

**Case No. 1:20-cv-08008-LTS**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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IN RE AVIANCA HOLDINGS S.A., ET AL.,

*DEBTORS.*

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USAV SECURED LENDER GROUP,  
*APPELLANT,*

v.

AVIANCA HOLDINGS S.A., ET AL.,  
*APPELLEES.*

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APPEAL FROM THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
BANKR. CASE No. 20-11133 (MG)

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**MEMORANDUM OF LAW IN SUPPORT OF  
EMERGENCY MOTION FOR STAY PENDING  
APPEAL, OR IN THE ALTERNATIVE TO  
EXPEDITE APPEALS, AND REQUEST TO  
CONSOLIDATE APPEALS**

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October 14, 2020

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The group of secured lenders (the “USAV Secured Lender Group” or “Lenders”) under the Loan Agreement (as defined below), hereby files this emergency motion (the “Motion”)<sup>1</sup> pursuant to Rule 42(a) of the Federal Rules of Civil Procedure and Rules 8003, 8007, and 8013 of the Federal Rules of Bankruptcy Procedure seeking (i) a stay pending appeal, or in the alternative, to expedite pending appeals, and (ii) to consolidate appeals,<sup>2</sup> of the so ordered *Memorandum Opinion Granting in Part and Denying in Part Debtors’ Motion to Reject the USAV Agreements* (the “Order” or the “Op.”)<sup>3</sup> entered by the United States Bankruptcy Court for the Southern District of New York (Glenn, J.) in the jointly administered chapter 11 cases of Avianca Holdings S.A. (together with its affiliated debtors, “Avianca”) on September 4, 2020, insofar as the Order granted in part *Debtors’ Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts* (the “Rejection Motion”).

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<sup>1</sup> Pursuant Fed. R. Bankr. P. 8012, 8013(d), the USAV Secured Lender Group submits (i) the *Declaration of Joshua D. Weedman* (the “Weedman Declaration”) substantially contemporaneously herewith, (ii) that the Motion cannot be remanded as it seeks procedural relief related to the administration of appeals pending in this Court, and (iii) a corporate disclosure statement and contact information for the parties as Exhibits VII and VIII hereto.

<sup>2</sup> USAVflow Limited (“USAV,” and together with the USAV Secured Lender Group, the “Appellants”) filed its own appeal of the Order pending under Case No. 1:20-cv-08364 (LTS).

<sup>3</sup> A copy of the Order is attached to the Weedman Declaration as Ex. A. The Appellants do not appeal the Order insofar as it denied in part the Rejection Motion and as otherwise set for in their notices of appeal. *See* [Dkt. 1]; [Bankr. Dkt. 960].

## **PRELIMINARY STATEMENT**

Avianca is a Colombian airline. In 2017, Avianca sold its rights to payment on account of certain ticket sales purchased through credit cards (such rights, and the proceeds thereof, the “Contract Rights” and “Future Proceeds”) to USAV. USAV paid \$150 million plus a substantial amount of “Additional Purchase Price” during the course of dealing since the closing of the sale. The USAV Secured Lender Group funded the \$150 million purchase price and, in return, received security interests over the Contract Rights and Future Proceeds that Avianca sold to USAV.<sup>4</sup> Three years later, in May 2020, amid the COVID-19 crisis, Avianca filed a petition for Chapter 11 reorganization. This appeal concerns an Order from the bankruptcy court allowing Avianca to use the “rejection” power under Section 365 of the Bankruptcy Code to take back the Contract Rights and Future Proceeds and to keep the purchase price paid for those assets. Avianca is now acting upon the Order and unwinding the 2017 sale by replacing the underlying credit card processing agreements, in order to divert the Contract Rights and Future Proceeds to itself.

The Order is clearly erroneous as a matter of law. *One*, the Order violates the United States Supreme Court’s recent holding in *Mission Prod. Holdings v. Tempnology, LLC* that rejection does not allow a debtor to unwind a prepetition sale,

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<sup>4</sup> Copies of the security documents are attached to the Weedman Declaration as Exs. B–K.

as the Order allows Avianca to do, by taking back assets that it sold years ago. 139 S. Ct. 1652 (2019) (“Mission Product”). *Two*, the Order violates Mission Product’s holding that a debtor cannot expand its estate by taking back the Contract Rights and Future Proceeds that it did not own pre-bankruptcy. *Three*, even where a transaction can be unwound, unlike here, the seller is required to return the purchase price in order to obtain such relief. The Order permits Avianca to take back the assets that it sold in 2017, and also keep the purchase price paid for those assets. There is no legal or equitable principle that could support that ruling. *Four*, there are no material unperformed obligations under the contracts at issue that would allow Avianca to reject them under Section 365 of the Bankruptcy Code.

The credit card processing agreements that Avianca seeks to terminate were sold to USAV in 2017. They are valuable, and Avianca would not terminate them if the Order did not allow Avianca to take back those assets (while keeping the purchase price). Absent a stay pending appeal, there is a substantial risk, if not a certainty, that Avianca will improperly terminate the credit card processing agreements, permanently impairing USAV and the Lenders’ rights.

Today it became clear that the emergency relief requested herein would be necessary. At an omnibus hearing held this afternoon before the bankruptcy court in Avianca’s chapter 11 cases, Avianca confirmed that it is in discussions with alternative credit card processors to replace the credit card processing agreements it

sold to USAV in 2017. Weedman Decl. ¶ 2. This is consistent with counsel for Avianca’s earlier representations to the bankruptcy court at a hearing held on October 5, 2020 that “there is quite a bit of work happening behind the scenes” with respect to the replacement of the credit card processing agreements, in response to the bankruptcy court’s request for an update as to whether it was still Avianca’s intention to terminate the existing agreements.<sup>5</sup>

Alternatively, the USAV Secured Lender Group asks to expedite the appeals to allow for a decision before Avianca can terminate the credit card processing agreements. Prior to filing this Motion, counsel to the Appellants endeavored to bring this Court a consensual briefing schedule for consideration, but counsel to Avianca refused to negotiate an expedited timetable for the appeals. Weedman Decl. ¶¶ 4–7.

The USAV Secured Lender Group proposes to file its opening brief, substantially in the form attached hereto as Exhibit I.<sup>6</sup> The USAV Secured Lender Group further requests that Avianca file its responding brief by October 28, 2020, the Appellants file their reply by November 4, 2020, and the Court schedule oral

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<sup>5</sup> See October 5, 2020 Hr’g Tr. at 58:21–59:16 [Bankr. Dkt. 1039], Weedman Decl. Ex. M.

<sup>6</sup> If the appeals of the USAV Secured Lender Group and USAV are consolidated, USAV will join in the USAV Secured Lender Group’s opening and reply briefs in order to avoid duplication. The Appellants will submit a brief with corrected citations to the Joint Appendix within one day after the Joint Appendix has been submitted.

argument for the week of November 16, 2020. Additionally, to ensure that the record of the proceedings below is expeditiously transmitted to this Court, the USAV Secured Lender Group further requests that Avianca's deadline for making counter-designations of the record on appeal be set as October 15, 2020 and that the parties agree to and file a Joint Appendix on or before October 19, 2020.<sup>7</sup>

The USAV Secured Lender Group also seeks to consolidate the appeals of the Order filed by the Appellants. That relief is uncontested, as USAV supports, and Avianca does not oppose, consolidation. Consolidation is warranted in the interests of judicial economy and expediency as the appeals involve the same order, concern the same transaction, and involve the same parties and issues. *See* Fed. R. Civ. P. 42(a); Fed. R. Bankr. P. 8003(b)(2).

### **BACKGROUND**

1. On May 10, 2020, Avianca filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. *See* Op. at 4. On June 23, 2020, Avianca filed the Rejection Motion seeking *inter alia* to reject the USAV Agreements (as defined therein) and pursuant to Sections 365 of the Bankruptcy Code. *See* Rejection Motion ¶ 37. On June 23, 2020, Avianca also commenced an adversary proceeding against

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<sup>7</sup> The USAV Secured Lender Group's proposed appendix ("Proposed Appendix") is attached hereto in five volumes as Exhibits II-VI. References in the USAV Secured Lender Group's opening brief submitted herewith are to this proposed appendix.



USAV making contrary assertions that the USAV Agreements are a “disguised secured financing,” rather than executory contracts capable of rejection. *See Op.* at n.3.

2. The Appellants filed objections on July 22, 2020. Avianca and the Committee filed replies on August 7, 2020. *Op.* at 5. All parties submitted supplemental briefing ordered by the bankruptcy court on August 18, 2020, and each of the Appellants submitted sur-replies on that same day. *Id.* at 5–6. On August 26, 2020, the bankruptcy court held a hearing on the Rejection Motion.

3. On September 4, 2020, the bankruptcy court issued the Order, granting in part and denying in part the Rejection Motion. *Id.* at 37. In partially denying the Rejection Motion, the bankruptcy court held, *inter alia*, that rejection could not unwind the 2017 sale of the Contract Rights and Future Proceeds to USAV, because such relief is prohibited by the Supreme Court’s decision in *Mission Product*. *Id.* at 34–37. The bankruptcy court, however, then allowed Avianca to unwind the sale prospectively through rejection.

4. On September 18, 2020, the Appellants each filed timely notices of appeal from the Order, insofar as it granted the Rejection Motion, and more specifically the bankruptcy court’s decision to allow Avianca to (i) use rejection to take back assets that were sold, while keeping the purchase price and (ii) reject non-

executory agreements. *See USAVflow Notice of Appeal* [Bankr. Dkt. 960]; *USAV Secured Lender Group Notice of Appeal* [Dkt. 1]. On October 2, 2020, the Appellants each filed statements of issues on appeal and designations of the record for the appeal. *See USAVflow Statement of Issues* [Bankr. Dkt. 1015]; *USAV Secured Lender Group Statement of Issues* [Bankr. Dkt. 1014].

## **ARGUMENT**

### **I. A STAY OF THE ORDER IS WARRANTED<sup>8</sup>**

5. The decision whether to grant a stay pending appeal from an order of a bankruptcy court is within the court's discretion. *In re Adelphia Comm'ns Corp.*, 361 B.R. 337, 346 (S.D.N.Y. 2007). Courts in this Circuit weigh four factors in making this decision: "(1) whether the movant will suffer irreparable injury absent a stay, (2) whether the movant has demonstrated a substantial likelihood of success on the merits, (3) whether another party will suffer substantial injury if a stay is issued, and (4) the public interests at stake." *Id.*; *see also Hirschfeld v. Bd. of Elections*, 984 F.2d 35, 39 (2d Cir. 1993). While some courts in this Circuit have held that the movant must show satisfactory evidence on all four factors, others have

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<sup>8</sup> As required by Bankruptcy Rule 8007(a), the USAV Secured Lender Group has also moved in the bankruptcy court for a stay of the appealed aspects of the Order on an expedited basis. [Bankr. Dkt. 1081]. USAV has filed a joinder to that motion. [Bankr. Dkt. 1083]. Avianca refused the USAV Secured Lender Group's request to schedule a hearing on an expedited basis, and the hearing is scheduled for October 29. Weedman Decl. ¶¶ 3, 10. Accordingly, pursuant to Bankruptcy Rule 8007(b), this Court can hear the present Motion.

held that the appropriate inquiry “involves a balancing of the four factors and the lack of any one factor is not dispositive to the success of the motion.” *In re Brown*, No. 18-10617 (JLG), 2020 Bankr. LEXIS 1537, at \*16 (Bankr. S.D.N.Y. June 10, 2020) (employing balancing approach);<sup>9</sup> *see also Westpoint Stevens Inc. v. Aretex, LLC (In re Westpoint Stevens Inc.)*, 2007 U.S. Dist. LEXIS 33725, at \*14 n.4 (S.D.N.Y. May 9, 2007) (noting the Second Circuit’s approval of “flexible application of test weighing relative strength of factors in determining how much of a showing of probability of success on the merits is required” (citing *Mohammed v. Reno*, 309 F.3d 95, 101 (2d Cir. 2002))) (Swain, J.); *In re BGI, Inc.*, No. 11-10614 (MG), 2012 Bankr. LEXIS 5244, at \*16 (Bankr. S.D.N.Y. Nov. 2, 2012) (“the lack of one factor is not dispositive to the success of the motion, rather the appropriate inquiry represents a balancing of the four factors.”) (internal citations omitted); *In re Daebo Int’l Shipping Co.*, No. 15-10616 (MEW), 2016 Bankr. LEXIS 356, at \*8 (Bankr. S.D.N.Y. Feb. 4, 2016); *In re GMC*, 409 B.R. 24, 30 (Bankr. S.D.N.Y. 2009). Each of the four factors weighs in favor of granting the stay.

**A. In the Absence of a Stay The Appellants Will Suffer Irreparable Injury**

6. “[I]rreparable harm . . . [exists] where, but for the grant of equitable relief, there is a substantial chance that upon final resolution of the action the parties

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<sup>9</sup> Copies of unpublished decisions are attached to the Weedman Declaration, Ex. L.

cannot be returned to the positions they previously occupied.” *Brenntag Int’l Chems., Inc. v. Bank of India*, 175 F.3d 245, 249 (2d Cir. 1999).

7. Irreparable harm also exists where the availability of monetary recovery is uncertain due to the insolvency of the party obligated to pay damages. *Brenntag Int’l Chems.*, 175 F.3d at 250 (affirming finding of irreparable harm where defendant was insolvent); *CRP/Extell Parcel I, L.P. v. Cuomo*, 394 F. App’x 779, 781 (2d Cir. 2010) (“[W]e have held that a finding of irreparable harm may lie in connection with an action for money damages where the claim involves an obligation owed by an insolvent or a party on the brink of insolvency.”).

8. Indeed, courts have found that an unsecured creditor or movant may suffer irreparable harm where it is at risk of losing its collateral pending appeal because of the appellee’s insolvency. *Dairy Mart Convenience Stores, Inc.*, 272 B.R. at 70 (granting motion to expedite where party would otherwise lose its status as a secured creditor); *cf. Carter-Wallace, Inc. v. Davis-Edwards Pharmacal Corp.*, 443 F.2d 867 (2d Cir. 1971) (no irreparable harm where claim in bankruptcy would receive priority and adequate security could be provided).

9. Here, in the absence of a stay of the Order, Avianca will try to terminate its existing credit card processing agreements and enter into new ones. The Contract Rights and Future Proceeds relate to a unique underlying asset—rights to payment on account of “Specified Sales” of airline tickets and related services purchased

through U.S. travel agencies with certain credit cards. The rights to payment from Specified Sales belong to the Appellants. Those rights are unique assets upon which the Lenders based their decision to provide financing for the 2017 sale. Terminating them is irreparable harm. *Main St. Baseball, LLC v. Binghamton Mets Baseball Club, Inc.*, 103 F. Supp. 3d 244, 261 (N.D.N.Y. 2015) (loss of contractual right to unique property constituted irreparable harm); *Commercial Radio Inst., Inc. v. W. Pa. Christian Broad. Co.*, 428 F. Supp. 1054, 1057 (W.D. Pa. 1977) (same); *see also Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 404 (2d Cir. 2004) (recognizing loss of potential business opportunities may constitute irreparable harm).<sup>10</sup>

10. Additionally these agreements are the USAV Secured Lender Group's collateral. If Avianca can terminate the credit card processing agreements, the USAV Secured Lender Group will be irreparably deprived of its bargained-for security and will face an uncertain prospect of recovery of damages to compensate it for such deprivation. Indeed, the bankruptcy court has acknowledged that the credit card agreements are the "only link" between the proceeds of Avianca's ticket sales and the payment rights acquired by USAV. Op. at 37. Such harm is not merely

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<sup>10</sup> Appellants' ability to reach the Contract Rights diverted to any replacement card processing agreement, and the Future Proceeds generated through the new credit card processing agreements does not eliminate the irreparable harm. The existing agreements are unique contracts. Any new credit card processing agreement will have different terms, different networks and presumably transitional delays. Thus, Avianca would not replace those credit card agreements but for its scheme to take back the Contract Rights and Future Proceeds it sold in 2017.

theoretical. Today, counsel for Avianca re-confirmed to the bankruptcy court that Avianca is in discussions with alternative credit card processors to replace the credit card processing agreements it sold to USAV in 2017. Weedman Decl. ¶ 2. The imminent loss of the USAV Secured Lenders’ collateral constitutes irreparable harm and warrants granting a stay pending determination of the appeal.

11. While the bankruptcy court has acknowledged that the Appellants will have a claim for damages as a result of the rejection of the sale agreement or “RSPA”<sup>11</sup> the related Undertaking Agreement, under which Avianca has obligations to USAV, as “Seller,” to *inter alia*, “ensure that each of the Card Processing Agreements remains the legal, valid, and binding obligation of each of the parties thereto . . .”,<sup>12</sup> the extent to which Avianca will pay that claim is unknown. Op. at 37–38. Indeed, Avianca has announced an intention to seek to treat the claim as unsecured, which, if successful (and it should not be) would ensure there would not be anything close to a full recovery. So, Avianca seeks to implement a scheme to circumvent the Supreme Court’s decision in *Mission Product*, to avoid paying the Appellants’ claims to the maximum extent possible, and relegate the Appellants’ rejection damages to an unsecured claim. *Id.*

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<sup>11</sup> Proposed Appendix at AX. 5.

<sup>12</sup> Undertaking Agreement § 2.01(t)(v), Proposed Appendix at AX. 6.

## **B. Granting the Stay Serves the Public Interest**

12. The public interest in preserving the integrity, certainty, and stability of the debt markets also supports a stay. *See, e.g., Volmar Distribs. v. N.Y. Post Co.*, 152 F.R.D. 36, 40 (S.D.N.Y. 1993) (granting stay noting “[t]he public certainly has an interest in the preservation of the integrity of competitive markets.”); *NML Capital, Ltd. v. Republic of Argentina*, 144 F. Supp.3d 513, 521 (S.D.N.Y. 2015) (granting order for specific performance where it would serve the “public interest of enforcing contracts, maintaining confidence in debt markets”) (quoting *NML Capital, Ltd. v. Republic of Arg.*, 727 F.3d 230, 248 (2d Cir. 2013)). Moreover, “[t]here is good reason to avoid judicial disruption of commercial transactions based on a balancing of factors susceptible to subjective interpretation.” *Paloian v. LaSalle Bank Nat’l Ass’n (In re Doctors Hosp. of Hyde Park, Inc.)*, 507 B.R. 558, 721 (Bankr. N.D. Ill. 2013).

13. As of July 2019, the outstanding issuances in connection with structured financing transactions in the United States, such as the transaction at issue here, was \$11.7 trillion.<sup>13</sup> Of that amount, approximately \$800 billion involved consumer credit-related receivables, including the sale of auto loans and credit card

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<sup>13</sup> See Justin Guichard, Brendan Beer, and Clark Koury, *Oaktree Insights Strategy Primer: Investing in Structured Credit*, Oaktree Capital L.P. 1 (July 2019), available at <https://www.oaktreecapital.com/docs/default-source/default-document-library/investing-in-structured-credit.pdf>.

receivables (usually through securitization) to special purpose vehicles or investors. *See id.* The Order paves the way for future debtors to avoid their obligations to receivables financiers and other lenders secured by contract rights, by terminating and replacing the underlying contracts post-petition. Accordingly, the Order has the potential to chill the market for structured lending secured by contract rights, and to do so during difficult economic times, when access to capital is particularly important. The resolution of the appeal, therefore, is a matter of general public concern.

14. Additionally, there is “a public interest in protecting the right to appellate review when it can be done without undue prejudice to the side that won below.” *In re Motors Liquidation Co.*, 539 B.R. 676, 686 (Bankr. S.D.N.Y. 2015); *see also In re Gleasman*, 111 B.R. 595, 599 (Bankr. W.D. Tex. 1990) (a stay is appropriate where it would neither “undo nor overwhelm the administration of the bankruptcy case during the appellate process”). A stay will not harm Avianca’s restructuring or emergence from bankruptcy. As set forth below, the stay will not deprive Avianca of liquidity necessary to continue their operations, and the stay will have a neutral impact on Avianca’s broader chapter 11 process. *See infra* ¶ 15. Thus, the public interest factor weighs in favor of this Court granting a stay pending appeal.



**C. Avianca Will Not Suffer Substantial Injury From The Stay**

15. The minimal impact of a stay on Avianca’s interests also supports a stay. Mere delay in the diversion of USAV’s credit card proceeds to Avianca should be given little weight in balancing the interests of the parties, since Avianca is not relying on such receivables to fund the chapter 11 cases. *See In re Neff*, No. 1:11-bk-22424-GM, 2020 Bankr. LEXIS 2079 at \*8–9 (Bankr. C.D. Cal. August 4, 2020) (finding that a delay in access to funds may be “inconvenient” for a debtor, but it does not constitute “substantial injury.”). Indeed, Avianca just raised \$1.2 billion of new liquidity through debtor-in-possession financing, which Avianca says will “ensure the Debtors’ continued ability to pay operating expenses, finance the Chapter 11 Cases and, ultimately provide them with an opportunity to restructure their debts . . . .” [Bankr. Dkt. 964] ¶ 9; [Bankr. Dkt. 1031].

16. Additionally, the Appellants are prepared to commit to a briefing schedule that would be concluded by November 4, 2020, so the stay need not last long. Any harm caused to Avianca by a mere month’s delay is eclipsed by the harm the Appellants will suffer unless their property interests in assets that have been bought and paid are preserved pending determination of this appeal. *In re Advanced Min. Sys., Inc.*, 173 B.R. 467, 469 (S.D.N.Y. 1994) (granting stay where “[a]ny prejudice to the debtors and creditors if a stay is granted pales into insignificance in contrast to the prejudice the [movant] would suffer if it is not.”).

**D. The Appellants Have A Substantial Possibility of Success on Appeal**

17. “[T]he movant need not always show a ‘probability of success’ on the merits; instead, the movant need only present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities weighs heavily in favor of granting the stay.” *In re Adelphia Commc’ns Corp.*, 361 B.R. 337, 349 (S.D.N.Y. 2007) (quoting *LaRouche v. Kezer*, 20 F.3d 68, 72–73 (2d Cir. 1994)). Thus, when the issues on appeal are primarily confined to questions of law, or the bankruptcy court has ruled on a “difficult legal question” a stay is warranted even if the court considers success on the merits to be unlikely. *Barcia v. Sitkin*, 79 Civ. 5831 (RLC), 2004 U.S. Dist. LEXIS 5362, at \*10 (S.D.N.Y. Mar. 29, 2004); *see also In re Westwood Plaza Apartments*, 150 B.R. 163, 168 (Bankr. E.D. Tex. 1993). Indeed, pursuant to the Second Circuit’s “sliding scale” approach to weighing the stay factors, “if enough factors weigh in favor of a stay, one may be appropriate even where the party requesting it has failed to demonstrate a likelihood of success on the merits.” *Clark v. Perez*, 05 Civ. 698, 2006 U.S. Dist. LEXIS 85289 at \*6 (S.D.N.Y. Nov. 13, 2006).

18. The key issues on appeal are purely legal and subject to *de novo* review. And the merits of the three key issues on appeal are clear. First, the Order allows Avianca to unwind a prepetition sale in violation of *Mission Product*. The

bankruptcy court agreed that, under *Mission Product*, “rejection does not permit a debtor to ‘get back’ rights that they sold or ‘unwind’ or ‘rescind’ a transaction” (Op. at 32), but then violated the controlling Supreme Court case by allowing Avianca to do just that. (*See id.* at 34–37).

19. Second, the Order also allows Avianca to expand its estate, again in violation of *Mission Product*. Specifically, the Supreme Court held that “[t]he estate cannot possess anything more than the debtor itself did outside of bankruptcy.” *Mission Prod.*, 139 S. Ct. at 1663 (citing *Board of Trade of Chicago v. Johnson*, 264 U.S. 1, 15 (1924)). Avianca did not own the Contract Rights and Future Proceeds on the petition date because it had sold them to USAV in 2017. Op. at 34–37. The bankruptcy court thus erred in allowing Avianca to use the rejection power to enlarge estate assets by taking back those Contract Rights and Future Proceeds.

20. Third, the Order allows Avianca to take back the assets it sold while keeping the purchase price of \$150 million plus other consideration, a result not allowed by any authority or legal or equitable principle. Where a transaction can be unwound, unlike here, rescission requires the rescinding party to return what it received in order to unwind. *See, e.g. Curtis v. Curtis*, 1992 U.S. Dist. LEXIS 12695, at \*13 (S.D.N.Y. Aug. 24, 1992) (“In order to rescind the contract [plaintiff] must return the funds received pursuant to the contract.”). Thus, the bankruptcy court further erred in unwinding only one side of the sale.

21. Fourth, the sale was consummated in 2017, and any remaining obligations are not so essential as to render the contracts at issue executory and subject to rejection. *See, e.g., In re Safety-Kleen Corp.*, 410 B.R. 164, 168 (Bankr. D. Del. 2009) (contingent obligations must be “essential to the contract” in order to render the contract executory); *In re Spoverlook, LLC*, 551 B.R. 481, 486 (Bankr. D.N.M. 2016) (same). Avianca cannot use its own breaches to take back the Contract Rights and Future Proceeds it sold prepetition (while keeping the purchase price paid for those assets).

**E. The Appellants Should Not Be Required to Post A Bond**

22. Although Rule 8007 of the Bankruptcy Rules allows the Court to condition a stay pending appeal on the filing of a bond, a bond is not required. *Silverman v. Nat’l Union Fire Ins. Co. of Pittsburgh (In re Suprema Specialties, Inc.)*, 330 B.R. 93, 96 (S.D.N.Y. 2005) (“The posting of a bond, however, is discretionary and is not a prerequisite to obtain a stay pending appeal”). Where the order on appeal is not a money judgment, as here, a bond need not be imposed. *De la Fuente v. DCI Telecomms., Inc.*, 269 F. Supp. 2d 237, 240 (S.D.N.Y. 2003) (bond requirement may be eliminated or reduced where doing so “does not unduly endanger the judgment creditor’s interest in ultimate recovery.”); *Selletti v. Carey*, 173 F.3d 104, 112 (2d Cir. 1999) (“the primary purpose of the bond requirement is to insure that whatever assets a party does possess will not have been dissipated or

otherwise have become unreachable by the time such costs are actually awarded.”); *Lussier v. Sullivan (In re Sullivan)*, Nos. 08-18652-JNF, 09-1211, 2011 Bankr. LEXIS 871, at \*1 n.2 (Bankr. D. Mass. Mar. 7, 2011) (observing there is “difficulty with the applicability of the [supersedeas bond rule] in the absence of a monetary judgment”); *In re United Merchs. & Mfrs., Inc.*, 138 B.R. 426, 430 (D. Del. 1992) (the purpose of a bond “is to protect the adverse party from potential losses resulting from the stay” and finding that a bond was unnecessary since the non-moving party “[would] not suffer any loss as a result of the stay pending appeal”).

23. “The underlying purpose of posting a bond is to preserve the status quo while protecting the non-appealing party’s rights pending appeal.” *Schmidt v. FCI Enters. LLC*, 2020 U.S. Dist. LEXIS 95323, at \*7 (Feb. 3, 2020). If the Appellants are unsuccessful on appeal, Avianca will be able to seek to terminate the credit card processing agreements at that time. A bond is wholly irrelevant to the preservation of Avianca’s ability to do so.

24. A bond is also unnecessary because Avianca has no immediate need to terminate the contracts at issue with major processors, like American Express and Crediomatic.<sup>14</sup> And Avianca has ample capital to fund a reorganization without

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<sup>14</sup> Seeking to terminate or replace its existing credit card processing agreement would constitute an action outside the ordinary course of business that would require court approval, and thus the Appellants expect to receive notice of any such decision taken by Avianca. The Appellants reserve all rights in this respect.

taking away the proceeds they sold in 2017. *Supra* ¶ 15. Therefore, no bond or other security is justified or necessary to preserve the status quo.

## II. ALTERNATIVELY, EXPEDITING THE APPEAL IS WARRANTED

25. Courts may permit “expedited action on a motion because irreparable harm would occur during the time needed to consider a response.” Fed. R. Bankr. P. 8013(d)(1). Specifically, courts may “accelerate the time to transmit the record, the deadline for filing briefs and other documents, oral argument, and the resolution of the appeal.” Fed. R. Bankr. P. 8013(a)(2)(B).

26. Expediting an appeal may be appropriate where relief is needed to avoid irreparable harm. *In re Dairy Mart Convenience Stores*, 272 B.R. 66, 70 (S.D.N.Y. 2002) (creditor’s potential loss of secured status and unique procedural posture warranted expedited review); *ACC Bondholder Grp. v. Adelphia Communs. Corp.* (*In re Adelphia Communs. Corp.*), 361 B.R. 337, 368–69 (S.D.N.Y. 2007) (granting a stay pending appeal and expediting the appeal to avoid potential mootness). As set forth above, expediting the appeal is warranted to facilitate determination of this appeal before Avianca causes irreparable harm to the Appellants by taking back the property it sold to USAV and extinguishing the USAV Secured Lender Group’s collateral.<sup>15</sup> *Supra* ¶¶ 6–11.

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<sup>15</sup> Replacing the credit card processing agreements will not moot the appeal, among other reasons, because the Appellants can impose a constructive trust over the diverted proceeds. But that does not alleviate the harm because the replacement agreements will be on different

27. Additionally, courts may expedite appeals where it is in the public interest to do so. *See Eur. Movieco Partners Ltd. v. United Pan-Europe Communs. N.V. (In re United Pan–Europe Communs. N.V.)*, No. 02-16020 (BL), M-47 (RWS), 2003 U.S. Dist. LEXIS 1297, at \*6 (S.D.N.Y. Jan. 30, 2003) (describing purpose of Rule 8013’s predecessor as giving “district courts . . . the power to expedite the consideration of cases that are ‘of primary concern to the public or to the litigants.’”); *see also Groendyke Transp. Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969) (permitting expedited disposition because important public policy issues were involved and appellant’s position was clearly correct as a matter of law). As addressed above, the Order may have a dramatic impact on the availability of receivables financing, and potentially all financing secured by contract rights — at a time when stability of the debt markets and access to liquidity are paramount. *Supra* ¶¶ 12-14. Accordingly, the expedited determination of the appeal is also necessary to safeguard the public interest in preserving the certainty and stability of the capital markets at this critical juncture.

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terms and require a ramp up, assets may be dissipated for a period, and it will take litigation to reach the diverted proceeds.

### **NOTICE**

As set forth in the Weedman Declaration, the USAV Secured Lender Group has provided notice of this Motion in the manner required by required by Fed. R. Bankr. P. 8007(b)(4) and 8013(d)(3). *See* Weedman Decl. ¶¶ 4–8.

### **CONCLUSION**

Wherefore, for the foregoing reasons, the USAV Secured Lender Group respectfully requests that the Court enter an order (i) consolidating the appeals of the Order, (ii) granting a stay of the Order insofar as it grants the Rejection Motion, or, in the alternative, expediting the appeals as set forth in this Motion, and (iii) granting such other relief as may be proper.



**CERTIFICATE OF COMPLIANCE**

This Motion complies with the type-volume limitation of Federal Rule of Bankruptcy Procedure 8015(a)(7)(B)(i), because it contains 5,139 words, excluding the parts of the brief exempted by Federal Rule of Bankruptcy Procedure 8015(g).

This Motion complies with the typeface requirements of Federal Rule of Bankruptcy Procedure 8015(a)(5) and the type style requirements of Federal Rule of Bankruptcy Procedure 8015(a)(6) because this Motion has been prepared in a proportionately spaced typeface using Microsoft Word in 14-point Times New Roman font.

*[Signature on following page]*

Dated: October 14, 2020

New York, New York

**WHITE & CASE LLP**

By: */s/ Glenn M. Kurtz*

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**EXHIBIT I**

ORAL ARGUMENT REQUESTED

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**Case Nos. 1:20-cv-08008-LTS; 1:20-cv-08364-LTS**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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IN RE AVIANCA HOLDINGS S.A., ET AL.,  
*DEBTORS.*

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USAV SECURED LENDER GROUP,  
USAVFLOW LIMITED,  
*APPELLANTS,*

V.

AVIANCA HOLDINGS S.A., ET AL.,  
*APPELLEES.*

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APPEAL FROM THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
BANKR. CASE No. 20-11133 (MG)

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**OPENING BRIEF FOR  
APPELLANT USAV SECURED LENDER GROUP**

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**CORPORATE DISCLOSURE STATEMENT**

Appellant USAV Secured Lender Group, by and through its undersigned counsel, hereby makes the following disclosures pursuant to Fed. R. Bankr. P. 8012 for each member of the USAV Secured Lender Group:

1. Deutsche Bank AG, London Branch has no parent corporation and no publicly held corporation owns, directly or indirectly, 10% or more of any class of its equity interests.

2. Bank United N.A. states that the following entity owns, directly or indirectly, 10% or more of any class of its equity interests: BankUnited, Inc.

3. Banco de Credito del Peru states that the following entities owns, directly or indirectly, 10% or more of any class of its equity interests: Grupo Credito S.A.; Credicorp Ltd.; and Atlantic Security Holding Corporation.

4. First Citizens Bank Limited states that the following entities own, directly or indirectly, 10% or more of any class of its equity interests: First Citizens Holdings Limited; and Ministry of Finance (Corporation Sole).

5. Metrobank S.A. states that the following entities own, directly or indirectly, 10% or more of any class of its equity interests: Metro Holding Enterprises, Inc.; Fundación Reflexión Cristiana; and Buzz Finance Incorporated.

6. Prival Bank S.A. states that the following entities own, directly or indirectly, 10% or more of any class of its equity interests: Grupo Prival, S.A.; and

Grupo Famar, S.A.

7. Moneda Deuda Latinoamericana Fondo de Inversion has no parent corporation and no publicly held corporation owns, directly or indirectly, 10% or more of any class of its equity interests.

8. Moneda Latinoamerica Deuda Local Fondo de Inversion has no parent corporation and no publicly held corporation owns, directly or indirectly, 10% or more of any class of its equity interests.

**STATEMENT REGARDING ORAL ARGUMENT**

Pursuant to Fed. R. Bankr. P. 8019, Appellant USAV Secured Lender Group respectfully requests oral argument on these appeals. This matter concerns an important issue: the Supreme Court's decision in *Mission Product Holdings v. Tempnology, LLC*, 139 S. Ct. 1652 (2019). The order on appeal runs afoul of *Mission Product* and sets authority that likely will be followed in other bankruptcy cases, giving a debtor-seller the unprecedented power to unwind any sale of contract rights through rejection, while keeping the purchase price in violation of governing law.

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**PRELIMINARY STATEMENT**<sup>1</sup>

Aerovías del Continente Americano S.A. Avianca (“Aerovías,” and together with its affiliated Chapter 11 debtors, “Avianca”) is a Colombian airline. In 2017, Avianca sold to USAVflow Limited (“USAV”), an offshore special purpose vehicle, its right to payment (“Future Proceeds”) from the sale of tickets purchased through credit cards (“Contract Rights”). USAV paid \$150 million plus the potential for additional amounts (“Additional Purchase Price”) for those assets as they then existed under certain credit card processing agreements (“Card Processing Agreements”) and under any replacements of those agreements. The USAV Secured Lender Group financed the \$150 million purchase price paid by USAV, and took purchase money security interests on all of the purchased assets.

The value of the assets purchased was in the Future Proceeds, which can be separated into two buckets as is relevant here: (i) the proceeds that correspond to the \$150 million purchase price (the “Non-Excess Proceeds”), and (ii) the proceeds in excess of those Non-Excess Proceeds. The Non-Excess Proceeds are delivered to USAV and then the Lenders to cover the financed purchase price. The Non-Excess Proceeds are paid on an amortized schedule. Provided certain conditions are met, including the absence of a “Trigger Event” (as described below), the amount in

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<sup>1</sup> Capitalized terms not defined in the Preliminary Statement have the meanings provided elsewhere herein.



excess of what is owed to USAV and the Lenders, the Excess Proceeds, are paid to Avianca in the form of Additional Purchase Price. USAV's potential obligation to make payments of Additional Purchase Price, however, terminates upon a Trigger Event. Following a Trigger Event, all proceeds are retained by USAV until the loans from the Lenders are repaid in full. In other words, the loan amount is accelerated, so all proceeds are Non-Excess Proceeds until the loan is repaid. Following payment in full of USAV's loan obligations through those Non-Excess Proceeds, Avianca can then receive the Excess Proceeds through an option to purchase USAV's shares.

So, there is no dispute here that only USAV and the USAV Secured Lender Group (together, the "USAV Parties") have an interest in the Non-Excess Proceeds. And while USAV also owns the Excess Proceeds, Avianca has a contractual right either to receive the Excess Proceeds through Additional Purchase Price (in the absence of a Trigger Event) or by purchasing USAV's shares after the loans are repaid (in the event of a Trigger Event).

The Order allowed Avianca to unwind the sale to take back the Contract Rights and Future Proceeds sold in 2017, including the Non-Excess Proceeds in which even Avianca concedes it has no interest, while keeping the \$150 million payment and other consideration paid for those assets. The Order is erroneous as a matter of law.

Although this is an appeal of a bankruptcy court order, the issue raised is primarily one of contract law. The United States Supreme Court recently held that rejection of a contract under Section 365 of Title 11 of the United States Code (the “Bankruptcy Code”) merely operates as a breach of contract, and does not allow a debtor to terminate or unwind a transaction, as Avianca did here. *Mission Product Holdings v. Tempnology, LLC*, 139 S. Ct. 1652, 1662-63 (2019). Rather, the consequences of rejection are determined by “non-bankruptcy contract law,” just like any other breach of contract, and non-bankruptcy contract law does not allow a breaching party to unwind a transaction. The Supreme Court further held that rejection does not allow a debtor to take back what it sold because rejection does not expand a debtor’s estate beyond what the debtor owned before bankruptcy. *See id.*

The bankruptcy court acknowledged that *Mission Product* does not allow Avianca to take back the Contract Rights and Future Proceeds, but then allowed Avianca to do so in a ruling that is even more erroneous because Avianca was also allowed to keep the \$150 purchase price, plus other consideration. Even where a sale can be unwound, unlike here, the seller cannot get back the asset sold *and* keep the purchase price. The bankruptcy court did not cite any law that would allow the breaching party to unwind a sale and get back the assets sold to a non-breaching party (while keeping the purchase price), and there is none. There is no legal or

equitable principle that would allow the breaching party to unwind a sale or to keep both the assets sold and the purchase price paid for the assets.

The bankruptcy court also erred because Section 365 allows only executory contracts to be rejected. A contract is executory only where each party has material unperformed obligations and those matching bilateral unperformed obligations are so essential that one party's failure to perform its remaining obligations would excuse the other party from performing its remaining obligations. The sale of the Contract Rights and Future Proceeds as they relate to the Non-Excess Proceeds can never be executory because Avianca never had an interest in those proceeds. Moreover, the RSPA and the Undertaking Agreement (described below) simply do not have material bilateral unperformed obligations that would allow Avianca to take back the Contract Rights and Future Proceeds sold in 2017.

### **JURISDICTIONAL STATEMENT**

The so-ordered *Memorandum Opinion Granting in Part and Denying in Part Debtors' Motion to Reject the USAV Agreements* (AX40, the "Order" or the "Op."),<sup>2</sup> entered by the bankruptcy court on September 4, 2020, constitutes a final, appealable order within the meaning of 28 U.S.C. §158(a)(1). The bankruptcy court exercised

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<sup>2</sup> References to "AX\_\_" are to the "Appendix Exhibit Numbers" shown in the Appendix filed contemporaneously herewith. References to "A\_\_" are to specific page numbers in the Appendix. References to "Bk.Dkt.\_\_" are to docket entries from the main Chapter 11 bankruptcy case no. 20-11133 (MG).

jurisdiction pursuant to 28 U.S.C. §§157 and 1334 and the Amended Standing Order of Reference M-341, dated January 31, 2012. Pursuant to Fed. R. Bankr. P. 8002, the USAV Secured Lender Group timely filed its notice of appeal on September 18, 2020 (Dkt.1) of the Order insofar as the Order granted in part *Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts* (AX3, the "Motion"). This Court has jurisdiction over these appeals pursuant to 28 U.S.C. §158(a)(1).

### **QUESTIONS PRESENTED**

1. Whether the bankruptcy court erred in allowing Avianca to use rejection to unwind its prepetition sale of Contract Rights and Future Proceeds, where the Supreme Court's decision in *Mission Product Holdings v. Tempnology, LLC*, 139 S. Ct. 1652 (2019) recently held that sales could not be unwound through rejection? This is an issue of law subject to *de novo* review.

2. Whether the bankruptcy court erred in allowing Avianca to use rejection to expand its estate by taking back the Contract Rights and Future Proceeds it sold in 2017, where *Mission Product* explicitly held that a debtor cannot do so? This is an issue of law subject to *de novo* review.

3. Whether the bankruptcy court erred in allowing Avianca to unwind only one side of the sale transaction with USAV by allowing Avianca to take back the assets it sold but to keep the \$150 million plus other consideration USAV paid

for those assets, financed by the USAV Secured Lender Group, where the law is clear that a party must return what it received to rescind? This is an issue of law subject to *de novo* review.

4. Whether the bankruptcy court erred in finding the Receivables Maintenance Agreement dated December 12, 2017 (AX6, the “Undertaking Agreement”), between Aerovías, as seller and servicer, and USAV, as purchaser, was an executory contract subject to rejection under Section 365(a), where USAV has no material unperformed obligation, as required for a contract to be executory? This is an issue of law subject to *de novo* review.

5. Whether the bankruptcy court erred in finding the Contract Rights and Receivables Sale, Purchase and Servicing Agreement dated December 12, 2017 (AX5, the “RSPA”), between Aerovías, as seller and servicer, and USAV, as purchaser, was an executory contract subject to rejection under Section 365(a)? This is an issue of law subject to *de novo* review.

### **STANDARD OF REVIEW**

“A question of the interpretation of the Bankruptcy Code, like any other question of statutory interpretation, is a question of law that we review *de novo*.” *Mission Prod. Holdings v. Tempnology LLC (In re Tempnology LLC)*, 559 B.R. 809, 815 (B.A.P. 1st Cir. 2016) (quoting *United States v. Yellin (In re Weinstein)*, 272 F.3d 39, 42 (1st Cir. 2001)). The interpretation of unambiguous contracts is also a

question of law reviewed *de novo*. *Omni Quartz v. CVS Corp.*, 287 F.3d 61, 64 (2d Cir. 2002); *Beth Medrash Eeyun Hatalmud v. Spellings*, 505 F.3d 139, 145 (2d Cir. 2007). The issue of whether a contract is executory under Section 365 is a legal question and, therefore, is subject to *de novo* review. *See Glosser v. Maysville Reg'l Water Dist. (In re Midwest Portland Cement Co.)*, 174 F. App'x 34, 36 (3d Cir. 2006); *RCI Tech. Corp. v. Sunterra Corp. (In re Sunterra Corp.)*, 361 F.3d 257, 263 (4th Cir. 2004); *Penn Traffic Co. v. COR Route 5 Co., LLC (In re Penn Traffic Co.)*, 05 Civ. 3755 (NRB), 2005 U.S. Dist. LEXIS 20407, at \*5 (S.D.N.Y. Sep. 16, 2005); *Pieco, Inc. v. Atl. Comput. Sys. (In re Atl. Comput. Sys.)*, 173 B.R. 844, 849 (S.D.N.Y. 1994). The bankruptcy court's conclusions of law are subject to *de novo* review. *Smart World Techs., LLC v. Juno Online Servs. (In re Smart World Techs., LLC)*, 423 F.3d 166, 174 (2d Cir. 2005). Mixed questions of law and fact are also reviewed *de novo*. *See Citibank, N.A. v. Vebeliunas (In re Vebeliunas)*, 332 F.3d 85, 90 (2d Cir. 2003).

## **STATEMENT OF THE CASE**

### **A. The 2017 Transaction**

#### **1. The Sale And Sale Documents**

Avianca is an airline. Avianca receives revenue from various sources, including airline ticket sales and related services purchased by consumers through U.S. travel agencies with American Express, Visa, and MasterCard credit cards (the

“Specified Sales”). (See A1212, A1216-17 (Op. at 7, 11-12); A154, A157-59 (RSPA §§1.01, 2.01); Bk.Dkt.17 ¶¶45-48) In order to facilitate these Specified Sales, Avianca entered into agreements with third-party credit card companies (“Card Processors”)—namely, American Express Travel Related Services Company, Inc. and American Express Payment Services Limited (“AMEX”), and BAC International Bank Inc. and its subsidiaries (“Credomatic”)—pursuant to which those Card Processors collect and deliver the amounts they recover from settling and processing the credit card transactions in exchange for a fee for their services. (*See id.*)

In 2017, Avianca sold the Contract Rights and Future Proceeds that it receives from Specified Sales to USAV (the “2017 Transaction”). (See A1207-08 (Op. at 2-3)) As part of the 2017 Transaction, USAV also purchased Avianca’s already-accrued credit card receivables (the “Receivables”). (*Id.*)

In order to effectuate the 2017 Transaction, Avianca entered into a number of different agreements, all dated on or about December 12, 2017 (including the agreements Avianca sought to reject by the Motion (the “USAV Agreements”)).<sup>3</sup> (See A1215-16 (Op. at 10-11)) As is relevant here, the USAV Agreements include four primary documents.

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<sup>3</sup> Capitalized terms used but not defined herein have the meanings provided in the USAV Agreements.

First, the USAV Agreements included the RSPA,<sup>4</sup> which reflects USAV's agreement to purchase Avianca's Contract Rights, Future Proceeds, and accrued Receivables under the Card Processing Agreements for \$150 million, along with the potential for Avianca to receive additional contingent payments assuming certain conditions are met, as described more fully below.<sup>5</sup> (*See* A1212, A1216-17 (Op. at 7, 11-12); A154, A157-59 (RSPA §§1.01, 2.01))

Second, the parties executed the Undertaking Agreement,<sup>6</sup> which requires Avianca, as seller, among other things, to “ensure that each of the Card Processing Agreements remains the legal, valid, and binding obligation of each of the parties thereto ...” (A285 (Undertaking Agreement §2.01(t)(v))), and, as “Servicer” of the Contract Rights and Future Proceeds, perform certain administrative duties. (A1219 (Op. at 14))

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<sup>4</sup> The RSPA is governed by Colombian law. (A181 (RSPA §9.09))

<sup>5</sup> For clarity, this brief uses the term “Contract Rights” to mean the *right to receive* all future “Collections”—i.e., “all cash collections and other cash proceeds derived from the Contract Rights or the Receivables, whether received by the Seller, the Purchaser, or any other Person” (A145 (RSPA §1.01))—prior to their being liquidated into cash proceeds following a Specified Sale, and the term “Future Proceeds” to mean the *actual cash collections and other proceeds* generated from the Contract Rights, but the Court should note that the concept of Future Proceeds is already captured by and subsumed within the concept of “Contract Rights.” (*See* A145-46 (RSPA §1.01))

<sup>6</sup> The Undertaking Agreement is governed by Colombian law. (A293 (Undertaking Agreement §4.09))



Third, the USAV Agreements included certain notices and consents (AX8-10) provided by Avianca to its Card Processors, which, among other things, instructed those Card Processors to deliver all Future Proceeds directly to USAV's New York Pass-Through Account, to which instruction the Card Processors agreed. (See A340-42 (Credomatic Notice §3); A376 (Credomatic Consent and Agreement §(a)(ii)); A385-87 (AMEX Notice and Consent §§3-4)) All Future Proceeds deposited in USAV's New York Pass-Through Account are swept daily to USAV's Collections Account located in London, England.<sup>7</sup> (See A433-34 (Loan Agreement §2.3))

Finally, as relevant here, the USAV Agreements included the Cash Management Agreement (AX7, the "CMA"; A1215 (Op. at 10)), which provides the mechanics and timing for distributions from USAV's Collections Account and clarifies the payment priorities of the parties, including in the case of a Trigger Event (as discussed more fully below). (See A318-21 (CMA §§2.01-2.04); A1220, A1229-30 (Op. at 15, 24-25))

## 2. The Loan

Contemporaneously with the USAV Agreements, USAV entered into a loan agreement dated December 12, 2017 (AX11, the "Loan Agreement"), among

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<sup>7</sup> USAV's New York Pass-Through Account, Debt Service Reserve Account, and Collections Account are under the control of Citibank for the benefit of the Lenders. (See A1214 (Op. at 9 n.6))

USAV, as borrower, certain Avianca debtors, as guarantors, the Lenders, and Citibank, N.A. (“Citibank”), as administrative agent (the “Administrative Agent”) and collateral agent (the “Collateral Agent,” and together with the Administrative Agent, the “Agents”). (*See* A1212-13 (Op. at 7-8)) Under the Loan Agreement, the Lenders advanced the \$150 million for USAV’s purchase of the Contract Rights, Future Proceeds, and existing Receivables. (*See* A1208 (Op. at 3)) In exchange, USAV agreed to pay to the Lenders amortization and interest payments from the Future Proceeds that USAV purchased from Avianca. (*See* A625 (Lenders’ Obj. ¶17)) The Contract Rights and Future Proceeds, as well as the pledged accounts into which they flow, are the collateral securing the Lenders’ claims against USAV. (*See id.*)

### **3. Additional Purchase Price And Trigger Events**

As noted above, under the RSPA, Avianca is entitled to an additional contingent payment, or “Additional Purchase Price,” which is defined as an amount equal to future cash proceeds from credit card sales less the amount required for USAV’s monthly amortization and other payments plus certain amounts USAV is obligated to maintain in reserve under the Loan Agreement. (*See* A1212 (Op. at 7); A142, A162-63 (RSPA §§1.01, 3.01(a))) The Additional Purchase Price is subject to various conditions, including that no “Trigger Event” is continuing, and only when the Standard Priority Provisions (as defined below) under the CMA apply (*see*

A1218 (Op. at 13); A162-63 (RSPA §3.01(a)(ii))), as explained below. *See infra* pp.12-13.

Section 6.01 of the RSPA lists a number of “events” that constitute “Trigger Events” (each, a “Trigger Event”). (*See* A174-76 (RSPA §§6.01(a)-(r))) Among other circumstances, a Trigger Event occurs when “the capacity or ability of the Seller to operate domestic and/or international flights is materially impaired for any reason,” or upon the occurrence of an “Insolvency Event,” which the RSPA defines to include the filing of a voluntary bankruptcy petition. (A175 (RSPA §§6.01(i)(i), (h))) The failure of Avianca to provide notice to USAV and the Administrative Agent of a Trigger Event pursuant to Section 2.01(f)(v) of the Undertaking Agreement also constitutes a Trigger Event. (A175 (RSPA §6.01(c)(i)))

In the absence of a Trigger Event, the standard priority of payments set forth in Section 2.01 and 2.02 of the CMA applies (the “Standard Priority Provisions”). (*See* A318-20 (CMA §§2.01, 2.02)) The Standard Priority Provisions generally contemplate the release by the Collateral Agent of Excess Proceeds in the form of Additional Purchase Price to the extent of any collections received in USAV’s accounts in excess of the payments and reserves USAV is required to make or hold under the Loan Agreement. (*See id.*) If the Collateral Agent receives written notice from the Administrative Agent under the Loan Agreement that “a Trigger Event has occurred and is continuing” (a “Trigger Event Notice”), however, then the Collateral

Agent shall not make any further distributions *unless* the Collateral Agent receives written notice from the Administrative Agent (at the direction of the “Required Lenders” under the Loan Agreement) that the Trigger Event Notice has been “revoked or is otherwise of no further force or effect” (a “Trigger Event Waiver”). (*See id.*) There is no obligation in the USAV Agreements for the Lenders to make such a direction.

Notwithstanding that the delivery of a Trigger Event Notice relieves USAV from paying Additional Purchase Price (unless restored by a Trigger Event Waiver), Avianca does not lose the Excess Proceeds. Rather, Avianca can receive the Excess Proceeds by exercising its right to acquire the outstanding shares of USAV, after payment in full of USAV’s obligations to the Lenders, by exercising its option on such shares pursuant to an option agreement dated December 12, 2017 (AX31, the “Option Agreement”).

#### **4. The Back-Up Protection To Preserve The Sale**

As discussed, the RSPA records a sale of the Contract Rights and Future Proceeds generated through credit card purchases of airline tickets. *See supra* pp.7-10. Unlike some other types of assets, however, the ticket sales depend on the ability of third-party Card Processors to process the credit card sales. Consequently, the parties contracted for certain back-up protections to ensure that the Future Proceeds

at issue were protected in the event that any Contract Rights had to be moved to a new Card Processor.

Avianca has no right to terminate and enter into replacement Card Processing Agreements (*see* A284-85 (Undertaking Agreement §2.01(t))), but if the USAV Parties determined to allow Avianca to do so, then the back-up mechanism requires Avianca to “sell” to USAV the rights under any replacement Card Processing Agreements in consideration for the purchase price already paid for those assets. (*See* A157-59 (RSPA §2.01); A161 (RSPA §2.03(b)); A163 (RSPA §3.01(d)) (“The Purchase price shall be consideration for the Sale and Transfer ... with respect to each Additional Card Processing Agreement.”))

**B. The Trigger Events Prior To Avianca’s Bankruptcy**

On March 20, 2020, the Republic of Colombia closed its airspace to address the spread of COVID-19. (A1209 (Op. at 4)) On March 24, 2020, Avianca announced that it was suspending all scheduled passenger flights effective March 25, 2020 (*see id.*), which was a Trigger Event under RSPA §6.01(i)(i) (the “Flight Impairment Trigger Event”). *See supra* p.12. Avianca failed to provide notice to USAV and the Administrative Agent of that Trigger Event (*see* A841 (Lenders’ Sur-Reply n.16)), which resulted in another Trigger Event under RSPA §6.01(c)(i) (a

“Notification Trigger Event,” and together with the Flight Impairment Trigger Event, the “Unwaived Trigger Events”).<sup>8</sup> *See supra* p.12.

On March 31, 2020, the Administrative Agent delivered to USAV and Avianca a Trigger Event Notice for the Flight Impairment Trigger Event. (AX17, the “March Trigger Event Notice”) Under the unambiguous terms of the RSPA and CMA, the occurrence of the Unwaived Trigger Events cut off Avianca’s right to Additional Purchase Price. *See supra* pp.11-13. RSPA §3.01(a)(ii) is clear that “***no Additional Purchase Price shall be paid*** during the continuance of ... a Trigger Event.” (*See* A162-63 (RSPA §3.01(a)(ii))) (emphasis added) Further, RSPA §3.01(a)(ii) provides that Additional Purchase Price is “due and payable” only as provided in the applicable priority of payment provisions set forth in Sections 2.01, 2.02, or 2.03 of the CMA. (*See id.*) Upon receipt of the March Trigger Event Notice, the Standard Priority Provisions of the CMA automatically were turned off and, therefore, no further Additional Purchase Price payments to Avianca were due. (*See* A318-20 (CMA §§2.01, 2.02))

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<sup>8</sup> Upon Avianca’s filing of the Chapter 11 cases, another Trigger Event occurred. *See supra* p.12. Avianca relied on this Trigger Event as the basis of its argument that USAV’s interests the Contract Rights and Future Proceeds could be extinguished by providing USAV with an unsecured, pre-petition claim for “Liquidated Damages.” (*See* A712, A731-32 (Avianca’s Reply ¶¶12, 59)) Although that argument was not decided below and is not at issue in these appeals, Avianca has admitted the validity and enforceability of this Trigger Event in the proceedings below.

After the March Trigger Event Notice was delivered, the Standard Priority Provisions (along with USAV's obligation to pay Additional Purchase Price) could be restored *only* if the Collateral Agent receives a Trigger Event Waiver from the Administrative Agent (at the direction of the Required Lenders) declaring that the March Trigger Event Notice has been "revoked or is otherwise of no further force or effect." (*See id.*) Avianca never requested, and neither USAV, the Administrative Agent, nor the Lenders ever provided, a Trigger Event Waiver in respect of Unwaived Trigger Events. (*See* A591 (USAV Obj. n.5); A637 (Lenders' Obj. n.14); A840-41 (Lenders' Sur-Reply ¶¶35-36)) Consequently, USAV did not (and still does not) have any obligation to pay Additional Purchase Price as of May 10, 2020 (the "Petition Date").<sup>9</sup>

After delivery of the March Trigger Event Notice, between April 1, 2020 and April 9, 2020, payments in the aggregate amount of \$255,951.22 were disbursed to Avianca. (*See* A1214 (Op. at 9)) Under the terms of the RSPA and CMA, Avianca should not have received those amounts. *See supra* pp.11-13.

### **C. Procedural History**

On May 10, 2020, Avianca filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. (A1209 (Op. at 4)) On June 23, 2020, Avianca filed

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<sup>9</sup> As a consequence of the Unwaived Trigger Events, Citibank subsequently disbursed amounts on deposit in USAV's bank accounts to the Lenders in accordance with the USAV Agreements. (*See* A1214 (Op. at 9))

the Motion seeking to reject the USAV Agreements pursuant to Section 365 in order to take back the Contract Rights and Future Proceeds. (*See id.*) On July 22, 2020, the USAV Parties each filed timely objections to the Motion. (AX13; AX15) On August 7, 2020, Avianca and the Official Committee of Unsecured Creditors filed replies in support of the Motion. (AX19-20) On August 18, 2020, each of the parties submitted supplemental briefing in response to the bankruptcy court's questions posed at a July 27, 2020 status conference. (AX24-27) On that same day, the USAV Secured Lender Group also filed a sur-reply.<sup>10</sup> (AX28) On August 26, 2020, the bankruptcy court held a hearing on the Motion (the "Rejection Hearing"). (*See* A1211 (Op. at 6))

#### **D. The Order**

On September 4, 2020, the bankruptcy court issued the Order granting in part and denying in part the Motion. (A1245 (Op. at 40)) As is relevant to these appeals, the bankruptcy court (i) determined that the RSPA and Undertaking Agreement were executory contracts that Avianca may reject under Section 365 (*see id.*), and (ii) that rejection allows Avianca to take back the Contract Rights and Future Proceeds (while keeping the purchase price). (A1240-44 (Op. at 35-39))

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<sup>10</sup> In support of its objection, supplemental briefing, and sur-reply, the USAV Secured Lender Group submitted Colombian law declarations from Professor Jorge Suescún Melo. (AX16, the "First Suescún Decl."; AX30, the "Second Suescún Decl.")



## **SUMMARY OF ARGUMENT**

As summarized in the Preliminary Statement and detailed in the Argument section below:

1. The Order violates *Mission Product* by allowing Avianca, the breaching party, to use rejection to unwind the prepetition sale of the Contract Rights and Future Proceeds, including on the basis of a back-up mechanism to ensure that the sale could *not* be unwound. *See infra* pp.23-25, 26-28.

2. The Order violates *Mission Product* by allowing Avianca to use rejection to expand its estate by taking back the Contract Rights and Future Proceeds it did not own at the Petition Date (because it sold those assets in 2017). *See id.* p.26.

3. The Order also violates applicable non-bankruptcy law because even where a sale can be unwound, unlike here, the seller must return the purchase price before it can take back the asset sold. Here, the Order is allowing Avianca to take back the asset and keep the purchase price. *See id.* pp.28-30.

4. The Order is erroneous in allowing rejection, which requires material unperformed obligations by both parties that are so essential that breach by one would excuse performance by the other, because: (a) Avianca admits that it has never before had an interest in the Non-Excess Proceeds here at issue, so there is no basis for using rejection to take those proceeds; (b) there are no material unperformed

obligations of either party under the Undertaking Agreement that would allow for rejection; and (c) there are no material unperformed obligations of either party under the RSPA that would allow for rejection. *See id.* pp.30-54.

## **ARGUMENT**

### **I.**

#### **THE BANKRUPTCY COURT ERRED IN ALLOWING AVIANCA TO UNWIND THE 2017 SALE OF CONTRACT RIGHTS AND FUTURE PROCEEDS IN VIOLATION OF *MISSION PRODUCT***

##### **A. Mission Product And The Effects Of Rejection**

The Supreme Court’s 2019 decision in *Mission Product* involved a debtor’s attempt in a Chapter 11 case to terminate a trademark license it had granted to a licensee by rejecting the underlying licensing agreement. 139 S. Ct. at 1658-59. The debtor had argued that, as a result of such rejection, the debtor not only was free to stop performing under the parties’ agreement, but also that rejection terminated the licensee’s right to use the licensed trademark going forward. *Id.* The bankruptcy court there agreed, reasoning that the debtor’s rejection of the licensing agreement must extinguish the rights that the agreement conferred on the licensee as well. *Id.* at 1659.

The Bankruptcy Appellate Panel reversed, relying on the Seventh Circuit’s decision in *Sunbeam Prods. v. Chicago Am. Mfg., LLC*, 686 F.3d 372 (7th Cir. 2012), in determining that rejection does not “terminate the contract” or “vaporize[]” the

counterparty's rights, so the licensee could continue to use the trademark as previously granted to it by the debtor. *Mission Prod.*, 139 S. Ct. at 1659. The First Circuit rejected the Panel's view, reinstating the bankruptcy court's opinion terminating the license. *Id.* The Supreme Court granted certiorari to resolve the circuit split. *Id.* at 1660.

In an 8-1 decision,<sup>11</sup> Justice Kagan, writing for the Court, reversed the decision of the First Circuit, holding that rejection of an executory contract gives rise to a claim for breach of contract against the debtor, but it does not operate as a termination or rescission of the rejected contract, so a debtor cannot evade its pre-rejection grant of rights. *Id.* at 1657-58. The Court deemed this distinction a "rejection-as-breach" approach, as opposed to the "rejection-as-rescission" approach advocated by the debtor and adopted by the First Circuit. *Id.* at 1663.

The Supreme Court explained that rejection is a breach, and the consequences of such breach are determined by "non-bankruptcy contract law." *Id.* at 1662. The majority held, and the concurrence emphasized, that specialized contract terms may limit what rights the non-breaching counterparty may have. *See id.* at 1666 ("[T]he baseline inquiry remains whether the licensee's rights would survive a breach under applicable nonbankruptcy law. Special terms in a licensing contract or state law could bear on that question in individual cases.") (Sotomayor, J., concurring). Thus,

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<sup>11</sup> The one dissent did not disagree, writing only about mootness.

“a debtor’s rejection of an executory contract in bankruptcy has the same effect as a breach outside of bankruptcy.” *Id.* at 1666. That is, it “does not eliminate rights the contract had already conferred on the non-breaching party.” *Id.* at 1659. “It gives the counterparty a claim for damages, while leaving intact the rights the counterparty has received under the contract.” *Id.* at 1661.

A debtor “cannot unilaterally revoke” its sale based on its own breach. *Id.* at 1662. “A rejection breaches a contract but does not rescind it. And that means all the rights that would originally survive a contract breach, remain in place.” *Id.* at 1657-58, 1666 (“[Rejection] cannot rescind rights that the contract previously granted.”); *see id.* at 1666 (stating that rejection of an executory contract “functions as a breach of the contract rather than unwinding the rejected contract as if it never existed”) (Sotomayor, J., concurring). “When [rejection] occurs, the debtor and counterparty do not go back to their pre-contract positions. Instead, the counterparty retains the rights it has received under the agreement. As after a breach, so too after a rejection, those rights survive.” *Id.* at 1662.

“In preserving those rights, Section 365 reflects a general bankruptcy rule: The estate cannot possess anything more than the debtor itself did outside of bankruptcy.” *Id.* at 1663 (citing 11 U.S.C. §541(a)(1) (defining the estate to include the “interests of the debtor in property”)). “The rejection-as-breach rule (but *not* the

rejection-as-rescission rule) ensures that result.” *Id.* (emphasis in original). Thus, rejection cannot be used to expand a debtor’s estate.

A debtor can expand the estate’s property interests beyond what existed on the petition date only by bringing and prevailing in an action under the avoidance provisions of the Bankruptcy Code. 11 U.S.C. §§541-50. The Supreme Court explained that allowing a debtor to unwind a transaction through rejection “would circumvent the Code’s stringent limits on ‘avoidance’ actions”:

[A trustee’s avoidance powers] can be invoked in only narrow circumstances—unlike the power of rejection, which may be exercised for any plausible economic reason.... If trustees (or debtors) could use rejection to rescind previously granted interests, then rejection would become functionally equivalent to avoidance. Both, that is, would roll back a prior transfer. And that result would subvert everything the Code does to keep avoidances cabined—so they do not threaten the rule that the estate can take only what the debtor possessed before filing.

*Id.* at 1663; *see also Cohen v. Drexel Burnham Lambert Grp.*, 138 B.R. 687, 709 (Bankr. S.D.N.Y. 1992) (“Rejection is not itself an avoiding power.”).

*Mission Product* applies to all contracts: “we reject an argument for the rescission approach turning on the distinctive features of trademark licenses. Rejection of a contract—any contract—in bankruptcy operates not as a rescission but as a breach.” 139 S. Ct. at 1661.

The Supreme Court explained, “[t]he Code of course aims to make reorganizations possible. But it does not permit anything and everything that might

advance that goal.” *Id.* at 1665. “Section 365 does not grant the debtor an exemption from all the burdens that generally applicable law—whether involving contracts or trademarks—imposes on property owners .... In thus delineating the burdens that a debtor may and may not escape, Congress also weighed (among other things) the legitimate interests and expectations of the debtor’s counterparties.” *Id.* at 1665-66 (citation omitted). “The resulting balance may indeed impede some reorganizations, of trademark licensors and others. But that is only saying that Section 365’s edict that rejection is breach expresses a more complex set of aims than [the debtor] acknowledges.” *Id.* at 1666; *see also* Baird, Douglas G., *Elements of Bankruptcy* 123 (6th ed. 2014) (“Baird”) (“Arguments ... giving the trustee the power to recapture rights that could never be taken from a third party outside of bankruptcy should not ... rest on ... a bankruptcy policy in favor of rehabilitating the debtor.”).

**B. The Order Violates *Mission Product* By Permitting Avianca To Unwind The Sale And Expand Estate Property Through Rejection**

**1. The Order Unwinds The Sale**

The bankruptcy court agreed that, under *Mission Product*, “rejection does not permit a debtor to ‘get back’ rights that it sold or ‘unwind’ or ‘rescind’ a transaction” (A1237 (Op. at 32)), but then violated the controlling Supreme Court case by allowing Avianca to do just that. (*See* A1239-42 (Op. at 34-37)) Although Avianca tried to avoid *Mission Product* by not using the word “unwind,” it candidly admitted it was seeking exactly that relief, using synonyms for unwind, such as “*revert*,”

“*restore*,” “*recoup*,” “*extinguish*,” and asking for USAV to “*return* all economic interest” in the Future Proceeds to Avianca.<sup>12</sup> (A711, A731, A732-33 (Avianca’s Reply ¶¶6, 7, 56, 57, 61)) And the bankruptcy court confirmed it was unwinding the transaction by ruling that Avianca could “restore” to itself the assets it sold in 2017, which is exactly a rescission (although a one-sided rescission that allowed Avianca to also retain the purchase price). (See A1243-44 (Op. at 38-39)) “Restore” means “to give back, return” or “to put again in possession of something.” *Merriam-Webster Dictionary* (Aug. 18, 2020).

In any case, regardless of the words used, it cannot be disputed that the Order allows Avianca to unwind the sale through rejection. Prior to the 2017 sale, Avianca owned the Contract Rights and Future Proceeds. Following the 2017 sale, Avianca no longer owned the Contract Rights or the Future Proceeds, which then belonged to USAV. Instead, Avianca owned \$150 million plus a then-contingent (but now extinguished) right to Additional Purchase Price and an option to buy USAV’s shares. Now, following the Order, Avianca can use rejection to take back, or to “restore” (to use the bankruptcy court’s word), the Contract Rights and Future

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<sup>12</sup> “Revert,” *Merriam-Webster Dictionary* (Aug. 18, 2020) (“to return to the proprietor ... at the end of a reversion”); “Restore,” *Merriam-Webster Dictionary* (Aug. 18, 2020) (“to give back, return” or “to put again in possession of something”); “Recoup,” *Merriam-Webster Dictionary* (Aug. 18, 2020) (“regain”); “Extinguish,” *Merriam-Webster Dictionary* (Aug. 18, 2020) (“to cause to be void: nullify”); “Return,” *Merriam-Webster Dictionary* (Aug. 18, 2020) (“to pass back to an earlier possessor”).

Proceeds that it sold in 2017. Thus, the Order allows Avianca to unwind the sale through rejection, though it is a one-sided unwind, as Avianca also gets to keep the \$150 million purchase price and other consideration paid for the assets it is taking back.

The consequences of rejection are the same as for breach, and governed by “non-bankruptcy contract law.” *Mission Prod.*, 139 S. Ct. at 1662. There is no legal or equitable principle that would allow a breaching party to unwind a sale to the non-breaching party (and keep the purchase price), particularly on the basis of a back-up protection for the non-breaching party to ensure that the sale could not be unwound. *See Butner v. United States*, 440 U.S. 48, 56 (1979) (criticizing bankruptcy courts’ use of “undefined considerations of equity” to change result of property rights dictated by non-bankruptcy law in bankruptcy); Andrew, Michael T., *Executory Contracts in Bankruptcy: Understanding ‘Rejection,’* 59 U. Colo. L. Rev. 845, 849 (1988) (stating that such a rule “is fundamentally contrary to general bankruptcy principles, to the history and purpose of executory contracts doctrine itself, and to common sense”); Baird at 115 (stating that rejection cannot terminate the counterparty’s rights under a contract or strip it “of any benefits of the contract” if the counterparty “would have been entitled to these benefits had the breach occurred outside of bankruptcy”).



## **2. The Order Permitted Avianca To Expand Its Estate**

Although the bankruptcy court replicated most of the Lenders’ briefing on *Mission Product* in its Order, it excluded the Supreme Court’s critical holding that a debtor cannot expand estate property through rejection: “The estate cannot possess anything more than the debtor itself did outside of bankruptcy.” *Mission Prod.*, 139 S. Ct. at 1663. There is no dispute that Avianca did not own the Contract Rights and Future Proceeds on the Petition Date because it had sold them to USAV in 2017. (See A1239-42 (Op. at 34-37)) Before the Petition Date, 100% of the rights to payment in respect of Specified Sales—i.e., sales made by travel agencies in the United States where payment is made with MasterCard, Visa, or American Express credit cards—were confined to the existing Card Processing Agreements with AMEX and Credomatic. See *supra* pp.7-10. The bankruptcy court correctly determined that those rights were sold by Avianca to USAV in 2017 and therefore never came into the estate. (See A1239-42 (Op. at 34-37)) The bankruptcy court erred in allowing Avianca to expand its estate by taking back the Contract Rights and Future Proceeds in clear violation of *Mission Product*.

## **3. Mission Product Also Prohibits Avianca From Using Rejection To Unwind The Sale Through Creative Lawyering**

As discussed, the nature of the assets sold required backup protection in the event that any Contract Rights had to be moved to a new Card Processor. See *supra* pp.13-14. Specifically, the parties agreed that if the USAV Parties allow Avianca to

terminate a Card Processing Agreement (or in a situation where termination is initiated by a Card Processor), then the back-up mechanism requires Avianca to “sell” to USAV the rights under any replacement Card Processing Agreements in consideration for the purchase price already paid for those assets. *See id.* p.14.

The bankruptcy court relied on the back-up protection included to preserve the prepetition sale of the Contract Rights and Future Proceeds in allowing Avianca to, instead, unwind it. Specifically, the Order allows Avianca to (i) use rejection to breach the Undertaking Agreement by terminating the Card Processing Agreements that were in place at the time of the sale in 2017, (ii) enter into new Card Processing Agreements to “restore” to Avianca the Contract Rights and Future Proceeds it sold to USAV in 2017, and (iii) then use rejection to breach the RSPA by not selling back the Contract Rights and Future Proceeds that Avianca improperly diverted to itself. (*See* A1227-33, A1241-42, A1243-44 (Op. at 22-28, 36-37, 38-39))

The bankruptcy court emphasized that USAV owed “no *additional* consideration” for the back-up protection. (A1227 (Op. at 22)) (emphasis added) The reason “no *additional* consideration” is owed is because USAV *already* paid \$150 million, plus Additional Purchase Price payments for over two years prior to the Flight Impairment Trigger Event, in exchange for contract rights and proceeds relating to Specified Sales. *Supra* p.14. Moving those assets to a different contract

(in breach of the Undertaking Agreement) does not allow Avianca *to sell the same assets a second time*.

*Mission Product* prohibits a debtor from using rejection to unwind a transaction or expand estate property, and that controlling authority applies regardless of the creative ways that Avianca's lawyers have devised to use rejection to unwind the sale. Indeed, the Order is particularly unsound in allowing Avianca to use the very provisions included to protect USAV from losing the Future Proceeds to take those Future Proceeds from USAV. Moreover, *Mission Product* explicitly held that rejection does not permit a debtor to expand its estate, which the Order allows Avianca to do by gaining property it did not own prior to bankruptcy.<sup>13</sup>

**C. The Bankruptcy Court Also Erred In Unwinding Only One Side Of The Sale**

In addition to the fact that the sale cannot be unwound through rejection, the bankruptcy court erred in unwinding only one side of the sale. Even where a transaction can be unwound, unlike here, rescission requires the rescinding party to tender back what it received. As the Second Circuit has explained, “[t]he rule requiring the tender of consideration received, as a condition to rescission of a

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<sup>13</sup> Should Avianca succeed in interfering with USAV's property rights to the Contract Rights and Future Proceeds, such *post-petition* interference would entitle USAV to an administrative claim. Under basic bankruptcy principles, when the estate takes actions post-petition that wrongfully injure a third party, the estate's liability to that party is an administrative expense. 11 U.S.C. §503(b)(1)(A); *Reading Co. v. Brown*, 391 U.S. 471, 483-485 (1968).

contract ..., is said to be a general principle of the common law of contracts.” *Brown v. City of S. Burlington*, 393 F.3d 337, 344 (2d Cir. 2004); *see Hatteras Enters. v. Forsythe Cosmetic Grp., Ltd.*, 2:15-cv-05887 (ADS) (ARL), 2018 U.S. Dist. LEXIS 68792, at \*21-22 (E.D.N.Y. Apr. 23, 2018) (stating that under New York law, rescission requires the party seeking rescission to tender what it received and the counterparty to give back that which it received); *Curtis v. Curtis*, 91 Civ. 8293 (JSM), 1992 U.S. Dist. LEXIS 12695, at \*13 (S.D.N.Y. Aug. 24, 1992) (“In order to rescind the contract [plaintiff] must return the funds received pursuant to the contract.”). Further, the party seeking rescission must “tender back the sum received” (e.g., the purchase price) “[i]n order to avoid a finding of *ratification* where consideration has been paid ....” *Brown*, 393 F.3d at 344 (emphasis added); *see also VisionChina Media Inc. v. S’holder Representative Servs., LLC*, 109 A.D.3d 49, 56-57 (N.Y. App. Div. 2013) (stating that the rescinding party may not “*affirm* the transaction by continuing to perform, keep the property and also recover the costs of acquiring [the property] ...” (emphasis added)). Avianca is not returning the \$150 million and Additional Purchase Price paid for the Contract Rights and Future Proceeds. Consequently, Avianca cannot unwind the transaction, and in fact has ratified it. Moreover, Avianca is estopped from seeking to unwind the sale. *Bank Itec N.V. v. J. Henry Schroder Bank & Trust Co.*, 612 F. Supp. 134, 140 (S.D.N.Y.

1985) (“A party who accepts benefits under a contract is estopped from seeking rescission or other relief from the terms of that contract.”).

The same is true under Colombian law, the governing law for the RSPA: “[Rescission] would require the return of the Contract Rights and Receivables to [Avianca] and the return of the [\$150 million initial purchase price] paid by USAV ... and any Additional Purchase Price paid.” (A651-52 (First Suescún Decl. ¶13)) Thus, the bankruptcy court erred in allowing Avianca to take back the Contract Rights and Future Proceeds without returning the purchase price.

## II.

### **THE BANKRUPTCY COURT ERRED IN FINDING THE RSPA AND UNDERTAKING AGREEMENT WERE EXECUTORY CONTRACTS SUBJECT TO REJECTION UNDER SECTION 365**

Subject to bankruptcy court approval, Section 365 of the Bankruptcy Code allows a debtor to “reject any executory contract.” 11 U.S.C. §365(a). “The party seeking to reject a contract has the burden of demonstrating that it is executory.” *In re Exide Techs.*, 607 F.3d 957, 962 (3d Cir. 2010); *see also In re M. Fine Lumber Co.*, 383 B.R. 565, 573 (Bankr. E.D.N.Y. 2008) (“The debtor bears the burden of showing that the requirements for assumption under §365 have been met.”).

The parties and the bankruptcy court agreed that the Countryman test applies to determine whether a contract is executory. (*See* A1226 (Op. at 21)) Under the Countryman test, the court must determine (i) whether both parties have material

unperformed *obligations*, and (ii) whether the failure of one party to perform those *obligations* would constitute a material breach excusing performance by the other party. *See In re Helm*, 335 B.R. 528, 535 (Bankr. S.D.N.Y. 2006); *see also In re GP Express Airlines*, 200 B.R. 222, 230 (Bankr. D. Neb. 1996) (an agreement is executory where the contract “contemplat[es] ongoing and substantial performances by both parties” and the failure of “either side to perform its *essential* obligations” would excuse performance by the other party (emphasis added)). “If performance remains due on only one side, the contract is not executory, and hence, neither assumable nor capable of rejection.” *In re Hawker Beechcraft, Inc.*, 486 B.R. 264, 276 (Bankr. S.D.N.Y. 2013); *Vaughan v. Cont’l Airlines, Inc.*, 154 B.R. 172, 175 (Bankr. D. Del. 1993) (same).

Whether a contractual breach is material is a question of non-bankruptcy law. *Enter. Energy Corp. v. United States (In re Columbia Gas Sys.)*, 50 F.3d 233, 239 n.10 (3d Cir. 1995); *In re Hawker Beechcraft*, 486 B.R. at 276; *In re Worldcom, Inc.*, 343 B.R. 486, 493 (Bankr. S.D.N.Y. 2006). The RSPA and Undertaking Agreement are both governed by Colombian law. *See supra* n.4-6. Under Colombian law, a material breach is one of great magnitude (*gran magnitud*), severity (*gravedad*) and intensity (*intensidad*). (A653 (First Suescún Decl. ¶15)) A breach of great magnitude (*gran magnitud*), severity (*gravedad*) and intensity (*intensidad*) is one that frustrates the ends of the contract or undermines its purpose. (*Id.*)

**A. There Is Nothing Executory About The Non-Excess Proceeds**

Before addressing the Undertaking Agreement and RSPA specifically, an overriding issue is that the sale of the Contract Rights and Future Proceeds as they relate to the Non-Excess Proceeds can never be executory. USAV, financed by the Lenders, paid in full for the Non-Excess Proceeds in 2017. Because the sale was completed, there is no performance by USAV owed with respect to the Non-Excess Proceeds. USAV has fully performed its obligations with respect to the Non-Excess Proceeds, and Avianca has received the full benefits of that sale. And, there is no unperformed obligation that could ever be material enough to somehow allow USAV to take back the assets that it sold in 2017, while keeping the purchase price.<sup>14</sup>

The bankruptcy court erred in ignoring the distinction between the Excess Proceeds and the Non-Excess Proceeds. Although Avianca no longer has an interest in the Excess Proceeds in the form of Additional Purchase Price due to the Unwaived Trigger Events, Avianca *never* had an interest in the Non-Excess Proceeds. (*See* A162-63 (RSPA §§2.05(a), 3.01(e)) (providing that Avianca irrevocably agreed that it had a right to seek payment *only* for the Excess Proceeds)) Avianca has repeatedly

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<sup>14</sup> Although this brief uses the concepts of “Excess Proceeds” and “Non-Excess Proceeds” for illustrative purposes, all Future Proceeds are the property of USAV. (*See* A166-67 (RSPA §4.01(u)(ii)) (stating that Avianca sold to USAV “good and valid title” to the Contract Rights and Future Proceeds and the “the definitive and infeasible ownership thereof”)) Avianca’s rights to payment (including the now-extinguished right to Additional Purchase Price) were merely contractual.

acknowledged that its prior-contingent (and now extinguished) interest in any Excess Proceeds could arise, if at all, *only after* the Non-Excess Proceeds are used to repay the “currently-due loan obligations” of USAV—i.e., the outstanding balance under the Loan Agreement. (See A710 (Avianca’s Reply ¶4) (“[Avianca] [is] entitled to all cash generated from the receivables *in excess* of the amount due on USAV’s loan from the Lender Group.”); A727-28 (Avianca’s Reply ¶47) (“In contrast, [Avianca] ... continue[s] to have, all economic interest in Receivables that *exceed* whatever the outstanding balance is on USAV’s loan.”); A727 (Avianca’s Reply ¶45) (“USAV would be entitled to retain nothing *once its loan is paid off*.”); A717 (Avianca’s Reply ¶26) (“[I]n the event where alternative payment priorities are triggered, USAV is ... entitled to permanently retain amounts ... of currently due loan obligations”))

Avianca cannot use a contingent interest in Excess Proceeds, which could arise only after the loan amount is satisfied in full through the Non-Excess Proceeds, to take back the Non-Excess Proceeds sold in 2017. See *In re Atl. Gulf Communities Corp.*, 369 B.R. 156, 164-165 (Bankr. D. Del. 2007) (debtor’s contingent interest in property does not divest other’s interests in same property); *Musso v. New York State Higher Educ. Servs. Corp. (In re Royal Bus. Sch.)*, 157 B.R. 932, 942 (Bankr. E.D.N.Y. 1993) (agreements providing contingent interest outside of bankruptcy are to have same effect in bankruptcy). Consequently, regardless of any alleged



unperformed obligations, there is nothing executory as it relates to the Non-Excess Proceeds, and there is no authority for using rejection, or any other law, to take back the Non-Excess Proceeds that Avianca sold for \$150 million and other consideration in 2017 (while keeping that money).

**B. The Undertaking Agreement Is Not Executory**

The bankruptcy court committed two errors in determining that the Undertaking Agreement is executory: (i) it found that USAV had an obligation to furnish “account records” to Avianca, but it is Avianca that has the account records, not USAV; and (ii) it found that USAV’s obligation to provide “other documents,” if requested was material, where even Avianca acknowledged that it was not material.

**1. The Bankruptcy Court Erred In Finding That USAV Had Any Unperformed Obligation To Provide Account Records**

The bankruptcy court erroneously concluded that “USAV’s ongoing obligation to furnish all necessary **account records** to [Avianca] is a material obligation, especially where—as here—[Avianca] require[s] those documents to perform their obligations under the Undertaking Agreement.” (A1233 (Op. at 28)) (emphasis added) USAV has no such obligation. The bankruptcy court evidently relied on Avianca’s description of USAV’s obligation as one to “provide all

necessary **account records**” in Avianca’s Rejection Hearing demonstrative. (*See* A1021) (emphasis in original)

The Undertaking Agreement itself is clear that Avianca—not USAV—holds and maintains all account records. Specifically, Section 3.03 of the Undertaking Agreement provides that Avianca “hold[s] the Receivables Files on behalf of [USAV] and maintain[s] such accurate and complete accounts, records, and computer systems pertaining to each Receivables File as shall enable [USAV] to obtain the benefits of this Agreement and to preserve its interest in the Receivables.” (A288 (Undertaking Agreement §§3.03(a)); *see also* A288 (Undertaking Agreement §3.03(d)) (stating that Avianca maintains each Receivables File at its office in Colombia)) Thus, Avianca already has the account records needed to carry out its obligations under the Undertaking Agreement, and USAV has no obligation (or ability) to provide them. Moreover, as addressed below, a failure to provide account records might relieve Avianca of its obligation to act as a *servicer*, but it would not allow Avianca to breach its obligations as a *seller* in order to take back the assets it sold in 2017. *See infra* pp.37-38.

## **2. The Bankruptcy Court Erred In Finding That USAV’s Only Obligation Under The Undertaking Agreement Was Sufficiently Material To Allow Rejection** ---

USAV’s only unperformed obligation under the Undertaking Agreement is to provide unspecified (and never requested) “documents” to Avianca “to enable the

Servicer to carry out its servicing and administrative duties.” (A289 (Undertaking Agreement §3.05)) This purely ministerial provision is immaterial. Indeed, Avianca never claimed it was material in its Motion, and then conceded it was not material at the Rejection Hearing:

THE COURT: You say under the undertaking agreement the only obligation that USAVflow had was Section 3.05 to provide records. Why is that a material obligation?

MR. LEBLANC: Well, Your Honor, look, I think -- let me answer both the questions.

*I’m not sure that it is a material obligation, Your Honor.*

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The undertaking -- Your Honor, I think your question highlighted the issue that it appears as though *the undertaking is really just an effort to limit what we can do and impose obligations on us, the debtors.*

(A1101 (8/26 Hr’g Tr. at 33:9-13, 33:22-25)) (emphasis added) Thus, Avianca did not discharge its burden of proving that the obligation was sufficiently material to render the Undertaking Agreement executory.

Avianca is correct that the obligation to provide non-specific documentation (the only example even mentioned being a power of attorney), if requested, is not material. Such obligation is nothing more than a duty of cooperation to enable Avianca to carry out its duties as a servicer of the Contract Rights and Future Proceeds for USAV’s benefit. USAV’s obligation is ministerial, incidental, and

contingent, and, therefore, insufficient to render the Undertaking Agreement executory. *See In re Conseco, Inc.*, No. 05 C 3170, 2005 U.S. Dist. LEXIS 24584, at \*16 (N.D. Ill. Oct. 18, 2005) (party’s agreement to “cooperate” in connection with collections was “ministerial only and not an unperformed, material obligation,” and noting that “[c]ourts have routinely held that similar administrative obligations are not material and do not render a contract executory”); *Olah v. Baird (In re Baird)*, 567 F.3d 1207, 1212 (10th Cir. 2009) (finding no executory contract because a party’s continuing obligations, including the “obligation to provide cooperation in the course of defense to any liability claims,” were “at best considered ministerial”); *In re Safety-Kleen Corp.*, 410 B.R. 164, 168 (Bankr. D. Del. 2009) (stating that contingent obligations must be “*essential* to the contract” in order to render the contract executory (emphasis added)); *In re Spoverlook, LLC*, 551 B.R. 481, 486 (Bankr. D.N.M. 2016) (same).

Moreover, USAV’s obligation to supply documents runs to Avianca solely in its capacity as Servicer. Consequently, a breach of USAV’s obligation to provide documents might relieve Avianca of its obligation to act as a *servicer* of the Contract Rights and Future Proceeds, which would be the symmetrical obligation that the bankruptcy court referenced. (A1233 (Op. at 28) (“[Avianca] require[s] those documents to perform their obligations [as Servicer] under the Undertaking Agreement”)) But the boilerplate provision for providing documents, if requested,

could never allow Avianca to breach its obligation as a *seller* to not terminate the existing Card Processing Agreements, so that it could improperly divert to itself the Contract Rights and Future Proceeds it sold in 2017.

Additionally, Avianca is not even supposed to be acting as Servicer, so its duties as such are not material, and there is no record below of it performing any activities in its role as such. (*See* A640 (Lenders' Obj. ¶56 & n.17); A839 (Lenders' Sur-Reply n.11)) The Lenders have not been able to direct the Administrative Agent to appoint a replacement Servicer because of the automatic stay that applies after a party files a bankruptcy petition. (*See id.*) Obligations that remain unperformed based only on Bankruptcy Code protections are not sufficiently material so as to allow Avianca to breach the Undertaking Agreement in order to take back for itself the assets sold in 2017 (while maintaining the purchase price for those assets).

### **C. The RSPA Is Not Executory**

The bankruptcy court committed three errors in ruling that the RSPA is executory: (i) it found that USAV had an unperformed obligation to pay Excess Proceeds to Avianca in the form of Additional Purchase Price, but that obligation was extinguished pre-petition; (ii) it held that Trigger Events are obligations, but they are only conditions, and conditions cannot render a contract executory; and (iii) it found that certain back-stop protections requiring Avianca to sell back to USAV the Contract Rights and Future Proceeds—to the extent USAV allowed Avianca to

move them to replacement Card Processing Agreements—was an unperformed material obligation that would allow Avianca, instead, to keep the assets it diverted (and keep the \$150 million and other consideration that USAV paid for those assets).

**1. USAV Has No Material Unperformed Obligations Under The RSPA**

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The bankruptcy court erred in finding that USAV had “material ongoing and unperformed obligations under the RSPA, namely the *contingent obligation* to make Additional Purchase Price payments.” (A1231 (Op. at 26)) The prepetition Unwaived Trigger Events extinguished any obligation of USAV to make Additional Purchase Price payments. *See supra* pp.11-13, 14-16. As explained above, the RSPA and CMA are unambiguous that the March Trigger Event Notice immediately turned off the Standard Priority Provisions of the CMA, terminating USAV’s obligation to pay any further Additional Purchase Price. *See supra* pp.12-13, 15-16. USAV’s obligation to pay Additional Purchase Price could be restored *only* if the Lenders granted a Trigger Event Waiver declaring that the March Trigger Event Notice has been “revoked or is otherwise of no further force or effect.” (A318-20 (CMA §§2.01, 2.02)) The bankruptcy court recognized the fact that the CMA “calls for the *resumption* of payment of the Additional Purchase Price” only if Citibank

“revokes any Trigger Event Notice.” (A1229-30 (Op. at 24-25)) (emphasis added)

The Lenders have not, and never will, grant a Trigger Event Waiver.<sup>15</sup>

The bankruptcy court did not address how Additional Purchase Price payments could constitute a contingent obligation of USAV given that such payments cannot be restored absent a Trigger Event Waiver. There is no authority or reasoning that an obligation extinguished by a default is a contingent unperformed obligation because a counterparty hypothetically could choose to grant a waiver. The Lenders have not located any case holding that a right that was cut off, but could be restored through waiver, constitutes a contingent obligation, nor did Avianca or the bankruptcy court identify one. An “obligation” is a requirement or a duty to do something. *See Lefkowitz v. Mich. Trucking, LLC (In re Gainey Corp.)*, No. 11-8038, 2012 Bankr. LEXIS 4184, at \*29-30 (B.A.P. 6th Cir. Sep. 11, 2012) (noting that the definition of “obligation” references an “agreement or acknowledgment of a liability ... to do a certain thing” and “a duty arising by contract” (quoting *Black’s Law Dictionary* (9th ed. 2009))). The Lenders have no obligation, and cannot be compelled, to instruct the Administrative Agent to deliver a Trigger Event Waiver. *Supra* p.13. Thus, USAV had no obligation to make any payments of Additional

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<sup>15</sup> The Notification Trigger Event, which occurred upon the failure of Avianca to provide notice to USAV and the Administrative Agent of the Flight Impairment Trigger Event, is incapable of being “cured.” *See supra* pp.12, 14.

Purchase Price to Avianca as of the Petition Date, and never will have such an obligation. *See COR Route 5 Co., LLC v. Penn Traffic Co. (In Re Penn Traffic Co.)*, 524 F.3d 373, 381 (2d Cir. 2008) (executoriness generally assessed as of petition date).

**2. The Bankruptcy Court Erred In Relying On  
Extrinsic Evidence To Vary The Terms Of The  
RSPA And CMA**

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The RSPA and the CMA are unambiguous that USAV has no obligation to make any Additional Purchase Price payments following the Unwaived Trigger Events. *Supra* pp.11-13, 14-16. Although the bankruptcy court did not find any ambiguity in the contracts, it nevertheless relied on extrinsic evidence to rewrite the terms of the RSPA and the CMA. Specifically, the bankruptcy court found that “USAV’s conduct confirms its obligation is only temporarily cut off upon the occurrence of a Trigger Event: Citibank continued to send Additional Purchase Price payments to Avianca in April 2020 after sending the March Notice declaring a Trigger Event.” (A1230 (Op. at 25)) Extrinsic evidence is inadmissible to vary the unambiguous terms of the RSPA and the CMA. Moreover, the extrinsic relied on below does not support the conclusion.

Courts cannot consider extrinsic evidence to construe unambiguous contract terms. *See, e.g., Hunt Ltd. v. Lifschultz Fast Freight, Inc.*, 889 F.2d 1274, 1277 (2d Cir. 1989) (“If the terms of a contract are unambiguous, the obligations it imposes



are to be determined without reference to extrinsic evidence ....”); *Goldman v. Comm’r*, 39 F.3d 402, 405-06 (2d Cir. 1994) (same). Moreover, parol evidence is inadmissible to vary the term of an unambiguous contract. *In re Delta Air Lines, Inc.*, 381 B.R. 57, 82 (Bankr. S.D.N.Y. 2008) (“Courts are barred under the parol evidence rule from considering extrinsic evidence to vary or change the unambiguous terms of a written agreement.”); *Uni-Rty Corp. v. Guangdong Bldg. (In re Uni-Rty Corp.)*, 191 B.R. 595, 597 (Bankr. S.D.N.Y. 1996) (same); *see Barclays Bank of N.Y. v. Goldman*, 517 F. Supp. 403, 412 (S.D.N.Y. 1981) (granting summary judgment against party seeking to offer evidence which “would necessarily vary or contradict the written terms of the contract and is therefore inadmissible as a matter of law”).

Additionally, the fact that Citibank made a few small payments (approximately \$250,000 in total) to Avianca in early April 2020, *see supra* p.16, does not prove that USAV owed the Additional Purchase Price following the Trigger Events. *First*, the bankruptcy court mistakenly imputed Citibank’s conduct to USAV: “USAV’s conduct confirms its obligation is only temporarily ‘cut off’ upon the occurrence of a Trigger Event: *Citibank* continued to send Additional Purchase Price payments to [Avianca] in April 2020 after sending the March Notice declaring a Trigger Event.” (A1230 (Op. at 25)) (emphasis added) Citibank is not even a party to the RSPA and, therefore, its conduct is no basis to “confirm” its terms.

There is no evidence that USAV authorized, or knew of, Citibank's release of this relatively small amount of money to Avianca. Nor could a release of money, let alone in such trivial amounts within a ten-day period, "confirm" terms that simply do not exist in the RSPA or the CMA. *See Compania Embotelladora Del Pacifico, S.A. v. Pepsi Cola Co.*, No. 11-5458, 2020 U.S. App. LEXIS 30869, at \*19 (2d Cir. Sep. 29, 2020) ("Because the [contract] is 'straightforward and unambiguous,' we may not consider ... the parties' course of dealing, nor may we read additional requirements into unambiguous text in search of such an obligation." (quoting *Postlewaite v. McGraw-Hill, Inc.*, 411 F.3d 63, 67 (2d Cir. 2005))); *see also CMA CGM (America) L.L.C. v. Seafood Expert W. Inc.*, No. 13-CV-2839 (VSB), 2015 U.S. Dist. LEXIS 45311, at \*20-22 (S.D.N.Y. Mar. 31, 2015) (holding that a small number of interactions was "insufficient to establish a course of dealing" because they did not amount to a "well-established custom" repeated in "numerous purchases over a period of time" (quoting *New Moon Shipping Co. v. MAN B&W Diesel AG*, 121 F.3d 24, 31 (2d Cir. 1997))).<sup>16</sup>

*Second*, Avianca, which is a party to the RSPA, has actually confirmed how the agreements work. Avianca requested and obtained waivers for no fewer than six

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<sup>16</sup> Moreover, even inconsistent actions of a party would not constitute a waiver of rights under the RSPA (and the bankruptcy did not find any waiver). (*See* A179 (RSPA §9.02) ("Any provision of this Agreement may be amended or waived *only* with the written consent of each of the Seller, the Purchaser and the Administrative Agent ...."))

Trigger Events since 2017—which waivers were granted by USAV and the Agents (with the consent of the Required Lenders). (*See* AX33 at A901-56) But Avianca never requested, and neither USAV nor the Lenders ever provided (or will ever provide), a waiver for the outstanding Unwaived Trigger Events.

*Third*, Avianca admitted that Trigger Events require written waivers, even if the circumstances giving rise to them have been resolved, in a waiver request letter dated February 19, 2018 from Avianca to the Lenders, the Agents, and USAV. (*See* AX32 at A898-99) In that letter, Avianca stated that “the underlying difficulties have been resolved but these Events of Default and Trigger Events are still outstanding, and we hereby respectfully requested your consent to certain related waivers and [sic] amendments.” (*Id.*) Thus, extrinsic evidence is inadmissible to vary the terms of the RSPA and the CMA, but all the extrinsic evidence and the actual course of dealing from the *parties* is consistent with the unambiguous terms of the RSPA and the CMA that the prior contingent right to Additional Purchase Price was extinguished pre-petition.

### **3. The Parties Included Specialized Contract Terms To Provide That A Failure By USAV To Remit Excess Proceeds Would Not Be Essential Enough To Excuse Avianca’s Performance**

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An alleged obligation to deliver Excess Proceeds to Avianca through Additional Purchase Price payments (and there was no such obligation) would not relieve Avianca of its obligation to “sell” the replacement Card Processing

Agreements (that Avianca entered into in breach of the Undertaking Agreement and the RSPA) to USAV to allow for the payment of the Non-Excess Proceeds.

*Mission Product* held, and the concurrence emphasized, that parties may determine for themselves the consequences of breach through specialized contract terms. *See* 139 S. Ct. at 1666 (“[T]he baseline inquiry remains whether the [counterparty’s] rights would survive a breach under applicable nonbankruptcy law. *Special terms* in a ... contract or state law could bear on that question in individual cases.” (emphasis added)) (Sotomayor, J., concurring).

Here, the parties contractually agreed to “specialized terms” under non-bankruptcy law that a failure by the purchaser to pay Additional Purchase Price would “[not] discharge any further obligations imposed on the party aggrieved by a breach,” *In re Hawker Beechcraft*, 486 B.R. at 278, (*i.e.*, the Seller):

***The Seller unconditionally and irrevocably waives any rights*** it may claim to have under article 870 of the Colombian Code of Commerce and under articles 1546 and 1609 of the Colombian Civil Code or otherwise to rescind this Agreement or any other Transaction Document for any reason or ***to refrain from complying with its obligations hereunder (including as a result of the failure by the Purchaser to satisfy*** any of its obligations hereunder, including ***the making of any payment pursuant to Section 3.01(a)(ii)***). As a result of such waiver, the Seller understands, acknowledges, and agrees that: (a) its remedies in the case of a failure by the Purchaser to make one or more payments of Additional Purchase Price hereunder shall be limited to the right to make a claim against the Purchaser for payment of any Additional Purchase Price payments that are past due and

unpaid, and (b) the Seller shall not be entitled to and shall not attempt to, under any circumstances, reclaim any right, title, or interest in, to or under any of the Contract Rights or the Receivables.

(A162 (RSPA §2.05)) (emphasis added)

The RSPA also provides that:

The Seller hereby irrevocably waives its right to request the resolución of the Agreement, pursuant to article 1546 of the Colombian Civil Code and article 870 of the Colombian Code of Commerce, upon any failure of the Purchaser to pay when due the Additional Purchase Price. ***As a consequence***, upon any such breach, ***the Seller irrevocably consent and agrees that its sole remedy shall be a claim for monetary damages*** hereunder.

(A163 (RSPA §3.01(e)) (emphasis added)

Moreover, despite acknowledging that “[t]he materiality of the breach is a question of state law” (*see* A1222 (Op. at 17)) and applying Colombian law to determine that the USAV Agreements could not “be treated as a single contract for purposes of rejection” (A1236 (Op. at 31)), the bankruptcy court erroneously disregarded Colombian law in assessing the materiality of the parties’ obligations under the RSPA. Professor Suescún confirms that Sections 2.05 and 3.01(e) of the RSPA constitute a valid waiver of Avianca’s right to seek to rescind the RSPA as a matter of Colombian law. (A652 (First Suescún Decl. ¶14); A862 (Second Suescún Decl. ¶8)) Avianca’s own Colombian counsel also confirmed in 2017 (AX14, the “GPZ Opinion”) that the provisions of the RSPA, including limitation on remedies,

are “legal, valid and binding obligations enforceable against the Seller in accordance with their terms.” (A604 (GPZ Opinion ¶5)) There is no contrary evidence in the record.

Thus, the parties expressly agreed that a failure by USAV to pay an Additional Purchase Price would not be essential enough to excuse Avianca’s performance; the RSPA, therefore, is not executory. *See Mission Prod.*, 139 S. Ct. at 1666 (stating that parties may include specialized terms in a contract to limit what rights the nonbreaching counterparty might have) (Sotomayor, J., concurring); *In re Hawker Beechcraft*, 486 B.R. at 278 (“Ordinarily, the materiality of these promises would be a question of fact.... However, if the parties contractually agree that some or all of the terms are sufficiently important to discharge any further obligations imposed on the party aggrieved by a breach, their intent will govern.”); *see also* Fed. R. Civ. P. 44.1 (court’s determination regarding foreign law “must be treated as a ruling on a question of law”).

#### **4. Avianca Has No Material Unperformed Obligations**

Avianca’s unperformed obligations are irrelevant given that USAV has no material unperformed obligations under the RSPA. *See supra* pp.39-47. Nonetheless, the bankruptcy court erred in concluding that Avianca has material unperformed obligations under the RSPA based on provisions relating to Trigger Events and replacement Card Processing Agreements. (*See* A1227 (Op. at 22))

None of the provisions cited by the bankruptcy court supports the legal conclusion that Avianca has material unperformed obligations, as explained below.

**a. Trigger Events Are Conditions, Not Obligations**

The law is clear that only material unperformed *obligations* can render a contract executory and, therefore, subject to rejection under Section 365 of the Bankruptcy Code. *See supra* pp.30-31, 40. Mere conditions, no matter how material, cannot render a contract executory. *See In re Columbia Gas Sys.*, 50 F.3d at 241 (stating that if the remaining contract terms “are mere conditions, not duties, then *the contract cannot be executory* for purposes of §365 because *no material breach could occur*” (emphasis added)); *In re Hawker Beechcraft, Inc.*, 486 B.R. at 276 (“In applying Countryman’s ‘material breach’ test, one must distinguish between a failure of condition and a breach of duty. ‘Non-occurrence of a condition is not a breach by a party unless he is under a duty that the condition occur.’”) (quoting Restatement (Second) of Contracts §225(3)); *Gencor Indus. v. CMI Terex Corp. (In re Gencor Indus., Inc.)*, 298 B.R. 902, 912 (Bankr. M.D. Fla. 2003) (“The obligations [remaining] are not obligations at all. They are instead, conditions to payment....”); *In re Level Propane Gases, Inc.*, 297 B.R. 503, 508 (Bankr. N.D. Ohio 2003) (“[I]f the remaining obligations in the contract are mere conditions, as opposed to duties, then the contract cannot be executory for purposes of §365 because no material breach could occur.”). Avianca itself agreed that “a condition

that remains unperformed ... will not render an agreement executory ....” (A718 (Avianca’s Reply ¶25 n.5)) (quoting *In re AbitibiBowater Inc.*, 418 B.R. 815, 830, n.11 (Bankr. D. Del. 2009)).

The bankruptcy court found that Avianca has material unperformed obligations under the RSPA because USAV would have a right to terminate the RSPA upon the occurrence of a Trigger Event. (A1228 (Op. at 23)) (citing RSPA §6.02) But the Trigger Events are conditions, not obligations. As its name indicates, a Trigger Event is an “event,” the occurrence or non-occurrence of which triggers certain consequences. (*See* A174 (RSPA §6.01) (“Each of the following *events* shall constitute a ‘Trigger Event’” (emphasis added))) An “event” is a condition, not an obligation. *See* 8 Corbin on Contracts §30.12 (2020) (noting that “it is obvious that promise and condition are very clearly different in character,” and that “a condition is a fact or an *event* and is not an expression of intention or an assurance”; accordingly “[a] promise in a contract creates a legal duty in the promisor and a right in the promisee; the fact or *event* constituting a condition creates no right or duty and is merely a limiting or modifying factor.”); *see also* Restatement (Second) of Contracts, §§224, 235 (noting that “[a] condition is an *event*, not certain to occur, which must occur, unless its non-occurrence is excused, before performance under a contract becomes due,” whereas a duty is a right that when due “any non-performance is a breach”); *Barnhill v. Veneman (In re Peanut Crop Ins. Litig.)*, 524



F.3d 458, 474 (4th Cir. 2008) (noting that “[a] condition precedent is either an act of a party that must be performed or a certain *event* that must happen before a contractual right accrues or contractual duty arises”) (citing 13 Williston on Contracts §38:7 (4th ed. 2006)). Thus, USAV could not sue Avianca based on the Trigger Event (where USAV would have to prove damages). Rather, the Trigger Event merely gave rise to the contractual consequence of extinguishing Avianca’s potential right to Additional Purchase Price payments (without the need to sue or prove damages). And the bankruptcy court found that the Trigger Event was a condition, not an obligation, in finding that the payment of Additional Purchase Price is “subject to the satisfaction of various *conditions*, including that *no Trigger Event* be continuing.” (A1218 (Op. at 13)) (emphasis added)

Absent an express agreement to perform a condition or cause it to occur or not to occur, a condition is not an obligation, regardless of whether it gives rise to a right to terminate the agreement.<sup>17</sup> *In re Hawker Beechcraft, Inc.*, 486 B.R. at 276 (“[W]hile a contracting party’s *failure to fulfill a condition excuses performance* by the other party ..., it is not, without an independent promise to perform the condition, a breach ....” (quoting *Merritt Hill Vineyards, Inc. v. Windy Heights Vineyard, Inc.*,

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<sup>17</sup> The failure of a condition routinely allows for termination. *See In re Condado Plaza Acquisition LLC*, No. 20-12094 (MEW), 2020 Bankr. LEXIS 2767, at \*13-14 (Bankr. S.D.N.Y. Oct. 5, 2020) (acknowledging that a purchaser had a termination right if certain conditions were not satisfied *or* if the counterparty committed a material breach).

61 N.Y.2d 106, 460 N.E.2d 1077, 1081-82, 472 N.Y.S.2d 592 (N.Y. 1984)) (emphasis added)). The bankruptcy court specifically found that “the RSPA *does not require* Avianca ... to ensure that a Trigger Event does not occur.” (A1228 (Op. at 23)) (emphasis added)

The bankruptcy court cited no authority that a termination right triggered by the occurrence of a *condition* can be a material *obligation*. To the contrary, the cases that the bankruptcy court relied on addressed *obligations*, not *conditions*. (See A1228-29 (Op. at 23-24))

**b. The Back-Up Protections Requiring Avianca To  
“Sell” Future Contracts Are Not Material  
Unperformed Obligations**

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The bankruptcy court also found that Avianca has material unperformed obligations under the RSPA based on requirements for Avianca to “sell” contractual rights to payment under potential future replacement Card Processing Agreements (“Replacement Contract Rights”) to USAV in consideration of the \$150 million plus the potential for Additional Purchase Price already paid for those Contract Rights and Future Proceeds. (See A163 (RSPA §3.01(d)) (“The Purchase Price shall be consideration for the Sale and Transfer ... with respect to each Additional Card Processing Agreement”); A1227 (Op. at 22))

As addressed above, the purpose of the provisions relating to the Replacement Contract Rights was to provide USAV with a back-up protection to ensure that it

would keep the benefit of its bargain with Avianca—USAV’s rights to payment from Specified Sales—in the event that the parties needed a new Card Processor. *See supra* pp.13-14. Avianca had no right to terminate the existing Card Processors. (See A284-85 (Undertaking Agreement §2.01(t))) But if the USAV Parties allowed Avianca to do so, then the Contract Rights and Future Proceeds that were being moved to a new Card Processor had to be sold back to USAV in consideration for the purchase price already paid because USAV had already purchased those Contract Rights and Future Proceeds (*see* A161 (RSPA §2.03(b))). *Supra* p.14.

The requirement to formalize USAV’s continued ownership of the rights to payment from Specified Sales is not a material unperformed obligation that would render the RSPA executory. The obligation to notify new card processors of USAV’s ownership and enter into new agreements as necessary to effectuate that continued ownership of the assets sold in 2017 is purely mechanical and ministerial. (See A157-58 (RSPA §§2.01(a)(ii), (b)(ii), (c)(ii)); A161 (2.03(b))) Courts have routinely found that delivery of title and similar ministerial steps, as is at issue here, are mere formalities that do not render a contract executory. *See, e.g., In re RLR Celestial Homes, Inc.*, 108 B.R. 36, 44 (Bankr. S.D.N.Y. 1989) (unperformed delivery of legal title from seller to purchaser is a formality and does not form the basis for determining that a contract was executory); *In re Columbia Gas Sys.*, 50 F.3d at 243-44 (same); *In re Curry*, 526 B.R. 276, 281-82 (Bankr. C.D. Ill. 2015)

(same); *In re S'holders Funding*, 188 B.R. 150, 161-62 (Bankr. E.D. Pa. 1995) (same). Indeed, Avianca itself cited in the proceedings below to *Pieco*, which acknowledges that delivery of legal title is a formality and will not render a contract executory. 173 B.R. at 856 (citing *In re RLR Celestial Homes*, 108 B.R. at 44).

Additionally, Avianca's failure to perform its obligation would only relieve USAV's corresponding material unperformed obligations going forward. *See supra* pp.37-38. Avianca cannot use *its own breach* as an unperformed obligation to use rejection to then justify *its own breach*. Avianca cannot use the back-up protection included for preserving the sale, instead, to unwind it. Avianca cannot use an obligation to not divert Contract Rights and Future Proceeds sold in a fully consummated transaction to do the opposite and divert the Future Proceeds sold back to itself (while keeping the purchase price).

Additionally, the back-up protection of selling the Contract Rights and Future Proceeds where they have been diverted (or in this case where Avianca breaches the Undertaking Agreement) is essentially a warranty for the purchased asset. Courts have found that similar back-up protections included in a purchase and sale agreement are too insubstantial to render the contract executory. *See, e.g., In re GEC Industries, Inc.*, 107 B.R. 491, 492 (Bankr. D. Del. 1989) (holding seller's unperformed warranty obligations "issued in connection with a sale of [a] product" insufficient to make contract executory; buyer's administrative steps to submit

claims for breach of warranty are merely procedural and do not make contract executory); *In re Shada Truck Leasing, Inc.*, 31 B.R. 97, 100 (Bankr. D. Neb. 1983) (holding seller's warranty obligation too insubstantial to make sale contract executory); *see also Johnson v. Smith (In re Johnson)*, 501 F.3d 1163, 1174 (10th Cir. 2007) (citing with approval *Shada Truck's* holding that a warranty obligation is insufficient to render a sale contract executory); *In re Columbia Gas Sys.*, 50 F.3d at 243 (citing with approval *GEC's* holding that a warranty obligation is insufficient to render a sale contract executory and analogizing it to other "ministerial acts"); *JPL & Co. v. Global Env't Servs. Group, LLC (In re Global Env't Servs. Group, LLC)*, No. 04-00748, 2006 Bankr. LEXIS 4926, at \*13 (Bankr. D. Haw. Mar. 16, 2006) ("The inclusion of ancillary provisions having to do with the purchased assets, such as warranties, do not make the contract executory.").

### **CONCLUSION**

For the foregoing reasons, the USAV Secured Lender Group asks the Court to reverse the Order insofar as it granted the Motion.

October 14, 2020  
New York, New York

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limitation of Fed. R. Bankr. P. 8015(a)(7)(B)(i), because it contains 12,841 words, excluding the parts of the brief exempted by Fed. R. Bankr. P. 8015(g).

This brief complies with the typeface requirements of Fed. R. Bankr. P. 8015(a)(5) and the type style requirements of Fed. R. Bankr. P. 8015(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word in 14-point Times New Roman font.

*[Signature on following page]*

October 14, 2020  
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Respectfully submitted,

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**EXHIBIT II**

ORAL ARGUMENT REQUESTED

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**Case Nos. 1:20-cv-08008-LTS; 1:20-cv-08364-LTS**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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IN RE AVIANCA HOLDINGS S.A., ET AL.,  
*DEBTORS.*

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USAV SECURED LENDER GROUP,  
USAVFLOW LIMITED,  
*APPELLANTS,*

V.

AVIANCA HOLDINGS S.A., ET AL.,  
*APPELLEES.*

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APPEAL FROM THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
BANKR. CASE No. 20-11133 (MG)

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**APPENDIX TO OPENING BRIEF FOR  
APPELLANT USAV SECURED LENDER GROUP  
VOLUME 1 OF 5 (PAGES A1-A569)**

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Pursuant to Fed. R. Bankr. P. 8018(b)(1), in support of its brief filed concurrently herewith, Appellant USAV Secured Lender Group<sup>1</sup> submits this Appendix comprised of the following documents:

AX <sup>2</sup>	Document Description (Date of Entry)	Docket No.	App'x Page Range
<b>VOLUME 1</b>			
1	Docket entries from Main Chapter 11 Bankruptcy Case, <i>In re Avianca Holdings S.A.</i> , Case No. 20-11133 (MG) (Bankr. S.D.N.Y.)	N/A	A1-A106
2	Docket entries from Adversary Proceeding, <i>Avianca Holdings S.A. v. USAVflow Limited</i> , Case No. 20-01189 (MG) (Bankr. S.D.N.Y.)	N/A	A107-A111
3	Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts <sup>3</sup> (6/23/2020)	Bk.Dkt.306 <sup>4</sup>	A112-A131
4	Declaration of Adrian Neuhauser in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (6/23/2020)	Bk.Dkt.306-1	A132-A136
5	Contract Rights and Receivables Sale, Purchase and Servicing Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 1	A137-A270

<sup>1</sup> Capitalized terms used but not defined in this Appendix have the meanings provided in the USAV Secured Lender Group's opening brief.

<sup>2</sup> "AX" refers to the Appendix Exhibit Number, as cited in the USAV Secured Lender Group's opening brief.

<sup>3</sup> The cover notice to the Rejection Motion has been omitted.

<sup>4</sup> "Bk.Dkt." refers to docket entries from the main Chapter 11 bankruptcy case captioned *In re Avianca Holdings S.A.*, Case No. 20-11133 (MG) (Bankr. S.D.N.Y.).

6	Receivables Maintenance Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 2	A271-A303
7	Cash Management Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 4	A304-A336
8	Credomatic Notice of Transfer, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 5	A337-A374
9	Credomatic Consent and Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 6	A375-A381
10	AMEX Notice and Consent, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 7	A382-A409
11	Loan Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 9	A410-A569
<b>VOLUME 2</b>			
12	Complaint <sup>5</sup> (6/23/2020)	Ap.Dkt.1, <sup>6</sup> Bk.Dkt.307	A570-A581
13	USAVflow Limited's Objection and Reservation of Rights to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (7/22/2020)	Bk.Dkt.616	A582-A600
14	Legal Opinion of Gómez-Pinzón Abogados S.A.S., Dated December 12, 2017 (7/22/2020)	Bk.Dkt.616-1	A601-A611
15	Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (7/22/2020)	Bk.Dkt.617	A612-A645
16	Declaration of Jorge Suescún Melo in Support of Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order	Bk.Dkt.618	A646-A654

<sup>5</sup> Exhibits to the Complaint have been omitted. The USAV Secured Lender Group can provide all the exhibits upon the Court's request.

<sup>6</sup> "Ap.Dkt." refers to docket entries from the adversary proceeding captioned *Avianca Holdings S.A. v. USAVflow Limited*, Case No. 20-01189 (MG) (Bankr. S.D.N.Y.).

	Authorizing Rejection of Certain Executory Contracts (7/22/2020)		
17	Notice of Trigger Event, Dated March 31, 2020 (7/23/2020)	Bk.Dkt.619-1	A655-A660
18	Transcript of Telephonic Status Conference Held on July 27, 2020 <sup>7</sup> (7/28/2020)	Bk.Dkt.647	A661-A690
19	Official Committee of Unsecured Creditors' Reply in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/07/2020)	Bk.Dkt.681	A691-A702
20	Debtors' Reply to the Objections of USAV and the USAV Secured Lender Group to the Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/07/2020)	Bk.Dkt.683	A703-A734
21	Second Declaration of Adrian Neuhauser in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/07/2020)	Bk.Dkt.683-1	A735-A740
22	Email Communication amongst Avianca and Citibank, N.A., Between July 5, 2020 and July 8, 2020 (8/07/2020)	Bk.Dkt.683-4	A741-A744
23	Certified English Translation of Declaration of Jaime Alberto Arrubla-Paucar in Support of the "Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts" (8/07/2020)	Bk.Dkt.684-1	A745-A758
24	Supplemental Response of the Official Committee of Unsecured Creditors to the Court's Questions Posed at the July 27, 2020 Status Conference (8/18/2020)	Bk.Dkt.714	A759-A763

<sup>7</sup> All transcript indexes in this Appendix have been omitted. The USAV Secured Lender Group can provide the full index upon the Court's request.

25	Debtors' Response to the Court's Questions Posed at the July 27, 2020 Status Conference (8/18/2020)	Bk.Dkt.715	A764-A782
26	USAV Secured Lender Group's Supplemental Brief in Support of Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/18/2020)	Bk.Dkt.716	A783-A803
27	USAVflow Limited's Combined Response to (A) Debtors' Reply in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts and (B) Questions Posed by the Court at the July 27, 2020 Status Conference (8/18/2020)	Bk.Dkt.717	A804-A817
28	Sur-Reply of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/18/2020)	Bk.Dkt.718	A818-A850
29	Declaration of Vicente Lines in Support of the USAV Secured Lender Group's Supplemental Brief and Sur-Reply in Support of Objection to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/19/2020)	Bk.Dkt.719	A851-A857
30	Second Declaration of Jorge Suescún Melo in Support of Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/19/2020)	Bk.Dkt.720	A858-A884
<b>VOLUME 3</b>			
31	Option Agreement, Dated December 12, 2017 (8/19/2020)	Bk.Dkt.721-1	A885-A896
32	Waiver Request Letter from Avianca to the Lenders, the Agents, and USAV, Dated February 19, 2018 (8/19/2020)	Bk.Dkt.721-11	A897-A900

33	Waivers of Trigger Events, Dated on or about April 13, 2018 and November 27, 2019 (8/19/2020)	Bk.Dkt.721-12	A901-A956
34	Transcript of Hearing Held on August 19, 2020 (8/20/2020)	Bk.Dkt.743	A957-A980
35	Transcript of Hearing Held on August 18, 2020 (8/21/2020)	Bk.Dkt.742	A981-A998
36	Order with Questions that Counsel for the Parties Should Address During the Hearing of the Rejection Motion (8/25/2020)	Bk.Dkt.757	A999-A1001
<b>VOLUME 4</b>			
37	Avianca's August 26, 2020 Hearing Demonstrative (8/26/2020)	N/A	A1002-A1030
38	USAV Secured Lender Group's August 26, 2020 Hearing Demonstrative (8/26/2020)	N/A	A1031-A1067
<b>VOLUME 5</b>			
39	Transcript of Hearing Held on August 26, 2020 (8/27/2020)	Bk.Dkt.788	A1068-A1204
40	Memorandum Opinion Granting in Part and Denying in Part Debtors' Motion to Reject the USAV Agreements (9/04/2020)	Bk.Dkt.850	A1205-A1245
41	USAV Secured Lender Group's Notice of Appeal <sup>8</sup> (9/18/2020)	Bk.Dkt.959	A1246-A1251
42	USAVflow Limited's Notice of Appeal <sup>9</sup> (9/18/2020)	Bk.Dkt.960	A1252-A1257

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<sup>8</sup> Exhibits to the USAV Secured Lender Group's Notice of Appeal have been omitted. Exhibit A to the Notice of Appeal, the Order, is included in this Appendix as Exhibit 40.

<sup>9</sup> Exhibits to USAV's Notice of Appeal have been omitted. Exhibit A to the Notice of Appeal, the Order, is included in this Appendix as Exhibit 40.

October 14, 2020  
New York, New York

Respectfully submitted,

**WHITE & CASE LLP**

By: /s/ Glenn M. Kurtz

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*Attorneys for the USAV Secured  
Lender Group*



**EXHIBIT 1**

**FeeDueAP, PENAP, MEGA, CLMAGT, Lead, APPEAL**

**U.S. Bankruptcy Court  
Southern District of New York (Manhattan)  
Bankruptcy Petition #: 20-11133-mg**

*Date filed: 05/10/2020*

*Assigned to:* Judge Martin Glenn  
Chapter 11  
Voluntary  
Asset

***Debtor***

**Avianca Holdings S.A.**  
Edificio P.H. Arifa, Boulevard Oeste  
Pisos 9 y 10  
Ciudad de Panama  
OUTSIDE U. S.  
Republica de Panama  
Tax ID / EIN: 00-0000000  
***aka SK Holding Ltd.***  
***aka Aviaca Taca Ltd.***  
***aka Avianca Taca Holdings S.A.***

represented by **Evan R. Fleck**

Milbank LLP  
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212-530-5567  
Email: [efleck@milbank.com](mailto:efleck@milbank.com)

***U.S. Trustee***

**United States Trustee**  
Office of the United States Trustee  
U.S. Federal Office Building  
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(212) 510-0500

represented by **Brian S. Masumoto**

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***Claims and Noticing Agent***

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El Segundo, CA 90245

310-823-9000

***Claims and Noticing Agent*****Kurtzman Carson Consultants**

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Suite 300

El Segundo, CA 90245

***Creditor Committee*****Official Committee Of Unsecured  
Creditors**represented by **Todd M. Goren**

Morrison &amp; Foerster LLP

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(212) 336-4325

Fax : (212) 468-7900

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Filing Date	#	Docket Text
05/10/2020	<u><a href="#">1</a></u> (20 pgs)	Chapter 11 Voluntary Petition for Non-Individual. Order for Relief Entered. Filed by Evan R. Fleck of Milbank LLP on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/10/2020)
05/10/2020		Judge Martin Glenn added to the case. (Porter, Minnie). (Entered: 05/10/2020)
05/10/2020	<u><a href="#">2</a></u> (28 pgs)	Motion for Joint Administration / <i>Debtors' Motion for Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/10/2020)
05/10/2020	<u><a href="#">3</a></u> (51 pgs)	Motion to Authorize / <i>Debtors' Motion for an Order Pursuant to Sections 363(B), 507, and 105(A) of the Bankruptcy Code (I) Authorizing, But Not Directing, The Debtors to (A) Pay Prepetition Wages, Compensation and Employee Benefits And (B) Continue Payment of Wages, Compensation, Employee Benefits and Related Administrative Obligations in the Ordinary Course Of Business; and (II) Authorizing and Directing Applicable Banks and Financial Institutions to Process and Pay All Checks Presented for Payment and to Honor all Funds Transfer Requests Made by The Debtors</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/10/2020)

05/10/2020		Receipt of Voluntary Petition (Chapter 11)( <a href="#">20-11133</a> ) [misc.824] (1717.00) Filing Fee. Receipt number A13976705. Fee amount 1717.00. (Re: Doc # <a href="#">1</a> ) (U.S. Treasury) (Entered: 05/10/2020)
05/10/2020	<a href="#">4</a> (60 pgs)	Motion to Authorize / <i>Debtors' Motion for Entry of Interim and Final Orders Pursuant to Sections 105(A), 345, 363, and 364 of the Bankruptcy Code Authorizing Debtors to (I) Maintain and Use Existing Cash Management Systems, Bank Accounts and Business Forms; (II) Provide Superpriority Status for Intercompany Claims; (III) Authorize Continued Payment of Service Charges; and (IV) Schedule Final Hearing; And (V) Grant Related Relief</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/10/2020)
05/10/2020	<a href="#">5</a> (21 pgs)	Motion to Authorize / <i>Debtors' Motion for Entry of an Order (I) Enforcing the Protections of 11 U.S.C. §§ 362, 365, 525, and 541(C); (II) Approving the Form and Manner of Notice; and (III) Granting Related Relief</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/10/2020)
05/10/2020	<a href="#">6</a> (32 pgs)	Motion to Authorize / <i>Debtors' Motion for Interim and Final Orders (A) Authorizing Debtors to Pay Prepetition Claims of Foreign Vendors; and (B) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/10/2020)
05/10/2020	<a href="#">7</a> (29 pgs)	Motion to Authorize / <i>Debtors' Motion for Interim and Final Orders, Pursuant to Sections 105(A) and 363 of the Bankruptcy Code, (I) Authorizing Debtors to Pay Certain Outside Maintenance and Service Providers, Shippers, and Contractors in Satisfaction of Perfected or Potential Mechanics', Materialmen's or Similar Liens or Interests; (II) Scheduling Final Hearing; and (III) Granting Related Relief</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/10/2020)
05/10/2020	<a href="#">8</a> (29 pgs)	Motion to Authorize / <i>Debtors' Motion for Interim and Final Orders Pursuant to Sections 105(a), 362, 363, and 553 of the Bankruptcy Code (I) Authorizing, but not Directing, the Debtors to Pay Prepetition Amounts Owing to Fuel Relationship Parties and to Continue Performing under Related Contracts; and (II) Authorizing the Fuel Relationship Parties to Exercise Their Setoff and Recoupment Rights</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/10/2020)
05/10/2020	<a href="#">9</a> (49 pgs)	Motion to Authorize / <i>Debtors' Motion for Interim and Final Orders (I) Pursuant to Sections 105(a) and 365 of the Bankruptcy Code, Authorizing Debtors to Assume Certain Agreements; (II) Pursuant to Sections 105(A) and 363 of the Bankruptcy, Code Authorizing but not Directing the Debtors to Satisfy (A) Certain Prepetition Obligations Pending Assumption, and (B) Certain Obligations to Other Airlines Settled Through Airline Clearinghouses and Certain Prepetition Airline Alliance and Frequent Flyer Obligations; (III) Modifying Automatic Stay Pursuant to Section 362 of the Bankruptcy Code to Effectuate the Foregoing; and (IV) Scheduling Final Hearing</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/10/2020)
05/10/2020	<a href="#">10</a> (16 pgs)	Motion to Authorize / <i>Debtors' Motion for Entry of an Order Pursuant to Sections 105(a), 363(b)(1), 503(B)(1), and 503(B)(9) of the Bankruptcy Code Authorizing the Payment of Certain Undisputed Obligations Arising</i>

		<i>from Goods Ordered Prepetition</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/10/2020)
05/10/2020	<a href="#"><u>11</u></a> (66 pgs)	Motion to Authorize / <i>Debtors' Motion for Entry of Interim and Final Orders Pursuant to Sections 105(a), 363, and 364 of the Bankruptcy Code Authorizing Debtors (I) to Continue their Insurance and Surety Bond Programs; (II) Satisfy Obligations related thereto; (III) Continue Payment of certain Brokerage Fees; (IV) Renew, Supplement, Modify, or Purchase Insurance Coverage and Surety Bonds; and (V) Enter into New Premium Financing Agreements in the Ordinary Course of Business</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/10/2020)
05/10/2020	<a href="#"><u>12</u></a> (31 pgs)	Motion to Authorize / <i>Debtors' Motion for Entry of Interim and Final Orders Pursuant to Sections 105(a), 363(b), 507(a)(8), and 541 of the Bankruptcy Code Authorizing the Payment of Certain Prepetition Taxes and Fees</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/10/2020)
05/10/2020	<a href="#"><u>13</u></a> (28 pgs)	Motion to Authorize / <i>Debtors' Motion for Interim and Final Orders Pursuant to Sections 105(a), 363, and 364(c) of the Bankruptcy Code for Authorization to Enter Into, Continue Performance, and Provide Credit Support Under Hedging and Derivative Contracts</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/10/2020)
05/10/2020	14	<b>(The Wrong Event Code was Used, See Document No. 29) for the Correct Entry)</b> Application to Employ Kurtzman Carson Consultants LLC as Claims and Noticing Agent / <i>Application for an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent for the Debtors Pursuant to 28 U.S.C. § 156(c), 11 U.S.C. § 105(a), and S.D.N.Y. L.B.R. 5075-1 Nunc Pro Tunc to the Petition Date</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) <b>Modified on 5/11/2020 (Bush, Brent)</b> (Entered: 05/10/2020)
05/10/2020	<a href="#"><u>15</u></a> (29 pgs)	Motion to Authorize / <i>Debtors' Motion for Entry of Order Implementing Certain Notice and Case Management Procedures</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/10/2020)
05/10/2020	<a href="#"><u>16</u></a> (17 pgs)	Motion to Approve / <i>Debtors' Motion for Entry of Order Pursuant to Sections 105(a) and 546(c) of Bankruptcy Code Establishing and Implementing Exclusive and Global Procedures for Treatment of Reclamation Claims</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/10/2020)
05/10/2020	<a href="#"><u>17</u></a> (35 pgs)	Motion to Authorize / <i>Debtors' Motion for Interim and Final Orders Pursuant to Sections 105(a) and 363 of the Bankruptcy Code (I) Authorizing Debtors to Pay or Honor Prepetition Obligations to Customers, Travel Agents, Charter and Tour Operators, and Certain Other Business Entities; (II) Modifying Automatic Stay to the Extent Necessary to Effectuate Ordinary Course Setoffs with Such Counterparties; and (III) Granting Related Relief</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/10/2020)
05/10/2020	<a href="#"><u>18</u></a> (24 pgs)	Motion to Authorize / <i>Debtors' Motion for Entry of an Order (I) Authorizing Debtors to (A) File a Consolidated List of Creditors and (B) File a Consolidated List of Debtors 40 Largest Unsecured Claims; (II) Approving Procedure for Disclosure of Certain Creditor and Interest Holder Information; and (III) Approving Form and Manner of Notifying</i>

		<i>Creditors of Commencement of Chapter 11 Cases</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/10/2020)
05/10/2020	<a href="#"><u>19</u></a> (16 pgs)	Application to Extend Time to File Schedules / <i>Debtors' Motion for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases, Statements of Financial Affairs, and Rule 2015.3 Financial Reports; and (II) Waiving Requirement to File a List of Equity Security Holders and Provide Notice of Commencement to Equity Security Holders</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/10/2020)
05/10/2020	<a href="#"><u>20</u></a> (101 pgs)	Declaration of <i>Adrian Neuhauser in Support of Chapter 11 Petitions and First Day Pleadings</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/10/2020)
05/10/2020	<a href="#"><u>21</u></a> (33 pgs)	Motion to Authorize / <i>Debtors' First Omnibus Motion for an Order Authorizing them to (I) Reject Certain Aircraft Leases and (II) Abandon Certain Aircraft</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/10/2020)
05/11/2020	<a href="#"><u>22</u></a> (5 pgs)	Notice of Agenda / <i>Notice of Commencement of Chapter 11 Cases and Agenda for First Day Hearing</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/11/2020)
05/11/2020	23	<b>(The Wrong Event Code was Used, See Document No. <a href="#"><u>29</u></a> for the Correct Entry)</b> Application to Appoint / <i>Corrected Application for an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent for the Debtors Pursuant to 28 U.S.C. § 156(c), 11 U.S.C. § 105(a), and S.D.N.Y. L.B.R. 5075-1 Nunc Pro Tunc to the Petition Date</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) <b>Modified on 5/11/2020 (Bush, Brent)</b> (Entered: 05/11/2020)
05/11/2020	<a href="#"><u>24</u></a> (4 pgs)	Notice of Appearance and Request for Service of Notices and Papers by <i>Milbank LLP as Counsel to Avianca Holdings S.A.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/11/2020)
05/11/2020	<a href="#"><u>25</u></a> (3 pgs)	Notice of Appearance filed by Leo T. Crowley on behalf of Crdit Agricole Corporate and Investment Bank, Norddeutsche Landesbank Girozentrale, New York Branch. (Crowley, Leo) (Entered: 05/11/2020)
05/11/2020	<a href="#"><u>26</u></a> (4 pgs)	Application for Pro Hac Vice Admission of <i>James C. Behrens</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/11/2020)
05/11/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#"><u>20-11133-mg</u></a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A13978123. Fee amount 200.00. (Re: Doc # <a href="#"><u>26</u></a> ) (U.S. Treasury) (Entered: 05/11/2020)
05/11/2020	<a href="#"><u>27</u></a> (88 pgs)	Certificate of Mailing of Claims Agent <i>re Notice of Commencement of Chapter 11 Cases and Agenda for First Day Hearing, First Day Motions, and Related Pleadings</i> (related document(s) <a href="#"><u>9</u></a> , <a href="#"><u>10</u></a> , <a href="#"><u>15</u></a> , <a href="#"><u>6</u></a> , <a href="#"><u>3</u></a> , <a href="#"><u>18</u></a> , <a href="#"><u>23</u></a> , <a href="#"><u>12</u></a> , <a href="#"><u>2</u></a> , <a href="#"><u>8</u></a> , <a href="#"><u>21</u></a> , <a href="#"><u>5</u></a> , <a href="#"><u>11</u></a> , <a href="#"><u>16</u></a> , <a href="#"><u>17</u></a> , <a href="#"><u>22</u></a> , <a href="#"><u>7</u></a> , <a href="#"><u>19</u></a> , <a href="#"><u>20</u></a> , <a href="#"><u>13</u></a> , <a href="#"><u>4</u></a> ) filed by Kurtzman Carson Consultants LLC.(Kass, Albert) (Entered: 05/11/2020)
05/11/2020	<a href="#"><u>28</u></a> (2 pgs)	Notice of Appearance and Request for Service of Papers filed by Gabriel Adam Morgan on behalf of Advent International Colombia S.A.S. and its



		affiliates. (Morgan, Gabriel) (Entered: 05/11/2020)
05/11/2020	<a href="#"><u>29</u></a> (43 pgs)	Motion to Appoint Kurtzman Carson Consultants LLC as Claims and Noticing Agent (related document(s) <a href="#"><u>14</u></a> , <a href="#"><u>23</u></a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/11/2020)
05/11/2020	<a href="#"><u>30</u></a> (5 pgs; 2 docs)	Joint Notice of Appearance <i>and Demand for Service of Papers</i> filed by Keith A. Simon on behalf of Citibank, N.A.. (Attachments: # <a href="#"><u>1</u></a> Exhibit A) (Simon, Keith) (Entered: 05/11/2020)
05/11/2020	<a href="#"><u>31</u></a> (7 pgs)	Interim Order Signed on 5/11/2020 (I) Authorizing Debtors to (A) Maintain and Use Existing Cash Management Systems, Bank Accounts and Business Forms; (B) Continue to Engage in Intercompany Transactions and Afford Administrative Expense Priority to Intercompany Claims; (C) Continue Payment of Service Charges; (II) Waiving Compliance With Section 345 of Bankruptcy Code; (III) Scheduling Final Hearing; and (IV) Granting Related Relief. Final hearing to be held on 6/11/2020 at 2:00 PM. (Anderson, Deanna) (Entered: 05/11/2020)
05/11/2020	<a href="#"><u>32</u></a> (4 pgs; 2 docs)	Application for Pro Hac Vice Admission filed by Dania Slim on behalf of Credit Agricole Corporate and Investment Bank, Norddeutsche Landesbank Girozentrale, New York Branch. (Attachments: # <a href="#"><u>1</u></a> Proposed Order) (Slim, Dania) (Entered: 05/11/2020)
05/11/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#"><u>20-11133-mg</u></a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A13979904. Fee amount 200.00. (Re: Doc # <a href="#"><u>32</u></a> ) (U.S. Treasury) (Entered: 05/11/2020)
05/12/2020	<a href="#"><u>33</u></a> (2 pgs)	Order, signed on 5/12/2020, Granting Application for Pro Hac Vice Admission of Dania Slim (Related Doc # <a href="#"><u>32</u></a> ) . (Anderson, Deanna) (Entered: 05/12/2020)
05/12/2020	<a href="#"><u>34</u></a> (12 pgs)	Order Signed on 5/12/2020 (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief (Related Doc # <a href="#"><u>2</u></a> ) . An order has been entered directing joint administration forprocedural purposes only of the chapter 11 cases of: The Debtors inthese chapter 11 cases: Avianca HoldingsS.A.; Aero Transporte de Carga Unin, S.A. de C.V.;Aeroinversiones de Honduras, S.A.; Aerovas del ContinenteAmericano S.A. Avianca; Airlease Holdings One Ltd.; AmericaCentral (Canada) Corp.; America Central Corp.; AV InternationalHoldco S.A.; AV International Holdings S.A.; AV InternationalInvestments S.A.; AV International Ventures S.A.; AV InvestmentsOne Colombia S.A.S.; AV Investments Two Colombia S.A.S.; AVTaca International Holdco S.A.; Avianca Costa Rica S.A.; AviancaLeasing, LLC; Avianca, Inc.; Avianca-Ecuador S.A.; Aviaservicios,S.A.; Aviateca, S.A.; Avifreight Holding Mexico, S.A.P.I. de C.V.;C.R. Intl Enterprises, Inc.; Grupo Taca Holdings Limited;International Trade Marks Agency Inc.; Inversiones del Caribe,S.A.; Islea de Inversiones, S.A. de C.V.; Latin Airways Corp.;Latin Logistics, LLC; Nicaraguense de Aviacin, SociedadAnnima (Nica, S.A.); Regional Express Amricas S.A.S.; RonairN.V.; Servicio Terrestre, Aereo y Rampa S.A.; ServiciosAeroportuarios Integrados SAI S.A.S.; Taca de Honduras, S.A. deC.V.; Taca de Mxico, S.A.; Taca International Airlines S.A.; TacaS.A.; Tampa Cargo S.A.S.; Technical and Training Services, S.A.de C.V. All further pleadings and other papers in such casesshall be filed in and all further docket entries shall be made inAvianca Holdings S.A. Case No. 20-11133 (MG). (Anderson, Deanna) (Entered: 05/12/2020)

05/12/2020	<a href="#"><u>35</u></a> (5 pgs)	Interim Order, Signed on 5/12/2020, Pursuant to Sections 363(B), 507, and 105(A) of the Bankruptcy Code (I) Authorizing, But Not Directing, The Debtors to (A) Pay Prepetition Wages, Compensation and Employee Benefits And (B) Continue Payment of Wages, Compensation, Employee Benefits and Related Administrative Obligations in the Ordinary Course Of Business; and (II) Authorizing and Directing Applicable Banks and Financial Institutions to Process and Pay All Checks Presented for Payment and to Honor all Funds Transfer Requests Made by The Debtors. (related document(s) <a href="#"><u>3</u></a> ) Final Hearing to be held on 6/11/2020 at 2:00 PM. (Anderson, Deanna) (Entered: 05/12/2020)
05/12/2020	<a href="#"><u>36</u></a> (5 pgs)	Interim Order Signed on 5/12/2020 Authorizing (A) Debtors to Pay Prepetition Claims of Foreign Vendors; and (B) Financial Institutions to Honor and Process Related Checks and Transfers. A Final Hearing Will be Held on 6/11/2020 at 2:00 p.m. (related document(s) <a href="#"><u>6</u></a> ) (Calderon, Lynda) (Entered: 05/12/2020)
05/12/2020	<a href="#"><u>37</u></a> (5 pgs)	Interim Order Signed on 5/12/2020 (I) Authorizing, but Not Directing, the Debtors to Pay Prepetition Amounts Owning to Fuel Relationship Parties and to Continue Performing under Related Contracts; and (II) Authorizing the Fuel Relationship Parties to Exercise Their Setoff and Recoupment Rights. A Final Hearing Will be Held on 6/11/2020 at 2:00 p.m. (related document(s) <a href="#"><u>8</u></a> ) (Calderon, Lynda) (Entered: 05/12/2020)
05/12/2020	<a href="#"><u>38</u></a> (4 pgs)	Interim Order Signed on 5/12/2020 Pursuant to Sections 105(a), 363(b), 507(a)(8), and 541 of the Bankruptcy Code Authorizing the Debtors to Pay Certain Prepetition Taxes and Fees. A Final Hearing Will be Held on 6/11/2020 at 2:00 p.m. (related document(s) <a href="#"><u>12</u></a> ) (Calderon, Lynda) (Entered: 05/12/2020)
05/12/2020	<a href="#"><u>39</u></a> (6 pgs)	Interim Order Signed on 5/12/2020 (I) Pursuant to Sections 105(a) and 365 of the Bankruptcy Code, Authorizing Debtors to Assume Certain Agreements; (II) Pursuant to Sections 105(a) and 363 of the Bankruptcy Code Authorizing but Not Directing the Debtors to Satisfy (A) Certain Prepetition Obligations Pending Assumption, and (B) Certain Obligations to Other Airlines Settled Through Airline Clearinghouses and Certain Prepetition Airline Alliance Obligations; (III) Modifying Automatic Stay Pursuant to Section 362 of the Bankruptcy Code to Effectuate the Foregoing; and (IV) Scheduling Final Hearing for 6/11/2020 at 2:00 p.m. (related document(s) <a href="#"><u>9</u></a> ) (Calderon, Lynda) (Entered: 05/12/2020)
05/12/2020	<a href="#"><u>40</u></a> (5 pgs)	Interim Order, signed on 5/12/2020, Pursuant to Sections 105(A) and 363 of the Bankruptcy Code, (I) Authorizing Debtors to Pay Certain Outside Maintenance and Service Providers, Shippers, and Contractors in Satisfaction of Perfected or Potential Mechanics', Materialmen's or Similar Liens or Interests. (related document(s) <a href="#"><u>7</u></a> ) Final Hearing to be held on 6/11/2020 at 2:00 PM. (Anderson, Deanna) (Entered: 05/12/2020)
05/12/2020	<a href="#"><u>41</u></a> (12 pgs)	Order Signed on 5/12/2020 (I) Authorizing Debtors to (A) File a Consolidated List of Creditors and (B) File a Consolidated List of Debtors 40 Largest Unsecured Claims; (II) Approving Procedure for Disclosure of Certain Creditor and Interest Holder Information; and (III) Approving Form and Manner of Notifying Creditors of Commencement of these Chapter 11 Cases. (Related Doc # <a href="#"><u>18</u></a> ) (Calderon, Lynda) (Entered: 05/12/2020)
05/12/2020	<a href="#"><u>42</u></a> (4 pgs)	Interim Order, Signed on 5/12/2020, Authorizing Debtors (I) to Continue Their Insurance and Surety Bond Programs; (II) Satisfy Obligations Related Thereto; (III) Continue Payment of certain Brokerage Fees; (IV) Renew,



		Supplement, Modify, or Purchase Insurance Coverage and Surety Bonds; and (V) Enter into New Premium Financing Agreements in the Ordinary Course of Business (related document(s) <a href="#">11</a> ) Final hearing to be held on 6/11/2020 at 2:00 PM. (Anderson, Deanna) (Entered: 05/12/2020)
05/12/2020	<a href="#">43</a> (4 pgs)	Interim Order, Signed on 5/12/2020, Pursuant to Sections 105(a), 363(c), and 364(c) of the Bankruptcy Code for Authorization to Enter Into, Continue Performance, and Provide Credit Support Under Hedging and Derivative Contracts. (related document(s) <a href="#">13</a> ) Final hearing to be held on 6/11/2020 at 2:00 PM. (Anderson, Deanna) (Entered: 05/12/2020)
05/12/2020	<a href="#">44</a> (4 pgs)	Order, signed on 5/12/2020, (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases, Statements of Financial Affairs, and Rule 2015.3 Financial Reports; and (II) Waiving Requirement to File a List of Equity Security Holders and Provide Notice of Commencement to Equity Security Holders (Related Doc # <a href="#">19</a> ). (Anderson, Deanna) (Entered: 05/12/2020)
05/12/2020	<a href="#">45</a> (3 pgs)	Order, Signed on 5/12/2020, Pursuant to Sections 105(a), 363(b)(1), 503(b)(1), and 503(b)(9) of the Bankruptcy Code Authorizing the Payment of Certain Undisputed Obligations Arising from Goods Ordered Prepetition (Related Doc # <a href="#">10</a> ). (Anderson, Deanna) (Entered: 05/12/2020)
05/12/2020	<a href="#">46</a> (10 pgs)	Order signed on 5/12/2020 (I) Enforcing the Protections of 11 U.S.C. §§ 362, 365, 525, and 541(C); (II) Approving the Form and Manner of Notice; and (III) Granting Related Relief (Related Doc # <a href="#">5</a> ). (Anderson, Deanna) (Entered: 05/12/2020)
05/12/2020	<a href="#">47</a> (18 pgs)	Order, Signed on 5/12/2020, Implementing Certain Notice and Case Management Procedures. (related document(s) <a href="#">15</a> ) (Anderson, Deanna) (Entered: 05/12/2020)
05/12/2020	<a href="#">48</a> (5 pgs)	Interim Order, Signed on 5/12/2020, Pursuant to Sections 105(a) and 363 of the Bankruptcy Code (I) Authorizing Debtors to Pay or Honor Prepetition Obligations to Customers, Travel Agents, Charter and Tour Operators, and Certain Other Business Entities; (II) Modifying Automatic Stay to the Extent Necessary to Effectuate Ordinary Course Setoffs with Such Counterparties; and (III) Granting Related Relief. Final Hearing to be Held on 6/11/2020 at 2:00PM (Teleconference Only) (related document(s) <a href="#">17</a> ) (Anderson, Deanna) <b>Docket Text Hearing Time and Date added on 5/12/2020 (Bush, Brent)</b> (Entered: 05/12/2020)
05/12/2020	<a href="#">49</a> (6 pgs)	Order, Signed on 5/12/2020, Pursuant to Sections 105(a) and 546(c) of Bankruptcy Code Establishing and Implementing Exclusive and Global Procedures for Treatment of Reclamation Claims (Related Doc # <a href="#">16</a> ). (Anderson, Deanna) (Entered: 05/12/2020)
05/12/2020	<a href="#">50</a> (5 pgs)	Notice of Hearing / <i>Notice of Final Hearing on First Day Motions to be Held Telephonically on June 11, 2020, at 2:00 p.m. (Prevailing Eastern Time)</i> (related document(s) <a href="#">9</a> , <a href="#">12</a> , <a href="#">8</a> , <a href="#">21</a> , <a href="#">11</a> , <a href="#">6</a> , <a href="#">17</a> , <a href="#">7</a> , <a href="#">3</a> , <a href="#">13</a> , <a href="#">4</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with hearing to be held on 6/11/2020 at 02:00 PM at Courtroom 523 (MG) Objections due by 6/4/2020, (Fleck, Evan) (Entered: 05/12/2020)
05/12/2020	<a href="#">51</a> (3 pgs)	Notice of Appearance filed by Samuel S. Kohn on behalf of U.S. Bank National Association, acting through its Canadian branch, U.S. Bank

		National Association, Elavon Canada Company, Elavon Financial Services DAC (UK Branch). (Kohn, Samuel) (Entered: 05/12/2020)
05/12/2020	<a href="#"><u>61</u></a> (153 pgs)	Transcript regarding Hearing Held on 05/11/2020 at 2:00 pm RE: (Doc. No. 17) Motion Authorizing Debtors to Pay or Honor Pre-petition Obligations to Customers, Travel Agents, Charter and Tour Operators, and Certain Other Business Entities;(II) Modifying Automatic Stay to the Extent Necessary to Effectuate Ordinary Course Setoffs with Such Counterparties. (Doc. No. 2) Debtors' Motion for Entry of an Order (I)Directing Joint Administration of Chapter 11 Cases and (II)Granting Related Relief.(Doc. No. 3) Debtors' Motion for an Order (I) Authorizing, But Not Directing, the Debtors to (A) Pay Pre-petition Wages, Compensation and Employee Benefits and (B) Continue Payment of Wages, Compensation, Employee Benefits and Related Administrative Obligations in the Ordinary Course Of Business...et al. <b>Remote electronic access to the transcript is restricted until 8/10/2020.</b> The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: eScribers.]. (See the Courts Website for contact information for the Transcription Service Agency.). Notice of Intent to Request Redaction Deadline Due By 5/19/2020. Statement of Redaction Request Due By 6/2/2020. Redacted Transcript Submission Due By 6/12/2020. Transcript access will be restricted through 8/10/2020. (Lewis, Tenille) (Entered: 05/14/2020)
05/13/2020	<a href="#"><u>52</u></a> (6 pgs)	Order, signed on 5/13/2020, Authorizing Retention and Appointment of Kurtzman Carson Consultants, LLC as Claims and Noticing Agent Nunc Pro Tunc to the Petition Date and Granting Related Relief (Related Doc # <a href="#"><u>29</u></a> ). (Anderson, Deanna) (Entered: 05/13/2020)
05/13/2020	<a href="#"><u>53</u></a> (4 pgs)	Notice of Appearance filed by Michael James Edelman on behalf of JPA No. 160 Co., Ltd., JPA No. 159 Co., Ltd., JPA No. 151 Co., Ltd., JPA No. 152 Co., Ltd.. (Edelman, Michael) (Entered: 05/13/2020)
05/13/2020	<a href="#"><u>54</u></a> (2 pgs)	Certificate of Service (related document(s) <a href="#"><u>30</u></a> ) Filed by Keith A. Simon on behalf of Citibank, N.A.. (Simon, Keith) (Entered: 05/13/2020)
05/13/2020	<a href="#"><u>55</u></a> (6 pgs; 3 docs)	Notice of Appearance <i>and Demand for Service of Papers</i> filed by Keith A. Simon on behalf of Citibank, N.A.. (Attachments: # <a href="#"><u>1</u></a> Exhibit A # <a href="#"><u>2</u></a> Certificate of Service)(Simon, Keith) (Entered: 05/13/2020)
05/13/2020	<a href="#"><u>56</u></a> (3 pgs)	Notice of Appearance <i>and Request for Service of Papers</i> filed by John D. Penn on behalf of The Boeing Company. (Penn, John) (Entered: 05/13/2020)
05/13/2020	<a href="#"><u>57</u></a> (3 pgs)	Notice of Appearance <i>and Request for Service of Papers</i> filed by Allan S. Brilliant on behalf of Citadel Advisors, LLC and its Managed Investment Vehicle. (Brilliant, Allan) (Entered: 05/13/2020)
05/13/2020	<a href="#"><u>58</u></a> (3 pgs)	Notice of Appearance <i>And Request For Service Of Papers</i> filed by Craig E Reimer on behalf of AMCK Aviation Holdings Ireland Limited. (Reimer, Craig) (Entered: 05/13/2020)
05/13/2020	<a href="#"><u>59</u></a> (4 pgs; 2 docs)	Application for Pro Hac Vice Admission filed by Craig E Reimer on behalf of AMCK Aviation Holdings Ireland Limited. (Attachments: # <a href="#"><u>1</u></a> Proposed Order) (Reimer, Craig) (Entered: 05/13/2020)
05/13/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#"><u>20-11133-mg</u></a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A13986449. Fee

		amount 200.00. (Re: Doc # <a href="#">59</a> ) (U.S. Treasury) (Entered: 05/13/2020)
05/13/2020	<a href="#">60</a> (4 pgs; 2 docs)	Application for Pro Hac Vice Admission <i>Of Louis S. Chiappetta</i> filed by Craig E Reimer on behalf of AMCK Aviation Holdings Ireland Limited. (Attachments: # <a href="#">1</a> Proposed Order) (Reimer, Craig) (Entered: 05/13/2020)
05/13/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#">20-11133-mg</a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A13986491. Fee amount 200.00. (Re: Doc # <a href="#">60</a> ) (U.S. Treasury) (Entered: 05/13/2020)
05/14/2020	<a href="#">62</a> (6 pgs)	Notice of Hearing / <i>Notice of Establishment of Omnibus Hearing Dates Pursuant to Order Implementing Certain Notice and Case Management Procedures</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/14/2020)
05/14/2020	<a href="#">63</a> (3 pgs)	Notice of Appearance <i>and Demand for Service of Papers</i> filed by Michael James Edelman on behalf of Export-Import Bank of the United States. (Edelman, Michael) (Entered: 05/14/2020)
05/14/2020	<a href="#">64</a> (3 pgs)	Notice of Appearance <i>and Demand for Service of Papers</i> filed by Constantine Dean Pourakis on behalf of STS Component Solutions, LLC, STS Aviation Group, Inc.. (Pourakis, Constantine) (Entered: 05/14/2020)
05/14/2020	<a href="#">65</a> (2 pgs)	Order signed on 5/14/2020 Granting Application for Pro Hac Vice Admission of Craig E. Reimer (Related Doc # <a href="#">59</a> ). (Anderson, Deanna) (Entered: 05/14/2020)
05/14/2020	<a href="#">66</a> (2 pgs)	Order signed on 5/14/2020 Granting Application for Pro Hac Vice Admission of Louis S. Chiappetta (Related Doc # <a href="#">60</a> ). (Anderson, Deanna) (Entered: 05/14/2020)
05/14/2020	<a href="#">67</a> (4 pgs)	Amended Interim Order, signed on 5/14/2020, Authorizing Debtors (I) to Continue Their Insurance and Surety Bond Programs; (II) Satisfy Obligations Related Thereto; (III) Continue Payment of certain Brokerage Fees; (IV) Renew, Supplement, Modify, or Purchase Insurance Coverage and Surety Bonds; and (V) Enter into New Premium Financing Agreements in the Ordinary Course of Business. (related document(s) <a href="#">42</a> ) Final hearing to be held on 6/11/2020 at 2:00 PM. (Anderson, Deanna) (Entered: 05/14/2020)
05/14/2020	<a href="#">68</a> (6 pgs)	Amended Interim Order, Signed on 5/12/2020, Pursuant to Sections 105(a) and 363 of the Bankruptcy Code (I) Authorizing Debtors to Pay or Honor Prepetition Obligations to Customers, Travel Agents, Charter and Tour Operators, and Certain Other Business Entities; (II) Modifying Automatic Stay to the Extent Necessary to Effectuate Ordinary Course Setoffs with Such Counterparties; and (III) Granting Related Relief. Final Hearing to be Held on 6/11/2020 at 2:00PM. (Anderson, Deanna) (Entered: 05/14/2020)
05/14/2020	<a href="#">69</a> (12 pgs)	Notice of Proposed Order / <i>Notice of Filing of Amended Interim Orders</i> (related document(s) <a href="#">42</a> , <a href="#">48</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/14/2020)
05/14/2020	<a href="#">70</a> (4 pgs)	Notice of Appearance <i>with Certificate of Service</i> filed by David A. Rosenzweig on behalf of Development Bank of Japan Inc.. (Rosenzweig, David) (Entered: 05/14/2020)

05/14/2020	<a href="#">71</a> (4 pgs)	Notice of Appearance <i>with Certificate of Service</i> filed by James Alan Copeland on behalf of KGAL Aircraft Owners. (Copeland, James) (Entered: 05/14/2020)
05/15/2020	<a href="#">72</a> (116 pgs)	Certificate of Mailing of Claims Agent <i>re re Notice of Commencement of Chapter 11 Cases and Agenda for First Day Hearing, First Day Motions, and Related Pleadings</i> (related document(s) <a href="#">9</a> , <a href="#">10</a> , <a href="#">12</a> , <a href="#">2</a> , <a href="#">8</a> , <a href="#">15</a> , <a href="#">21</a> , <a href="#">5</a> , <a href="#">11</a> , <a href="#">16</a> , <a href="#">6</a> , <a href="#">17</a> , <a href="#">22</a> , <a href="#">7</a> , <a href="#">19</a> , <a href="#">3</a> , <a href="#">20</a> , <a href="#">18</a> , <a href="#">13</a> , <a href="#">23</a> , <a href="#">4</a> ) filed by Kurtzman Carson Consultants. (Kass, Albert) (Entered: 05/15/2020)
05/15/2020	<a href="#">73</a> (12 pgs)	Amended Order, Signed on 5/15/2020, (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief. An order has been entered directing joint administration for procedural purposes only of the chapter 11 cases of: Avianca Holdings S.A.; Aero Transporte de Carga Unin, S.A. de C.V.; Aero inversiones de Honduras, S.A.; Aerovas del Continente Americano S.A. Avianca; Airlease Holdings One Ltd.; America Central (Canada) Corp.; America Central Corp.; AV International Holdco S.A.; AV International Holdings S.A.; AV International Investments S.A.; AV International Ventures S.A.; AV Investments One Colombia S.A.S.; AV Investments Two Colombia S.A.S.; AVTaca International Holdco S.A.; Avianca Costa Rica S.A.; Avianca Leasing, LLC; Avianca, Inc.; Avianca-Ecuador S.A.; Aviaservicios, S.A.; Aviateca, S.A.; Avifreight Holding Mexico, S.A.P.I. de C.V.; C.R. Intl Enterprises, Inc.; Grupo Taca Holdings Limited; International Trade Marks Agency Inc.; Inversiones del Caribe, S.A.; Islea de Inversiones, S.A. de C.V.; Latin Airways Corp.; Latin Logistics, LLC; Nicaraguense de Aviacion, Sociedad Annima (Nica, S.A.); Regional Express Amricas S.A.S.; Ronair N.V.; Servicio Terrestre, Aereo y Rampa S.A.; Servicios Aeroportuarios Integrados SAI S.A.S.; Taca de Honduras, S.A. de C.V.; Taca de Mexico, S.A.; Taca International Airlines S.A.; Taca S.A.; Tampa Cargo S.A.S.; Technical and Training Services, S.A. de C.V. All further pleadings and other papers in such cases shall be filed in and all further docket entries shall be made in Avianca Holdings S.A. Case No. 20-11133 (MG). (Anderson, Deanna). (Entered: 05/15/2020)
05/15/2020	<a href="#">74</a> (2 pgs)	Order, signed on 5/15/2020, Granting Application for Pro Hac Vice Admission of James C. Behrens (Related Doc # <a href="#">26</a> ). (Anderson, Deanna) (Entered: 05/15/2020)
05/15/2020	<a href="#">75</a> (3 pgs)	Notice of Appearance <i>and Demand for Service of Papers</i> filed by Christopher A. Lynch on behalf of Accenture Ltda. and Accenture Peru SRL. (Lynch, Christopher) (Entered: 05/15/2020)
05/15/2020	<a href="#">76</a> (2 pgs; 2 docs)	Application for Pro Hac Vice Admission <i>for Claudia Z. Springer of Reed Smith LLP</i> filed by Christopher A. Lynch on behalf of Accenture Ltda. and Accenture Peru SRL. (Attachments: # <a href="#">1</a> Proposed Order) (Lynch, Christopher) (Entered: 05/15/2020)
05/15/2020		Receipt of Application for Pro Hac Vice Admission ( <a href="#">20-11133-mg</a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A13991856. Fee amount 200.00. (Re: Doc # <a href="#">76</a> ) (U.S. Treasury) (Entered: 05/15/2020)
05/18/2020	<a href="#">77</a> (1 pg)	Order, signed on 5/18/2020, Granting Application for Pro Hac Vice Admission of Claudia Z. Springer (Related Doc # <a href="#">76</a> ). (Anderson, Deanna) (Entered: 05/18/2020)
05/18/2020	<a href="#">78</a> (2 pgs)	Certificate of Service (related document(s) <a href="#">58</a> ) Filed by Craig E Reimer on behalf of AMCK Aviation Holdings Ireland Limited. (Reimer, Craig)

		(Entered: 05/18/2020)
05/18/2020	<a href="#"><u>79</u></a> (3 pgs)	Notice of Appearance <i>and Request for Service of Notices and Other Documents</i> , filed by Arthur E. Rosenberg on behalf of Wilmington Trust Company (not in its individual capacity but solely as owner trustee under Trust Agreement of Aircol 8; Trust Agreement Aircol 9. (Rosenberg, Arthur) (Entered: 05/18/2020)
05/18/2020	<a href="#"><u>80</u></a> (4 pgs)	Notice of Appearance <i>and Request for Service of Notices and Other Documents</i> , filed by Arthur E. Rosenberg on behalf of Wells Fargo Trust Company, National Association (not in its individual capacity but solely as owner trustee Under Trust Agreement (Sky High XXXV MSN 6002 Trust), Trust Agreement (Sky High XXXV MSN 613. (Rosenberg, Arthur) (Entered: 05/18/2020)
05/18/2020	<a href="#"><u>81</u></a> (3 pgs)	Notice of Appearance <i>and Notices and Other Documents</i> , filed by Barbra R. Parlin on behalf of Wells Fargo Trust Company, National Association (not in its individual capacity but solely as owner trustee under Trust Agreement (MSN 1073), Trust Agreement (N568TA). (Parlin, Barbra) (Entered: 05/18/2020)
05/18/2020	<a href="#"><u>82</u></a> (3 pgs)	Notice of Appearance <i>and Request for Service of Notices and Other Documents</i> , filed by Barbra R. Parlin on behalf of UMB Bank N.A. (not in its individual capacity but solely as owner trustee under Trust Agreement MSN 43983 Aircraft Trust. (Parlin, Barbra) (Entered: 05/18/2020)
05/18/2020	<a href="#"><u>83</u></a> (4 pgs)	Notice of Appearance <i>and Request for Service of Notices and Other Documents</i> , filed by Barbra R. Parlin on behalf of Wells Fargo TrusCompany Association, not in its individual capacity but solely as owner trustee under Trust Agreement (Aircraft MSN 39406 Trust), Trust Agreement (MSN 6862 Trust), et al.. (Parlin, Barbra) (Entered: 05/18/2020)
05/18/2020	<a href="#"><u>84</u></a> (3 pgs)	Notice of Appearance <i>and Request for Service of Notices and Other Documents</i> , filed by Barbra R. Parlin on behalf of Wells Fargo Trust Company Association, not in its individual capacity but solely as owner trustee under Trust Agreement (MSN 1342), Trust Agreement (MSN 4763), et al. (Parlin, Barbra) (Entered: 05/18/2020)
05/18/2020	<a href="#"><u>85</u></a> (3 pgs)	Notice of Appearance <i>and Request for Service of Notices and Other Documents</i> , filed by Barbra R. Parlin on behalf of Wilmington Trust Company, not in its individual capacity but solely as owner trustee under Trust Agreement of AIRCOL 22, Trust Agreement of AIRCOL 10, Agreement of AIRCOL 24, et al.. (Parlin, Barbra) (Entered: 05/18/2020)
05/18/2020	<a href="#"><u>86</u></a> (3 pgs)	Notice of Appearance <i>and Request for Service of Notices and Other Documents</i> , filed by Barbra R. Parlin on behalf of CIT Aerospace International. (Parlin, Barbra) (Entered: 05/18/2020)
05/18/2020	<a href="#"><u>87</u></a> (2 pgs)	Notice of Appearance <i>and Request for Service of Notices and Other Documents</i> , filed by Barbra R. Parlin on behalf of San Agustin Leasing Co., Ltd.. (Parlin, Barbra) (Entered: 05/18/2020)
05/18/2020	<a href="#"><u>88</u></a> (2 pgs)	Notice of Appearance <i>and Request for Service of Notices and Other Documents</i> , filed by Barbra R. Parlin on behalf of Los Katios Leasing Co., Ltd.. (Parlin, Barbra) (Entered: 05/18/2020)
05/18/2020	<a href="#"><u>89</u></a>	Notice of Appearance <i>and Request for Service of Notices and Other</i>



	(3 pgs)	<i>Documents</i> , filed by Barbra R. Parlin on behalf of Wilmington Trust Company (not in its individual capacity but solely as owner trustee under Trust Agreement (MSN 3980). (Parlin, Barbra) (Entered: 05/18/2020)
05/18/2020	<a href="#"><u>90</u></a> (3 pgs)	Notice of Appearance <i>and request for service of Notices and Other Documents</i> , filed by Arthur E. Rosenberg on behalf of Wings Capital Partners LLC. (Rosenberg, Arthur) (Entered: 05/18/2020)
05/18/2020	<a href="#"><u>91</u></a> (3 pgs)	Notice of Appearance <i>and Request for Service of Notices and Other Documents</i> , filed by Arthur E. Rosenberg on behalf of Wings Capital Partners Aviation Ireland Limited. (Rosenberg, Arthur) (Entered: 05/18/2020)
05/18/2020	<a href="#"><u>92</u></a> (3 pgs)	Notice of Appearance <i>and Request for Service of Notices and Other Documents</i> , filed by Arthur E. Rosenberg on behalf of Wells Fargo Trust Company, National Association (not in its individual capacity but solely as owner trustee under Trust Agreement (WCP 1400 Trust). (Rosenberg, Arthur) (Entered: 05/18/2020)
05/19/2020	<a href="#"><u>93</u></a> (3 pgs)	Notice of Appearance <i>and Request for Service of Notices and Other Documents</i> , filed by Barbra R. Parlin on behalf of Wells Fargo Trust Company, National Association (not in its individual capacity but solely as owner trustee under Trust Agreement (6153), Trust Agreement (6209), Trust Agreement (6219). (Parlin, Barbra) (Entered: 05/19/2020)
05/19/2020	<a href="#"><u>94</u></a> (13 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Notice of Commencement of Chapter 11 Cases and Agenda for First Day Hearing; and 2) Debtors First Omnibus Motion for an Order Authorizing Them to (I) Reject Certain Aircraft Leases and (II) Abandon Certain Aircraft</i> (related document(s) <a href="#"><u>72</u></a> , <a href="#"><u>21</u></a> , <a href="#"><u>22</u></a> , <a href="#"><u>27</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 05/19/2020)
05/19/2020	<a href="#"><u>95</u></a> (2 pgs)	Notice of Appearance filed by James S. Carr on behalf of Tata Consultancy Services Limited. (Carr, James) (Entered: 05/19/2020)
05/19/2020	<a href="#"><u>96</u></a> (22 pgs)	Notice of Proposed Order / <i>Notice of Revised Exhibit C to First Omnibus Rejection Motion</i> (related document(s) <a href="#"><u>21</u></a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/19/2020)
05/19/2020	<a href="#"><u>97</u></a> (507 pgs)	Notice of Presentment of <i>Stipulations and Orders Between Debtors and Aircraft Counterparties Concerning Certain Aircraft</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with presentment to be held on 5/21/2020 at 04:00 PM at Courtroom 523 (MG) Objections due by 5/21/2020, (Fleck, Evan) (Entered: 05/19/2020)
05/19/2020	<a href="#"><u>98</u></a> (24 pgs)	Motion to Authorize / <i>Notice of Hearing on Debtors' (I) Request for Expedited Determination; and (II) Motion For Order Pursuant to Sections 363(B) and 105(A) of the Bankruptcy Code Authorizing Debtors to Pay Certain Obligations of Avianca Peru Entities</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 5/26/2020 at 02:00 PM at Courtroom 523 (MG) Responses due by 5/25/2020,. (Fleck, Evan) (Entered: 05/19/2020)
05/20/2020	<a href="#"><u>99</u></a> (3 pgs)	Notice of Appearance <i>and Request for Service of Notices and Other Documents</i> , filed by Barbra R. Parlin on behalf of Wells Fargo Trust Company, National Association (not in its individual capacity but solely as owner trustee under Trust Agreement (2010 Single Aircraft Trust W),

		Amended and Restated Trust Agreement (. (Parlin, Barbra) (Entered: 05/20/2020)
05/20/2020	<a href="#"><u>100</u></a> (3 pgs)	Application for Pro Hac Vice Admission filed by Drew Gaddis on behalf of Alpha Brokers Corp.. (Gaddis, Drew) (Entered: 05/20/2020)
05/20/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#"><u>20-11133-mg</u></a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14001660. Fee amount 200.00. (Re: Doc # <a href="#"><u>100</u></a> ) (U.S. Treasury) (Entered: 05/20/2020)
05/20/2020	<a href="#"><u>101</u></a> (3 pgs)	Application for Pro Hac Vice Admission filed by Sergio S. Lozano Jr on behalf of Alpha Brokers Corp.. (Lozano, Sergio) (Entered: 05/20/2020)
05/20/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#"><u>20-11133-mg</u></a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14001728. Fee amount 200.00. (Re: Doc # <a href="#"><u>101</u></a> ) (U.S. Treasury) (Entered: 05/20/2020)
05/20/2020	<a href="#"><u>102</u></a> (1 pg)	Order, signed on 5/20/2020, Granting Application for Pro Hac Vice Admission of Drew Dickinson Gaddis (Related Doc # <a href="#"><u>100</u></a> ). (Anderson, Deanna) (Entered: 05/20/2020)
05/20/2020	<a href="#"><u>103</u></a> (1 pg)	Notice of Appearance <i>and Request for Service of Notices and Pleadings</i> filed by John P. Dillman on behalf of Harris County, Jefferson County. (Dillman, John) (Entered: 05/20/2020)
05/20/2020	<a href="#"><u>104</u></a> (1 pg)	Order, signed on 5/20/2020, Granting Application for Pro Hac Vice Admission of Sergio S. Lozano Jr. (Related Doc # <a href="#"><u>101</u></a> ). (Anderson, Deanna) (Entered: 05/20/2020)
05/20/2020	<a href="#"><u>105</u></a> (129 pgs)	Certificate of Mailing of Claims Agent <i>re First Day Interim Orders, Final Orders and Notice of Final Hearing</i> (related document(s) <a href="#"><u>38</u></a> , <a href="#"><u>47</u></a> , <a href="#"><u>43</u></a> , <a href="#"><u>42</u></a> , <a href="#"><u>37</u></a> , <a href="#"><u>36</u></a> , <a href="#"><u>31</u></a> , <a href="#"><u>40</u></a> , <a href="#"><u>49</u></a> , <a href="#"><u>50</u></a> , <a href="#"><u>45</u></a> , <a href="#"><u>44</u></a> , <a href="#"><u>48</u></a> , <a href="#"><u>41</u></a> , <a href="#"><u>46</u></a> , <a href="#"><u>39</u></a> , <a href="#"><u>35</u></a> , <a href="#"><u>34</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 05/20/2020)
05/21/2020	<a href="#"><u>106</u></a> (1 pg)	Statement <i>Notice of Reclamation Demand of STS Component Solutions, LLC</i> filed by Constantine Dean Pourakis on behalf of STS Component Solutions, LLC. (Pourakis, Constantine) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>107</u></a> (3 pgs)	Notice of Appearance filed by Seth H. Lieberman on behalf of Wilmington Savings Fund Society, FSB, as indenture trustee for the 9.000% Senior Secured Notes due 2023. (Lieberman, Seth) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>108</u></a> (14 pgs)	First Stipulation and Order, signed on 5/21/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft. (MSN 3992) (Anderson, Deanna) <b>Docket Text Added on 5/22/2020 (Bush, Brent)</b> (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>109</u></a> (11 pgs)	First Stipulation and Order, signed on 5/21/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (4281 Lease). (Anderson, Deanna) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>110</u></a> (11 pgs)	First Stipulation and Order, signed on 5/21/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (4284 Lease). (Anderson, Deanna) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>111</u></a>	First Stipulation and Order, signed on 5/21/2020, Between Debtors and

	(12 pgs)	Aircraft Counterparties Concerning Certain Aircraft (7887 Lease). (Anderson, Deanna) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>112</u></a> (12 pgs)	First Stipulation and Order, signed on 5/21/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (7928 Lease). (Anderson, Deanna) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>113</u></a> (11 pgs)	First Stipulation and Order Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (8300 Lease). (Anderson, Deanna) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>114</u></a> (14 pgs)	First Stipulation and Order, signed on 5/21/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (39407 Lease). (Anderson, Deanna) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>115</u></a> (10 pgs)	First Stipulation and Order, signed on 5/21/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (MSN 1073 Lease, etcetera) (Anderson, Deanna) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>116</u></a> (10 pgs)	First Stipulation and Order, signed on 5/21/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (Aircastle MSN 2687, etcetera). (Anderson, Deanna) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>117</u></a> (10 pgs)	First Stipulation and Order, signed on 5/21/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (AMCK - MSN 3961, etcetera). (Anderson, Deanna) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>118</u></a> (9 pgs)	First Stipulation and Order, signed on 5/21/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (Avolon - MSN 3408, etc.). (Anderson, Deanna) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>119</u></a> (11 pgs)	First Stipulation and Order Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (MSN's 1342, 4763, 5632). (Anderson, Deanna) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>120</u></a> (2 pgs)	Notice of Appearance <i>Request for Notice</i> filed by Shawn M. Christianson on behalf of Oracle America, Inc.. (Christianson, Shawn) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>121</u></a> (10 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (MSNs 3467, 3518). (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>122</u></a> (11 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (MSNs 7284, 7318 etc.). (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>123</u></a> (15 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (MSNs 37504, 37505 etc.) (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>124</u></a> (11 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (MSNs 4001, 4011, etc). (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>125</u></a>	First Stipulation and Order signed on 5/21/2020 Between Debtors and



	(10 pgs)	Aircraft Counterparties Concerning Certain Aircraft (MSNs 4487, 4599 etc.) (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>126</u></a> (10 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (MSNs 5243, 5840, 37502, etc) (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>127</u></a> (10 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (MSNs 6138, 6411, etc). (Gomez, Jessica) Modified on 5/21/2020 (Gomez, Jessica). (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>128</u></a> (14 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (JP Lease - MSN 3988). (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>129</u></a> (11 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (JSA - MSNs 6153, 6209, 6219, etc) (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>130</u></a> (12 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (Merx - MSNs 1224, 4567, 3980, 5195 etc). (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>131</u></a> (22 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (Avolon - MSNs 3664, 4026, etc). (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>132</u></a> (10 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (ICBC - MSNs 6002, 6190, etc) (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>133</u></a> (12 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (EAIV 2016 - MSN 37511) (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>134</u></a> (22 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (EAIV 2015 - MSNs 6617, 6511, etc.) (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>135</u></a> (11 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (DVB-FPAC MSN 37510). (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>136</u></a> (17 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (DVB - MSNs 4167, 4381, etc.). (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>137</u></a> (13 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (DVB - MSNs 3042, 3103, etc.). (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>138</u></a> (12 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (DVB - MSN 4100). (Gomez, Jessica) (Entered: 05/21/2020)

05/21/2020	<a href="#"><u>139</u></a> (11 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (CDB - MSN 1279). (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>140</u></a> (10 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (CDB - MSN 1208). (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>141</u></a> (12 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (Nord - MSNs 2282, 2301, etc.). (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>142</u></a> (14 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (NY Life EAIV 2014 - MSNs 6132, 6399, etc.). (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>143</u></a> (11 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (ORIX - MSNs 5360, 5477, etc.). (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>144</u></a> (10 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (Seraph - MSN 4906). (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>145</u></a> (10 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (Seraph - MSN 37509). (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>146</u></a> (14 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (SMBC - 14 Aircraft). (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>147</u></a> (10 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (SMBC - MSN 43983). (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>148</u></a> (10 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (SMBC Managed - MSN 7437). (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>149</u></a> (10 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (Stratos - MSN 4944). (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>150</u></a> (11 pgs)	First Stipulation and Order signed on 5/21/2020 Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (Wings MSN 1400). (Gomez, Jessica) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>151</u></a> (5 pgs)	Notice of Appearance filed by Stephanie Wickouski on behalf of Delaware Trust Company. (Wickouski, Stephanie) (Entered: 05/21/2020)
05/21/2020	<a href="#"><u>152</u></a> (2 pgs)	Notice of Appearance filed by Adam P Friedman on behalf of Liberty Seguros S.A.. (Friedman, Adam) (Entered: 05/21/2020)
05/22/2020	<a href="#"><u>153</u></a> (46 pgs)	Motion to Reject / Debtors' Motion for Entry of an Order (I) Authorizing and Approving Procedures to Reject or Assume Executory Contracts and

		<i>Unexpired Leases and (II) Granting Related Relief</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 6/11/2020 at 02:00 PM at Courtroom 523 (MG) Responses due by 6/4/2020. (Fleck, Evan) (Entered: 05/22/2020)
05/22/2020	<a href="#"><u>154</u></a> (2 pgs)	Appointment of Official Creditors' Committee / <i>Notice of Appointment of Official Committee of Unsecured Creditors</i> Filed by Brian S. Masumoto on behalf of United States Trustee. (Masumoto, Brian) (Entered: 05/22/2020)
05/22/2020	<a href="#"><u>155</u></a> (24 pgs)	Certificate of Mailing of Claims Agent <i>re: Documents Served on May 14, 2020</i> (related document(s) <a href="#"><u>62</u></a> , <a href="#"><u>67</u></a> , <a href="#"><u>69</u></a> , <a href="#"><u>68</u></a> , <a href="#"><u>52</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 05/22/2020)
05/25/2020	<a href="#"><u>156</u></a> (4 pgs)	<i>Statement of the Official Committee of Unsecured Creditors in Response to Debtors' Motion for Order Pursuant to Sections 363(b) and 105(a) of the Bankruptcy Code Authorizing Debtors to Pay Certain Obligations of Avianca Peru Entities</i> (related document(s) <a href="#"><u>98</u></a> ) filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. with hearing to be held on 5/26/2020 at 02:00 PM at Courtroom 523 (MG) (Miller, Brett) (Entered: 05/25/2020)
05/25/2020	<a href="#"><u>157</u></a> (3 pgs)	<i>Notice of Appearance and Request for Service of All Pleadings and Documents</i> filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. (Miller, Brett) (Entered: 05/25/2020)
05/25/2020	<a href="#"><u>158</u></a> (2 pgs)	<i>Notice of Agenda / Agenda of Matters Scheduled for Hearing on May 26, 2020 at 2:00 p.m. (Eastern Time)</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with hearing to be held on 5/26/2020 at 02:00 PM at Courtroom 523 (MG) (Fleck, Evan) (Entered: 05/25/2020)
05/26/2020	<a href="#"><u>159</u></a> (2 pgs)	Notice of Appearance filed by Mark Sherrill on behalf of Puma Energy Aviation, S.A.. (Sherrill, Mark) (Entered: 05/26/2020)
05/26/2020	<a href="#"><u>160</u></a> (3 pgs)	<i>Notice of Appearance and Request for Notice and Service of Papers</i> filed by Michael G. Burke on behalf of United Airlines, Inc. and its affiliates. (Burke, Michael) (Entered: 05/26/2020)
05/26/2020	<a href="#"><u>161</u></a> (2 pgs)	Notice of Appearance filed by David R. Softness on behalf of Amadeus IT Group, S.A.. (Softness, David) (Entered: 05/26/2020)
05/26/2020	<a href="#"><u>162</u></a> (3 pgs)	Order, signed on 5/26/2020, Pursuant to Sections 363(B) and 105(A) of the Bankruptcy Code Authorizing Debtors to pay Certain Obligations of Avianca Peru Entities (Related Doc # <a href="#"><u>98</u></a> ). (Anderson, Deanna) (Entered: 05/26/2020)
05/26/2020	<a href="#"><u>163</u></a> (2 pgs)	<i>Notice of Appearance /Notice of Appearance and Request for Service of Papers</i> filed by Jasmine Ball on behalf of Burnham Sterling & Co. LLC. (Ball, Jasmine) (Entered: 05/26/2020)
05/27/2020	<a href="#"><u>164</u></a> (13 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Notice of Revised Exhibit C to First Omnibus Rejection Motion; 2) Notice of Presentment and Stipulations and Orders Between Debtors and Aircraft Counterparties Concerning Certain Aircraft; and 3) Notice of Hearing on Debtors (I) Request for Expedited Determination; and (II) Motion for Order Pursuant to Sections 363(b) and 105(a) of the Bankruptcy Code Authorizing Debtors to Pay Certain Obligations of Avianca Peru Entities</i> (related document(s) <a href="#"><u>98</u></a> , <a href="#"><u>97</u></a> ,

		<a href="#">96</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 05/27/2020)
05/27/2020	<a href="#">165</a> (1575 pgs)	Certificate of Mailing of Claims Agent <i>re Notice of Commencement of Chapter 11 Bankruptcy Case</i> (related document(s) <a href="#">41</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 05/27/2020)
05/27/2020	<a href="#">166</a> (41 pgs)	Transcript regarding Hearing Held on 05/26/2020 at 2:00 pm RE: (Doc# 98, 156, 158) Debtors' Motion (I) Requesting Expedited Determination; and (II) Motion For Order Pursuant to Sections 363(B) and 105(A) of the Bankruptcy Code Authorizing Debtors to Pay Certain Obligations of Avianca Peru Entities. <b>Remote electronic access to the transcript is restricted until 8/25/2020.</b> The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: eScribers, LLC.]. (See the Courts Website for contact information for the Transcription Service Agency.) (RE: related document(s) <a href="#">98</a> , <a href="#">156</a> , <a href="#">158</a> ). Notice of Intent to Request Redaction Deadline Due By 6/3/2020. Statement of Redaction Request Due By 6/17/2020. Redacted Transcript Submission Due By 6/29/2020. Transcript access will be restricted through 8/25/2020. (Lewis, Tenille) (Entered: 05/28/2020)
05/28/2020	<a href="#">167</a> (4 pgs)	Statement / <i>Notice of Filing Vendor Information Under Seal</i> (related document(s) <a href="#">8</a> , <a href="#">6</a> , <a href="#">7</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 05/28/2020)
05/28/2020	<a href="#">168</a> (3 pgs)	Notice of Appearance filed by Donald K. Ludman on behalf of SAP Columbia S.A.S.. (Ludman, Donald) (Entered: 05/28/2020)
05/28/2020	<a href="#">169</a> (3 pgs; 2 docs)	Application for Pro Hac Vice Admission filed by Donald K. Ludman on behalf of SAP Columbia S.A.S.. (Attachments: # <a href="#">1</a> Proposed Form of Order) (Ludman, Donald) (Entered: 05/28/2020)
05/28/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#">20-11133-mg</a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14018489. Fee amount 200.00. (Re: Doc # <a href="#">169</a> ) (U.S. Treasury) (Entered: 05/28/2020)
05/28/2020	<a href="#">170</a> (5 pgs)	Application for Pro Hac Vice Admission <i>for Christopher Perkins</i> filed by Christopher F. Graham on behalf of DXC Technology Company. (Graham, Christopher) (Entered: 05/28/2020)
05/28/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#">20-11133-mg</a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14018926. Fee amount 200.00. (Re: Doc # <a href="#">170</a> ) (U.S. Treasury) (Entered: 05/28/2020)
05/28/2020	<a href="#">171</a> (1 pg)	Order signed on 5/28/2020 Granting Application for Pro Hac Vice Admission of Donald K. Ludman (Related Doc # <a href="#">169</a> ) . (Anderson, Deanna) (Entered: 05/28/2020)
05/28/2020	<a href="#">172</a> (6 pgs)	Notice of Appearance <i>and Request for Notice of Papers on behalf of Kingsland International Group, S.A. and Kingsland Holdings Limited</i> filed by Michele Maman on behalf of Kingsland Holdings Limited, Kingsland International Group, S.A.. (Maman, Michele) (Entered: 05/28/2020)
05/28/2020	<a href="#">173</a> (94 pgs)	Application to Employ / <i>Debtors' Application for Entry of Order Authorizing Employment and Retention of Milbank LLP as Counsel to Debtors and Debtors in Possession Nunc Pro Tunc to Petition Date</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. Responses due by

		6/4/2020, with presentment to be held on 6/11/2020 at 02:00 PM at Courtroom 523 (MG). (Fleck, Evan) (Entered: 05/28/2020)
05/28/2020	<a href="#">174</a> (75 pgs)	Motion to Authorize / <i>Debtors' Application for Entry of Order Authorizing Employment and Retention of Seabury Securities LLC and Seabury International Corporate Finance LLC as Financial Advisor and Investment Banker to Debtors and Debtors In Possession Nunc Pro Tunc to the Petition Date</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 6/11/2020 at 02:00 PM at Courtroom 523 (MG) Responses due by 6/4/2020,. (Fleck, Evan) (Entered: 05/28/2020)
05/28/2020	<a href="#">175</a> (86 pgs)	Motion to Authorize / <i>Debtors' Application for Entry of Order Authorizing Employment and Retention of FTI Consulting, Inc. as Financial Advisor To Debtors and Debtors In Possession Nunc Pro Tunc to the Petition Date</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 6/11/2020 at 02:00 PM at Courtroom 523 (MG) Responses due by 6/4/2020,. (Fleck, Evan) (Entered: 05/28/2020)
05/28/2020	<a href="#">176</a> (39 pgs)	Motion to Authorize / <i>Debtors' Application for Authority to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 6/11/2020 at 02:00 PM at Courtroom 523 (MG) Responses due by 6/4/2020,. (Fleck, Evan) (Entered: 05/28/2020)
05/28/2020	<a href="#">177</a> (3 pgs; 2 docs)	Application for Pro Hac Vice Admission filed by Julie F. Montgomery on behalf of SAP Columbia S.A.S.. (Attachments: # <a href="#">1</a> Proposed Form of Order) (Montgomery, Julie) (Entered: 05/28/2020)
05/28/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#">20-11133-mg</a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14020343. Fee amount 200.00. (Re: Doc # <a href="#">177</a> ) (U.S. Treasury) (Entered: 05/28/2020)
05/28/2020	<a href="#">178</a> (51 pgs)	Motion to Authorize / <i>Debtors' Motion for Authorization to Employ and Pay Professionals Used in Ordinary Course of Business</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 6/11/2020 at 02:00 PM at Courtroom 523 (MG) Responses due by 6/4/2020,. (Fleck, Evan) (Entered: 05/28/2020)
05/28/2020	<a href="#">179</a> (23 pgs)	Motion to Authorize / <i>Debtors' Motion for Entry of an Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 6/11/2020 at 02:00 PM at Courtroom 523 (MG) Responses due by 6/4/2020,. (Fleck, Evan) (Entered: 05/28/2020)
05/28/2020	<a href="#">180</a> (87 pgs)	Motion to Authorize / <i>Application of Debtors for Authority to Retain and Employ Ropes &amp; Gray LLP as Special Government Investigations Counsel to the Debtors Effective as of the Petition Date</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 6/11/2020 at 02:00 PM at Courtroom 523 (MG) Responses due by 6/4/2020,. (Fleck, Evan) (Entered: 05/28/2020)
05/28/2020	<a href="#">181</a> (86 pgs)	Motion to Authorize / <i>Notice of Debtors' Application for an Order Pursuant to Section 327(e) of the Bankruptcy Code Authorizing and Approving Employment And Retention of Smith, Gambrell &amp; Russell, LLP as Special Aviation Counsel to the Debtors Effective Nunc Pro Tunc To Petition Date</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to



		be held on 6/11/2020 at 02:00 PM at Courtroom 523 (MG) Responses due by 6/4/2020,. (Fleck, Evan) (Entered: 05/28/2020)
05/29/2020	<a href="#"><u>182</u></a> (3 pgs)	Notice of Appearance <i>And Request For Notices And Service Of Papers</i> filed by Brian Trust on behalf of BNP Paribas. (Trust, Brian) (Entered: 05/29/2020)
05/29/2020	<a href="#"><u>183</u></a> (1 pg)	Order, Signed on 5/29/2020, Granting Application for Pro Hac Vice Admission of Julie F. Montgomery (Related Doc # <a href="#"><u>177</u></a> ). (Anderson, Deanna) (Entered: 05/29/2020)
05/29/2020	<a href="#"><u>184</u></a> (1 pg)	Notice of Appearance filed by Dana S. Plon on behalf of Unisys del Peru. (Plon, Dana) (Entered: 05/29/2020)
05/29/2020	<a href="#"><u>185</u></a> (1 pg)	Notice of Appearance filed by Dana S. Plon on behalf of Unisys de Colombia S.A.. (Plon, Dana) (Entered: 05/29/2020)
05/29/2020	<a href="#"><u>186</u></a> (1 pg)	Notice of Appearance filed by Dana S. Plon on behalf of Unisys de Centro America L.L.C.. (Plon, Dana) (Entered: 05/29/2020)
05/29/2020	<a href="#"><u>187</u></a> (2 pgs)	Certificate of Service (related document(s) <a href="#"><u>182</u></a> ) Filed by Brian Trust on behalf of BNP Paribas. (Trust, Brian) (Entered: 05/29/2020)
05/29/2020	<a href="#"><u>188</u></a> (5 pgs; 2 docs)	Application for Pro Hac Vice Admission filed by Ryan Zagare on behalf of Miami Dade County, Florida, through the Miami-Dade Aviation Department. (Attachments: # <a href="#"><u>1</u></a> Proposed Order) (Zagare, Ryan) (Entered: 05/29/2020)
05/29/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#"><u>20-11133-mg</u></a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14022962. Fee amount 200.00. (Re: Doc # <a href="#"><u>188</u></a> ) (U.S. Treasury) (Entered: 05/29/2020)
05/29/2020	<a href="#"><u>189</u></a> (2 pgs)	Order signed on 5/29/2020 Granting Application for Pro Hac Vice Admission of Ryan C. Zagare (Related Doc # <a href="#"><u>188</u></a> ). (Anderson, Deanna) (Entered: 05/29/2020)
05/29/2020	<a href="#"><u>190</u></a> (7 pgs)	Affidavit of Service of <i>Laura Guido</i> (related document(s) <a href="#"><u>156</u></a> ) Filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. (Miller, Brett) (Entered: 05/29/2020)
05/29/2020	<a href="#"><u>191</u></a> (9 pgs; 2 docs)	Application for Pro Hac Vice Admission <i>to respresent the entities on Annex I</i> , filed by Brian Smith on behalf of Wilmington Trust Company (not in its individual capacity but solely as owner trustee under Trust Agreement of Aircol 8; Trust Agreement Aircol 9. (Attachments: # <a href="#"><u>1</u></a> Proposed Order) (Smith, Brian) (Entered: 05/29/2020)
05/29/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#"><u>20-11133-mg</u></a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14023901. Fee amount 200.00. (Re: Doc # <a href="#"><u>191</u></a> ) (U.S. Treasury) (Entered: 05/29/2020)
05/29/2020	<a href="#"><u>192</u></a> (9 pgs; 2 docs)	Application for Pro Hac Vice Admission of <i>Robert W. Jones, to represent the entities listed on Annex I</i> , filed by Barbra R. Parlin on behalf of Wilmington Trust Company (not in its individual capacity but solely as owner trustee under Trust Agreement of Aircol 8; Trust Agreement Aircol 9. (Attachments: # <a href="#"><u>1</u></a> Proposed Order) (Parlin, Barbra) (Entered: 05/29/2020)

05/29/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#">20-11133-mg</a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14024117. Fee amount 200.00. (Re: Doc # <a href="#">192</a> ) (U.S. Treasury) (Entered: 05/29/2020)
05/29/2020	<a href="#">193</a> (4 pgs)	Notice of Certification of Publication <i>Affidavit of Publication of the Notice Of Commencement of Chapter 11 Bankruptcy Case in USA Today</i> (related document(s) <a href="#">41</a> ) filed by Kurtzman Carson Consultants LLC.(Kass, Albert) (Entered: 05/29/2020)
06/01/2020	<a href="#">194</a> (4 pgs)	Notice of Appearance filed by Grace E. Robson on behalf of Kelly Tractor Company, Alliance Ground International, LLC. (Robson, Grace) (Entered: 06/01/2020)
06/01/2020	<a href="#">195</a> (3 pgs)	Notice of Appearance <i>and Request for Service of Notices and Other Documents</i> , filed by Barbra R. Parlin on behalf of Malpelo Leasing Co., Ltd.. (Parlin, Barbra) (Entered: 06/01/2020)
06/02/2020	<a href="#">196</a> (4 pgs)	Notice of Appearance <i>and Demand for Service of Papers</i> filed by Michael James Edelman on behalf of ORIX Aviation Systems Limited. (Edelman, Michael) (Entered: 06/02/2020)
06/02/2020	<a href="#">197</a> (4 pgs)	Notice of Appearance <i>and Demand for Service of Papers</i> filed by Michael James Edelman on behalf of Barings LLC, as Investment Advisor for Massachusetts Mutual Life Insurance Company and YF Life Insurance International Limited. (Edelman, Michael) (Entered: 06/02/2020)
06/02/2020	<a href="#">198</a> (3 pgs)	Notice of Appearance <i>and Demand for Service of Papers</i> filed by Michael James Edelman on behalf of DekaBank Deutsche Girozentrale. (Edelman, Michael) (Entered: 06/02/2020)
06/02/2020	<a href="#">199</a> (3 pgs)	Notice of Appearance <i>and Demand for Service of Papers</i> filed by Michael James Edelman on behalf of AerCap Ireland Limited. (Edelman, Michael) (Entered: 06/02/2020)
06/02/2020	<a href="#">200</a> (4 pgs)	Notice of Appearance <i>and Demand for Service of Papers</i> filed by Michael James Edelman on behalf of MEMBERS Capital Advisors, Inc. as Investment Advisor for CMFG Life Insurance Company. (Edelman, Michael) (Entered: 06/02/2020)
06/02/2020	<a href="#">201</a> (3 pgs)	Notice of Appearance <i>and Demand for Service of Papers</i> filed by Michael James Edelman on behalf of Zephyrus Capital Aviation Partners 2018-1 Ltd. (Edelman, Michael) (Entered: 06/02/2020)
06/02/2020	<a href="#">202</a> (3 pgs)	Notice of Appearance <i>and Demand for Service of Papers</i> filed by Michael James Edelman on behalf of Woori Bank, Tokyo Branch. (Edelman, Michael) (Entered: 06/02/2020)
06/02/2020	<a href="#">203</a> (3 pgs)	Notice of Appearance <i>and Demand for Service of Papers</i> filed by Michael James Edelman on behalf of Siemens Financial Services Inc.. (Edelman, Michael) (Entered: 06/02/2020)
06/02/2020	<a href="#">204</a> (3 pgs)	Notice of Appearance <i>and Demand for Service of Papers</i> filed by Michael James Edelman on behalf of MUFG Bank, Ltd.. (Edelman, Michael) (Entered: 06/02/2020)

06/02/2020	<a href="#"><u>205</u></a> (4 pgs)	Notice of Appearance <i>and Demand for Service of Papers</i> filed by Michael James Edelman on behalf of KEB Hana Bank, Tokyo Branch. (Edelman, Michael) (Entered: 06/02/2020)
06/02/2020	<a href="#"><u>206</u></a> (3 pgs)	Notice of Appearance <i>and Demand for Service of Papers</i> filed by Michael James Edelman on behalf of The Korea Development Bank. (Edelman, Michael) (Entered: 06/02/2020)
06/02/2020	<a href="#"><u>207</u></a> (4 pgs)	Notice of Appearance <i>and Demand for Service of Papers</i> filed by Michael James Edelman on behalf of PCAM ISSUANCE III S.A., acting in respect of its Compartment BER_USD_001, PCAM ISSUANCE III S.A., acting in respect of its Compartment PCAD_USD_001 in relation to Series PCAD_USD_001-A Limited Recourse Secured Loan Asset-Linked Securities, PCAM ISSUANCE III S.A., acting in respect of its Compartment PCAD_USD_001 in relation to Series PCAD_USD_001-B Limited Recourse Secured Loan Asset-Linked Securities. (Edelman, Michael) (Entered: 06/02/2020)
06/02/2020	<a href="#"><u>208</u></a> (4 pgs)	Notice of Appearance <i>and Demand for Service of Papers</i> filed by Michael James Edelman on behalf of New York Life Insurance Company, NYL Investors LLC, as Investment Manager on behalf of New York Life Insurance and Annuity Corporation, NYL Investors LLC, as Investment Manager on behalf of New York Life Insurance and Annuity Corporation Institutionally Owned Life Insurance Separate Account (BOLI 30C). (Edelman, Michael) (Entered: 06/02/2020)
06/03/2020	<a href="#"><u>209</u></a> (3 pgs)	Notice of Appearance filed by Paula K. Jacobi on behalf of DASI LLC. (Jacobi, Paula) (Entered: 06/03/2020)
06/03/2020	<a href="#"><u>210</u></a> (1 pg)	Notice of Appearance filed by Gordon J. Toering on behalf of RECARO Aircraft Seating Americas, LLC. (Toering, Gordon) (Entered: 06/03/2020)
06/03/2020	<a href="#"><u>211</u></a> (1 pg)	Application for Pro Hac Vice Admission filed by Gordon J. Toering on behalf of RECARO Aircraft Seating Americas, LLC. (Toering, Gordon) (Entered: 06/03/2020)
06/03/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#"><u>20-11133-mg</u></a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14034526. Fee amount 200.00. (Re: Doc # <a href="#"><u>211</u></a> ) (U.S. Treasury) (Entered: 06/03/2020)
06/03/2020	<a href="#"><u>212</u></a> (26 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on or Before May 22, 2020</i> (related document(s) <a href="#"><u>110</u></a> , <a href="#"><u>116</u></a> , <a href="#"><u>111</u></a> , <a href="#"><u>117</u></a> , <a href="#"><u>115</u></a> , <a href="#"><u>108</u></a> , <a href="#"><u>112</u></a> , <a href="#"><u>114</u></a> , <a href="#"><u>109</u></a> , <a href="#"><u>113</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 06/03/2020)
06/03/2020	<a href="#"><u>213</u></a> (24 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on or Before May 22, 2020</i> (related document(s) <a href="#"><u>119</u></a> , <a href="#"><u>130</u></a> , <a href="#"><u>122</u></a> , <a href="#"><u>123</u></a> , <a href="#"><u>118</u></a> , <a href="#"><u>125</u></a> , <a href="#"><u>127</u></a> , <a href="#"><u>128</u></a> , <a href="#"><u>126</u></a> , <a href="#"><u>121</u></a> , <a href="#"><u>133</u></a> , <a href="#"><u>129</u></a> , <a href="#"><u>124</u></a> , <a href="#"><u>131</u></a> , <a href="#"><u>132</u></a> ) filed by Kurtzman Carson Consultants. (Kass, Albert) (Entered: 06/03/2020)
06/03/2020	<a href="#"><u>214</u></a> (34 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on or Before May 22, 2020</i> (related document(s) <a href="#"><u>142</u></a> , <a href="#"><u>137</u></a> , <a href="#"><u>141</u></a> , <a href="#"><u>139</u></a> , <a href="#"><u>138</u></a> , <a href="#"><u>134</u></a> , <a href="#"><u>136</u></a> , <a href="#"><u>135</u></a> , <a href="#"><u>140</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 06/03/2020)
06/03/2020	<a href="#"><u>215</u></a> (13 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on or Before May 22, 2020</i> (related document(s) <a href="#"><u>147</u></a> , <a href="#"><u>149</u></a> , <a href="#"><u>148</u></a> , <a href="#"><u>144</u></a> , <a href="#"><u>150</u></a> , <a href="#"><u>145</u></a> , <a href="#"><u>143</u></a> , <a href="#"><u>146</u></a> )



		filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 06/03/2020)
06/04/2020	<a href="#">216</a> (8 pgs)	Certificate of Mailing of Claims Agent <i>re Debtors Motion for Entry of an Order (I) Authorizing and Approving Procedures to Reject or Assume Executory Contracts and Unexpired Leases and (II) Granting Related Relief</i> (related document(s) <a href="#">153</a> ) filed by Kurtzman Carson Consultants. (Kass, Albert) (Entered: 06/04/2020)
06/04/2020	<a href="#">217</a> (3 pgs)	Notice of Appearance filed by Christopher J. Giaimo Jr. on behalf of Panasonic Avionics Corporation. (Giaimo, Christopher) (Entered: 06/04/2020)
06/04/2020	<a href="#">218</a> (11 pgs)	Objection to Motion / <i>Objection Of The United States Trustee To Entry Of Order Approving The Retention Of Ropes &amp; Gray LLP As Special Government Investigations Counsel To The Debtors</i> (related document(s) <a href="#">180</a> ) filed by Brian S. Masumoto on behalf of United States Trustee. (Masumoto, Brian) (Entered: 06/04/2020)
06/04/2020	<a href="#">219</a> (3 pgs)	Notice of Appearance <i>and Request for Service of Papers</i> filed by Derek L. Wright on behalf of Airlines Reporting Corporation. (Wright, Derek) (Entered: 06/04/2020)
06/04/2020	<a href="#">220</a> (4 pgs; 2 docs)	Application for Pro Hac Vice Admission of <i>Erika Morabito</i> filed by Derek L. Wright on behalf of Airlines Reporting Corporation. (Attachments: # <a href="#">1</a> Proposed Order) (Wright, Derek) (Entered: 06/04/2020)
06/04/2020	<a href="#">221</a> (3 pgs; 2 docs)	Application for Pro Hac Vice Admission of <i>Brittany J. Nelson</i> filed by Derek L. Wright on behalf of Airlines Reporting Corporation. (Attachments: # <a href="#">1</a> Proposed Order) (Wright, Derek) (Entered: 06/04/2020)
06/04/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#">20-11133-mg</a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14038780. Fee amount 200.00. (Re: Doc # <a href="#">220</a> ) (U.S. Treasury) (Entered: 06/04/2020)
06/04/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#">20-11133-mg</a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14038780. Fee amount 200.00. (Re: Doc # <a href="#">221</a> ) (U.S. Treasury) (Entered: 06/04/2020)
06/04/2020	<a href="#">222</a> (12 pgs)	Objection to Motion / <i>Objection Of The United States Trustee To Entry Of Order Authorizing The Debtors To Pay Wages, Compensation, Employee Benefits And Related Relief</i> (related document(s) <a href="#">3</a> ) filed by Brian S. Masumoto on behalf of United States Trustee. (Masumoto, Brian) (Entered: 06/04/2020)
06/05/2020	<a href="#">223</a> (2 pgs)	Order, Signed on 6/5/2020, Granting Application for Pro Hac Vice Admission of Erika Morabito (Related Doc # <a href="#">220</a> ). (Anderson, Deanna) (Entered: 06/05/2020)
06/05/2020	<a href="#">224</a> (2 pgs)	Order, Signed on 6/5/2020, Granting Application for Pro Hac Vice Admission of Brittany J. Nelson (Related Doc # <a href="#">221</a> ). (Anderson, Deanna) (Entered: 06/05/2020)
06/05/2020	<a href="#">225</a> (3 pgs)	Notice of Appearance <i>and Request for Service of Papers</i> filed by Jeffrey M. Traurig on behalf of Worldwide Flight Services, Inc.. (Traurig, Jeffrey) (Entered: 06/05/2020)

06/05/2020	<a href="#"><u>226</u></a> (3 pgs)	Notice of Appearance <i>and Request for Service of Papers</i> filed by Gary D. Bressler on behalf of United States Fire Insurance Company and its affiliated sureties, Chubb Seguros Columbia S.A. and its affiliated sureties. (Bressler, Gary) (Entered: 06/05/2020)
06/05/2020	<a href="#"><u>227</u></a> (3 pgs; 2 docs)	Application for Pro Hac Vice Admission of <i>Michael Morano, Esq.</i> filed by Gary D. Bressler on behalf of Chubb Seguros Columbia S.A. and its affiliated sureties, United States Fire Insurance Company and its affiliated sureties. (Attachments: # <a href="#"><u>1</u></a> Proposed Order) (Bressler, Gary) (Entered: 06/05/2020)
06/05/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#"><u>20-11133-mg</u></a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14041624. Fee amount 200.00. (Re: Doc # <a href="#"><u>227</u></a> ) (U.S. Treasury) (Entered: 06/05/2020)
06/05/2020	<a href="#"><u>228</u></a> (1 pg)	Order Signed on 6/5/2020 Granting Application for Pro Hac Vice Admission of Michael R. Morano (Related Doc # <a href="#"><u>227</u></a> ). (Anderson, Deanna) (Entered: 06/05/2020)
06/05/2020	<a href="#"><u>229</u></a> (1 pg)	Order signed on 6/5/2020 Granting Application for Pro Hac Vice Admission of Gordon Toering (Related Doc # <a href="#"><u>211</u></a> ). (Anderson, Deanna) (Entered: 06/05/2020)
06/05/2020	<a href="#"><u>230</u></a> (6 pgs)	Certificate of Mailing of Claims Agent <i>re Agenda of Matters Scheduled for Hearing on May 26, 2020 at 2:00 p.m. (Eastern Time)</i> (related document(s) <a href="#"><u>158</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 06/05/2020)
06/05/2020	<a href="#"><u>231</u></a> (6 pgs)	Certificate of Mailing of Claims Agent <i>re Order Pursuant to Sections 363(b) and 105(a) of the Bankruptcy Code Authorizing Debtors to Pay Certain Obligations of Avianca Peru Entities</i> (related document(s) <a href="#"><u>162</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 06/05/2020)
06/05/2020	<a href="#"><u>232</u></a> (2 pgs)	Declaration / <i>Supplemental Declaration of Ginger Hughes in Support of the Debtors' Application for Entry of Order Authorizing Employment and Retention of Seabury Securities LLC and Seabury International Corporate Finance LLC as Financial Advisor and Investment Banker to Debtors and Debtors In Possession Nunc Pro Tunc to the Petition Date</i> (related document(s) <a href="#"><u>174</u></a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 06/05/2020)
06/05/2020	<a href="#"><u>233</u></a> (3 pgs)	Declaration / <i>Supplemental Declaration of Peter Barlow in Support of the Debtors' Application for an Order Pursuant to Section 327(e) of the Bankruptcy Code Authorizing and Approving Employment And Retention of Smith, Gambrell &amp; Russell, LLP as Special Aviation Counsel to the Debtors Effective Nunc Pro Tunc To Petition Date</i> (related document(s) <a href="#"><u>181</u></a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 06/05/2020)
06/06/2020	<a href="#"><u>234</u></a> (3 pgs)	Statement of No Objection <i>RESPONSE OF (A) ZEPHYRUS CAPITAL AVIATION PARTNERS IC LIMITED AND (B) AERCAP HOLDINGS N.V. THAT THEY HAVE NO OBJECTION TO DEBTORS FIRST OMNIBUS MOTION FOR AN ORDER AUTHORIZING THEM TO (I) REJECT CERTAIN AIRCRAFT LEASES AND (II) ABANDON CERTAIN AIRCRAFT</i> (related document(s) <a href="#"><u>21</u></a> ) filed by Michael James Edelman on behalf of AerCap Ireland Limited, Zephyrus Capital Aviation Partners 2018-1 Ltd. (Edelman, Michael) (Entered: 06/06/2020)

06/07/2020	<a href="#"><u>235</u></a> (21 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on May 28, 2020</i> (related document(s) <a href="#"><u>173</u></a> , <a href="#"><u>181</u></a> , <a href="#"><u>179</u></a> , <a href="#"><u>180</u></a> , <a href="#"><u>174</u></a> , <a href="#"><u>178</u></a> , <a href="#"><u>176</u></a> , <a href="#"><u>175</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 06/07/2020)
06/08/2020	<a href="#"><u>236</u></a> (253 pgs)	Statement of No Objection / <i>Omnibus Certificate of No Objection</i> (related document(s) <a href="#"><u>9</u></a> , <a href="#"><u>12</u></a> , <a href="#"><u>173</u></a> , <a href="#"><u>8</u></a> , <a href="#"><u>181</u></a> , <a href="#"><u>179</u></a> , <a href="#"><u>21</u></a> , <a href="#"><u>11</u></a> , <a href="#"><u>153</u></a> , <a href="#"><u>6</u></a> , <a href="#"><u>174</u></a> , <a href="#"><u>17</u></a> , <a href="#"><u>178</u></a> , <a href="#"><u>176</u></a> , <a href="#"><u>7</u></a> , <a href="#"><u>13</u></a> , <a href="#"><u>175</u></a> , <a href="#"><u>4</u></a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 06/08/2020)
06/08/2020	<a href="#"><u>237</u></a> (3 pgs)	Notice of Appearance filed by Karol K. Denniston on behalf of Panasonic Avionics Corporation. (Denniston, Karol) (Entered: 06/08/2020)
06/08/2020	<a href="#"><u>238</u></a> (54 pgs)	Response / <i>Debtors' Reply to Objection of the United States Trustee to Entry of Order Authorizing the Debtors to Pay Wages, Compensation, Employee Benefits and Related Relief</i> (related document(s) <a href="#"><u>222</u></a> , <a href="#"><u>3</u></a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 06/08/2020)
06/08/2020	<a href="#"><u>239</u></a> (18 pgs)	Motion to File Under Seal / <i>Notice of Hearing on Debtors' (I) Request for Expedited Determination; and (II) Debtors Motion for Entry of an Order (A) Authorizing the Debtors to Redact and File Under Seal their Reply to the Objection of the United States Trustee to Entry of an Order Authorizing the Debtors to Pay Wages, Compensation, Employee Benefits and Related Relief and (B) Granting Related Relief</i> (related document(s) <a href="#"><u>238</u></a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 6/11/2020 at 02:00 PM at Courtroom 523 (MG) Responses due by 6/10/2020,. (Fleck, Evan) (Entered: 06/08/2020)
06/08/2020	<a href="#"><u>240</u></a> (3 pgs)	Statement / <i>Debtors' Witness and Exhibit List</i> (related document(s) <a href="#"><u>3</u></a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 06/08/2020)
06/09/2020	<a href="#"><u>241</u></a> (4 pgs)	Order, Signed on 6/9/2020, Granting Application for Pro Hac Vice Admission of Brian Smith (Related Doc # <a href="#"><u>191</u></a> ). (Anderson, Deanna) (Entered: 06/09/2020)
06/09/2020	<a href="#"><u>242</u></a> (4 pgs)	Order, signed on 6/9/2020, Granting Application for Pro Hac Vice Admission of Robert W. Jones (Related Doc # <a href="#"><u>192</u></a> ). (Anderson, Deanna) (Entered: 06/09/2020)
06/09/2020	<a href="#"><u>243</u></a> (4 pgs; 2 docs)	Application for Pro Hac Vice Admission filed by Richard A. Levy on behalf of Credomatic of Florida, Inc., BAC Salvador, Banco de Bogota S.A., Banco de Occidente, BAC International Bank, Inc., Banco de Bogota S.A. New York Agency. (Attachments: # <a href="#"><u>1</u></a> Proposed Order) (Levy, Richard) (Entered: 06/09/2020)
06/09/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#"><u>20-11133-mg</u></a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14047881. Fee amount 200.00. (Re: Doc # <a href="#"><u>243</u></a> ) (U.S. Treasury) (Entered: 06/09/2020)
06/09/2020	<a href="#"><u>244</u></a> (4 pgs; 2 docs)	Application for Pro Hac Vice Admission filed by Peter P. Knight on behalf of BAC International Bank, Inc., BAC Salvador, Banco de Bogota S.A., Banco de Bogota S.A. New York Agency, Banco de Occidente, Credomatic of Florida, Inc.. (Attachments: # <a href="#"><u>1</u></a> Proposed Order) (Knight, Peter) (Entered: 06/09/2020)

06/09/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#">20-11133-mg</a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14047925. Fee amount 200.00. (Re: Doc # <a href="#">244</a> ) (U.S. Treasury) (Entered: 06/09/2020)
06/09/2020	<a href="#">245</a> (5 pgs)	Order, Signed on 6/9/2020, Establishing Procedures for Remote Evidentiary Hearing on June 11, 2020 in Connection With Debtor's Motions for Orders Granting Final Relief With Respect to Contested Motions. (related document(s) <a href="#">240</a> ) Telephone Hearing Using Zoom for Government to be held on 6/11/2020 at 2:00 PM. (Anderson, Deanna) (Entered: 06/09/2020)
06/09/2020	<a href="#">246</a> (4 pgs)	Final Order, Signed on 6/9/2020, Pursuant to Sections 105(a), 363(c) and 364(c) of the Bankruptcy Code for Authorization to Enter Into, Continue Performance and Provide Credit Support Under Hedging and Derivative Contracts (Related Doc # <a href="#">13</a> ). (Anderson, Deanna) (Entered: 06/09/2020)
06/09/2020	<a href="#">247</a> (9 pgs)	Final Order, signed on 6/9/2020, Pursuant to Sections 105(A), 345, 363, and 364 of the Bankruptcy Code (I) Authorizing Debtors to (A) Maintain and Use Existing Cash Management Systems, Bank Accounts and Business Forms; (B) Continue to Engage in Intercompany Transactions and Afford Administrative Expense Priority Claims; (C) Continue Payment of Service Charges; and (II) Waiving Compliance With Section 345 of Bankruptcy Code; and (III) Granting Related Relief (Related Doc # <a href="#">4</a> ). (Anderson, Deanna) (Entered: 06/09/2020)
06/09/2020	<a href="#">248</a> (5 pgs)	Final Order, Signed on 6/9/2020, Authorizing (A) Debtors to Pay Prepetition Claims of Foreign Vendors; and (B) Financial Institutions to Honor and Process Related Checks and Transfers (Related Doc # <a href="#">6</a> ) . (Anderson, Deanna) (Entered: 06/09/2020)
06/09/2020	<a href="#">249</a> (5 pgs)	Final Order, signed on 6/9/2020, Pursuant to Sections 105(a), 362, 363, and 553 of the Bankruptcy Code (I) Authorizing, but not Directing, the Debtors to Pay Prepetition Amounts Owning to Fuel Relationship Parties and to Continue Performing under Related Contracts; and (II) Authorizing the Fuel Relationship Parties to Exercise Their Setoff and Recoupment Rights (Related Doc # <a href="#">8</a> ). (Anderson, Deanna) (Entered: 06/09/2020)
06/09/2020	<a href="#">250</a> (5 pgs)	Final Order, signed on 6/9/2020, Pursuant to Sections 105(A) and 363 of the Bankruptcy Code, (I) Authorizing Debtors to Pay Certain Outside Maintenance and Service Providers, Shippers, and Contractors in Satisfaction of Perfected or Potential Mechanics', Materialmen's or Similar Liens or Interests. (Related Doc # <a href="#">7</a> ) . (Anderson, Deanna) (Entered: 06/09/2020)
06/09/2020	<a href="#">251</a> (4 pgs)	Statement of <i>The Official Committee of Unsecured Creditors in Response to Debtors' First Day and Second Day Motions</i> filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. (Miller, Brett) (Entered: 06/09/2020)
06/09/2020	<a href="#">252</a> (6 pgs)	Final Order signed on 6/9/2020 Pursuant to Sections 105(a) and 363 of the Bankruptcy Code (I) Authorizing Debtors to Pay or Honor Prepetition Obligations to Customers, Travel Agents, Charter and Tour Operators, and Certain Other Business Entities; (II) Modifying Automatic Stay to the Extent Necessary to Effectuate Ordinary Course Setoffs with Such Counterparties; and Granting Related Relief (Related Doc # <a href="#">17</a> ). (Anderson, Deanna) (Entered: 06/09/2020)
06/09/2020	<a href="#">253</a>	Final Order, signed on 6/9/2020, Pursuant to Sections 105(a), 363(b),



	(4 pgs)	507(a)(8), and 541 of the Bankruptcy Code Authorizing Debtors to pay Certain Prepetition Taxes and Fees (Related Doc # <a href="#">12</a> ). (Anderson, Deanna) (Entered: 06/09/2020)
06/09/2020	<a href="#">254</a> (5 pgs)	Order signed on 6/9/2020 Authorizing Debtors to Retain and Employ FTI Consulting, Inc. as Financial Advisor Nunc Pro Tunc to the Petition Date (Related Doc # <a href="#">175</a> ). (Anderson, Deanna) (Entered: 06/09/2020)
06/09/2020	255	<b>(The Wrong PDF File was Entered, See Document No. <a href="#">266</a>)</b> Final Order signed on 6/9/2020 Authorizing Debtors (I) to Continue their Insurance and Surety Bond Programs; (II) Satisfy Obligations related thereto; (III) Continue Payment of certain Brokerage Fees; (IV) Renew, Supplement, Modify, or Purchase Insurance Coverage and Surety Bonds; and (V) Enter into New Premium Financing Agreements in the Ordinary Course of Business (Related Doc <a href="#">11</a> ). (Anderson, Deanna) <b>Modified on 6/9/2020 (Bush, Brent)</b> (Entered: 06/09/2020)
06/09/2020	<a href="#">256</a> (7 pgs)	Order signed on 6/9/2020 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals (Related Doc # <a href="#">179</a> ). (Anderson, Deanna) (Entered: 06/09/2020)
06/09/2020	<a href="#">257</a> (7 pgs)	Final Order, signed on 6/9/2020, on the Debtor's Motion for Interim and Final Orders (I) Authorizing Debtors to Assume Certain Agreements; (II) Pursuant to Sections 105(A) and 363 of the Bankruptcy, Code Authorizing but not Directing the Debtors to Satisfy (A) Certain Prepetition Obligations Pending Assumption, and (B) Certain Obligations to Other Airlines Settled Through Airline Clearinghouses and Certain Prepetition Airline Alliance and Frequent Flyer Obligations; (III) Modifying Automatic Stay Pursuant to Section 362 of the Bankruptcy Code (Related Doc # <a href="#">9</a> ). (Anderson, Deanna) (Entered: 06/09/2020)
06/09/2020	<a href="#">258</a> (5 pgs)	Order signed on 6/9/2020 Authorizing the Debtors to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date (Related Doc # <a href="#">176</a> ). (Anderson, Deanna) (Entered: 06/09/2020)
06/09/2020	<a href="#">259</a> (4 pgs)	Order signed on 6/9/2020 Authorizing Employment and Retention of Milbank LLP as Attorneys for Debtors and Debtors in Possession Nunc Pro Tunc to Petition Date (Related Doc # <a href="#">173</a> ). (Anderson, Deanna) (Entered: 06/09/2020)
06/09/2020	<a href="#">260</a> (33 pgs)	Order signed on 6/9/2020 Authorizing the Debtors to Employ and Pay Professionals Used in the Ordinary Course of Business (Related Doc # <a href="#">178</a> ). (Anderson, Deanna) (Entered: 06/09/2020)
06/09/2020	<a href="#">261</a> (8 pgs)	Order, signed on 6/9/2020, (I) Authorizing and Approving Procedures to Reject or Assume Executory Contracts and Unexpired Leases and Abandon Certain Aircraft and Equipment and (II) Granting Related Relief (Related Doc # <a href="#">153</a> ). (Anderson, Deanna) (Entered: 06/09/2020)
06/09/2020	<a href="#">262</a> (6 pgs)	Order, Signed on 6/9/2020, Authorizing Debtors to Employ and Retain Seabury Securities LLC and Seabury International Corporate Finance LLC as Financial Advisor and Investment Banker to Debtors and Debtors In Possession Nunc Pro Tunc to the Petition Date (Related Doc # <a href="#">174</a> ) . (Anderson, Deanna) (Entered: 06/09/2020)
06/09/2020	<a href="#">263</a>	Order, signed on 6/9/2020, Pursuant to Section 327(e) of the Bankruptcy

	(4 pgs)	Code Authorizing and Approving Employment and Retention of Smith, Gambrell & Russell, LLP as Special Aviation Counsel to the Debtors Effective Nunc Pro Tunc to Petition Date (Related Doc # <a href="#">181</a> ) . (Anderson, Deanna) (Entered: 06/09/2020)
06/09/2020	<a href="#">264</a> (2 pgs)	Order signed on 6/9/2020 Granting Application for Pro Hac Vice Admission of Richard A. Levy (Related Doc # <a href="#">243</a> ). (Anderson, Deanna) (Entered: 06/09/2020)
06/09/2020	<a href="#">265</a> (2 pgs)	Order signed on 6/9/2020 Granting Application for Pro Hac Vice Admission of Peter P. Knight (Related Doc # <a href="#">244</a> ). (Anderson, Deanna) (Entered: 06/09/2020)
06/09/2020	<a href="#">266</a> (5 pgs)	Amended Final Order, signed on 6/9/2020, Authorizing Debtors (I) to Continue their Insurance and Surety Bond Programs; (II) Satisfy Obligations related thereto; (III) Continue Payment of certain Brokerage Fees; (IV) Renew, Supplement, Modify, or Purchase Insurance Coverage and Surety Bonds; and (V) Enter into New Premium Financing Agreements in the Ordinary Course of Business. (related document(s) <a href="#">255</a> ) (Anderson, Deanna) (Entered: 06/09/2020)
06/10/2020	<a href="#">267</a> (8 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Supplemental Declaration of Ginger Hughes in Support of the Debtors Application for Entry of Order Authorizing Employment and Retention of Seabury Securities LLC and Seabury International Corporate Finance LLC as Financial Advisor and Investment Banker to Debtors and Debtors in Possession Nunc Pro Tunc to the Petition Date; and 2) Supplemental Declaration of Peter Barlow in Support of Debtors Application for an Order Pursuant to Section 327(e) of the Bankruptcy Code Authorizing and Approving Employment and Retention of Smith, Gambrell &amp; Russell, LLP as Special Aviation Counsel to the Debtors Effective Nunc Pro Tunc to Petition Date</i> (related document(s) <a href="#">232</a> , <a href="#">233</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 06/10/2020)
06/10/2020	<a href="#">268</a> (3 pgs)	Statement / <i>Debtors' Amended Witness and Exhibit List</i> (related document(s) <a href="#">3</a> , <a href="#">240</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 06/10/2020)
06/10/2020	<a href="#">269</a> (3 pgs)	Notice of Appearance filed by Kathleen M. Aiello on behalf of Microsoft Corporation, Microsoft Licensing, GP and Microsoft Online, Inc.. (Aiello, Kathleen) (Entered: 06/10/2020)
06/10/2020	<a href="#">270</a> (2 pgs)	Affidavit of Service (related document(s) <a href="#">269</a> ) Filed by Kathleen M. Aiello on behalf of Microsoft Corporation, Microsoft Licensing, GP and Microsoft Online, Inc.. (Aiello, Kathleen) (Entered: 06/10/2020)
06/10/2020	<a href="#">271</a> (3 pgs)	Notice of Appearance <i>and Request for Service of Papers</i> filed by Richard A. Levy on behalf of BAC International Bank, Inc., BAC Salvador, Banco de Bogota S.A., Banco de Bogota S.A. New York Agency, Banco de Occidente, Credomatic of Florida, Inc.. (Levy, Richard) (Entered: 06/10/2020)
06/10/2020	<a href="#">272</a> (4 pgs; 2 docs)	Application for Pro Hac Vice Admission filed by Evan Schladow on behalf of BAC International Bank, Inc., BAC Salvador, Banco de Bogota S.A., Banco de Bogota S.A. New York Agency, Banco de Occidente, Credomatic of Florida, Inc.. (Attachments: # <a href="#">1</a> Proposed Order) (Schladow, Evan) (Entered: 06/10/2020)

06/10/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#">20-11133-mg</a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14052897. Fee amount 200.00. (Re: Doc # <a href="#">272</a> ) (U.S. Treasury) (Entered: 06/10/2020)
06/10/2020	<a href="#">273</a> (2 pgs)	Order signed on 6/10/2020 Granting Application for Pro Hac Vice Admission of Evan E. H. Schladow (Related Doc # <a href="#">272</a> ). (Anderson, Deanna) (Entered: 06/10/2020)
06/10/2020	<a href="#">274</a> (3 pgs)	Notice of Agenda / <i>Agenda of Matters Scheduled for Hearing on June 11, 2020 at 2:00 p.m. (Eastern Time)</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with hearing to be held on 6/11/2020 at 02:00 PM at Courtroom 523 (MG) (Fleck, Evan) (Entered: 06/10/2020)
06/11/2020	<a href="#">275</a> (11 pgs)	Stipulation and Order, Signed on 6/11/2020, Authorizing Debtors to Reject Certain Unexpired Leases With Aircraft Counterparties and to Return and/or Abandon Certain Aircraft, as Applicable (BNP Paribas). (related document(s) <a href="#">21</a> , <a href="#">97</a> ) (Anderson, Deanna) (Entered: 06/11/2020)
06/11/2020	<a href="#">276</a> (16 pgs)	Stipulation and Order, Signed on 6/11/2020, Authorizing Debtors to Reject Certain Unexpired Leases With Aircraft Counterparties and to Return and/or Abandon Certain Aircraft, as Applicable (KGAL). (related document(s) <a href="#">21</a> , <a href="#">97</a> ) (related document(s) <a href="#">21</a> , <a href="#">97</a> ) (Anderson, Deanna) (Entered: 06/11/2020)
06/11/2020	<a href="#">277</a> (7 pgs)	Order, Signed on 6/11/2020, Authorizing the Debtors to (I) Reject Certain Aircraft Leases and (II) Abandon Certain Aircraft (MSN 3510, 3538, 1882, 2078). (related document(s) <a href="#">21</a> ) (Anderson, Deanna) (Entered: 06/11/2020)
06/11/2020	<a href="#">278</a> (3 pgs)	Notice of Appearance <i>and Request for Service of Papers</i> filed by Evan Schladow on behalf of BAC International Bank, Inc., BAC Salvador, Banco de Bogota S.A., Banco de Bogota S.A. New York Agency, Banco de Occidente, Credomatic of Florida, Inc.. (Schladow, Evan) (Entered: 06/11/2020)
06/12/2020	<a href="#">279</a> (4 pgs)	Affidavit of Service of <i>Laura Guido</i> (related document(s) <a href="#">251</a> ) Filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. (Miller, Brett) (Entered: 06/12/2020)
06/12/2020	<a href="#">280</a> (5 pgs)	Order signed on 6/12/2020 Establishing Procedures for Remote Evidentiary Hearing on June 18, 2020 in Connection with Debtor's Motion for an Order Granting Final Relief with Respect to Contested Motion (related document(s) <a href="#">222</a> , <a href="#">3</a> , <a href="#">35</a> ). Hearing to be held on 6/18/2020 at 02:30 PM via Zoom. (Gomez, Jessica) (Entered: 06/12/2020)
06/12/2020	<a href="#">281</a> (4 pgs)	Notice of Appearance <i>and Request for Service of Papers</i> filed by Camille W. Hill on behalf of Sodexo Operations, LLC, Sodexo, Inc.. (Hill, Camille) (Entered: 06/12/2020)
06/12/2020	<a href="#">282</a> (4 pgs; 2 docs)	Certificate of Service (related document(s) <a href="#">271</a> , <a href="#">278</a> , <a href="#">244</a> , <a href="#">243</a> , <a href="#">272</a> ) Filed by Evan Schladow on behalf of BAC International Bank, Inc., BAC Salvador, Banco de Bogota S.A., Banco de Bogota S.A. New York Agency, Banco de Occidente, Credomatic of Florida, Inc.. (Attachments: # <a href="#">1</a> Exhibit A - Service List)(Schladow, Evan) (Entered: 06/12/2020)
06/12/2020	<a href="#">283</a> (3 pgs)	Notice of Appearance filed by Janine M. Cerbone on behalf of Securitas S.A.C., Securitas Ecuador CIA LTDA, Securitas Colombia S.A., Global

		Security Consulting Group, Inc., Securitas Airline Services GmbH & Co KG, Securitas S.A.. (Cerbone, Janine) (Entered: 06/12/2020)
06/12/2020	<a href="#">284</a> (30 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on June 8, 2020</i> (related document(s) <a href="#">239</a> , <a href="#">238</a> , <a href="#">236</a> , <a href="#">240</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 06/12/2020)
06/12/2020	<a href="#">285</a> (110 pgs)	Transcript regarding Hearing Held on 06/11/2020 at 2:00 pm RE: (Doc# 238, 239, 240, 251, 268, 274) Motion (I) Request for Expedited Determination; and (II) Debtors' Motion for Entry of an Order (A) Authorizing the Debtors to Redact and File Under Seal their Reply to the Objection of the United States Trustee to Entry of an Order Authorizing the Debtors to Pay Wages, Compensation, Employee Benefits and Related Relief and (B) Granting Related Relief. Second Day of Hearing will take place on June 18th at 2:30 PM...et al. <b>Remote electronic access to the transcript is restricted until 9/10/2020.</b> The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: eScribers, LLC.]. (See the Courts Website for contact information for the Transcription Service Agency.) (RE: related document(s) <a href="#">239</a> , <a href="#">238</a> , <a href="#">274</a> , <a href="#">222</a> , <a href="#">268</a> , <a href="#">3</a> , <a href="#">35</a> , <a href="#">240</a> , <a href="#">251</a> ). Notice of Intent to Request Redaction Deadline Due By 6/19/2020. Statement of Redaction Request Due By 7/6/2020. Redacted Transcript Submission Due By 7/13/2020. Transcript access will be restricted through 9/10/2020. (Lewis, Tenille) (Entered: 06/15/2020)
06/15/2020	<a href="#">286</a> (28 pgs)	Certificate of Mailing of Claims Agent <i>re Order Establishing Procedures for Remote Evidentiary Hearing on June 11, 2020 in Connection with Debtor's Motions for Orders Granting Final Relief with Respect to Contested Motions</i> (related document(s) <a href="#">245</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 06/15/2020)
06/15/2020	<a href="#">287</a> (1 pg)	Application for Pro Hac Vice Admission filed by Paul Arrow on behalf of Etihad Airways Engineering, LLC. (Arrow, Paul) (Entered: 06/15/2020)
06/15/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#">20-11133-mg</a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14064588. Fee amount 200.00. (Re: Doc # <a href="#">287</a> ) (U.S. Treasury) (Entered: 06/15/2020)
06/15/2020	<a href="#">288</a> (12 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Debtors' Amended Witness and Exhibit List; and 2) Agenda of Matters Scheduled for Hearing on June 11, 2020 at 2:00 p.m.</i> (related document(s) <a href="#">274</a> , <a href="#">268</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 06/15/2020)
06/16/2020	<a href="#">289</a> (5 pgs)	Declaration of Renato Covelo in Support of Debtors Motion To Pay Wages, Compensation, Employee Benefits and Related Relief (related document(s) <a href="#">239</a> , <a href="#">238</a> , <a href="#">3</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 06/16/2020)
06/17/2020	<a href="#">290</a> (2 pgs)	Notice of Adjournment of Hearing / Notice of Adjournment of Evidentiary Hearing on Debtors' Motion for an Order Authorizing the Debtors to Pay Prepetition Wages, Compensation, and Employee Benefits (related document(s) <a href="#">3</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with hearing to be held on 6/25/2020 at 02:00 PM at Courtroom 523 (MG) (Fleck, Evan) (Entered: 06/17/2020)
06/17/2020	<a href="#">291</a>	Final Order, Signed on 6/17/2020, (I) Authorizing, but not Directing, the



	(5 pgs)	Debtors to (A) Pay Prepetition Wages, Compensation and Employee Benefits and (B) Continue Payment of Wages, Compensation, Employee Benefits and Related Administrative Obligations in the Ordinary Course of Business; and (II) Authorizing and Directing Applicable Banks and Financial Institutions to Process and pay all Checks Presented for Payment and to Honor all Funds Transfer Requests Made by the Debtors. (Related Doc # <a href="#">3</a> ) (Anderson, Deanna) (Entered: 06/17/2020)
06/17/2020	<a href="#">292</a> (126 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on June 11, 2020</i> (related document(s) <a href="#">249</a> , <a href="#">256</a> , <a href="#">255</a> , <a href="#">247</a> , <a href="#">246</a> , <a href="#">263</a> , <a href="#">257</a> , <a href="#">259</a> , <a href="#">258</a> , <a href="#">250</a> , <a href="#">261</a> , <a href="#">266</a> , <a href="#">253</a> , <a href="#">252</a> , <a href="#">254</a> , <a href="#">262</a> , <a href="#">248</a> , <a href="#">260</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 06/17/2020)
06/17/2020	<a href="#">293</a> (6 pgs)	Order, Signed on 6/17/2020, Establishing Procedures for Remote Evidentiary Hearing on June 25, 2020 in Connection with Debtor's Motion for an Order Granting Final Relief With Respect to Contested Matter (related document(s) <a href="#">291</a> , <a href="#">222</a> , <a href="#">3</a> , <a href="#">35</a> ). Hearing to be held on 6/25/2020 at 02:00 PM (EST) via Zoom. (Anderson, Deanna) (Entered: 06/17/2020)
06/17/2020	<a href="#">294</a> (19 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Stipulation and Order Authorizing Debtors to Reject Certain Unexpired Leases with Aircraft Counterparties and to Return and/or Abandon Certain Aircraft, as Applicable (BNP Paribas); 2) Stipulation and Order Authorizing Debtors to Reject Certain Unexpired Leases with Aircraft Counterparties and to Abandon Certain Aircraft, (KGAL); and 3) Order Authorizing the Debtors to (I) Reject Certain Aircraft Leases and (II) Abandon Certain Aircraft (MSN 3510, 3538, 1882, 2078)</i> (related document(s) <a href="#">276</a> , <a href="#">275</a> , <a href="#">277</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 06/17/2020)
06/17/2020	<a href="#">295</a> (14 pgs)	Certificate of Mailing of Claims Agent <i>re Order Establishing Procedures for Remote Evidentiary Hearing on June 18, 2020 in Connection with Debtors Motion for an Order Granting Final Relief with Respect to Contested Motion</i> (related document(s) <a href="#">280</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 06/17/2020)
06/18/2020	<a href="#">296</a> (5 pgs)	<i>Declaration and Disclosure Statement of Jonathon H. Foglia on Behalf of Kma Zuckert LLC</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 06/18/2020)
06/18/2020	<a href="#">297</a> (252 pgs)	Notice of Presentment of <i>Stipulations and Orders Between Debtors and Aircraft Counterparties Concerning Certain Aircraft</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with presentment to be held on 6/22/2020 at 04:00 PM at Courtroom 523 (MG) Objections due by 6/22/2020, (Fleck, Evan) (Entered: 06/18/2020)
06/18/2020	<a href="#">298</a> (1 pg)	Notice of Appearance filed by Luis Orengo Jr on behalf of PEMICA, Inc.. (Orengo, Luis) (Entered: 06/18/2020)
06/19/2020	<a href="#">299</a> (3 pgs)	Order, Signed on 6/19/2020, (A) Authorizing the Debtors to Redact and File Under Seal their Reply to the Objection of the United States Trustee to Entry of an Order Authorizing the Debtors to Pay Wages, Compensation, Employee Benefits and Related Relief and (B) Granting Related Relief (Related Doc # <a href="#">239</a> ). (Anderson, Deanna) (Entered: 06/19/2020)

06/19/2020	<a href="#"><u>300</u></a> (18 pgs)	Notice of Presentment of <i>Stipulation and Order between Debtors and Finance Counterparties Concerning Certain Collateral</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with presentment to be held on 6/26/2020 at 12:00 PM at Courtroom 523 (MG) Objections due by 6/25/2020, (Fleck, Evan) (Entered: 06/19/2020)
06/20/2020	<a href="#"><u>301</u></a> (4 pgs)	Notice of Appearance with <i>Certificate of Service</i> filed by Howard S. Beltzer on behalf of Deutsche Bank AG New York Branch and Deutsche Bank Trust Company Americas. (Beltzer, Howard) (Entered: 06/20/2020)
06/21/2020	<a href="#"><u>302</u></a> (2 pgs)	Notice of Appearance filed by James Christopher Vandermark on behalf of Google LLC. (Vandermark, James) (Entered: 06/21/2020)
06/22/2020	<a href="#"><u>303</u></a> (45 pgs)	Statement / <i>Notice of First Amended OCP List</i> (related document(s) <a href="#"><u>260</u></a> , <a href="#"><u>178</u></a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 06/22/2020)
06/22/2020	<a href="#"><u>304</u></a> (11 pgs)	Certificate of Mailing of Claims Agent <i>re Notice of Commencement of Chapter 11 Bankruptcy Case</i> (related document(s) <a href="#"><u>165</u></a> , <a href="#"><u>41</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 06/22/2020)
06/22/2020	<a href="#"><u>305</u></a> (5 pgs)	<i>Declaration and Disclosure Statement of David Heffernan, on Behalf of Cozen O'Connor</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 06/22/2020)
06/23/2020	<a href="#"><u>306</u></a> (538 pgs; 4 docs)	Motion to Reject / <i>Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 7/15/2020 at 10:00 AM at Courtroom 523 (MG) Responses due by 7/2/2020,. (Attachments: # <a href="#"><u>1</u></a> Exhibit A - Neuhauser Declaration # <a href="#"><u>2</u></a> Exhibit B - Renenger Declaration # <a href="#"><u>3</u></a> Exhibit C - Proposed Order) (Fleck, Evan) (Entered: 06/23/2020)
06/23/2020	<a href="#"><u>307</u></a> (394 pgs)	Adversary case 20-01189. Complaint against USAVflow Limited (Fee Amount \$ 350.). Nature(s) of Suit: (21 (Validity, priority or extent of lien or other interest in property)), (91 (Declaratory judgment)) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A., et al.. (Fleck, Evan) (Entered: 06/23/2020)
06/23/2020	<a href="#"><u>308</u></a> (13 pgs)	First Stipulation and Order, Signed on 6/23/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft ("1368 All Parties Agreement"). (related document(s) <a href="#"><u>297</u></a> ) (Anderson, Deanna) (Entered: 06/23/2020)
06/23/2020	<a href="#"><u>309</u></a> (13 pgs)	First Stipulation and Order, Signed on 6/23/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (the 1534 All Parties Agreement). (related document(s) <a href="#"><u>297</u></a> ) (Anderson, Deanna) (Entered: 06/23/2020)
06/23/2020	<a href="#"><u>310</u></a> (17 pgs)	First Stipulation and Order, Signed on 6/23/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (the 3647 All Parties Agreement and the 3691 All Parties Agreement). (related document(s) <a href="#"><u>297</u></a> ) (Anderson, Deanna) (Entered: 06/23/2020)
06/23/2020	<a href="#"><u>311</u></a> (13 pgs)	First Stipulation and Order, Signed on 6/23/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (the 3869 All Parties

		Agreement). (related document(s) <a href="#">297</a> ) (Anderson, Deanna) (Entered: 06/23/2020)
06/23/2020	<a href="#">312</a> (13 pgs)	First Stipulation and Order, Signed on 6/23/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (the 5057 All Parties Agreement). (related document(s) <a href="#">297</a> ) (Anderson, Deanna) (Entered: 06/23/2020)
06/23/2020	<a href="#">313</a> (13 pgs)	First Stipulation and Order, Signed on 6/23/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (the 5119 All Parties Agreement). (related document(s) <a href="#">297</a> ) (Anderson, Deanna) (Entered: 06/23/2020)
06/23/2020	<a href="#">314</a> (13 pgs)	First Stipulation and Order, Signed on 6/23/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (the 5333 All Parties Agreement). (related document(s) <a href="#">297</a> ) (Anderson, Deanna) (Entered: 06/23/2020)
06/23/2020	<a href="#">315</a> (13 pgs)	First Stipulation and Order, Signed on 6/23/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (the 5936 All Parties Agreement). (related document(s) <a href="#">297</a> ) (Anderson, Deanna) (Entered: 06/23/2020)
06/23/2020	<a href="#">316</a> (15 pgs)	First Stipulation and Order, Signed on 6/23/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (the 1009 All Parties Agreement and the 4200 All Parties Agreement). (related document(s) <a href="#">297</a> ) (Anderson, Deanna) (Entered: 06/23/2020)
06/23/2020	<a href="#">317</a> (16 pgs)	First Stipulation and Order, Signed on 6/23/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (the 1380 All Parties Agreement, the 1428 All Parties Agreement and the 1448 All Parties Agreement). (related document(s) <a href="#">297</a> ) (Anderson, Deanna) (Entered: 06/23/2020)
06/23/2020	<a href="#">318</a> (15 pgs)	First Stipulation and Order, Signed on 6/23/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (the 1506 All Parties Agreement and the 5944 All Parties Agreement). (related document(s) <a href="#">297</a> ) (Anderson, Deanna) (Entered: 06/23/2020)
06/23/2020	<a href="#">319</a> (15 pgs)	First Stipulation and Order, Signed on 6/23/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (the 4345 All Parties Agreement and the 4287 All Parties Agreement). (related document(s) <a href="#">297</a> ) (Anderson, Deanna) (Entered: 06/23/2020)
06/23/2020	<a href="#">320</a> (15 pgs)	First Stipulation and Order, Signed on 6/23/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (the 5068 All Parties Agreement, the 5406 All Parties Agreement, the 5238 All Parties Agreement, the 5219 All Parties Agreement and the 5280 All Parties Agreement). (related document(s) <a href="#">297</a> ) (Anderson, Deanna) (Entered: 06/23/2020)
06/23/2020	<a href="#">321</a> (18 pgs)	First Stipulation and Order, Signed on 6/23/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (the 6167 All Parties Agreement, the 6174 All Parties Agreement, the 6068 All Parties Agreement, and the 6099 All Parties Agreement). (related document(s) <a href="#">297</a> ) (Anderson, Deanna) (Entered: 06/23/2020)

06/23/2020	<a href="#"><u>322</u></a> (12 pgs)	First Stipulation and Order, Signed on 6/23/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (the 1185 All Parties Agreement). (related document(s) <a href="#"><u>297</u></a> ) (Anderson, Deanna) (Entered: 06/23/2020)
06/23/2020	<a href="#"><u>323</u></a> (13 pgs)	First Stipulation and Order, Signed on 6/23/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (the 1092 All Parties Agreement, the 1116 All Parties Agreement, the 1160 All Parties Agreement, and the 1142 All Parties Agreement). (related document(s) <a href="#"><u>297</u></a> ) (Anderson, Deanna) (Entered: 06/23/2020)
06/23/2020	<a href="#"><u>324</u></a> (13 pgs)	First Stipulation and Order, Signed on 6/23/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (the 1114 All Parties Agreement, the 1126 All Parties Agreement, the 1151 All Parties Agreement, and the 1124 All Parties Agreement. (related document(s) <a href="#"><u>297</u></a> ) (Anderson, Deanna) (Entered: 06/23/2020)
06/23/2020	<a href="#"><u>325</u></a> (13 pgs)	First Stipulation and Order, Signed on 6/23/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (the 1167 All Parties Agreement and the 1174 All Parties Agreement). (related document(s) <a href="#"><u>297</u></a> ) (Anderson, Deanna) (Entered: 06/23/2020)
06/23/2020	<a href="#"><u>326</u></a> (13 pgs)	First Stipulation and Order, Signed on 6/23/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (the 65315 All Parties Agreement). (related document(s) <a href="#"><u>297</u></a> ) (Anderson, Deanna) (Entered: 06/23/2020)
06/24/2020	<a href="#"><u>327</u></a> (2 pgs)	Notice of Adjournment of Hearing / <i>Notice of Adjournment of Evidentiary Hearing on Debtors' Motion for an Order Authorizing the Debtors to Pay Prepetition Wages, Compensation, and Employee Benefits</i> (related document(s) <a href="#"><u>3</u></a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with hearing to be held on 7/15/2020 at 10:00 AM at Courtroom 523 (MG) (Fleck, Evan) (Entered: 06/24/2020)
06/24/2020	<a href="#"><u>328</u></a> (3 pgs)	Application for Pro Hac Vice Admission of <i>David L. Gay</i> filed by Luis Orengo Jr on behalf of PEMICA, Inc.. (Orengo, Luis) (Entered: 06/24/2020)
06/24/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#"><u>20-11133-mg</u></a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14086979. Fee amount 200.00. (Re: Doc # <a href="#"><u>328</u></a> ) (U.S. Treasury) (Entered: 06/24/2020)
06/24/2020	<a href="#"><u>329</u></a> (19 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on June 17, 2020</i> (related document(s) <a href="#"><u>289</u></a> , <a href="#"><u>290</u></a> , <a href="#"><u>291</u></a> , <a href="#"><u>293</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 06/24/2020)
06/24/2020	<a href="#"><u>330</u></a> (2 pgs; 2 docs)	Application for Pro Hac Vice Admission filed by Scott Andron on behalf of Broward County, Florida. (Attachments: # <a href="#"><u>1</u></a> Exhibit Proposed Order Granting Admission to Practice Pro Hac Vice) (Andron, Scott) (Entered: 06/24/2020)
06/24/2020	<a href="#"><u>331</u></a> (16 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Declaration and Disclosure Statement of Jonathon H. Foglia on Behalf of KMA Zuckert LLC; and 2) Notice of Presentment of Stipulations and Orders Between Debtors and Aircraft Counterparties Concerning Certain Aircraft</i> (related document(s) <a href="#"><u>296</u></a> , <a href="#"><u>297</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 06/24/2020)

06/24/2020	<a href="#"><u>332</u></a> (153 pgs)	First Monthly Fee Statement of Milbank LLP for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Counsel to the Debtors From May 10, 2020 Through and Including May 31, 2020 Filed by Evan R. Fleck on behalf of Milbank LLP. (Fleck, Evan) (Entered: 06/24/2020)
06/25/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#"><u>20-11133-mg</u></a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14089402. Fee amount 200.00. (Re: Doc # <a href="#"><u>330</u></a> ) (U.S. Treasury) (Entered: 06/25/2020)
06/25/2020	<a href="#"><u>333</u></a> (1 pg)	Order, Signed on 6/25/2020, Granting Application for Pro Hac Vice Admission of David L. Gay (Related Doc # <a href="#"><u>328</u></a> ). (Anderson, Deanna) (Entered: 06/25/2020)
06/25/2020	<a href="#"><u>334</u></a> (3 pgs)	Notice of Appearance filed by Leo T. Crowley on behalf of Tamweel Aviation Funding L.P.. (Crowley, Leo) (Entered: 06/25/2020)
06/25/2020	<a href="#"><u>335</u></a> (3 pgs)	Notice of Appearance filed by Leo T. Crowley on behalf of Sumitomo Mitsui Banking Corporation, New York Branch. (Crowley, Leo) (Entered: 06/25/2020)
06/25/2020	<a href="#"><u>336</u></a> (3 pgs)	Notice of Appearance filed by Leo T. Crowley on behalf of Development Bank of Japan Inc.. (Crowley, Leo) (Entered: 06/25/2020)
06/25/2020	<a href="#"><u>337</u></a> (3 pgs)	Notice of Appearance filed by Leo T. Crowley on behalf of Credit Industriel et Commercial, New York Branch. (Crowley, Leo) (Entered: 06/25/2020)
06/25/2020	<a href="#"><u>338</u></a> (3 pgs)	Notice of Appearance filed by Dania Slim on behalf of Tamweel Aviation Funding L.P.. (Slim, Dania) (Entered: 06/25/2020)
06/25/2020	<a href="#"><u>339</u></a> (3 pgs)	Notice of Appearance filed by Dania Slim on behalf of Credit Industriel et Commercial, New York Branch. (Slim, Dania) (Entered: 06/25/2020)
06/25/2020	<a href="#"><u>340</u></a> (1 pg)	Order signed on 6/25/2020 Granting Application for Pro Hac Vice Admission of Scott Andron (Related Doc # <a href="#"><u>330</u></a> ). (Anderson, Deanna) (Entered: 06/25/2020)
06/25/2020	<a href="#"><u>341</u></a> (3 pgs)	Notice of Appearance filed by Dania Slim on behalf of Development Bank of Japan Inc.. (Slim, Dania) (Entered: 06/25/2020)
06/25/2020	<a href="#"><u>342</u></a> (3 pgs)	Notice of Appearance filed by Dania Slim on behalf of Credit Agricole Corporate and Investment Bank. (Slim, Dania) (Entered: 06/25/2020)
06/25/2020	<a href="#"><u>343</u></a> (3 pgs)	Notice of Appearance filed by Dania Slim on behalf of Norddeutsche Landesbank Girozentrale, New York Branch. (Slim, Dania) (Entered: 06/25/2020)
06/25/2020	<a href="#"><u>344</u></a> (3 pgs)	Notice of Appearance filed by Dania Slim on behalf of Sumitomo Mitsui Banking Corporation, New York Branch. (Slim, Dania) (Entered: 06/25/2020)
06/25/2020	<a href="#"><u>345</u></a> (5 pgs; 2 docs)	Application for Pro Hac Vice Admission filed by Layla Milligan on behalf of Texas Comptroller of Public Accounts, Unclaimed Property



		Division. (Attachments: # <a href="#">1</a> Proposed Order) (Milligan, Layla) (Entered: 06/25/2020)
06/25/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#">20-11133-mg</a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14090482. Fee amount 200.00. (Re: Doc # <a href="#">345</a> ) (U.S. Treasury) (Entered: 06/25/2020)
06/26/2020	<a href="#">346</a> (6 pgs)	Order, Signed on 6/26/2020, Establishing Procedures for Remote Evidentiary Hearing on July 15, 2020 in Connection with Debtor's Motion for an Order Granting Final Relief With Respect to Contested Matter (related document(s)291, 222, 3, 35). Hearing to be held on 7/15/2020 at 10:00 AM (EST) via Zoom. (related document(s) <a href="#">327</a> ) (Anderson, Deanna) (Entered: 06/26/2020)
06/26/2020	<a href="#">347</a> (13 pgs)	First Stipulation and Order, Signed on 6/26/2020, between Debtors and Finance Counterparties Concerning Certain Collateral. (related document(s) <a href="#">300</a> ) (Anderson, Deanna) (Entered: 06/26/2020)
06/26/2020	<a href="#">348</a> (21 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Order (I) Authorizing the Debtors to Redact and File Under Seal Their Reply to Objection of the United States Trustee to Entry of an Order Authorizing the Debtors to Pay Wages, Compensation, Employee Benefits and Related Relief and (II) Granting Related Relief; and 2) Notice of Presentment of Stipulation and Order Between Debtors and Finance Counterparties Concerning Certain Collateral</i> (related document(s) <a href="#">300</a> , <a href="#">299</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 06/26/2020)
06/29/2020	<a href="#">349</a> (2 pgs)	Application for Pro Hac Vice Admission <i>for Aaron Renenger</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 06/29/2020)
06/29/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#">20-11133-mg</a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14097695. Fee amount 200.00. (Re: Doc # <a href="#">349</a> ) (U.S. Treasury) (Entered: 06/29/2020)
06/29/2020	<a href="#">350</a> (36 pgs)	Motion to Authorize / <i>Debtors' Emergency Motion for Entry of an Order Authorizing Alternative Service of Process</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 6/30/2020 at 03:00 PM at Courtroom 523 (MG) Responses due by 6/30/2020,. (Fleck, Evan) (Entered: 06/29/2020)
06/29/2020	<a href="#">351</a> (1 pg)	Order, signed on 6/29/2020, Granting Application for Pro Hac Vice Admission of Aaron L. Renenger (Related Doc # <a href="#">349</a> ). (Anderson, Deanna) (Entered: 06/29/2020)
06/29/2020	<a href="#">352</a> (3 pgs)	Notice of Appearance <i>and Request for Service of Notices and Other Documents</i> , filed by Barbra R. Parlin on behalf of BOC Aviation Limited. (Parlin, Barbra) (Entered: 06/29/2020)
06/29/2020	<a href="#">353</a> (787 pgs)	Notice of Presentment <i>of Stipulations and Orders Between Debtors and Aircraft Counterparties Concerning Certain Aircraft</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with presentment to be held on 7/6/2020 at 12:00 PM at Courtroom 523 (MG) Objections due by 7/5/2020, (Fleck, Evan) (Entered: 06/29/2020)
06/29/2020	<a href="#">354</a> (22 pgs)	Motion to File Under Seal / <i>Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to Redact and File Aircraft Stipulations Under</i>

		<i>Seal and (II) Granting Related Relief (Presentment Date: July 6, 2020 at 12:00 p.m.)</i> (related document(s) <a href="#">353</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A. Responses due by 7/5/2020,. (Fleck, Evan) (Entered: 06/29/2020)
06/30/2020	<a href="#">355</a> (2 pgs)	Notice of Appearance with <i>Certificate of Service</i> filed by Jennifer V. Doran on behalf of Citibank, N.A.. (Doran, Jennifer) (Entered: 06/30/2020)
06/30/2020	<a href="#">356</a> (3 pgs; 2 docs)	Application for Pro Hac Vice Admission with <i>Certificate of Service</i> filed by Jennifer V. Doran on behalf of Citibank, N.A.. (Attachments: # <a href="#">1</a> Order Granting Permission to Practice Pro Hac Vice) (Doran, Jennifer) (Entered: 06/30/2020)
06/30/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#">20-11133-mg</a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14101507. Fee amount 200.00. (Re: Doc # <a href="#">356</a> ) (U.S. Treasury) (Entered: 06/30/2020)
06/30/2020	<a href="#">357</a> (2 pgs)	Statement / <i>Notice of Cancellation of Hearing on Debtors' Emergency Motion for Entry of an Order Authorizing Alternative Service of Process</i> (related document(s) <a href="#">350</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 06/30/2020)
06/30/2020	<a href="#">358</a> (35 pgs)	Motion to Authorize / <i>Debtors' Motion for Authorization to Pay Certain Fees and Expenses of Professionals Retained by the Government of the Republic of Colombia</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 7/15/2020 at 10:00 AM at Courtroom 523 (MG) Responses due by 7/8/2020,. (Fleck, Evan) (Entered: 06/30/2020)
06/30/2020	<a href="#">359</a> (19 pgs)	Motion to Extend Time / <i>Debtors' Motion for Entry of an Order Extending the Time to File Notices of Removal of Civil Actions</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 7/15/2020 at 10:00 AM at Courtroom 523 (MG) Responses due by 7/8/2020,. (Fleck, Evan) (Entered: 06/30/2020)
06/30/2020	<a href="#">360</a> (28 pgs)	Motion to Authorize / <i>Debtors' Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a), 363(b) &amp; 502(a) and Fed. R. Bankr. P. 9019(b) Establishing Procedures for Settling Certain Claims</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 7/15/2020 at 10:00 AM at Courtroom 523 (MG) Responses due by 7/8/2020,. (Fleck, Evan) (Entered: 06/30/2020)
06/30/2020	<a href="#">361</a> (7 pgs)	Statement / <i>Notice of Rejection of Certain Executory Contracts and Unexpired Leases</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 06/30/2020)
06/30/2020	<a href="#">362</a> (2 pgs)	Notice of Adjournment of Hearing on <i>Debtors' Motion for an Order Authorizing Rejection of Certain Executory Contracts</i> (related document(s) <a href="#">306</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with hearing to be held on 7/29/2020 at 11:00 AM at Courtroom 523 (MG) (Fleck, Evan) (Entered: 06/30/2020)
06/30/2020	<a href="#">363</a> (4 pgs)	Notice of Appearance and <i>Request for Service of Notices and Papers</i> filed by Benjamin Mintz on behalf of Republic of Colombia. (Mintz, Benjamin) (Entered: 06/30/2020)

06/30/2020	<a href="#"><u>364</u></a> (3 pgs)	Application for Pro Hac Vice Admission <i>Michael L. Bernstein</i> filed by Benjamin Mintz on behalf of Republic of Colombia. (Mintz, Benjamin) (Entered: 06/30/2020)
06/30/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#"><u>20-11133-mg</u></a> ) [motion,122] ( 200.00) Filing Fee. Receipt number B14103110. Fee amount 200.00. (Re: Doc # <a href="#"><u>364</u></a> ) (U.S. Treasury) (Entered: 06/30/2020)
06/30/2020	<a href="#"><u>365</u></a> (53 pgs)	First Monthly Fee Statement of <i>Seabury Securities LLC for Professional Services and Disbursements for the period of May 10, 2020 through May 31, 2020</i> Filed by Evan R. Fleck on behalf of Seabury Securities LLC. (Fleck, Evan) (Entered: 06/30/2020)
06/30/2020	<a href="#"><u>366</u></a> (3 pgs)	Application for Pro Hac Vice Admission <i>Raul R. Herrera</i> filed by Benjamin Mintz on behalf of Republic of Colombia. (Mintz, Benjamin) (Entered: 06/30/2020)
06/30/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#"><u>20-11133-mg</u></a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14103225. Fee amount 200.00. (Re: Doc # <a href="#"><u>366</u></a> ) (U.S. Treasury) (Entered: 06/30/2020)
06/30/2020	<a href="#"><u>367</u></a> (59 pgs)	First Monthly Fee Statement of <i>Smith, Gambrell &amp; Russell, LLP. Special Aviation Counsel to the Debtors for Allowance of Compensation and Reimbursement of Expenses for the period May 10, 2020 through May 31, 2020</i> Filed by Evan R. Fleck on behalf of Smith, Gambrell & Russell, LLP. (Fleck, Evan) (Entered: 06/30/2020)
06/30/2020	<a href="#"><u>368</u></a> (47 pgs)	First Monthly Fee Statement of <i>FTI Consulting, Inc. for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Financial Advisor to the Debtors From May 10, 2020 Through and Including May 31, 2020</i> Filed by Evan R. Fleck on behalf of FTI Consulting, Inc.. (Fleck, Evan) (Entered: 06/30/2020)
07/01/2020	<a href="#"><u>369</u></a> (13 pgs)	Motion to Extend Time / <i>Debtors' Motion for Entry of an Order Further Extending Time to File Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases, Statements of Financial Affairs, and Rule 2015.3 Financial Reports</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/01/2020)
07/01/2020	<a href="#"><u>370</u></a> (92 pgs)	Motion to Authorize / <i>Notice of Debtors' Application for Entry of Order Authorizing Employment and Retention of Oliver Wyman, Inc. and Oliver Wyman Services Limited as Strategic Advisor</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 7/15/2020 at 10:00 AM at Courtroom 523 (MG) Responses due by 7/8/2020,. (Fleck, Evan) (Entered: 07/01/2020)
07/01/2020	<a href="#"><u>371</u></a> (74 pgs)	Motion to Authorize / <i>Application for Entry of an Order Authorizing the Retention and Employment of Morrison &amp; Foerster LLP as Counsel to the Official Committee of Unsecured Creditors Nunc Pro Tunc to May 24, 2020</i> filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors with hearing to be held on 7/15/2020 at 10:00 AM at Courtroom 523 (MG) Responses due by 7/8/2020,. (Miller, Brett) (Entered: 07/01/2020)
07/01/2020	<a href="#"><u>372</u></a> (81 pgs)	Motion to Authorize / <i>The Official Committee of Unsecured Creditors' Application for Entry of Order Authorizing Employment and Retention of</i>



		<i>Alton Aviation Consultancy LLC Nunc Pro Tunc to May 27, 2020</i> filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors with hearing to be held on 7/15/2020 at 10:00 AM at Courtroom 523 (MG) Responses due by 7/8/2020,. (Miller, Brett) (Entered: 07/01/2020)
07/01/2020	<a href="#">373</a> (54 pgs)	<i>Motion to Authorize / Application of the Official Committee of Unsecured Creditors of the Debtor, Avianca Holdings S.A., et al., for Order: (A) Authorizing Employment and Retention of Alvarez &amp; Marsal North America, LLC as Financial Advisor Nunc Pro Tunc to May 27, 2020</i> filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors with hearing to be held on 7/15/2020 at 10:00 AM at Courtroom 523 (MG) Responses due by 7/8/2020,. (Miller, Brett) (Entered: 07/01/2020)
07/01/2020	<a href="#">374</a> (86 pgs)	<i>Motion to Authorize / Application of the Official Committee of Unsecured Creditors for Entry of an Order (I) Authorizing the Committee to Retain and Employ Jefferies LLC as Investment Banker Pursuant to 11 U.S.C. §§ 328(a) and 1103(a), Effective as of May 24, 2020, (II) Waiving Certain Information Requirements of Local Bankruptcy Rule 2016-1 and (III) Granting Related Relief</i> filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors with hearing to be held on 7/15/2020 at 10:00 AM at Courtroom 523 (MG) Responses due by 7/8/2020,. (Miller, Brett) (Entered: 07/01/2020)
07/02/2020	<a href="#">375</a> (1 pg)	Order, Signed on 7/2/2020, Granting Application for Pro Hac Vice Admission of Raul R. Herrera (Related Doc # <a href="#">366</a> ). (Anderson, Deanna) (Entered: 07/02/2020)
07/02/2020	<a href="#">376</a> (1 pg)	Order, Signed on 7/2/2020, Granting Application for Pro Hac Vice Admission of Michael L. Bernstein (Related Doc # <a href="#">364</a> ). (Anderson, Deanna) (Entered: 07/02/2020)
07/02/2020	<a href="#">377</a> (16 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Notice of First Amended OCP List; and 2) Declaration and Disclosure Statement of David Heffernan, on Behalf of Cozen OConnor</i> (related document(s) <a href="#">303</a> , <a href="#">305</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 07/02/2020)
07/02/2020	<a href="#">378</a> (2 pgs)	Notice of Withdrawal <i>Of Notice Of Appearance And Request For Service Of Papers</i> (related document(s) <a href="#">58</a> ) filed by Craig E Reimer on behalf of AMCK Aviation Holdings Ireland Limited. (Reimer, Craig) (Entered: 07/02/2020)
07/03/2020	<a href="#">379</a> (51 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on June 23, 2020</i> (related document(s) <a href="#">308</a> , <a href="#">313</a> , <a href="#">316</a> , <a href="#">326</a> , <a href="#">314</a> , <a href="#">309</a> , <a href="#">318</a> , <a href="#">310</a> , <a href="#">311</a> , <a href="#">312</a> , <a href="#">317</a> , <a href="#">322</a> , <a href="#">307</a> , <a href="#">323</a> , <a href="#">306</a> , <a href="#">321</a> , <a href="#">315</a> , <a href="#">324</a> , <a href="#">319</a> , <a href="#">320</a> , <a href="#">325</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 07/03/2020)
07/03/2020	<a href="#">380</a> (23 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Notice of Adjournment of Evidentiary Hearing on Debtors Motion for an Order Authorizing the Debtors to Pay Prepetition Wages, Compensation, and Employee Benefits; and 2) First Monthly Fee Statement of Milbank LLP for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Counsel to the Debtors from May 10, 2020 Through and Including May 31, 2020</i> (related document(s) <a href="#">327</a> , <a href="#">332</a> ) filed by Kurtzman Carson Consultants. (Kass, Albert) (Entered: 07/03/2020)

07/03/2020	<a href="#"><u>381</u></a> (19 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Order Establishing Procedures for Remote Evidentiary Hearing on July 15, 2020 in Connection with Debtor's Motion for an Order Granting Final Relief with Respect to Contested Motion; and 2) First Stipulation and Order Between Debtors and Finance Parties Concerning Certain Collateral</i> (related document(s) <a href="#"><u>346</u></a> , <a href="#"><u>347</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 07/03/2020)
07/03/2020	<a href="#"><u>382</u></a> (4 pgs)	Notice of Appearance filed by Laurel D. Roglen on behalf of Aero Miami II, LLC. (Roglen, Laurel) (Entered: 07/03/2020)
07/03/2020	<a href="#"><u>383</u></a> (3 pgs)	Application for Pro Hac Vice Admission <i>Motion of Leslie C. Heilman for Admission to Practice Pro Hac Vice</i> filed by Leslie C. Heilman on behalf of Aero Miami II, LLC. (Heilman, Leslie) (Entered: 07/03/2020)
07/03/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#"><u>20-11133-mg</u></a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14113415. Fee amount 200.00. (Re: Doc # <a href="#"><u>383</u></a> ) (U.S. Treasury) (Entered: 07/03/2020)
07/03/2020	<a href="#"><u>384</u></a> (2 pgs)	Application for Pro Hac Vice Admission <i>Motion of Lindsey Zions for Admission to Practice Pro Hac Vice</i> filed by Leslie C. Heilman on behalf of Aero Miami II, LLC. (Heilman, Leslie) (Entered: 07/03/2020)
07/03/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#"><u>20-11133-mg</u></a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14113418. Fee amount 200.00. (Re: Doc # <a href="#"><u>384</u></a> ) (U.S. Treasury) (Entered: 07/03/2020)
07/06/2020	<a href="#"><u>385</u></a> (9 pgs)	Amended Final Order, Signed on 7/6/2020, Pursuant to Sections 105(A), 345, 363, and 364 of the Bankruptcy Code (I) Authorizing Debtors to (A) Maintain and Use Existing Cash Management Systems, Bank Accounts and Business Forms; (B) Continue to Engage in Intercompany Transactions and Afford Administrative Expense Priority to Intercompany Claims; (C) Continue Payment of Service Charges; (II) Waiving Compliance With Section 345 of Bankruptcy Code; and (III) Granting Related Relief. (related document(s) <a href="#"><u>247</u></a> ) (Anderson, Deanna) (Entered: 07/06/2020)
07/06/2020	<a href="#"><u>386</u></a> (2 pgs)	Order, Signed on 7/6/2020, Requiring Filing of Status Report Regarding Wages Motion. (related document(s) <a href="#"><u>291</u></a> , <a href="#"><u>3</u></a> ) (Anderson, Deanna) (Entered: 07/06/2020)
07/06/2020	<a href="#"><u>387</u></a> (50 pgs)	Monthly Operating Report <i>for the Period Ending May 31, 2020</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/06/2020)
07/06/2020	<a href="#"><u>388</u></a> (3 pgs)	Amended Notice of Appearance filed by Stephen Seungkun Cha-Kim on behalf of Export-Import Bank of the United States. (Cha-Kim, Stephen) (Entered: 07/06/2020)
07/06/2020	<a href="#"><u>389</u></a> (50 pgs)	Amended Operating Report / <i>Amended Monthly Operating Report for the Period Ending May 31, 2020 related to ECF No. 387</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/06/2020)
07/07/2020	<a href="#"><u>390</u></a> (3 pgs)	Order, Signed on 7/7/2020, (I) Authorizing the Debtors to Redact and File Aircraft Stipulations Under Seal and (II) Granting Related Relief (Related Doc # <a href="#"><u>354</u></a> ). (Anderson, Deanna) (Entered: 07/07/2020)

07/07/2020	<a href="#"><u>391</u></a> (16 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (MSN 1073). (related document(s) <a href="#"><u>353</u></a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#"><u>392</u></a> (16 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (MSN 2687, etc.). (related document(s) <a href="#"><u>353</u></a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#"><u>393</u></a> (16 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (MSN 3961, etc.). (related document(s) <a href="#"><u>353</u></a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#"><u>394</u></a> (16 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (MSN 3408, etc.) (related document(s) <a href="#"><u>353</u></a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#"><u>395</u></a> (18 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (MSN 1342, 4763, 5632, etc.). (related document(s) <a href="#"><u>353</u></a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#"><u>396</u></a> (17 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (MSN 3467, 3518, etc.) (related document(s) <a href="#"><u>353</u></a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#"><u>397</u></a> (29 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (MSN 3664, 4026, 4046, 4051, 4821, 4789, etc.) (related document(s) <a href="#"><u>353</u></a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#"><u>398</u></a> (16 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (MSN 1208). (related document(s) <a href="#"><u>353</u></a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#"><u>399</u></a> (17 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (MSN 1279). (related document(s) <a href="#"><u>353</u></a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#"><u>400</u></a> (17 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (MSN 37510). (related document(s) <a href="#"><u>353</u></a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#"><u>401</u></a> (29 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (MSN 6617, 6511, 6692, 6739, etc.) (related document(s) <a href="#"><u>353</u></a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#"><u>402</u></a> (20 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (EAIIV 2016 - MSN 7284, 7318). (related document(s) <a href="#"><u>353</u></a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#"><u>403</u></a> (22 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (EXIM - MSN 37504,

		37505). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">404</a> (18 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (FGI (Fuyo) - MSN 4001, 4011, etc..) (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">405</a> (20 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (FPG - MSN 39407). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">406</a> (17 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (GECAS - MSN's 4487, 4599). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">407</a> (17 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (Goshawk - MSN's 5243, 5840, 37502). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">408</a> (17 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (ICBC - MSN 6002, 6190). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">409</a> (17 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (ICBC - MSN's 6138, 6411). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">410</a> (20 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (JOLCO JP Lease - MSN 3992). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">411</a> (17 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (JOLCO JP Lease - MSN 4281). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">412</a> (17 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (JOLCO JP Lease - MSN 4284). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">413</a> (17 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (JOLCO NTT - MSN 8300). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">414</a> (18 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (JOLCO SMFL - MSN 7887). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)

07/07/2020	<a href="#">415</a> (18 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (JOLCO SMFL - MSN 7928). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">416</a> (20 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (JP Lease - MSN 3988). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">417</a> (18 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (JSA - MSN's 6153, 6209, 6219). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">418</a> (19 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (Merx - MSN 1224, 4567, 3980, 5195). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">419</a> (18 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (MUFG - MSN 4100). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">420</a> (20 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (MUFG - MSN 3042, 3103, 3113, etc..) (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">421</a> (24 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (MUFG - MSN 4167, 4381, 4336). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">422</a> (23 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (Nord - MSN 2282, 2301, 2444, etc..) (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">423</a> (20 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (Nord - DBJ - MSN 37511, etc..) (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">424</a> (21 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (NY Life EAIIV 2014 - MSN's 6132, 6399, 37503, etc..) (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">425</a> (18 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (ORIX - MSN's 5360, 5477, 5622, etc..) (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">426</a>	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and



	(16 pgs)	Aircraft Counterparties Concerning Certain Aircraft (Seraph - MSN 4906). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">427</a> (16 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (Seraph - MSN 37509). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">428</a> (19 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (SMBC - Avianca Aircraft - MSN 4547, etc.). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">429</a> (18 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (SMBC - TACA Aircraft). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">430</a> (16 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (SMBC Managed - MSN 7437). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">431</a> (16 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (Stratos - MSN 4944). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/07/2020	<a href="#">432</a> (18 pgs)	Second Stipulation and Order, Signed on 7/7/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (Wings - MSN 1400). (related document(s) <a href="#">353</a> ) (Anderson, Deanna) (Entered: 07/07/2020)
07/08/2020	<a href="#">433</a> (2 pgs)	Notice of Adjournment of Hearing / <i>Notice of Adjournment of Meeting of Creditors</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with hearing to be held on 8/14/2020 at 01:00 PM at Office of UST (TELECONFERENCE ONLY) (Fleck, Evan) (Entered: 07/08/2020)
07/08/2020	<a href="#">434</a> (8 pgs)	Objection to Motion / <i>Objection Of The United States Trustee To Entry Of Order Approving The Retention Of Oliver Wyman, Inc. And Oliver Wyman Services Limited As Strategic Advisor To The Debtors</i> (related document(s) <a href="#">370</a> ) filed by Brian S. Masumoto on behalf of United States Trustee. (Masumoto, Brian) (Entered: 07/08/2020)
07/08/2020	<a href="#">435</a> (7 pgs)	<i>Declaration and Disclosure Statement of Mark J. Peregrin, on Behalf of Daugherty, Fowler, Peregrin Haught &amp; Jensen, P.C.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/08/2020)
07/09/2020	<a href="#">436</a> (4 pgs)	<i>Supplemental Declaration of Brett Miller in Support of Application for Entry of an Order Authorizing the Retention and Employment of Morrison &amp; Foerster LLP as Counsel to the Official Committee of Unsecured Creditors Nunc Pro Tunc to May 24, 2020</i> (related document(s) <a href="#">371</a> ) filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. (Miller, Brett) (Entered: 07/09/2020)
07/09/2020	<a href="#">437</a>	<i>Declaration and Disclosure Statement of Manuel Romano Mijares, on</i>

	(6 pgs)	<i>Behalf of Jones Day Mexico, S.C. filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/09/2020)</i>
07/09/2020	<a href="#">438</a> (2 pgs)	Notice of Appearance <i>and Request for Service of Papers</i> filed by Arthur E. Rosenberg on behalf of Banco Cuscatlan de El Salvador, S.A.. (Rosenberg, Arthur) (Entered: 07/09/2020)
07/09/2020	<a href="#">439</a> (2 pgs)	Declaration / <i>Supplemental Declaration of Tim Hoyland in Support of the Application of Debtors for Entry of Order Authorizing Employment and Retention of Oliver Wyman, Inc. and Oliver Wyman Services Limited as Strategic Advisor</i> (related document(s) <a href="#">370</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/09/2020)
07/09/2020	<a href="#">440</a> (3 pgs)	Joint Status Report <i>Regarding Wages Motion</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/09/2020)
07/09/2020	<a href="#">441</a> (8 pgs)	Declaration / <i>Amended Declaration and Disclosure Statement of Mark J. Peregrin, on Behalf of Daugherty, Fowler, Peregrin Haught &amp; Jensen, P.C.</i> (related document(s) <a href="#">435</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/09/2020)
07/09/2020	<a href="#">442</a> (20 pgs)	Certificate of Mailing of Claims Agent <i>re: 1) Notice of Hearing on Debtors Emergency Motion for Entry of an Order Authorizing Alternative Service of Process; 2) Notice of Presentment of Stipulations and Orders Between Debtors and Aircraft Counterparties Concerning Certain Aircraft; and 3) Notice of Presentment of Debtors Motion for Entry of an Order (A) Authorizing the Debtors to Redact and File Aircraft Stipulations Under Seal and (B) Granting Related Relief</i> (related document(s) <a href="#">353</a> , <a href="#">354</a> , <a href="#">350</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 07/09/2020)
07/10/2020	<a href="#">443</a> (5 pgs)	Certificate of Service (related document(s) <a href="#">372</a> , <a href="#">374</a> , <a href="#">371</a> , <a href="#">373</a> ) Filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. (Miller, Brett) (Entered: 07/10/2020)
07/10/2020	<a href="#">444</a> (5 pgs)	Certificate of Service (related document(s) <a href="#">436</a> ) Filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. (Miller, Brett) (Entered: 07/10/2020)
07/10/2020	<a href="#">445</a> (40 pgs)	Statement / <i>Notice of Second Amended OCP List</i> (related document(s) <a href="#">303</a> , <a href="#">260</a> , <a href="#">178</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/10/2020)
07/10/2020	<a href="#">446</a> (28 pgs)	Statement of No Objection / <i>Omnibus Certificate of No Objection</i> (related document(s) <a href="#">360</a> , <a href="#">369</a> , <a href="#">359</a> , <a href="#">358</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/10/2020)
07/10/2020	<a href="#">447</a> (9 pgs)	Certificate of No Objection Pursuant to LR 9075-2 / <i>Certificate of No Objection Regarding Application for Entry of an Order Authorizing the Retention and Employment of Morrison &amp; Foerster LLP as Counsel to the Official Committee of Unsecured Creditors Nunc Pro Tunc to May 24, 2020</i> (related document(s) <a href="#">371</a> ) Filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. (Miller, Brett) (Entered: 07/10/2020)
07/10/2020	<a href="#">448</a> (15 pgs)	Certificate of No Objection Pursuant to LR 9075-2 / <i>Certificate of No Objection Regarding Application of the Official Committee of Unsecured</i>

		<i>Creditors of the Debtor, Avianca Holdings S.A., et al., for Order Authorizing Employment and Retention of Alvarez &amp; Marsal North America, LLC as Financial Advisor Nunc Pro Tunc to May 27, 2020</i> (related document(s) <a href="#">373</a> ) Filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. (Miller, Brett) (Entered: 07/10/2020)
07/10/2020	<a href="#">449</a> (28 pgs)	Certificate of No Objection Pursuant to LR 9075-2 / <i>Certificate of No Objection Regarding The Official Committee of Unsecured Creditors' Application for Entry of Order Authorizing Employment and Retention of Alton Aviation Consultancy LLC Nunc Pro Tunc to May 27, 2020</i> (related document(s) <a href="#">372</a> ) Filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. (Miller, Brett) (Entered: 07/10/2020)
07/10/2020	<a href="#">450</a> (30 pgs)	Certificate of No Objection Pursuant to LR 9075-2 / <i>Certificate of No Objection Regarding Application of the Official Committee of Unsecured Creditors for Entry of an Order (I) Authorizing the Committee to Retain and Employ Jefferies LLC as Investment Banker Pursuant to 11 U.S.C. §§ 328(a) and 1103(a), Effective as of May 24, 2020, (II) Waiving Certain Information Requirements of Local Bankruptcy Rule 2016-1 and (III) Granting Related Relief</i> (related document(s) <a href="#">374</a> ) Filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. (Miller, Brett) (Entered: 07/10/2020)
07/12/2020	<a href="#">451</a> (3 pgs)	<i>Declaration / Supplemental Declaration of Michael G. McGovern in Further Support of Application of Debtors for Authority to Retain and Employ Ropes &amp; Gray LLP as Special Government Investigations Counsel to the Debtors Effective as of The Petition Date</i> (related document(s) <a href="#">180</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/12/2020)
07/13/2020	<a href="#">452</a> (3 pgs)	Application for Pro Hac Vice Admission filed by Devon Eggert on behalf of Oliver Wyman Services Limited, Oliver Wyman, Inc.. (Eggert, Devon) (Entered: 07/13/2020)
07/13/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#">20-11133-mg</a> ) [motion,122] ( 200.00) Filing Fee. Receipt number C14135071. Fee amount 200.00. (Re: Doc # <a href="#">452</a> ) (U.S. Treasury) (Entered: 07/13/2020)
07/13/2020	<a href="#">453</a> (20 pgs; 2 docs)	Reply to Motion <i>For Entry of Order Authorizing Employment and Retention</i> (related document(s) <a href="#">370</a> ) filed by Devon Eggert on behalf of Oliver Wyman Services Limited, Oliver Wyman, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1- Declaration of Matthew Cunningham) (Eggert, Devon) (Entered: 07/13/2020)
07/13/2020	<a href="#">454</a> (19 pgs)	Certificate of Mailing of Claims Agent <i>re: Documents Served on June 30, 2020</i> (related document(s) <a href="#">360</a> , <a href="#">362</a> , <a href="#">365</a> , <a href="#">359</a> , <a href="#">357</a> , <a href="#">367</a> , <a href="#">361</a> , <a href="#">368</a> , <a href="#">358</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 07/13/2020)
07/13/2020	<a href="#">455</a> (9 pgs)	Certificate of Mailing of Claims Agent <i>re: 1) Debtors Motion for Entry of an Order Further Extending Time to File Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases, Statements of Financial Affairs, and Rule 2015.3 Financial Reports; and 2) Notice and Debtors' Application for Entry of Order Authorizing Employment and Retention of Oliver Wyman, Inc. and Oliver Wyman Services Limited as Strategic Advisor</i> (related document(s) <a href="#">369</a> , <a href="#">370</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 07/13/2020)



07/14/2020	<a href="#">456</a> (36 pgs)	Response / <i>Debtors' Supplemental Reply to Objection of the United States Trustee to Entry of Order Authorizing the Debtors to Pay Wages, Compensation, Employee Benefits and Related Relief</i> (related document(s) <a href="#">222, 3</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/14/2020)
07/14/2020	<a href="#">457</a> (5 pgs)	Notice of Agenda / <i>Agenda of Matters Scheduled for Hearing on July 15, 2020 at 10:00 a.m. (Eastern Time)</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with hearing to be held on 7/15/2020 at 10:00 AM at Courtroom 523 (MG) (Fleck, Evan) (Entered: 07/14/2020)
07/14/2020	<a href="#">458</a> (4 pgs)	Statement / <i>Debtors' Witness and Exhibit List</i> (related document(s) <a href="#">3, 370</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/14/2020)
07/14/2020	<a href="#">459</a> (4 pgs)	Order signed on 7/14/2020: (A) Authorizing Employment and Retention of Alvarez & Marsal North America, LLC as Financial Advisor Nunc Pro Tunc to May 27, 2020 (Related Doc # <a href="#">373</a> ) . (Anderson, Deanna) (Entered: 07/14/2020)
07/14/2020	<a href="#">460</a> (4 pgs)	Order, signed on 7/14/2020, Authorizing the Retention and Employment of Morrison & Foerster LLP as Counsel to the Official Committee of Unsecured Creditors Nunc Pro Tunc to May 24, 2020 (Related Doc # <a href="#">371</a> ). (Anderson, Deanna) (Entered: 07/14/2020)
07/14/2020	<a href="#">461</a> (7 pgs)	Order, signed on 7/14/2020, Authorizing The Official Committee of Unsecured Creditors' Employment and Retention of Alton Aviation Consultancy LLC Nunc Pro Tunc to May 27, 2020 (Related Doc # <a href="#">372</a> ). (Anderson, Deanna) (Entered: 07/14/2020)
07/14/2020	<a href="#">462</a> (17 pgs; 2 docs)	Order, Signed on 7/14/2020, (I) Authorizing the Committee to Retain and Employ Jefferies LLC as Investment Banker Pursuant to 11 U.S.C. §§ 328(a) and 1103(a), Effective as of May 24, 2020, (II) Waiving Certain Information Requirements of Local Bankruptcy Rule 2016-1 and (III) Granting Related Relief (Related Doc # <a href="#">374</a> ). (Anderson, Deanna) (Entered: 07/14/2020)
07/14/2020	<a href="#">463</a> (24 pgs)	Adversary case 20-01194. Complaint against G4S Facility Management CIA. LTDA and G4S Secure Solutions International Inc. (Fee Amount \$ 350.). Nature(s) of Suit: (91 (Declaratory judgment)), (72 (Injunctive relief - other)) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A., et al.. (Fleck, Evan) (Entered: 07/14/2020)
07/14/2020	<a href="#">464</a> (4 pgs)	Notice of Agenda / <i>Amended Agenda of Matters Scheduled for Hearing on July 15, 2020 at 10:00 a.m. (Eastern Time)</i> (related document(s) <a href="#">457</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with hearing to be held on 7/15/2020 at 10:00 AM at Courtroom 523 (MG) (Fleck, Evan) (Entered: 07/14/2020)
07/15/2020	<a href="#">465</a> (8 pgs)	Order, Signed on 7/15/2020, Granting Debtors Motion for Authority to Pay Amounts due Under the Debtors Long Term Incentive Plan. (related document(s) <a href="#">440, 3</a> ) (Anderson, Deanna) (Entered: 07/15/2020)
07/15/2020	<a href="#">466</a> (7 pgs)	<i>Declaration and Disclosure Statement of Martin Ibarra Pardo, on Behalf of Araujo Ibarra Consultores S.A.S</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)

07/15/2020	<a href="#"><u>467</u></a> (6 pgs)	Declaration and Disclosure Statement of Badaro Almeida E Advogados Associados, on Behalf of Gilberto Badaro de Almeida Souza filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>468</u></a> (5 pgs)	Order, signed on 7/15/2020, Establishing Procedures for Settling Certain Claims (Related Doc # <a href="#"><u>360</u></a> ). (Anderson, Deanna) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>469</u></a> (6 pgs)	Declaration and Disclosure Statement of Gerardo Camilo Burbano, on Behalf of Camilo Burbano Abogados S.A.S filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>470</u></a> (3 pgs)	Order, Signed on 7/15/2020, Extending the Time to File Notices of Removal of Civil Actions (Related Doc # <a href="#"><u>359</u></a> ). (Anderson, Deanna) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>471</u></a> (7 pgs)	Declaration and Disclosure Statement of Carlos Zagarra Cuba, on Behalf of Galvez, Risso, Zagarra & Asociados filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>472</u></a> (3 pgs)	Order, Signed on 7/15/2020, Granting Debtors' Motion to Further Extend Time to File (I) Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases, Statements of Financial Affairs, and (II) Rule 2015.3 Financial Reports (Related Doc # <a href="#"><u>369</u></a> ). (Anderson, Deanna) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>473</u></a> (7 pgs)	Declaration and Disclosure Statement of Jorge Nemar, on Behalf of Leite, Tosto E Barros Advogados Associados filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>474</u></a> (6 pgs)	Declaration and Disclosure Statement of Mauricio Pava Lugo, on Behalf of Mauricio Pava L. Abogados filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>475</u></a> (6 pgs)	Declaration and Disclosure Statement of Francisco Arias G., on Behalf of Morgan & Morgan filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>476</u></a> (14 pgs; 2 docs)	Order, signed on 7/15/2020, Authorizing the Retention and Employment of Ropes & Gray LLP as Special Government Investigations Counsel to the Debtors Effective as of the Petition Date (Related Doc # <a href="#"><u>180</u></a> ). (Anderson, Deanna) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>477</u></a> (6 pgs)	Declaration and Disclosure Statement of Solange Dias Neves, on Behalf of Solange Neves Advogados Associados filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>478</u></a> (6 pgs)	Declaration and Disclosure Statement of Fernando Elias and Ian McConnell, on Behalf of The Winterbotham Trust Company Limited filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>479</u></a> (6 pgs)	Declaration and Disclosure Statement of Natalie Neto, on Behalf of Walkers (Bermuda) Limited filed by Evan R. Fleck on behalf of Avianca

		Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">480</a> (6 pgs)	<i>Declaration and Disclosure Statement of Neguib Abisambra, on Behalf of Abisambra Pinilla Abogados SAS</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">481</a> (7 pgs)	<i>Declaration and Disclosure Statement of Arturo Gerbaud De La Guardia, on Behalf of Aleman, Cordero, Galindo &amp; Lee</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">482</a> (7 pgs)	<i>Declaration and Disclosure Statement of Alejandro Aleman Ferrari, on Behalf of Alfaro, Ferrer &amp; Ramirez (AFRA)</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">483</a> (6 pgs)	<i>Declaration and Disclosure Statement of Guilherme Amaral, on Behalf of Amaral Biazso Portela &amp; Zucca Sociedade De Advogados</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">484</a> (6 pgs)	<i>Declaration and Disclosure Statement of Harmen van de Wetering-Ashanti Regalado, on Behalf of Amicorp Curacao BV</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">485</a> (6 pgs)	<i>Declaration and Disclosure Statement of Luis Felipe Arana, on Behalf of Arana Brando SAS</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">486</a> (6 pgs)	<i>Statement / Notice of Rejection of Certain Executory Contracts and Unexpired Leases</i> (related document(s) <a href="#">261</a> , <a href="#">361</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">487</a> (40 pgs)	<i>Statement / Notice of Filing of Exhibit for July 15 Omnibus Hearing</i> (related document(s) <a href="#">458</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">488</a> (6 pgs)	<i>Declaration and Disclosure Statement of Patricio Reyes, on Behalf of Bambach y Campos Abogados Limitada</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">489</a> (6 pgs)	<i>Declaration and Disclosure Statement of Ricardo A. Cevallos, on Behalf of BLP Abogados, SA de CV</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">490</a> (6 pgs)	<i>Declaration and Disclosure Statement of Julio Castellanos Villanueva, on Behalf of BLP Abogados</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">491</a> (6 pgs)	<i>Declaration and Disclosure Statement of Maria Ines Arenales, on Behalf of BLP Abogados, S.A.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">492</a> (6 pgs)	<i>Declaration and Disclosure Statement of Jose Alvarez, on Behalf of BLP Honduras Abogados, S.A.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">493</a>	<i>Declaration and Disclosure Statement of Octavio Bofill Genzsch, on</i>

	(6 pgs)	<i>Behalf of Bofill Mir &amp; Ivarez Jana Abogados</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">494</a> (7 pgs)	<i>Declaration and Disclosure Statement of Renato De Perboyre Bonilha, on Behalf of Bonilha &amp; Almeida Advogados Associados</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">495</a> (6 pgs)	<i>Declaration and Disclosure Statement of Jose Giralt, on Behalf of Bufete Giralt &amp; Asociados</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">496</a> (6 pgs)	<i>Declaration and Disclosure Statement of Stefano Carlo Olivero Ros, on Behalf of Bufete Olivero, Sociedad Anonima</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">497</a> (6 pgs)	<i>Declaration and Disclosure Statement of Oscar Buitrago, on Behalf of Buitrago Asociados Ltda</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">498</a> (60 pgs)	<i>Motion to Authorize / Notice of Hearing on Debtors' Motion For Authorization to Enter into Letter Agreement with Financing Arranger</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 7/29/2020 at 11:00 AM at Courtroom 523 (MG) Responses due by 7/22/2020,. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">499</a> (6 pgs)	<i>Declaration and Disclosure Statement of Daniela Carreno Sanchez, on Behalf of C&amp;C Soluciones Juridicas S.A. De C.V.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">500</a> (6 pgs)	<i>Declaration and Disclosure Statement of Manuel Cepeda, on Behalf of C&amp;E Abogados y Asesores SAS</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">501</a> (6 pgs)	<i>Declaration and Disclosure Statement of Luz Elena Cabal Borrero, on Behalf of La Merced Cabal &amp; CIA SCA</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">502</a> (6 pgs)	<i>Declaration and Disclosure Statement of Ricardo Calvete, on Behalf of Calvete &amp; Abogados Asociados S.A.S.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">503</a> (6 pgs)	<i>Declaration and Disclosure Statement of Jaime Carey T., on Behalf Carey y Cia, Ltda</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">504</a> (6 pgs)	<i>Declaration and Disclosure Statement of Andres Ceballos Arango on Behalf Ceballos Arango Abogados S.A.S.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">505</a> (7 pgs)	<i>Declaration and Disclosure Statement of Mildred Avalos on Behalf Central Law Honduras</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#">506</a> (6 pgs)	<i>Declaration and Disclosure Statement of Andrew C. Ferreira, on Behalf Chancery Chambers</i> filed by Evan R. Fleck on behalf of Avianca

		Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>507</u></a> (5 pgs)	<i>Declaration and Disclosure Statement of Mirna Wilches Navarro, on Behalf of Chapman &amp; Asociados</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>508</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Jose Alberto Rodriguez Duque, on Behalf of CL Abogados, S.C.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>509</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Sergio Rodriguez Azuero, on Behalf of Rodriguez-Azuero Asociados SA</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>510</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Diego Salto on Behalf of Consortium Tax Advisors, S.A.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>511</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Juan Jose Icaza, on Behalf of Servicios Legem et Contractus, S. A.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>512</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Miguel Angel Cordova Reyes, on Behalf of Cordova Alvarado Abogados, S.C.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>513</u></a> (7 pgs)	<i>Declaration and Disclosure Statement of Wilhelmus Langeveld and Iseline Gouverneur, on Behalf of Curacao International Trust Company B.V.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>514</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Luisa Fernanda Gomez Uribe, on Behalf of Cuval Abogados S.A.S.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>515</u></a> (6 pgs)	<i>Declaration Declaration and Disclosure Statement of Daniel Labruna, on Behalf of Daniel Labruna &amp; Associates</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>516</u></a> (7 pgs)	<i>Declaration and Disclosure Statement of Bernado Parmenio Cardenas, on Behalf of Dentons Cardenas &amp; Cardenas Abogados Propiedad Intelectual SAS</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>517</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Luisa Medina, on Behalf of Di Ciero Advogados</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>518</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Laura M. Safran, Q.C., on Behalf of DLA Piper (Canada) LLP</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/15/2020	<a href="#"><u>519</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Norman G. De Castro, on Behalf of DR&amp;R Abogados y Consultores Fiscales, SRL</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)



07/15/2020	<a href="#"><u>520</u></a> (7 pgs)	Declaration and Disclosure Statement of Sven Wassmer, on Behalf of DRW Legal filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/15/2020)
07/16/2020	<a href="#"><u>521</u></a> (21 pgs)	Certificate of Mailing of Claims Agent re: 1) Amended Final Order Pursuant to Sections 105(a), 345, 363, and 364 of the Bankruptcy Code (I) Authorizing Debtors to (A) Maintain and Use Existing Cash Management Systems, Bank Accounts and Business Forms; (B) Continue to Engage in Intercompany Transactions and Afford Administrative Expense Priority to Intercompany Claims; (C) Continue Payment of Service Charges; (II) Waiving Compliance with Section 345 of Bankruptcy Code; and (III) Granting Related Relief; and 2) Order Requiring Filing of Status Report Regarding Wages Motion (related document(s) <a href="#"><u>386</u></a> , <a href="#"><u>385</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>522</u></a> (21 pgs)	Certificate of Mailing of Claims Agent re 1) Order (I) Authorizing the Debtors to Redact and File Under Seal Their Reply to Objection of the United States Trustee to Entry of an Order Authorizing the Debtors to Pay Wages, Compensation, Employee Benefits and Related Relief and (II) Granting Related Relief; and 2) Notice of Presentment of Stipulation and Order Between Debtors and Finance Counterparties Concerning Certain Collateral (related document(s) <a href="#"><u>300</u></a> , <a href="#"><u>299</u></a> , <a href="#"><u>348</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>523</u></a> (3 pgs)	Supplemental Order, signed on 7/16/2020, Authorizing but not Directing, Debtors to Pay Long Term Incentive Plan Obligations. (related document(s) <a href="#"><u>465</u></a> ) (Anderson, Deanna) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>524</u></a> (3 pgs)	Order, Signed on 7/16/2020, Authorizing Debtors to Pay Certain Fees and Expenses of Professionals Retained by the Government of the Republic of Columbia (Related Doc # <a href="#"><u>358</u></a> ) . (Anderson, Deanna) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>525</u></a> (2 pgs)	Statement / Notice of Establishment of Omnibus Hearing Dates Pursuant to Order Implementing Certain Notice and Case Management Procedures filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>526</u></a> (6 pgs)	Declaration and Disclosure Statement of Claudia Al-Alam Elias Fernandes on Behalf of Elias Fernandes Sociedade de Advogados filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>527</u></a> (7 pgs)	Declaration and Disclosure Statement of Alfonso Miranda Londono, on Behalf of Esguerra Asesores Juricos S.A filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>528</u></a> (6 pgs)	Declaration and Disclosure Statement of Jorge A. Alarcon Revilla on Behalf of Estudio Alarcon Revilla - Abogados filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>529</u></a> (6 pgs)	Declaration and Disclosure Statement of Mauricio Olaya on Behalf of Estudio Muniz S. Civil de R.L. filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>530</u></a> (6 pgs)	Declaration and Disclosure Statement of Juan E. Diaz Hidalgo, on Behalf of Eversheds Sutherland Nicea, S.L.P. filed by Evan R. Fleck on behalf of

		Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>531</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Gianni Gutierrez on behalf of, Mayer, Gonzlaez Y Otros Sociedad Civil (Ferrere Abogados)</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>532</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Elizabeth Mireya Freidenberg on behalf of Elizabeth Mireya Freidenberg</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>533</u></a> (8 pgs)	<i>Declaration and Disclosure Statement of Marie Linnette Garcia Campos on behalf of Garcia Campos &amp; Asociados, S.R.L.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>534</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Jose Ignacio Garcia Arboleda, on behalf of Garciarboleda Abogados SAS</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>535</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Garrigues Colombia S.A.S., on behalf of Avianca Holdings S.A.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>536</u></a> (2 pgs)	<i>Statement of Intention re Notice of Filing of Defendant's Response to Debtors' Motion for Temporary Restraining Order and Preliminary Injunction</i> Filed by Edward Joseph George on behalf of G4S Secure Solutions International Inc.. (George, Edward) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>537</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Andres Valencia, on behalf of Valencia Jaramillo Y Gesinco Abogados</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>538</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Michelle Pindling Sands, on behalf of Graham Thompson</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>539</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Alejandro Jose Piera Valdes, on behalf of GHP Attorneys at Law</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>540</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Roberto R. Aleman H., on behalf of Icaza, Gonzalez-Ruiz &amp; Aleman</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>541</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Jaime Mejia, on behalf of Integral Advisors</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>542</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Ivan Mattar, on behalf of Ivan Mattar</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>543</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Jaime Granados Pena, on behalf of Jaime Granados SAS</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)



07/16/2020	<a href="#">544</a> (5 pgs)	Declaration and Disclosure Statement of Javier Acosta Naranjo, on behalf of Javier Acosta Naranjo SAS filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#">545</a> (7 pgs)	Declaration and Disclosure Statement of Juan Carlos Suarez filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#">546</a> (6 pgs)	Declaration and Disclosure Statement of Fernando Moreno Quijano, on behalf of FMQ Abogados S.A.S. filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#">547</a> (6 pgs)	Declaration and Disclosure of Juliana Rojas Arango, on behalf of Rojas Arango Osorio S.A.S. filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#">548</a> (6 pgs)	Declaration and Disclosure Statement of Jose Alberto Monterrosa Ordenana, on behalf of Jurex Law filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#">549</a> (6 pgs)	Declaration and Disclosure Statement of David Mauricio Lopez Granadino, on behalf of L.G. Inversiones, S.A. filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#">550</a> (6 pgs)	Declaration and Disclosure Statement of Jose Antonio Gomez, on behalf of LLM Abogados filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#">551</a> (6 pgs)	Declaration and Disclosure Statement of Juan Pablo Lopez, on behalf of Lopez & Asociados SAS filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#">552</a> (6 pgs)	Declaration and Disclosure Statement of Renata Martins de Oliveira Amado, on behalf of Machado Meyer Sendacz e Opice Advogados filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#">553</a> (6 pgs)	Declaration and Disclosure Statement of Tatiana Rego E Silva, on behalf of Martel Assessoria E. Consultoria Aeronautica LTDA filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#">554</a> (6 pgs)	Declaration and Disclosure Statement of Jose Antonio Morales Y, on behalf of Morales Y Cia Abogados filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#">555</a> (6 pgs)	Declaration and Disclosure Statement of Tomas Federico Nassar Perez, on behalf of Nassar Abogados Costa Rica S.A. filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#">556</a> (5 pgs; 3 docs)	Application for Pro Hac Vice Admission for John M. Spires filed by Edward Joseph George on behalf of G4S Secure Solutions International Inc.. (Attachments: # <a href="#">1</a> Affidavit # <a href="#">2</a> Proposed Order) (George, Edward) (Entered: 07/16/2020)
07/16/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#">20-11133-mg</a> )

		[motion,122] ( 200.00) Filing Fee. Receipt number A14145291. Fee amount 200.00. (Re: Doc # <a href="#">556</a> ) (U.S. Treasury) (Entered: 07/16/2020)
07/16/2020	<a href="#">557</a> (6 pgs)	Declaration and Disclosure Statement of Henry Rodriguez Moreno, on behalf of Nassar Abogados El Salvador S.A. filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	558	<b>(This Document is Superseded by Document No. <a href="#">559</a>)</b> Declaration and Disclosure Statement of Maricruz Aragon Nassar, on behalf of Nassar Abogados Honduras S.A. filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) <b>Modified on 7/16/2020 (Bush, Brent)</b> (Entered: 07/16/2020)
07/16/2020	<a href="#">559</a> (6 pgs)	Declaration and Disclosure Statement of Maricruz Aragon Nassar, on behalf of Nassar Abogados Honduras S.A. filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#">560</a> (6 pgs)	Declaration and Disclosure Statement of Maria Lupita Quintero Nassar, on behalf of Nassar Abogados Nicaragua S.A. filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#">561</a> (6 pgs)	Declaration and Disclosure Statement of Edmundo Olivares Dufoo, on behalf of Olivares Dufoo Y Asociados S.C. filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#">562</a> (6 pgs)	Declaration and Disclosure Statement of Carlos Fernando Pellecer Valenzuela, on behalf of Algiers Consultants Guatemala S.A. filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#">563</a> (6 pgs)	Declaration and Disclosure Statement of Lautaro Damian Ferro, on Behalf of Perez Alati, Grondona, Benites & Arntsen filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#">564</a> (6 pgs)	Declaration and Disclosure Statement of Sebastian Perez-Arteta, on Behalf of Perez, Bustamante Y Ponce Abogados CIA. Ltda. filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#">565</a> (6 pgs)	Declaration and Disclosure Statement of Felix Picardi, on Behalf of Picardi & Co. filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#">566</a> (6 pgs)	Declaration and Disclosure Statement of Eduardo Pilonieta Pinilla, on Behalf of Pilonietalvarez SAS filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#">567</a> (6 pgs)	Declaration and Disclosure Statement of Javier Del Valle Petersfeldt, on Behalf of Pinto Ruiz & Del Valle, S.L.P. filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#">568</a> (6 pgs)	Declaration and Disclosure Statement of Fidel Chavez Mena, on Behalf of Prisma Consultoria Integral, S.A. De C.V. filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#">569</a>	Declaration and Disclosure Statement of James Ian Raisbeck, on Behalf

	(6 pgs)	<i>of Raisbeck Y Castro S.A.S.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>570</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Raul Humberto Monroy Gallego, on Behalf of Asesorias Juridicas Y Administrativas SAS</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>571</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Natalia Eleonora, Shuga on Behalf of Romero Zapiola, Clusellas &amp; Shuga Abogados S.R.L.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>572</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Humberto Saenz Marinero, on Behalf of Saenz Public, S.A. De C.V.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>573</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Sergio Fernando Salazar Machicado, on Behalf of Salazar Y Asociados</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>574</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Servio Tulio Caicedo Velasco, on Behalf of Senecar LTDA</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>575</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Felipe Serrano Pinilla, on Behalf of Serrano Martinez S.A.S.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>576</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Guilherme Justino Dantas, on Behalf of SiqueiraCastro Advogados</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>577</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Juan Carlos Ramirez Santana, on Behalf of Soluciones de Planeacion Empresarial S.C. de R.L. de C.V.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>578</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Alberto Jubiz, on Behalf of Vall De Ruten Y Jubiz Abogados S.A.S.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	<a href="#"><u>579</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Nicolas Uribe Lozada, on Behalf of Vivas &amp; Uribe Abogados SAS</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/16/2020)
07/16/2020	620	Transcript regarding Hearing Held on 07/15/2020 at 10:00 am RE: Telephonic Final Hearing Regarding Motion (I) Authorizing, But Not Directing, The Debtors to (A) Pay Prepetition Wages, Compensation and Employee Benefits And (B) Continue Payment of Wages, Compensation, Employee Benefits and Related Administrative Obligations in the Ordinary Course Of Business; and (II) Authorizing and Directing Applicable Banks and Financial Institutions to Process and Pay All Checks Presented for Payment and to Honor all Funds Transfer Requests Made by The Debtors. (Doc# 35, 3, 222, 238, 239, 240, 251, 268, 274, 280, 285, 289, 290, 291, 293, 327, 346, 440)...et al. <a href="#">Remote electronic access to the transcript is restricted until 10/14/2020.</a>

		The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: eScribers, LLC.]. (See the Courts Website for contact information for the Transcription Service Agency.) (RE: related document(s) <a href="#">439</a> , <a href="#">369</a> , <a href="#">180</a> , <a href="#">359</a> , <a href="#">434</a> , <a href="#">358</a> , <a href="#">451</a> , <a href="#">370</a> , <a href="#">218</a> , <a href="#">446</a> ). Notice of Intent to Request Redaction Deadline Due By 7/23/2020. Statement of Redaction Request Due By 8/6/2020. Redacted Transcript Submission Due By 8/17/2020. Transcript access will be restricted through 10/14/2020. (Lewis, Tenille) (Entered: 07/23/2020)
07/17/2020	<a href="#">580</a> (3 pgs)	Notice of Appearance <i>and Demand for Service of Papers</i> filed by Kathrine A. McLendon on behalf of Organizacion Terpel S.A.. (McLendon, Kathrine) (Entered: 07/17/2020)
07/17/2020	<a href="#">581</a> (6 pgs)	Declaration <i>and Disclosure Statement of Maria del Carmen Garcia Merlos, on Behalf of Garcia Merlos Y Asociados</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/17/2020)
07/17/2020	<a href="#">582</a> (6 pgs)	Declaration <i>and Disclosure Statement of Nestor Camilo Martinez, on Behalf of DLA Piper Martinez Beltran Abogados S.A.S.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/17/2020)
07/17/2020	<a href="#">583</a> (6 pgs)	Declaration <i>and Disclosure Statement of Andres Godoy Cordoba, on Behalf of Godoy Cordoba Abogados</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/17/2020)
07/17/2020	<a href="#">584</a> (5 pgs)	Declaration <i>and Disclosure Statement of Nathan A. Haynes, on Behalf of Greenberg Traurig, LLP</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/17/2020)
07/17/2020	<a href="#">585</a> (6 pgs)	Declaration <i>and Disclosure Statement of Guillermo Grellaud, on Behalf of Grellaud Y Luque Abogados SCRL</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/17/2020)
07/17/2020	<a href="#">586</a> (6 pgs)	Declaration <i>and Disclosure Statement of Eduardo Rene Mayora Alvarado, on Behalf of Mayora &amp; Mayora S. C.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/17/2020)
07/17/2020	<a href="#">587</a> (6 pgs)	Declaration <i>and Disclosure Statement of Lewis C. Leyard, on Behalf of Morris James LLP</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/17/2020)
07/17/2020	<a href="#">588</a> (5 pgs)	Declaration <i>and Disclosure Statement of Jean-Paul Chabaneix, on Behalf of Elias &amp; Medrano Abogados</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/17/2020)
07/17/2020	<a href="#">589</a> (6 pgs)	Declaration <i>and Disclosure Statement of Gustavo J. Tarassa, on Behalf of BTELT Y Asociados SRL dba Bullo Abogados</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/17/2020)
07/17/2020	<a href="#">590</a> (6 pgs)	Declaration <i>and Disclosure Statement of Carlos Lopez G., on Behalf of Carillo Y Carrillo S.A.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/17/2020)

07/17/2020	<a href="#"><u>591</u></a> (8 pgs)	Declaration and Disclosure Statement of Hernando Villa Restrepo on Behalf of Hernando Villa Restrepo Lawyer filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/17/2020)
07/17/2020	<a href="#"><u>592</u></a> (6 pgs)	Declaration and Disclosure Statement of Alberto Bonilla on Behalf of Jesus Alberto Bonilla Leyva filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/17/2020)
07/17/2020	<a href="#"><u>593</u></a> (6 pgs)	Declaration and Disclosure Statement of Jose Roberto Herrera Vergara on Behalf of Jose Roberto Herrera Vergara Abogado EU filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/17/2020)
07/17/2020	<a href="#"><u>594</u></a> (6 pgs)	Declaration and Disclosure Statement of Tim Hanigan on Behalf of Lang, Hanigan & Carvalho, LLP filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/17/2020)
07/17/2020	<a href="#"><u>595</u></a> (6 pgs)	Declaration and Disclosure Statement of Luis Felipe Bonilla on Behalf of Luis Felipe Bonilla Escobar filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/17/2020)
07/17/2020	<a href="#"><u>596</u></a> (6 pgs)	Declaration and Disclosure Statement of Luz Nelly Carreno on Behalf of Luz Nelly Carreno Perez filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/17/2020)
07/17/2020	<a href="#"><u>597</u></a> (7 pgs)	Declaration and Disclosure Statement of Joao Humberto Martorelli on Behalf of Martorelli Advogados filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/17/2020)
07/17/2020	<a href="#"><u>598</u></a> (6 pgs)	Declaration and Disclosure Statement of Matco Mendoza on Behalf of Mendoza Abogados SAS filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/17/2020)
07/17/2020	<a href="#"><u>599</u></a> (6 pgs)	Declaration and Disclosure Statement of Vitor Manoel Castan, on Behalf of Castan & Araujo Advogados Associados filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/17/2020)
07/17/2020	<a href="#"><u>600</u></a> (1 pg)	Order, Signed on 7/17/2020, Granting Application for Pro Hac Vice Admission of John M. Spires (Related Doc # <a href="#"><u>556</u></a> ). (Anderson, Deanna) (Entered: 07/17/2020)
07/17/2020	<a href="#"><u>601</u></a> (77 pgs)	Certificate of Mailing of Claims Agent re Documents Served on July 7, 2020 (related document(s) <a href="#"><u>422</u></a> , <a href="#"><u>413</u></a> , <a href="#"><u>393</u></a> , <a href="#"><u>426</u></a> , <a href="#"><u>409</u></a> , <a href="#"><u>400</u></a> , <a href="#"><u>408</u></a> , <a href="#"><u>427</u></a> , <a href="#"><u>418</u></a> , <a href="#"><u>415</u></a> , <a href="#"><u>414</u></a> , <a href="#"><u>405</u></a> , <a href="#"><u>428</u></a> , <a href="#"><u>399</u></a> , <a href="#"><u>407</u></a> , <a href="#"><u>404</u></a> , <a href="#"><u>401</u></a> , <a href="#"><u>429</u></a> , <a href="#"><u>430</u></a> , <a href="#"><u>394</u></a> , <a href="#"><u>416</u></a> , <a href="#"><u>419</u></a> , <a href="#"><u>391</u></a> , <a href="#"><u>411</u></a> , <a href="#"><u>392</u></a> , <a href="#"><u>421</u></a> , <a href="#"><u>425</u></a> , <a href="#"><u>406</u></a> , <a href="#"><u>431</u></a> , <a href="#"><u>396</u></a> , <a href="#"><u>403</u></a> , <a href="#"><u>420</u></a> , <a href="#"><u>412</u></a> , <a href="#"><u>397</u></a> , <a href="#"><u>423</u></a> , <a href="#"><u>389</u></a> , <a href="#"><u>417</u></a> , <a href="#"><u>424</u></a> , <a href="#"><u>398</u></a> , <a href="#"><u>432</u></a> , <a href="#"><u>402</u></a> , <a href="#"><u>410</u></a> , <a href="#"><u>390</u></a> , <a href="#"><u>395</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 07/17/2020)
07/20/2020	<a href="#"><u>602</u></a> (4 pgs)	Notice of Appearance filed by Sheron Korpus on behalf of USAVflow Limited. (Korpus, Sheron) (Entered: 07/20/2020)
07/20/2020	<a href="#"><u>603</u></a> (4 pgs)	Notice of Appearance filed by David S. Rosner on behalf of USAVflow Limited. (Rosner, David) (Entered: 07/20/2020)
07/20/2020	<a href="#"><u>604</u></a>	Notice of Appearance filed by David J. Mark on behalf of USAVflow



	(4 pgs)	Limited. (Mark, David) (Entered: 07/20/2020)
07/21/2020	<a href="#">605</a> (17 pgs)	First Monthly Fee Statement of Alvarez & Marsal North America, LLC for Payment of Compensation and Reimbursement of Expenses as Financial Advisor to the Official Committee of Unsecured Creditors for the Period from May 27, 2020 through June 30, 2020 Filed by Brett H. Miller on behalf of Alvarez & Marsal North America, LLC. (Miller, Brett) (Entered: 07/21/2020)
07/21/2020	<a href="#">606</a> (27 pgs)	First Monthly Fee Statement of Alton Aviation Consultancy LLC for Specialized Aviation Advisory Services Rendered and Reimbursement of Expenses Incurred as Professionals for the Official Committee of Unsecured Creditors for the Period May 27, 2020 through June 30, 2020 Filed by Brett H. Miller on behalf of Alton Aviation Consultancy LLC. (Miller, Brett) (Entered: 07/21/2020)
07/21/2020	<a href="#">607</a> (24 pgs)	Monthly Fee Statement / Consolidated First Monthly Fee Statement of Jefferies LLC for Allowance of Compensation Earned and Reimbursement of Expenses Incurred for the Period from May 24, 2020 To and Including June 30, 2020 Filed by Brett H. Miller on behalf of Jefferies LLC. (Miller, Brett) (Entered: 07/21/2020)
07/21/2020	<a href="#">608</a> (999 pgs)	Certificate of Mailing of Claims Agent re Notice of Adjournment of Meeting of Creditors (related document(s) <a href="#">433</a> ) filed by <b>Kurtzman Carson Consultants</b> (Kass, Albert) Modified on 7/22/2020 (Richards, Beverly). (Entered: 07/21/2020)
07/21/2020	<a href="#">609</a> (5 pgs)	Certificate of Mailing of Claims Agent re Declaration and Disclosure Statement of Mark J. Peregrin, on Behalf of Daugherty, Fowler, Peregrin, Haught & Jenson, P.C. (related document(s) <a href="#">435</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 07/21/2020)
07/21/2020	<a href="#">610</a> (23 pgs)	Certificate of Mailing of Claims Agent re: Documents Served on July 9, 2020 (related document(s) <a href="#">439</a> , <a href="#">440</a> , <a href="#">441</a> , <a href="#">437</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 07/21/2020)
07/21/2020	<a href="#">611</a> (12 pgs)	Certificate of Mailing of Claims Agent re: 1) Order Authorizing Debtors to Employ and Pay Professionals Used in the Ordinary Course of Business; 2) Notice of Second Amended OCP List; and 3) Omnibus Certificate of No Objection (related document(s) <a href="#">445</a> , <a href="#">260</a> , <a href="#">446</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 07/21/2020)
07/22/2020	<a href="#">612</a> (4 pgs)	Amended Notice of Hearing on Debtors' Motion for Authorization to Enter Into Letter Agreement with Financing Arranger (related document(s) <a href="#">498</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with hearing to be held on 7/29/2020 at 11:00 AM at Courtroom 523 (MG) Objections due by 7/22/2020, (Fleck, Evan) (Entered: 07/22/2020)
07/22/2020	<a href="#">613</a> (3 pgs)	Application for Pro Hac Vice Admission filed by Ross Robert Hartog on behalf of Alliance Ground International, LLC, Kelly Tractor Company. (Hartog, Ross) (Entered: 07/22/2020)
07/22/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#">20-11133-mg</a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14159252. Fee amount 200.00. (Re: Doc # <a href="#">613</a> ) (U.S. Treasury) (Entered: 07/22/2020)

07/22/2020	<a href="#">614</a> (4 pgs)	Notice of Appearance <i>and Request for Service of Papers</i> filed by Glenn M. Kurtz on behalf of USAV Secured Lender Group. (Kurtz, Glenn) (Entered: 07/22/2020)
07/22/2020	<a href="#">615</a> (7 pgs)	Statement / <i>Verified Statement of White &amp; Case LLP and The USAV Secured Lender Group Pursuant to Bankruptcy Rule 2019</i> filed by Mark Franke on behalf of USAV Secured Lender Group. (Franke, Mark) (Entered: 07/22/2020)
07/22/2020	<a href="#">616</a> (29 pgs; 2 docs)	Objection to Motion / <i>USAVflow Limiteds Objection And Reservation Of Rights To Debtors Motion For Entry Of An Order Authorizing Rejection Of Certain Executory Contracts [D.I. 306]</i> (related document(s) <a href="#">306</a> ) filed by Sheron Korpus on behalf of USAVflow Limited. (Attachments: # <a href="#">1</a> Exhibit A) (Korpus, Sheron) (Entered: 07/22/2020)
07/22/2020	<a href="#">617</a> (33 pgs)	Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of An Order Authorizing Rejection of Certain Executory Contracts (related document(s) <a href="#">306</a> ) filed by Glenn M. Kurtz on behalf of USAV Secured Lender Group. (Kurtz, Glenn) (Entered: 07/22/2020)
07/22/2020	<a href="#">618</a> (399 pgs; 2 docs)	Declaration of Suescun Melo in Support Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of An Order Authorizing Rejection of Certain Executory Contracts (related document(s) <a href="#">617</a> ) filed by Glenn M. Kurtz on behalf of USAV Secured Lender Group. (Attachments: # <a href="#">1</a> Exhibit A) (Kurtz, Glenn) (Entered: 07/23/2020)
07/23/2020	<a href="#">619</a> (300 pgs; 19 docs)	Declaration Joshua D. Weedman in Support Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of An Order Authorizing Rejection of Certain Executory Contracts (related document(s) <a href="#">617</a> ) filed by Glenn M. Kurtz on behalf of USAV Secured Lender Group. (Attachments: # <a href="#">1</a> Exhibit A # <a href="#">2</a> Exhibit B # <a href="#">3</a> Exhibit C # <a href="#">4</a> Exhibit D # <a href="#">5</a> Exhibit E # <a href="#">6</a> Exhibit F # <a href="#">7</a> Exhibit G-1 # <a href="#">8</a> Exhibit G-2 # <a href="#">9</a> Exhibit G-3 # <a href="#">10</a> Exhibit G-4 # <a href="#">11</a> Exhibit G-5 # <a href="#">12</a> Exhibit G-6 # <a href="#">13</a> Exhibit G-7 # <a href="#">14</a> Exhibit G-8 # <a href="#">15</a> Exhibit G-9 # <a href="#">16</a> Exhibit G-10 # <a href="#">17</a> Exhibit G-11 # <a href="#">18</a> Exhibit G-12) (Kurtz, Glenn) (Entered: 07/23/2020)
07/23/2020	<a href="#">621</a> (8 pgs)	Certificate of Mailing of Claims Agent <i>re Supplemental Declaration of Michael G. McGovern in Further Support of Application of Debtors for Authority to Retain and Employ Ropes &amp; Gray LLP as Special Government Investigations Counsel to the Debtors Effective as of the Petition Date</i> (related document(s) <a href="#">451</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 07/23/2020)
07/23/2020	<a href="#">622</a> (6 pgs)	Declaration and Disclosure Statement of Luis Velez on Behalf of Urdaneta, Velez, Pearl & Abdallah Abogados filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/23/2020)
07/23/2020	<a href="#">623</a> (6 pgs)	Declaration and Disclosure Statement of Carlos Ruffinelli, on Behalf of Moreno Ruffinelli & Asociados filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/23/2020)
07/23/2020	<a href="#">624</a> (6 pgs)	Declaration and Disclosure Statement of Rafael Sanchez-Navarro Caraza, on behalf of BSN Bufete Sanchez-Navarro, S.C. filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/23/2020)



07/23/2020	<a href="#"><u>625</u></a> (6 pgs)	Declaration and Disclosure Statement of Felipe Alvarez E., on behalf of Alvarez Lievano Laserna SAS filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/23/2020)
07/23/2020	<a href="#"><u>626</u></a> (19 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on July 14, 2020</i> (related document(s) <a href="#"><u>458</u></a> , <a href="#"><u>464</u></a> , <a href="#"><u>456</u></a> , <a href="#"><u>457</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 07/23/2020)
07/24/2020	<a href="#"><u>627</u></a> (7 pgs)	Declaration and Disclosure Statement of Mary Ward, on Behalf of Carey Olsen Bermuda Limited filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/24/2020)
07/24/2020	<a href="#"><u>628</u></a> (7 pgs; 2 docs)	Order Signed on 7/24/2020 Scheduling Status Conference with Counsel Concerning Debtor's Motion to Reject to USAV Agreements. The Status Conference Will be Held on 7/27/2020 at 03:30 p.m. (related document(s) <a href="#"><u>306</u></a> ) (Calderon, Lynda) (Entered: 07/24/2020)
07/24/2020	<a href="#"><u>629</u></a> (30 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on July 15, 2020</i> (related document(s) <a href="#"><u>478</u></a> , <a href="#"><u>508</u></a> , <a href="#"><u>481</u></a> , <a href="#"><u>491</u></a> , <a href="#"><u>492</u></a> , <a href="#"><u>472</u></a> , <a href="#"><u>500</u></a> , <a href="#"><u>470</u></a> , <a href="#"><u>519</u></a> , <a href="#"><u>473</u></a> , <a href="#"><u>499</u></a> , <a href="#"><u>471</u></a> , <a href="#"><u>484</u></a> , <a href="#"><u>497</u></a> , <a href="#"><u>516</u></a> , <a href="#"><u>503</u></a> , <a href="#"><u>507</u></a> , <a href="#"><u>486</u></a> , <a href="#"><u>496</u></a> , <a href="#"><u>513</u></a> , <a href="#"><u>506</u></a> , <a href="#"><u>483</u></a> , <a href="#"><u>466</u></a> , <a href="#"><u>511</u></a> , <a href="#"><u>514</u></a> , <a href="#"><u>482</u></a> , <a href="#"><u>485</u></a> , <a href="#"><u>474</u></a> , <a href="#"><u>520</u></a> , <a href="#"><u>505</u></a> , <a href="#"><u>512</u></a> , <a href="#"><u>510</u></a> , <a href="#"><u>498</u></a> , <a href="#"><u>518</u></a> , <a href="#"><u>509</u></a> , <a href="#"><u>493</u></a> , <a href="#"><u>488</u></a> , <a href="#"><u>494</u></a> , <a href="#"><u>495</u></a> , <a href="#"><u>465</u></a> , <a href="#"><u>501</u></a> , <a href="#"><u>479</u></a> , <a href="#"><u>469</u></a> , <a href="#"><u>490</u></a> , <a href="#"><u>515</u></a> , <a href="#"><u>517</u></a> , <a href="#"><u>487</u></a> , <a href="#"><u>504</u></a> , <a href="#"><u>480</u></a> , <a href="#"><u>476</u></a> , <a href="#"><u>468</u></a> , <a href="#"><u>502</u></a> , <a href="#"><u>467</u></a> , <a href="#"><u>475</u></a> , <a href="#"><u>477</u></a> , <a href="#"><u>489</u></a> ) filed by Kurtzman Carson Consultants. (Kass, Albert) (Entered: 07/24/2020)
07/24/2020	<a href="#"><u>630</u></a> (7 pgs)	Statement of No Objection / <i>Certificate of No Objection Regarding Debtors' Motion for Authorization to Enter Into Letter Agreement with Financing Arranger</i> (related document(s) <a href="#"><u>498</u></a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/24/2020)
07/24/2020	<a href="#"><u>631</u></a> (19 pgs)	Affidavit of Service of <i>Ulises Perez Acosta</i> (related document(s) <a href="#"><u>618</u></a> , <a href="#"><u>614</u></a> , <a href="#"><u>617</u></a> , <a href="#"><u>619</u></a> , <a href="#"><u>615</u></a> ) filed by Glenn M. Kurtz on behalf of USAV Secured Lender Group. (Kurtz, Glenn) (Entered: 07/24/2020)
07/24/2020	<a href="#"><u>632</u></a> (26 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on July 16, 2020</i> (related document(s) <a href="#"><u>573</u></a> , <a href="#"><u>532</u></a> , <a href="#"><u>561</u></a> , <a href="#"><u>575</u></a> , <a href="#"><u>563</u></a> , <a href="#"><u>529</u></a> , <a href="#"><u>537</u></a> , <a href="#"><u>553</u></a> , <a href="#"><u>568</u></a> , <a href="#"><u>541</u></a> , <a href="#"><u>543</u></a> , <a href="#"><u>551</u></a> , <a href="#"><u>530</u></a> , <a href="#"><u>550</u></a> , <a href="#"><u>533</u></a> , <a href="#"><u>523</u></a> , <a href="#"><u>564</u></a> , <a href="#"><u>559</u></a> , <a href="#"><u>547</u></a> , <a href="#"><u>531</u></a> , <a href="#"><u>546</u></a> , <a href="#"><u>540</u></a> , <a href="#"><u>560</u></a> , <a href="#"><u>526</u></a> , <a href="#"><u>552</u></a> , <a href="#"><u>549</u></a> , <a href="#"><u>527</u></a> , <a href="#"><u>562</u></a> , <a href="#"><u>570</u></a> , <a href="#"><u>544</u></a> , <a href="#"><u>545</u></a> , <a href="#"><u>569</u></a> , <a href="#"><u>572</u></a> , <a href="#"><u>542</u></a> , <a href="#"><u>524</u></a> , <a href="#"><u>579</u></a> , <a href="#"><u>571</u></a> , <a href="#"><u>548</u></a> , <a href="#"><u>566</u></a> , <a href="#"><u>557</u></a> , <a href="#"><u>525</u></a> , <a href="#"><u>534</u></a> , <a href="#"><u>539</u></a> , <a href="#"><u>538</u></a> , <a href="#"><u>574</u></a> , <a href="#"><u>578</u></a> , <a href="#"><u>554</u></a> , <a href="#"><u>565</u></a> , <a href="#"><u>528</u></a> , <a href="#"><u>535</u></a> , <a href="#"><u>567</u></a> , <a href="#"><u>555</u></a> , <a href="#"><u>576</u></a> , <a href="#"><u>577</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 07/24/2020)
07/24/2020	<a href="#"><u>633</u></a> (7 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on July 17, 2020</i> (related document(s) <a href="#"><u>595</u></a> , <a href="#"><u>583</u></a> , <a href="#"><u>594</u></a> , <a href="#"><u>590</u></a> , <a href="#"><u>592</u></a> , <a href="#"><u>596</u></a> , <a href="#"><u>591</u></a> , <a href="#"><u>598</u></a> , <a href="#"><u>581</u></a> , <a href="#"><u>586</u></a> , <a href="#"><u>587</u></a> , <a href="#"><u>589</u></a> , <a href="#"><u>588</u></a> , <a href="#"><u>593</u></a> , <a href="#"><u>599</u></a> , <a href="#"><u>585</u></a> , <a href="#"><u>582</u></a> , <a href="#"><u>597</u></a> , <a href="#"><u>584</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 07/24/2020)
07/26/2020	<a href="#"><u>634</u></a> (13 pgs)	Certificate of Mailing (related document(s) (Related Doc # <a href="#"><u>628</u></a> )) . Notice Date 07/26/2020. (Admin.) (Entered: 07/27/2020)
07/27/2020	<a href="#"><u>635</u></a> (3 pgs)	Order signed on 7/27/2020 Authorizing Debtors to Enter Into Letter Agreement With Financing Arranger (Related Doc # <a href="#"><u>498</u></a> , <a href="#"><u>612</u></a> ). (Anderson, Deanna) (Entered: 07/27/2020)
07/27/2020	<a href="#"><u>636</u></a> (2 pgs)	Notice of Hearing / <i>Notice of Cancellation of Hearing scheduled for July 29, 2020 at 11:00 a.m.</i> filed by Evan R. Fleck on behalf of Avianca

		Holdings S.A.. (Fleck, Evan) (Entered: 07/27/2020)
07/28/2020	<a href="#"><u>637</u></a> (2 pgs; 2 docs)	Application for Pro Hac Vice Admission <i>for Christopher O. Rivas of Reed Smith LLP</i> filed by Christopher A. Lynch on behalf of Accenture Ltda. and Accenture Peru SRL. (Attachments: # <a href="#"><u>1</u></a> Proposed Order) (Lynch, Christopher) (Entered: 07/28/2020)
07/28/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#"><u>20-11133-mg</u></a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14175368. Fee amount 200.00. (Re: Doc # <a href="#"><u>637</u></a> ) (U.S. Treasury) (Entered: 07/28/2020)
07/28/2020	<a href="#"><u>638</u></a> (29 pgs)	Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement / <i>Debtors' Motion to Extend the Debtors' Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof Pursuant to Section 1121 of The Bankruptcy Code</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 8/12/2020 at 10:00 AM at Courtroom 523 (MG) Responses due by 8/4/2020,. (Fleck, Evan) (Entered: 07/28/2020)
07/28/2020	<a href="#"><u>639</u></a> (28 pgs)	Motion to Extend Time / <i>Debtors' Motion for Entry of an Order (I) Extending the Time within which the Debtors may Assume or Reject Unexpired Leases of Nonresidential Real Property and (II) Establishing Procedures to Approve Agreements further Extending the 365(D)(4) Deadline</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 8/12/2020 at 10:00 AM at Courtroom 523 (MG) Responses due by 8/4/2020,. (Fleck, Evan) (Entered: 07/28/2020)
07/28/2020	647	Transcript regarding Hearing Held on 07/27/2020 at 3:30 pm RE: (Doc# 628, 617, 616, 306) Telephonic Status Conference (Using Court Solutions) with Counsel Concerning Debtors' Motion to Reject to USAV Agreements.. <b>Remote electronic access to the transcript is restricted until 10/26/2020.</b> The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: eScribers, LLC.]. (See the Courts Website for contact information for the Transcription Service Agency.) (RE: related document(s) <a href="#"><u>628</u></a> , <a href="#"><u>617</u></a> , <a href="#"><u>306</u></a> , <a href="#"><u>616</u></a> ). Notice of Intent to Request Redaction Deadline Due By 8/4/2020. Statement of Redaction Request Due By 8/18/2020. Redacted Transcript Submission Due By 8/28/2020. Transcript access will be restricted through 10/26/2020. (Lewis, Tenille) (Entered: 07/30/2020)
07/29/2020	<a href="#"><u>640</u></a> (1 pg)	Order, signed on 7/29/2020, Granting Application for Pro Hac Vice Admission of Christopher O. Rivas (Related Doc # <a href="#"><u>637</u></a> ). (Anderson, Deanna) (Entered: 07/29/2020)
07/29/2020	<a href="#"><u>641</u></a> (3 pgs)	Letter Filed by Robert J. Craven. (Rodriguez, Maria) (Entered: 07/29/2020)
07/29/2020	<a href="#"><u>642</u></a> (62 pgs)	First Monthly Fee Statement / <i>First Combined Monthly Fee Statement of Morrison &amp; Foerster LLP as Counsel to the Official Committee of Unsecured Creditors for Compensation and Reimbursement of Expenses Incurred for the Period May 24, 2020 through June 30, 2020</i> Filed by Brett H. Miller on behalf of Morrison & Foerster LLP. (Miller, Brett) (Entered: 07/29/2020)
07/29/2020	<a href="#"><u>643</u></a> (10 pgs)	Certificate of Mailing of Claims Agent <i>re Amended Notice of Hearing on Debtors' Motion for Authorization to Enter Into Letter Agreement</i>

		<i>with Financing Arranger</i> (related document(s) <a href="#">612</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 07/29/2020)
07/29/2020	<a href="#">644</a> (6 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on July 23, 2020</i> (related document(s) <a href="#">625</a> , <a href="#">624</a> , <a href="#">623</a> , <a href="#">622</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 07/29/2020)
07/29/2020	<a href="#">645</a> (14 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Declaration and Disclosure Statement of Mary Ward, on Behalf of Carey Olsen Bermuda Limited; and 2) Order Scheduling Status Conference with Counsel Concerning Debtors Motion to Reject USAV Agreements (ECF Doc. # 306)</i> (related document(s) <a href="#">628</a> , <a href="#">627</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 07/29/2020)
07/30/2020	<a href="#">646</a> (60 pgs)	Second Monthly Fee Statement of <i>FTI Consulting, Inc. for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Financial Advisor to the Debtors From June 1, 2020 Through and Including June 30, 2020</i> Filed by Evan R. Fleck on behalf of FTI Consulting, Inc.. (Fleck, Evan) (Entered: 07/30/2020)
07/30/2020	<a href="#">648</a> (147 pgs)	Second Monthly Fee Statement of <i>Milbank LLP for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Counsel to the Debtors From June 1, 2020 Through and Including June 30, 2020</i> Filed by Evan R. Fleck on behalf of Milbank LLP. (Fleck, Evan) (Entered: 07/30/2020)
07/30/2020	<a href="#">649</a> (24 pgs)	Notice of Presentment of <i>Stipulation and Order Between Debtors and Finance Parties Concerning Certain Collateral</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with presentment to be held on 8/7/2020 at 12:00 PM at Courtroom 523 (MG) Objections due by 8/6/2020, (Fleck, Evan) (Entered: 07/30/2020)
07/30/2020	<a href="#">650</a> (68 pgs)	Second Monthly Fee Statement of <i>Smith, Gambrell &amp; Russell, LLP, Special Aviation Counsel to the Debtors for Allowance of Compensation and Reimbursement of Expenses for the period June 1, 2020 through June 30, 2020</i> Filed by Evan R. Fleck on behalf of Smith, Gambrell & Russell, LLP. (Fleck, Evan) (Entered: 07/30/2020)
07/31/2020	<a href="#">651</a> (6 pgs)	<i>Declaration and Disclosure Statement of Rafael Mccausland, on Behalf of Arrubla Devis Asociados</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/31/2020)
07/31/2020	<a href="#">652</a> (39 pgs)	Second Monthly Fee Statement of <i>Seabury Securities LLC for Professional Services and Disbursements for the period of June 1, 2020 through June 30, 2020</i> Filed by Evan R. Fleck on behalf of Seabury Securities LLC. (Fleck, Evan) (Entered: 07/31/2020)
07/31/2020	<a href="#">653</a> (3 pgs; 2 docs)	Application for Pro Hac Vice Admission filed by Glenn Moses on behalf of Lufthansa Technik AG. (Attachments: # <a href="#">1</a> Proposed Order) (Moses, Glenn) (Entered: 07/31/2020)
07/31/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#">20-11133-mg</a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14184984. Fee amount 200.00. (Re: Doc # <a href="#">653</a> ) (U.S. Treasury) (Entered: 07/31/2020)
07/31/2020	<a href="#">654</a> (8 pgs)	<i>Declaration and Disclosure Statement of Sandra Milena Pulgarin Martinez, on Behalf of Pardo &amp; Asociados Estrategias Tributarias S.A.</i>

		filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 07/31/2020)
08/03/2020	<a href="#">655</a> (1 pg)	Order, Signed on 8/3/2020, Granting Application for Pro Hac Vice Admission of Ross Robert Hartog (Related Doc # <a href="#">613</a> ). (Anderson, Deanna) (Entered: 08/03/2020)
08/03/2020	<a href="#">656</a> (1 pg)	Order, signed on 8/3/2020, Granting Application for Pro Hac Vice Admission of Glenn D. Moses (Related Doc # <a href="#">653</a> ). (Anderson, Deanna) (Entered: 08/03/2020)
08/03/2020	<a href="#">657</a> (6 pgs)	<i>Declaration and Disclosure Statement of Rocio Margarita Plata Cruz, on Behalf of Rigoberto Paredes &amp; Asociados</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 08/03/2020)
08/03/2020	<a href="#">658</a> (9 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Order Authorizing Debtors to Enter Into Letter Agreement with Financing Arranger; and 2) Notice of Cancellation of Hearing</i> (related document(s) <a href="#">635</a> , <a href="#">636</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 08/03/2020)
08/04/2020	<a href="#">659</a> (5 pgs)	Stipulation and Order, Signed on 8/4/2020, Regarding Briefing Schedule. (related document(s) <a href="#">617</a> , <a href="#">306</a> , <a href="#">616</a> ) The Court will conduct a hearing at 10:00 am ET on August 26, 2020 UsingZoom For Government. (Anderson, Deanna) (Entered: 08/04/2020)
08/04/2020	<a href="#">660</a> (38 pgs)	Statement / <i>Notice of Third Amended OCP List</i> (related document(s) <a href="#">445</a> , <a href="#">303</a> , <a href="#">260</a> , <a href="#">178</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 08/04/2020)
08/04/2020	<a href="#">661</a> (10 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Debtors Motion to Extend the Debtors Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof Pursuant to Section 1121 of the Bankruptcy Code; and 2) Debtors Motion for Entry of an Order (I) Extending the Time Within Which the Debtors May Assume or Reject Unexpired Leases of Nonresidential Real Property and (II) Establishing Procedures to Approve Agreements Further Extending the 365(d)(4) Deadline</i> (related document(s) <a href="#">638</a> , <a href="#">639</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 08/04/2020)
08/05/2020	<a href="#">662</a> (8 pgs; 2 docs)	Motion to Allow <i>Excess Pages</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Attachments: # <a href="#">1</a> Exhibit A - Proposed Order) (Fleck, Evan) (Entered: 08/05/2020)
08/06/2020	<a href="#">663</a> (248 pgs)	Monthly Operating Report <i>for the Period June 1, 2020 Through June 30, 2020</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 08/06/2020)
08/06/2020	<a href="#">664</a> (6 pgs)	<i>Declaration and Disclosure Statement of Mary Ward On Behalf of Carey Olsen Bermuda Limited</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 08/06/2020)
08/06/2020	<a href="#">665</a> (3 pgs)	Response to Motion / <i>Response of the USAV Secured Lender Group to the Urgent Motion of the Debtors for Leave to Exceed Page Limit</i> (related document(s) <a href="#">662</a> ) filed by Glenn M. Kurtz on behalf of USAV Secured Lender Group. (Kurtz, Glenn) (Entered: 08/06/2020)



08/06/2020	<a href="#"><u>666</u></a> (2 pgs)	Statement / <i>USAVflow Limited's Joinder To Response Of The USAV Secured Lender Group To The Urgent Motion Of The Debtors For Leave To Exceed Page Limit</i> (related document(s) <a href="#"><u>665</u></a> ) filed by Sheron Korpus on behalf of USAVflow Limited. (Korpus, Sheron) (Entered: 08/06/2020)
08/06/2020	<a href="#"><u>667</u></a> (16 pgs)	Notice of Presentment of <i>Agreed Order Amending Fee Letter with Arnold &amp; Porter as Counsel to The Republic Of Colombia</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with presentment to be held on 8/12/2020 at 10:00 AM at Courtroom 523 (MG) Objections due by 8/11/2020, (Fleck, Evan) (Entered: 08/06/2020)
08/06/2020	<a href="#"><u>668</u></a> (3 pgs)	Notice of Appearance filed by Arthur E. Rosenberg on behalf of Engine Lease Finance Corporation. (Rosenberg, Arthur) (Entered: 08/06/2020)
08/06/2020	<a href="#"><u>669</u></a> (3 pgs)	Notice of Appearance filed by Arthur E. Rosenberg on behalf of MC Engine Leasing Ltd.. (Rosenberg, Arthur) (Entered: 08/06/2020)
08/06/2020	<a href="#"><u>670</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Enrique Munita on behalf of Munita Y. Olavarria Abogados Spa</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 08/06/2020)
08/06/2020	<a href="#"><u>671</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Sandro Nunez on behalf of Estudio Rubio Leguia Normand y. Asociados de R.L.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 08/06/2020)
08/06/2020	<a href="#"><u>672</u></a> (6 pgs)	<i>Declaration and Disclosure Statement of Jose Roberto Romero on behalf of Romero Pineda &amp; Asociados, S.A. de C.V.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 08/06/2020)
08/06/2020	<a href="#"><u>673</u></a> (11 pgs)	Statement of No Objection / <i>Certificate of No Objection Regarding Motions Scheduled for August 12 Omnibus Hearing</i> (related document(s) <a href="#"><u>638</u></a> , <a href="#"><u>639</u></a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 08/06/2020)
08/06/2020	<a href="#"><u>674</u></a> (2 pgs)	Order signed on 08/06/2020 Granting Debtors Leave to Exceed the Page Limit with Respect to Their Reply in Support of the Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts and Granting the USAV Secured Lender Group Leave to Exceed the Page Limit with Respect to its Sur-Reply (Related Doc # <a href="#"><u>662</u></a> ). (Gomez, Jessica) (Entered: 08/06/2020)
08/06/2020	<a href="#"><u>675</u></a> (6 pgs)	Statement / <i>Notice of Proposed Additional Services to be Performed by Alvarez &amp; Marsal North America, LLC as Financial Advisor to the Official Committee of Unsecured Creditors, Nunc Pro Tunc to August 6, 2020</i> (related document(s) <a href="#"><u>459</u></a> , <a href="#"><u>373</u></a> ) filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. Objections due by 8/17/2020, (Miller, Brett) (Entered: 08/06/2020)
08/06/2020	<a href="#"><u>676</u></a> (9 pgs)	Notice of Presentment of <i>Stipulated Order With Securities Exchange Commission Extending Time to Object to Dischargeability</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with presentment to be held on 8/12/2020 at 10:00 AM at Courtroom 523 (MG) Objections due by 8/11/2020, (Fleck, Evan) (Entered: 08/06/2020)

08/07/2020	<a href="#">677</a> (4 pgs)	Order, signed on 8/7/2020, (I) Extending the Time Within Which the Debtors may Assume or Reject Unexpired Leases of Nonresidential Real Property and (II) Establishing Procedures to Approve Agreements Further Extending the 365(d)(4) Deadline (Related Doc # <a href="#">639</a> ). (Anderson, Deanna) (Entered: 08/07/2020)
08/07/2020	<a href="#">678</a> (3 pgs)	Order, Signed on 8/7/2020, Extending the Debtors Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof Pursuant to Section 1121 of the Bankruptcy Code (Related Doc # <a href="#">638</a> ). (Anderson, Deanna) (Entered: 08/07/2020)
08/07/2020	<a href="#">679</a> (19 pgs)	Application to Extend Time to File Schedules / <i>Debtors' Motion for Entry of an Order Further Extending Time To File Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases, Statements of Financial Affairs, and Rule 2015.3 Financial Reports</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. Responses due by 8/14/2020, with presentment to be held on 8/21/2020 at 12:00 PM at Courtroom 523 (MG). (Fleck, Evan) (Entered: 08/07/2020)
08/07/2020	<a href="#">680</a> (2 pgs)	Statement / <i>Notice of Cancellation of Hearing</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 08/07/2020)
08/07/2020	<a href="#">681</a> (11 pgs)	Statement / <i>Reply in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts</i> (related document(s) <a href="#">617</a> , <a href="#">306</a> , <a href="#">616</a> ) filed by Todd M. Goren on behalf of Official Committee Of Unsecured Creditors. (Goren, Todd) (Entered: 08/07/2020)
08/07/2020	<a href="#">682</a> (4 pgs; 2 docs)	Application for Pro Hac Vice Admission filed by J. Brian Fletcher on behalf of City and County of San Francisco, acting by and through the San Francisco Airport Commission. (Attachments: # <a href="#">1</a> Proposed Order) (Fletcher, J.) (Entered: 08/07/2020)
08/07/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#">20-11133-mg</a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14204983. Fee amount 200.00. (Re: Doc # <a href="#">682</a> ) (U.S. Treasury) (Entered: 08/07/2020)
08/07/2020	<a href="#">683</a> (207 pgs; 6 docs)	Statement / <i>Debtors' Reply Brief in Support of the Motion to Reject</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Attachments: # <a href="#">1</a> Exhibit A # <a href="#">2</a> Exhibit B # <a href="#">3</a> Exhibit 1 to Renenger Declaration # <a href="#">4</a> Exhibit 2 to Renenger Declaration # <a href="#">5</a> Exhibit 3 to Renenger Declaration) (Fleck, Evan) (Entered: 08/07/2020)
08/07/2020	<a href="#">684</a> (1085 pgs; 3 docs)	Declaration of <i>Jaime Arrubla</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Attachments: # <a href="#">1</a> Exhibit A # <a href="#">2</a> Exhibit B) (Fleck, Evan) (Entered: 08/07/2020)
08/10/2020	<a href="#">685</a> (14 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on July 30, 2020</i> (related document(s) <a href="#">646</a> , <a href="#">648</a> , <a href="#">649</a> , <a href="#">650</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 08/10/2020)
08/10/2020	<a href="#">686</a> (8 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Declaration and Disclosure Statement of Rafael McCausland, on Behalf of Arrubla Devis Asociados S.A.S.; 2) Monthly Fee Statement of Seabury Securities LLC and Seabury International Corporate Finance LLC for Professional Services and Disbursements for the Period of June 1, 2020</i>

		<i>Through June 30, 2020; and 3) Declaration and Disclosure Statement of Sandra Milena Pulgarin Martinez, on Behalf of Pardo &amp; Asociados Estrategias Tributarias S.A. (related document(s) <a href="#">651</a>, <a href="#">652</a>, <a href="#">654</a>) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 08/10/2020)</i>
08/10/2020	<a href="#">687</a> (5 pgs)	Certificate of Mailing of Claims Agent <i>re Declaration and Disclosure Statement of Rocio Margarita Plata Cruz, on Behalf of Rigoberto Paredes &amp; Asociados</i> (related document(s) <a href="#">657</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 08/10/2020)
08/10/2020	<a href="#">688</a> (991 pgs)	Certificate of Mailing of Claims Agent <i>re Notice of Adjournment of Meeting of Creditors</i> (related document(s) <a href="#">433</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 08/10/2020)
08/10/2020	<a href="#">689</a> (12 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Stipulation and Order Regarding Briefing Schedule; and 2) Notice of Third Amended OCP List</i> (related document(s) <a href="#">659</a> , <a href="#">660</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 08/10/2020)
08/10/2020	<a href="#">690</a> (9 pgs)	Certificate of Mailing of Claims Agent <i>re Urgent Motion of the Debtors for Leave to Exceed Page Limit with Respect to Their Reply in Support of the Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts</i> (related document(s) <a href="#">662</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 08/10/2020)
08/11/2020	<a href="#">691</a> (20 pgs)	First Stipulation and Order, signed on 8/11/2020, Between Debtors and Finance Parties Concerning Certain Collateral (A300-600RF aircraft, Serial Numbers 626, 643, etcetera). (Anderson, Deanna) (Entered: 08/11/2020)
08/11/2020	<a href="#">692</a> (14 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on August 6, 2020</i> (related document(s) <a href="#">663</a> , <a href="#">667</a> , <a href="#">673</a> , <a href="#">672</a> , <a href="#">671</a> , <a href="#">674</a> , <a href="#">664</a> , <a href="#">670</a> , <a href="#">676</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 08/11/2020)
08/11/2020	<a href="#">693</a> (12 pgs)	Certificate of Service (related document(s) <a href="#">665</a> ) filed by Glenn M. Kurtz on behalf of USAV Secured Lender Group. (Kurtz, Glenn) (Entered: 08/11/2020)
08/11/2020	<a href="#">694</a> (42 pgs)	Motion to Authorize / <i>Notice of Hearing on Debtors' (I) Request for Expedited Determination; and (II) Emergency Motion for Authorization to Enter into Letter Agreements with Financing Arrangers</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 8/18/2020 at 02:00 PM at Courtroom 523 (MG) Responses due by 8/14/2020,. (Fleck, Evan) (Entered: 08/11/2020)
08/11/2020	<a href="#">695</a> (18 pgs)	Motion to File Under Seal / <i>Notice of Hearing on Debtors' (I) Request For Expedited Determination; and (II) Motion for Authorization to File DIP Facility Fee Letter Under Seal</i> (related document(s) <a href="#">694</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 8/18/2020 at 02:00 PM at Courtroom 523 (MG) Responses due by 8/14/2020,. (Fleck, Evan) (Entered: 08/11/2020)
08/11/2020	<a href="#">696</a> (44 pgs)	Notice of Presentment of <i>Amended Engagement Letter Between Debtors and Seabury Securities LLC and Seabury International Corporate Finance LLC</i> (related document(s) <a href="#">262</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with presentment to be held on 8/25/2020 at



		12:00 PM at Courtroom 523 (MG) Objections due by 8/19/2020, (Fleck, Evan) (Entered: 08/11/2020)
08/12/2020	<a href="#">697</a> (2 pgs)	Order, signed on 8/12/2020, Granting Application for Pro Hac Vice Admission of of J. Brian Fletcher (Related Doc # <a href="#">682</a> ). (Anderson, Deanna) (Entered: 08/12/2020)
08/13/2020	<a href="#">698</a> (7 pgs)	Declaration / <i>Second Supplemental Declaration of Michael G. McGovern In Further Support of Application of Debtors for Authority to Retain and Employ Ropes &amp; Gray LLP as Special Government Investigations Counsel to the Debtors Effective as of the Petition Date</i> (related document(s) <a href="#">180</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 08/13/2020)
08/13/2020	<a href="#">699</a> (10 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on or before August 8, 2020</i> (related document(s) <a href="#">684</a> , <a href="#">683</a> , <a href="#">677</a> , <a href="#">680</a> , <a href="#">679</a> , <a href="#">678</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 08/13/2020)
08/13/2020	<a href="#">700</a> (11 pgs)	Affidavit of Service (related document(s) <a href="#">675</a> ) Filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. (Miller, Brett) (Entered: 08/13/2020)
08/13/2020	<a href="#">701</a> (11 pgs)	Affidavit of Service (related document(s) <a href="#">681</a> ) Filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. (Miller, Brett) (Entered: 08/13/2020)
08/14/2020	<a href="#">702</a> (2 pgs; 2 docs)	Application for Pro Hac Vice Admission filed by Daniel M. Rosenthal on behalf of Asociacion Colombiana de Aviadores Civiles. (Attachments: # <a href="#">1</a> Proposed Order) (Rosenthal, Daniel) (Entered: 08/14/2020)
08/14/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#">20-11133-mg</a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14223156. Fee amount 200.00. (Re: Doc # <a href="#">702</a> ) (U.S. Treasury) (Entered: 08/14/2020)
08/14/2020	<a href="#">703</a> (2 pgs; 2 docs)	Application for Pro Hac Vice Admission filed by Ryan E. Griffin on behalf of Asociacion Colombiana de Aviadores Civiles. (Attachments: # <a href="#">1</a> Proposed Order) (Griffin, Ryan) (Entered: 08/14/2020)
08/14/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#">20-11133-mg</a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14223173. Fee amount 200.00. (Re: Doc # <a href="#">703</a> ) (U.S. Treasury) (Entered: 08/14/2020)
08/17/2020	<a href="#">704</a> (1 pg)	Order, Signed on 8/17/2020, Granting Application for Pro Hac Vice Admission of Ryan E. Griffin (Related Doc # <a href="#">703</a> ). (Anderson, Deanna) (Entered: 08/17/2020)
08/17/2020	<a href="#">705</a> (1 pg)	Order, Signed on 8/17/2020, Granting Application for Pro Hac Vice Admission of Daniel M. Rosenthal (Related Doc # <a href="#">702</a> ). (Anderson, Deanna) (Entered: 08/17/2020)
08/17/2020	<a href="#">706</a> (3 pgs)	Order Signed on 8/17/2020 Authorizing Debtors to pay Certain fees and Expenses of Professionals Retained by the Government of the Republic of Columbia Pursuant to the Amended fee Letter. (related document(s) <a href="#">667</a> ) (Anderson, Deanna) (Entered: 08/17/2020)

08/17/2020	<a href="#">707</a> (5 pgs)	Stipulation, Agreement and Order Between Debtors and Securities and Exchange Commission Extending Time to Object to Dischargeability Signed on 8/17/2020. (related document(s) <a href="#">676</a> ) (Anderson, Deanna) (Entered: 08/17/2020)
08/17/2020	<a href="#">708</a> (4 pgs)	<i>Statement of the Official Committee of Unsecured Creditors in Support of Debtors' Emergency Motion for Authorization to Enter Into Letter Agreements with Financing Arrangers</i> (related document(s) <a href="#">694</a> ) filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. with hearing to be held on 8/18/2020 at 02:00 PM at Courtroom 523 (MG) (Miller, Brett) (Entered: 08/17/2020)
08/17/2020	<a href="#">709</a> (2 pgs)	<i>Notice of Agenda of Matters Scheduled for Hearing on August 18, 2020 at 2:00 P.M. (Eastern Time)</i> (related document(s) <a href="#">695</a> , <a href="#">708</a> , <a href="#">694</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with hearing to be held on 8/18/2020 at 02:00 PM at Courtroom 523 (MG) (Fleck, Evan) (Entered: 08/17/2020)
08/18/2020	<a href="#">710</a> (1 pg)	Order, Signed on 8/18/2020, Granting Application for Pro Hac Vice Admission of Jennifer V. Doran (Related Doc # <a href="#">356</a> ). (Anderson, Deanna) (Entered: 08/18/2020)
08/18/2020	<a href="#">711</a> (10 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on August 11, 2020</i> (related document(s) <a href="#">696</a> , <a href="#">695</a> , <a href="#">691</a> , <a href="#">694</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 08/18/2020)
08/18/2020	<a href="#">712</a> (2 pgs)	<i>Notice of Adjournment of Hearing on Debtors' Emergency Motion for Authorization to Enter into Letter Agreements with Financing Arrangers and Debtors' Motion for Authorization to File DIP Facility Fee Letter Under Seal</i> (related document(s) <a href="#">695</a> , <a href="#">694</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with hearing to be held on 8/19/2020 at 10:00 AM at Courtroom 523 (MG) (Fleck, Evan) (Entered: 08/18/2020)
08/18/2020	<a href="#">713</a> (4 pgs; 2 docs)	Application for Pro Hac Vice Admission filed by Christian C. Onsager on behalf of City and County of San Francisco, acting by and through the San Francisco Airport Commission. (Attachments: # <a href="#">1</a> Proposed Order) (Onsager, Christian) (Entered: 08/18/2020)
08/18/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#">20-11133-mg</a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14230916. Fee amount 200.00. (Re: Doc # <a href="#">713</a> ) (U.S. Treasury) (Entered: 08/18/2020)
08/18/2020	<a href="#">714</a> (4 pgs)	Response / <i>Supplemental Response of the Official Committee of Unsecured Creditors to the Court's Questions Posed at the July 27, 2020 Status Conference</i> (related document(s) <a href="#">306</a> ) filed by Todd M. Goren on behalf of Official Committee Of Unsecured Creditors. (Goren, Todd) (Entered: 08/18/2020)
08/18/2020	<a href="#">715</a> (80 pgs; 2 docs)	Response / <i>Debtors' Response to the Court's Questions Posed at the July 27, 2020 Status Conference</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Attachments: # <a href="#">1</a> Exhibit A) (Fleck, Evan) (Entered: 08/18/2020)
08/18/2020	<a href="#">716</a> (20 pgs)	Response / <i>Supplemental Brief in Support of Objections of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order</i>

		<i>Authorizing Rejection of Certain Executory Contracts</i> (related document(s) <a href="#">684</a> , <a href="#">617</a> , <a href="#">683</a> , <a href="#">306</a> , <a href="#">681</a> ) filed by Glenn M. Kurtz on behalf of USAV Secured Lender Group. (Kurtz, Glenn) (Entered: 08/18/2020)
08/18/2020	<a href="#">717</a> (46 pgs; 3 docs)	Response / <i>USAVflow Limiteds Combined Response To (A) Debtors Reply In Support Of Debtors Motion For Entry Of An Order Authorizing Rejection Of Certain Executory Contracts And (B) Questions Posed By The Court At The July 27, 2020 Status Conference</i> (related document(s) <a href="#">684</a> , <a href="#">617</a> , <a href="#">683</a> , <a href="#">306</a> , <a href="#">616</a> ) filed by Sheron Korpus on behalf of USAVflow Limited. (Attachments: # <a href="#">1</a> Exhibit A # <a href="#">2</a> Exhibit B) (Korpus, Sheron) (Entered: 08/18/2020)
08/18/2020	<a href="#">718</a> (32 pgs)	Response / <i>Sur-Reply of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts</i> (related document(s) <a href="#">684</a> , <a href="#">617</a> , <a href="#">683</a> , <a href="#">306</a> , <a href="#">681</a> ) filed by Glenn M. Kurtz on behalf of USAV Secured Lender Group. (Kurtz, Glenn) (Entered: 08/18/2020)
08/19/2020	<a href="#">719</a> (6 pgs)	<i>Declaration of Vicente Lines In Support of the USAV Secured Lender Groups Supplemental Brief and Sur-Reply in Support of Objection to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts</i> (related document(s) <a href="#">684</a> , <a href="#">617</a> , <a href="#">683</a> , <a href="#">306</a> , <a href="#">681</a> ) filed by Glenn M. Kurtz on behalf of USAV Secured Lender Group. (Kurtz, Glenn) (Entered: 08/19/2020)
08/19/2020	<a href="#">720</a> (834 pgs; 2 docs)	<i>Declaration / Second Declaration of Jorge Suescun Melo In Support of the USAV Secured Lender Group's Supplemental Brief and Sur-Reply in Support of Objection to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts</i> (related document(s) <a href="#">684</a> , <a href="#">617</a> , <a href="#">683</a> , <a href="#">306</a> , <a href="#">681</a> ) filed by Glenn M. Kurtz on behalf of USAV Secured Lender Group. (Attachments: # <a href="#">1</a> Exhibit A) (Kurtz, Glenn) (Entered: 08/19/2020)
08/19/2020	<a href="#">721</a> (676 pgs; 34 docs)	<i>Declaration / Second Declaration of Joshua D. Weedman in Support of Objections of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts</i> (related document(s) <a href="#">617</a> , <a href="#">683</a> , <a href="#">306</a> , <a href="#">681</a> , <a href="#">684</a> ) filed by Glenn M. Kurtz on behalf of USAV Secured Lender Group. (Attachments: # <a href="#">1</a> Exhibit A # <a href="#">2</a> Exhibit B # <a href="#">3</a> Exhibit C # <a href="#">4</a> Exhibit D # <a href="#">5</a> Exhibit E # <a href="#">6</a> Exhibit F # <a href="#">7</a> Exhibit G # <a href="#">8</a> Exhibit H # <a href="#">9</a> Exhibit I # <a href="#">10</a> Exhibit J # <a href="#">11</a> Exhibit L # <a href="#">12</a> Exhibit M # <a href="#">13</a> Exhibit N-1 # <a href="#">14</a> Exhibit N-2 # <a href="#">15</a> Exhibit N-3 # <a href="#">16</a> Exhibit N-4 # <a href="#">17</a> Exhibit N-5 # <a href="#">18</a> Exhibit N-6 # <a href="#">19</a> Exhibit N-7 # <a href="#">20</a> Exhibit N-8 # <a href="#">21</a> Exhibit N-9 # <a href="#">22</a> Exhibit N-10 # <a href="#">23</a> Exhibit N-11 # <a href="#">24</a> Exhibit N-12 # <a href="#">25</a> Exhibit N-13 # <a href="#">26</a> Exhibit N-14 # <a href="#">27</a> Exhibit N-15 # <a href="#">28</a> Exhibit N-16 # <a href="#">29</a> Exhibit N-17 # <a href="#">30</a> Exhibit N-18 # <a href="#">31</a> Exhibit N-19 # <a href="#">32</a> Exhibit N-20 # <a href="#">33</a> Exhibit N-21) (Kurtz, Glenn) (Entered: 08/19/2020)
08/19/2020	<a href="#">722</a> (2 pgs)	Order, Signed on 8/19/2020, Granting Application for Pro Hac Vice Admission of Christian C. Onsager (Related Doc # <a href="#">713</a> ). (Anderson, Deanna) (Entered: 08/19/2020)
08/19/2020	<a href="#">723</a> (14 pgs)	<i>Statement / Notice of Revised DIP Facility Fee Letter (Filed Under Seal)</i> (related document(s) <a href="#">695</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 08/19/2020)
08/19/2020	<a href="#">724</a> (3 pgs)	Order signed on 8/19/2020 Authorizing Debtors to Enter into Letter Agreements with Financing Arrangers(Related Doc # <a href="#">694</a> ) . (Anderson,

		Deanna) (Entered: 08/19/2020)
08/19/2020	<a href="#"><u>725</u></a> (3 pgs)	Order signed on 8/19/2020 Authorizing the Filing of DIP Facility Fee Letter Under Seal (Related Doc # <a href="#"><u>695</u></a> ). (Anderson, Deanna) (Entered: 08/19/2020)
08/19/2020	<a href="#"><u>726</u></a> (363 pgs; 2 docs)	Statement / Notice of Filing of English Translation of Exhibit A to the Declaration of Jorge Suescun Melo [Ecf No. 618] (related document(s) <a href="#"><u>618</u></a> ) filed by Glenn M. Kurtz on behalf of USAV Secured Lender Group. (Attachments: # <a href="#"><u>1</u></a> Exhibit A) (Kurtz, Glenn) (Entered: 08/19/2020)
08/19/2020	<a href="#"><u>727</u></a> (4 pgs)	Notice of Appearance And Request For Service Of Papers filed by Thomas R. Slome on behalf of Topcast Aviation USA, Inc.. (Slome, Thomas) (Entered: 08/19/2020)
08/19/2020	<a href="#"><u>728</u></a> (17 pgs)	Second Monthly Fee Statement of Alvarez & Marsal North America, LLC for Payment of Compensation and Reimbursement of Expenses as Financial Advisor to the Official Committee of Unsecured Creditors from July 1, 2020 through July 31, 2020 Filed by Brett H. Miller on behalf of Alvarez & Marsal North America, LLC. (Miller, Brett) (Entered: 08/19/2020)
08/19/2020	<a href="#"><u>729</u></a> (25 pgs)	Second Monthly Fee Statement of Alton Aviation Consultancy LLC for Specialized Aviation Advisory Services Rendered and Reimbursement of Expenses Incurred as Professionals for the Official Committee of Unsecured Creditors for the Period July 1, 2020 through July 31, 2020 Filed by Brett H. Miller on behalf of Alton Aviation Consultancy LLC. (Miller, Brett) (Entered: 08/19/2020)
08/19/2020	<a href="#"><u>730</u></a> (22 pgs)	Second Monthly Fee Statement of Jefferies LLC for Allowance of Compensation Earned and Reimbursement of Expenses Incurred for the Period from July 1, 2020 To and Including July 31, 2020 Filed by Brett H. Miller on behalf of Jefferies LLC. (Miller, Brett) (Entered: 08/19/2020)
08/19/2020	<a href="#"><u>731</u></a> (9 pgs)	Certificate of Mailing of Claims Agent re Second Supplemental Declaration of Michael G. McGovern in Further Support of Application of Debtors for Authority to Retain and Employ Ropes & Gray LLP as Special Government Investigations Counsel to the Debtors Effective as of the Petition Date (related document(s) <a href="#"><u>698</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 08/19/2020)
08/19/2020	<a href="#"><u>732</u></a> (14 pgs)	Certificate of Mailing of Claims Agent re 1) Order Authorizing Debtors to Pay Certain Fees and Expenses of Professionals Retained by the Government of the Republic of Columbia Pursuant to the Amended Fee Letter; 2) Stipulation, Agreement and Order Between Debtors and Securities and Exchange Commission Extending Time to Object to Dischargeability; and 3) Agenda of Matters Scheduled for Hearing on August 18, 2020 at 2:00 p.m. (Eastern Time) (related document(s) <a href="#"><u>706</u></a> , <a href="#"><u>707</u></a> , <a href="#"><u>709</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 08/19/2020)
08/20/2020	<a href="#"><u>733</u></a> (6 pgs)	Certificate of No Objection Pursuant to LR 9075-2 / Certificate of No Objection Regarding Notice of Proposed Additional Services to be Performed by Alvarez & Marsal North America, LLC as Financial Advisor to the Official Committee of Unsecured Creditors, Nunc Pro



		<i>Tunc to August 6, 2020</i> (related document(s) <a href="#">675</a> ) Filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. (Miller, Brett) (Entered: 08/20/2020)
08/20/2020	<a href="#">734</a> (3 pgs)	Amended Order signed on 8/20/2020 (I) Authorizing the Debtors to Redact and File Aircraft Stipulations Under Seal and (II) Granting Related Relief. (Related Document## <a href="#">354</a> , <a href="#">390</a> ) (Anderson, Deanna) (Entered: 08/20/2020)
08/20/2020	<a href="#">735</a> (3 pgs)	Amended Order, Signed on 8/20/2020, (I) Authorizing the Debtors to Redact and File Under Seal Their Reply to Objection of the United States Trustee to Entry of an Order Authorizing the Debtors to pay Wages, Compensation, Employee Benefits and Related Relief and (II) Granting Related Relief. (Related Document ## <a href="#">239</a> , <a href="#">299</a> ). (Anderson, Deanna) (Entered: 08/20/2020)
08/20/2020	<a href="#">736</a> (3 pgs)	Amended Order, Signed on 8/20/2020, Authorizing the Filing of DIP Facility Fee Letter Under Seal. (Related Document## <a href="#">695</a> , <a href="#">725</a> ) (Anderson, Deanna) (Entered: 08/20/2020)
08/20/2020	<a href="#">737</a> (6 pgs)	<i>Declaration and Disclosure Statement of Nicolas Badell</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 08/20/2020)
08/20/2020	<a href="#">738</a> (6 pgs)	<i>Declaration and Disclosure Statement of Andres Rubinoff, on behalf of Arias, Fabrega &amp; Fabrega</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 08/20/2020)
08/20/2020	<a href="#">739</a> (6 pgs)	Order, Signed on 8/20/2020, Establishing Procedures for Remote Evidentiary Hearing on August 26, 2020 in Connection With Debtors Motion for an Order Granting Relief With Respect to Contested Motion. (Document(s) <a href="#">306</a> ) Hearing Using Zoom for Government to be held on 8/26/2020 at 10:00 AM. (Anderson, Deanna) (Entered: 08/20/2020)
08/20/2020	<a href="#">740</a> (1 pg)	<i>Letter / Status Letter to Hon. Martin Glenn re August 26 Hearing</i> (related document(s) <a href="#">306</a> ) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 08/20/2020)
08/20/2020	743	Transcript regarding Hearing Held on 08/19/2020 at RE: (Doc# 694, 708, 709, 712) Telephone Hearing Using CourtSolutions RE: Debtors' (I) Request for Expedited Determination; and (II) Emergency Motion for Authorization to Enter into Letter Agreements with Financing Arrangers (Doc##695, 694, 696, 712) Telephone Hearing Using CourtSolutions RE: Debtors' (I) Request For Expedited Determination; and (II) Motion for Authorization to File DIP Facility Fee Letter Under Seal. <b>Remote electronic access to the transcript is restricted until 11/18/2020.</b> The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: eScribers, LLC.]. (See the Courts Website for contact information for the Transcription Service Agency.) (RE: related document(s) <a href="#">696</a> , <a href="#">695</a> , <a href="#">712</a> , <a href="#">708</a> , <a href="#">709</a> , <a href="#">694</a> ). Notice of Intent to Request Redaction Deadline Due By 8/27/2020. Statement of Redaction Request Due By 9/10/2020. Redacted Transcript Submission Due By 9/21/2020. Transcript access will be restricted through 11/18/2020. (Lewis, Tenille) (Entered: 08/21/2020)
08/21/2020	<a href="#">741</a>	Motion for Relief from Stay <i>as to Maintenance and Support Agreement</i>

	(16 pgs)	filed by Glenn Moses on behalf of Lufthansa Technik AG. (Moses, Glenn) (Entered: 08/21/2020)
08/21/2020		Receipt of Motion for Relief from Stay (fee)( <a href="#">20-11133-mg</a> ) [motion,185] ( 181.00) Filing Fee. Receipt number A14243398. Fee amount 181.00. (Re: Doc # <a href="#">741</a> ) (U.S. Treasury) (Entered: 08/21/2020)
08/21/2020	742	Transcript regarding Hearing Held on 08/18/2020 at 2:00 pm RE: (Doc# 694, 708, 709) Telephone Hearing Using CourtSolutions RE: Debtors' (I) Request for Expedited Determination; and (II) Emergency Motion for Authorization to Enter into Letter Agreements with Financing Arrangers. Next Hearing set for 08/19/2020 at 10:00 am (Doc## 695, 694, 696) Telephone Hearing Using CourtSolutions RE: Debtors' (I) Request For Expedited Determination; and (II) Motion for Authorization to File DIP Facility Fee Letter Under Seal. Next Hearing set for 08/19/2020 at 10:00 am. <b>Remote electronic access to the transcript is restricted until 11/19/2020.</b> The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: eScribers, LLC.]. (See the Courts Website for contact information for the Transcription Service Agency.) (RE: related document(s) <a href="#">696</a> , <a href="#">695</a> , <a href="#">708</a> , <a href="#">709</a> , <a href="#">694</a> ). Notice of Intent to Request Redaction Deadline Due By 8/28/2020. Statement of Redaction Request Due By 9/11/2020. Redacted Transcript Submission Due By 9/21/2020. Transcript access will be restricted through 11/19/2020. (Lewis, Tenille) (Entered: 08/21/2020)
08/21/2020	<a href="#">744</a> (12 pgs)	Affidavit of Service of <i>Ulises Perez Acosta</i> (related document(s) <a href="#">721</a> , <a href="#">718</a> , <a href="#">719</a> , <a href="#">716</a> , <a href="#">720</a> ) Filed by Glenn M. Kurtz on behalf of USAV Secured Lender Group. (Kurtz, Glenn) (Entered: 08/21/2020)
08/21/2020	<a href="#">745</a> (6 pgs)	<i>Declaration and Disclosure Statement of Ramiro Baca, on Behalf of Naranjo Martinez &amp; Asociados CIA Ltda</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 08/21/2020)
08/21/2020	<a href="#">746</a> (6 pgs)	<i>Declaration and Disclosure Statement of Tito Galel Vasquez, on Behalf of Bufete Vasquez</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 08/21/2020)
08/21/2020	<a href="#">747</a> (5 pgs)	<i>Declaration and Disclosure Statement of Alexander Godinez, on Behalf of Bufete Godinez y Asociados</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 08/21/2020)
08/24/2020	<a href="#">748</a> (2 pgs)	Order, Signed on 8/24/2020, Approved Proposed Additional Services to be Performed by Alvarez & Marsal North America, LLC as Financial Advisor to the Official Committee of Unsecured Creditors, Nunc Pro Tunc to August 6, 2020. (related document(s) <a href="#">459</a> , <a href="#">675</a> ) (Anderson, Deanna) (Entered: 08/24/2020)
08/24/2020	<a href="#">749</a> (5 pgs)	Statement / <i>Debtors' Witness and Exhibit List</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 08/24/2020)
08/24/2020	<a href="#">750</a> (3 pgs)	Statement / <i>Witness and Exhibit List</i> (related document(s) <a href="#">306</a> ) filed by Glenn M. Kurtz on behalf of USAV Secured Lender Group. with hearing to be held on 8/26/2020 at 10:00 AM at Courtroom 523 (MG) (Kurtz, Glenn) (Entered: 08/24/2020)
08/24/2020	<a href="#">751</a>	Order, Signed on 8/24/2020, Admitting Exhibits in Evidence for August

	(2 pgs)	26, 2020 Contract Rejection Hearing. (related document(s) <a href="#">750</a> , <a href="#">749</a> ) (Anderson, Deanna) (Entered: 08/24/2020)
08/24/2020	<a href="#">752</a> (14 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Notice of Adjournment of Hearing on Debtors' Emergency Motion for Authorization to Enter Into Letter Agreements with Financing Arrangers and Debtors' Motion for Authorization to File DIP Facility Fee Letter Under Seal; and 2) Debtors' Response to the Court's Questions Posed at the July 27, 2020 Status Conference</i> (related document(s) <a href="#">712</a> , <a href="#">715</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 08/24/2020)
08/24/2020	<a href="#">753</a> (10 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Notice of Revised DIP Facility Fee Letter (Filed Under Seal); 2) Order Authorizing Debtors to Enter into Letter Agreements with Financing Arrangers; and 3) Order Authorizing the Filing of DIP Facility Fee Letter Under Seal</i> (related document(s) <a href="#">725</a> , <a href="#">724</a> , <a href="#">723</a> ) filed by Kurtzman Carson Consultants. (Kass, Albert) (Entered: 08/24/2020)
08/24/2020	<a href="#">754</a> (62 pgs)	Second Monthly Fee Statement of <i>Morrison &amp; Foerster LLP as Counsel to the Official Committee of Unsecured Creditors for Compensation and Reimbursement of Expenses Incurred for the Period July 1, 2020 through July 31, 2020</i> Filed by Brett H. Miller on behalf of Morrison & Foerster LLP. (Miller, Brett) (Entered: 08/24/2020)
08/25/2020	<a href="#">755</a> (5 pgs)	Notice of Agenda / <i>Agenda of Matters Scheduled for Hearing on August 26, 2020 at 10:00 a.m. (Eastern Time)</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with hearing to be held on 8/26/2020 at 10:00 AM at Courtroom 523 (MG) (Fleck, Evan) (Entered: 08/25/2020)
08/25/2020	<a href="#">756</a> (1 pg)	Notice of Appearance filed by Juan Miguel Barragan on behalf of The Port Authority of New York and New Jersey. (Barragan, Juan) (Entered: 08/25/2020)
08/25/2020	<a href="#">757</a> (2 pgs)	Order, Signed on 8/25/2020, With Questions That Counsel for the Parties Should Address During the Hearing of the Rejection Motion. (Anderson, Deanna) (Entered: 08/25/2020)
08/25/2020	<a href="#">758</a> (3 pgs)	Order, Signed on 8/25/2020, Granting Debtor's Motion to Further Extend Time To File (I) Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases, Statements of Financial Affairs, and (II) Rule 2015.3 Financial Reports Through and Including September 8, 2020 (Related Doc # <a href="#">679</a> ). (Anderson, Deanna) (Entered: 08/25/2020)
08/25/2020	<a href="#">759</a> (5 pgs)	Notice of Agenda / <i>Amended Agenda of Matters Scheduled for Hearing on August 26, 2020 at 10:00 a.m. (Eastern Time)</i> (related document(s) <a href="#">755</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with hearing to be held on 8/26/2020 at 10:00 AM at Courtroom 523 (MG) (Fleck, Evan) (Entered: 08/25/2020)
08/26/2020	<a href="#">760</a> (52 pgs)	Operating Report / <i>Third Monthly Fee Statement Of Smith, Gambrell &amp; Russell, LLP, Special Aviation Counsel To The Debtors, For Allowance Of Compensation And Reimbursement Of Expenses For The Period July 1, 2020 Through July 31, 2020</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 08/26/2020)
08/26/2020	<a href="#">761</a>	Certificate of Service (related document(s) <a href="#">750</a> ) Filed by Glenn M. Kurtz on



	(13 pgs)	behalf of USAV Secured Lender Group. (Kurtz, Glenn) (Entered: 08/26/2020)
08/26/2020	<a href="#">762</a> (3 pgs)	Affidavit of Service / <i>Supplemental Affidavit of Service of Ulises Perez Acosta</i> (related document(s) <a href="#">721</a> , <a href="#">718</a> , <a href="#">719</a> , <a href="#">744</a> , <a href="#">716</a> , <a href="#">720</a> ) Filed by Glenn M. Kurtz on behalf of USAV Secured Lender Group. (Kurtz, Glenn) (Entered: 08/26/2020)
08/27/2020	<a href="#">763</a> (34 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on August 20, 2020</i> (related document(s) <a href="#">740</a> , <a href="#">738</a> , <a href="#">737</a> , <a href="#">736</a> , <a href="#">734</a> , <a href="#">735</a> , <a href="#">739</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 08/27/2020)
08/27/2020	<a href="#">764</a> (6 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Declaration and Disclosure Statement of Ramiro Baca, on Behalf of Naranjo Martinez &amp; Asociados CIA Ltda; 2) Declaration and Disclosure Statement of Tito Galel Vasquez, on Behalf of Bufete Vasquez Coello; and 3) Declaration and Disclosure Statement of Alexander Godinez, on Behalf of Bufete Godinez y Asociados</i> (related document(s) <a href="#">746</a> , <a href="#">745</a> , <a href="#">747</a> ) filed by Kurtzman Carson Consultants. (Kass, Albert) (Entered: 08/27/2020)
08/27/2020	<a href="#">765</a> (9 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Debtors' Witness and Exhibit List; and 2) Order Admitting Exhibits in Evidence for August 26, 2020 Contract Rejection Hearing</i> (related document(s) <a href="#">749</a> , <a href="#">751</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 08/27/2020)
08/27/2020	<a href="#">766</a> (2 pgs)	Order, Signed on 8/27/2020, Authorizing Debtors to Employ and Retain Seabury Securities LLC and Seabury International Corporate Finance LLC as Financial Advisor and Investment Banker to Debtors and Debtors in Possession Nunc Pro Tunc to the Petition Date Pursuant to Amended Engagement Letter. (related document(s) <a href="#">696</a> ) (Anderson, Deanna) (Entered: 08/27/2020)
08/27/2020	<a href="#">767</a> (3 pgs)	Affidavit of Service (related document(s) <a href="#">754</a> ) Filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. (Miller, Brett) (Entered: 08/27/2020)
08/27/2020	<a href="#">768</a> (11 pgs)	Affidavit of Service (related document(s) <a href="#">708</a> ) Filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. (Miller, Brett) (Entered: 08/27/2020)
08/27/2020	<a href="#">769</a> (11 pgs)	Affidavit of Service (related document(s) <a href="#">714</a> ) Filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. (Miller, Brett) (Entered: 08/27/2020)
08/27/2020	<a href="#">770</a> (3 pgs)	Affidavit of Service (related document(s) <a href="#">729</a> , <a href="#">730</a> , <a href="#">728</a> ) Filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. (Miller, Brett) (Entered: 08/27/2020)
08/27/2020	788	Transcript regarding Hearing Held on 08/26/2020 at 10:00 am RE: Evidentiary Hearing Using Zoom for Government RE: Debtor's Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts. (Doc. Nos. 306, 362, 616 to 619, 659, 662, 674, 681, 683, 684, 714, 715, 716, 717, 718, 719, 720, 721, 726, 739, 749, 750, 755). <b>Remote electronic access to the transcript is restricted until 11/25/2020.</b> The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: eScribers, LLC.]. (See the Courts Website for contact information for the Transcription Service Agency.). Notice of Intent to Request

		Redaction Deadline Due By 9/3/2020. Statement of Redaction Request Due By 9/17/2020. Redacted Transcript Submission Due By 9/28/2020. Transcript access will be restricted through 11/25/2020. (Lewis, Tenille) (Entered: 08/31/2020)
08/28/2020	<a href="#"><u>771</u></a> (1 pg)	Notice of Withdrawal of <i>Appearance of Kathleen M. Aiello</i> filed by Kathleen M. Aiello on behalf of Microsoft Corporation, Microsoft Licensing, GP and Microsoft Online, Inc.. (Aiello, Kathleen) (Entered: 08/28/2020)
08/29/2020	<a href="#"><u>772</u></a> (132 pgs)	Third Monthly Fee Statement of <i>Milbank LLP for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Counsel to the Debtors From July 1, 2020 Through and Including July 31, 2020</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 08/29/2020)
08/29/2020	<a href="#"><u>773</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of ALDO MELINI GONZALES. (Portilla, Julio) (Entered: 08/29/2020)
08/29/2020	<a href="#"><u>774</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Alexandre Robert Ridoutt. (Portilla, Julio) (Entered: 08/29/2020)
08/29/2020	<a href="#"><u>775</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Carlos Alberto Castro Quiros. (Portilla, Julio) (Entered: 08/29/2020)
08/29/2020	<a href="#"><u>776</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Erwin Pinedo Sanchez. (Portilla, Julio) (Entered: 08/29/2020)
08/29/2020	<a href="#"><u>777</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of George Ioan Barandiaran Stefanescu. (Portilla, Julio) (Entered: 08/29/2020)
08/29/2020	<a href="#"><u>778</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Gerardo Guillermo Castillo Vargas. (Portilla, Julio) (Entered: 08/29/2020)
08/29/2020	<a href="#"><u>779</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Gino Ezio Giacchetti Russo. (Portilla, Julio) (Entered: 08/29/2020)
08/29/2020	<a href="#"><u>780</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Hugo Alfredo Moscoso Pezo. (Portilla, Julio) (Entered: 08/29/2020)
08/29/2020	<a href="#"><u>781</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Javier Palma Alvarez Calderon. (Portilla, Julio) (Entered: 08/29/2020)
08/29/2020	<a href="#"><u>782</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Jose Carloz Pinedo Centurion. (Portilla, Julio) (Entered: 08/29/2020)
08/29/2020	<a href="#"><u>783</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Jose Carlos Pinillos Kelez. (Portilla, Julio) (Entered: 08/29/2020)
08/29/2020	<a href="#"><u>784</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Jose Carlos San Martin Hoyos. (Portilla, Julio) (Entered: 08/29/2020)
08/29/2020	<a href="#"><u>785</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Kevin German Segura Burga. (Portilla, Julio) (Entered: 08/29/2020)

08/29/2020	<a href="#"><u>786</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Mario Pablo Pareja Vargas. (Portilla, Julio) (Entered: 08/29/2020)
08/29/2020	<a href="#"><u>787</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Roberto Felipe Vecco Arze. (Portilla, Julio) (Entered: 08/29/2020)
08/31/2020	<a href="#"><u>789</u></a> (60 pgs)	Third Monthly Fee Statement of <i>FTI Consulting, Inc. for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Financial Advisor to the Debtors From July 1, 2020 Through and Including July 31, 2020</i> Filed by Evan R. Fleck on behalf of FTI Consulting, Inc.. (Fleck, Evan) (Entered: 08/31/2020)
08/31/2020	<a href="#"><u>790</u></a> (41 pgs)	Monthly Fee Statement of <i>Seabury Securities LLC and Seabury International Corporate Finance LLC for Professional Services and Disbursements for the Period of July 1, 2020 Through July 31, 2020</i> Filed by Evan R. Fleck on behalf of Seabury Securities LLC. (Fleck, Evan) (Entered: 08/31/2020)
08/31/2020	<a href="#"><u>791</u></a> (117 pgs)	Motion to Authorize / <i>Debtors' Motion for Entry of an Order Authorizing Incurrence and Payment of Break-Up Fee, Transaction Expenses, and Indemnification Obligations in Connection with Postpetition Financing</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 9/16/2020 at 10:00 AM at Courtroom 523 (MG) Responses due by 9/8/2020,. (Fleck, Evan) (Entered: 08/31/2020)
08/31/2020	<a href="#"><u>792</u></a> (18 pgs)	Motion to Authorize / <i>Debtors' Motion for (I) Authorization to File Backstop Commitment Letter Under Seal and (II) Granting Related Relief</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 9/16/2020 at 10:00 AM at Courtroom 523 (MG) Responses due by 9/8/2020,. (Fleck, Evan) (Entered: 08/31/2020)
09/01/2020	<a href="#"><u>793</u></a> (6 pgs)	Declaration and Disclosure Statement of <i>Hector Hernandez Botero on Behalf of Philippi Prietocarrizosa Ferrero Du &amp; Ura S.A.S</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/01/2020)
09/01/2020	<a href="#"><u>794</u></a> (6 pgs)	Declaration and Disclosure Statement of <i>John E. Failla on Behalf of Proskauer Rose, LLP</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/01/2020)
09/01/2020	<a href="#"><u>795</u></a> (6 pgs)	Declaration and Disclosure Statement of <i>Daniel Shapiro, on Behalf of Shapiro Law Office, P.C.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/01/2020)
09/01/2020	<a href="#"><u>796</u></a> (6 pgs)	Declaration and Disclosure Statement of <i>Jorge Augusto Valle Vargas, on Behalf of Estudio Juridico Valle &amp; Asociados</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/01/2020)
09/02/2020	<a href="#"><u>797</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Anthony Alcalde Rodriguez. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>798</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Stefano Alvarez Morales. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>799</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Juan Carlos Angosto Diaz. (Portilla, Julio) (Entered: 09/02/2020)

09/02/2020	<a href="#"><u>800</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Carlos Rodrigo Arce Brandariz. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>801</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Jorge Balarezo Abarca. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>802</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Sergio Roberto Beltran Fontaine. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>803</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Carlos Benavides Sifuentes. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>804</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Gonzalo Beunza Peschiera. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>805</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Roy Brand Moran. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>806</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Jaime Cabrera Calenzani. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>807</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Sergio Fernando Carnero Rodriguez. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>808</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Willy Carrascal Miranda. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>809</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Daniel Cogorno Peral. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>810</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Francisco Diaz Cafferata. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>811</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Michelle Fankhauser Luna. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>812</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Ernesto Fankhauser Pockaj. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>813</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Victor Gamarra Goicochea. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>814</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Sebastian Huaco Pereira. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>815</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Arturo Landaure Santamaria. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>816</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Luis Larrea Castellano. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>817</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Luis Levano Gutierrez. (Portilla, Julio) (Entered: 09/02/2020)

09/02/2020	<a href="#"><u>818</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Mateo Melgar Velaochaga. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>819</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Diego Alonso Montoya Espinoza. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>820</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Erich Mory Dobbertin. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>821</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Jaime Antonio Moy Petersen. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>822</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Ricardo Ore Moquillaza. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>823</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Bruno Cesar Repetto Escobedo. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>824</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Juan Diego Restrepo Robles. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>825</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Humberto Rivero Bahamonde. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>826</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Pedro Saenz Rabanal. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>827</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Benjamin Sanchez Del Solar. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>828</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Erwin Schipper Spoya. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>829</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Jimmy Tamashiro Sueyoshi. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>830</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Juan Carlos Tizon. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>831</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Ivan Torres Sanchez. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>832</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Ivan Vasquez Lam. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>833</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Enrique Vilela Guillen. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>834</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Javier Villagarcia Tam. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>835</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Jose Wong Fernandez. (Portilla, Julio) (Entered: 09/02/2020)



09/02/2020	<a href="#"><u>836</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Victor Andre Yavar Chillitupa. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>837</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Rodrigo Palma Alvarez Calderon. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>838</u></a> (2 pgs)	Notice of Appearance filed by Julio E. Portilla on behalf of Christian Lembcke Alvarez Calderon. (Portilla, Julio) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>839</u></a> (8 pgs)	Declaration / <i>Second Supplemental Declaration of Peter Barlow in Support of Debtors' Application for an Order Pursuant to Section 327(e) of the Bankruptcy Code Authorizing and Approving Employment and Retention of Smith, Gambrell &amp; Russell, LLP as Special Aviation Counsel to the Debtors Effective Nunc Pro Tunc to Petition Date</i> (related document(s) <a href="#"><u>181</u></a> , <a href="#"><u>233</u></a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/02/2020)
09/02/2020	<a href="#"><u>840</u></a> (10 pgs)	Declaration / <i>Supplemental Declaration of Evan R. Fleck In Support of Debtor's Application for Entry of Order Authorizing Employment and Retention of Milbank LLP as Attorneys for Debtors and Debtors in Possession Nunc Pro Tunc to Petition Date</i> (related document(s) <a href="#"><u>173</u></a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/02/2020)
09/03/2020	<a href="#"><u>841</u></a> (14 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on August 25, 2020</i> (related document(s) <a href="#"><u>758</u></a> , <a href="#"><u>759</u></a> , <a href="#"><u>757</u></a> , <a href="#"><u>755</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 09/03/2020)
09/03/2020	<a href="#"><u>842</u></a> (5 pgs)	Certificate of Mailing of Claims Agent <i>re Third Monthly Fee Statement of Smith, Gambrell &amp; Russell, LLP, Special Aviation Counsel to the Debtors, for Allowance of Compensation and Reimbursement of Expenses for the Period July 1, 2020 Through July 31, 2020</i> (related document(s) <a href="#"><u>760</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 09/03/2020)
09/03/2020	<a href="#"><u>843</u></a> (3 pgs)	Notice of Appearance <i>and Request for Service of Papers</i> filed by Geoffrey T. Raicht on behalf of Fiduciaria Corficolombiana S.A. Fideicomiso Coomeva Inversiones. (Raicht, Geoffrey) (Entered: 09/03/2020)
09/03/2020	<a href="#"><u>844</u></a> (60 pgs)	Monthly Fee Statement / <i>First Consolidated Monthly Fee Statement of Ropes &amp; Gray LLP, Special Government Investigations Counsel to the Debtors, for Allowance of Compensation and Reimbursement of Expenses for the Period May 10, 2020 through July 31, 2020</i> Filed by Mark R. Somerstein on behalf of Ropes & Gray LLP. (Somerstein, Mark) (Entered: 09/03/2020)
09/03/2020	<a href="#"><u>845</u></a> (8 pgs)	Declaration / <i>Third Supplemental Declaration of Michael G. McGovern in Further Support of Application of Debtors for Authority to Retain and Employ Ropes &amp; Gray LLP as Special Government Investigations Counsel to the Debtors Effective as of the Petition Date</i> (related document(s) <a href="#"><u>180</u></a> , <a href="#"><u>698</u></a> , <a href="#"><u>451</u></a> ) filed by Mark R. Somerstein on behalf of Ropes & Gray LLP. (Somerstein, Mark) (Entered: 09/03/2020)
09/03/2020	<a href="#"><u>846</u></a> (4 pgs; 2 docs)	Application for Pro Hac Vice Admission filed by Stephanie B. Gonzalez on behalf of Allianz Global Corporate & Specialty AG, Swissport USA, Inc.. (Attachments: # <a href="#"><u>1</u></a> Proposed Order) (Gonzalez, Stephanie) (Entered: 09/03/2020)



09/03/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#">20-11133-mg</a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14287842. Fee amount 200.00. (Re: Doc # <a href="#">846</a> ) (U.S. Treasury) (Entered: 09/03/2020)
09/03/2020	<a href="#">847</a> (23 pgs)	Notice of Presentment of <i>First Stipulation and Order Between Debtors and Engine Counterparties Concerning Certain Aircraft Engines</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with presentment to be held on 9/10/2020 at 12:15 PM at Courtroom 523 (MG) Objections due by 9/8/2020, (Fleck, Evan) (Entered: 09/03/2020)
09/03/2020	<a href="#">848</a> (11 pgs)	Notice of Presentment of <i>Stipulation and Order Authorizing Debtors to Reject Certain Unexpired Leases With Engine Counterparty and to Abandon Certain Aircraft Engines</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with presentment to be held on 9/10/2020 at 12:00 PM at Courtroom 523 (MG) Objections due by 9/8/2020, (Fleck, Evan) (Entered: 09/03/2020)
09/03/2020	<a href="#">849</a> (11 pgs)	Notice of Presentment of <i>Stipulation and Order Authorizing Debtors to Reject Certain Unexpired Leases With Engine Counterparty and to Abandon Certain Aircraft Engines</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with presentment to be held on 9/10/2020 at 12:00 PM at Courtroom 523 (MG) Objections due by 9/8/2020, (Fleck, Evan) (Entered: 09/03/2020)
09/04/2020	<a href="#">850</a> (40 pgs)	Memorandum Opinion, Signed on 9/4/2020, Granting in Part and Denying in Part Debtors Motion to Reject the USAV Agreements. (related document(s) <a href="#">306</a> ) (Anderson, Deanna) (Entered: 09/04/2020)
09/04/2020	<a href="#">851</a> (9 pgs)	Certificate of Mailing of Claims Agent <i>re Notice of Adjournment of Meeting of Creditors</i> (related document(s) <a href="#">688</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 09/04/2020)
09/08/2020	<a href="#">852</a> (45 pgs)	Monthly Operating Report <i>for the Period July 1, 2020 Through July 31, 2020</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">853</a> (35 pgs)	Statement / <i>Periodic Report Pursuant To Bankruptcy Rule 2015.3</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">854</a> (2 pgs)	Notice of Withdrawal of <i>Motion for Relief from the Automatic Stay as to Technical Services Agreement</i> (related document(s) <a href="#">741</a> ) filed by Glenn Moses on behalf of Lufthansa Technik AG. (Moses, Glenn) (Entered: 09/08/2020)
09/08/2020	<a href="#">855</a> (52 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Aero Transporte de Carga Union, S.A. de C.V., (Case No. 20-11140)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">856</a> (39 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Aeroinversiones de Honduras, S.A., (Case No. 20-11141)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)

09/08/2020	<a href="#"><u>857</u></a> (216 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Aerovas del Continente Americano S.A. Avianca, (Case No. 20-11134)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>858</u></a> (39 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Airlease Holdings One Ltd., (Case No. 20-11142)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>859</u></a> (41 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for America Central (Canada) Corp., (Case No. 20-11143)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>860</u></a> (43 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for America Central Corp., (Case No. 20-11144)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>861</u></a> (39 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for AV International Holdco S.A., (Case No. 20-11145)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>862</u></a> (39 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for AV International Holdings S.A., (Case No. 20-11146)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>863</u></a> (39 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for AV International Investments S.A., (Case No. 20-11147)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>864</u></a> (39 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for AV International Ventures S.A., (Case No. 20-11148)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>865</u></a> (39 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for AV Investments One Colombia S.A.S., (Case No. 20-11135)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>866</u></a> (40 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for AV Investments Two Colombia S.A.S.,</i>

		(Case No. 20-11136) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>867</u></a> (39 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for AV Taca International Holdco S.A.</i> , (Case No. 20-11149) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>868</u></a> (69 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Avianca Costa Rica S.A.</i> , (Case No. 20-11150) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>869</u></a> (48 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Avianca Holdings S.A.</i> , (Case No. 20-11133) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>870</u></a> (43 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Avianca Leasing, LLC</i> , (Case No. 20-11151) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>871</u></a> (48 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Avianca, Inc.</i> , (Case No. 20-11132) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>872</u></a> (69 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Avianca-Ecuador S.A.</i> , (Case No. 20-11152) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>873</u></a> (42 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Aviaservicios, S.A.</i> , (Case No. 20-11153) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>874</u></a> (52 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Aviateca, S.A.</i> , (Case No. 20-11154) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>875</u></a> (39 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Avifreight Holding Mexico, S.A.P.I. de C.V.</i> , (Case No. 20-11155) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)

09/08/2020	<a href="#"><u>876</u></a> (41 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for C.R. Intl Enterprises, Inc., (Case No. 20-11156)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>877</u></a> (44 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Grupo Taca Holdings Limited, (Case No. 20-11157)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>878</u></a> (39 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for International Trade Marks Agency Inc., (Case No. 20-11158)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>879</u></a> (39 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Inversiones del Caribe, S.A., (Case No. 20-11159)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>880</u></a> (51 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Islena de Inversiones, S.A. de C.V., (Case No. 20-11160)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>881</u></a> (39 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Latin Airways Corp., (Case No. 20-11161)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>882</u></a> (43 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Latin Logistics, LLC, (Case No. 20-11162)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>883</u></a> (43 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>For Nicaraguense de Aviacion Sociedad Anonima (Nica, S.A.), (Case No 20-11163)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>884</u></a> (49 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Regional Express Americas S.A.S., (Case No. 20-11137)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>885</u></a> (39 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Ronair N.V., (Case No. 20-11164)</i> Filed

		by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">886</a> (43 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Servicio Terrestre, Aereo y Rampa S.A., (Case No. 20-11165)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">887</a> (49 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Servicios Aeroportuarios Integrados Sai S.A.S., (Case No. 20-11138)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">888</a> (43 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Taca de Honduras, S.A. De C.V., (Case No. 20-11166)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">889</a> (43 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>Taca de Mexico, S.A., (Case No. 20-11167)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">890</a> (97 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Taca International Airlines S.A., (Case No. 20-11168)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">891</a> (45 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Taca S.A., (Case No. 20-11169)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">892</a> (76 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Tampa Cargo S.A.S., (Case No. 20-11139)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">893</a> (44 pgs)	Schedules filed: Schedule A/B - Non-Individual, Schedule D - Non-Individual, Schedule E/F - Non-Individual, Schedule G - Non-Individual, Schedule H - Non-Individual <i>for Technical and Training Services, S.A. de C.V., (Case No. 20-11170)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">894</a> (41 pgs)	Statement of Financial Affairs - Non-Individual <i>for Aero Transporte de Carga Union, S.A. de C.V., (Case No. 20-11140)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">895</a> (40 pgs)	Statement of Financial Affairs - Non-Individual <i>for Aeroinversiones de Honduras, S.A., (Case No. 20-11141)</i> Filed by Evan R. Fleck on behalf of



		Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>896</u></a> (715 pgs)	Statement of Financial Affairs - Non-Individual <i>for Aerovias del Continente Americano S.A. Avianca, (Case No. 20-11134)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>897</u></a> (39 pgs)	Statement of Financial Affairs - Non-Individual <i>for Airlease Holdings One Ltd., (Case No. 20-11142)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>898</u></a> (40 pgs)	Statement of Financial Affairs - Non-Individual <i>for America Central (Canada) Corp., (Case No. 20-11143)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>899</u></a> (40 pgs)	Statement of Financial Affairs - Non-Individual <i>for America Central Corp., (Case No. 20-11144)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>900</u></a> (40 pgs)	Statement of Financial Affairs - Non-Individual <i>for AV International Holdco S.A., (Case No. 20-11145)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>901</u></a> (40 pgs)	Statement of Financial Affairs - Non-Individual <i>for AV International Holdings S.A., (Case No. 20-11146)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>902</u></a> (40 pgs)	Statement of Financial Affairs - Non-Individual <i>for AV International Investments S.A., (Case No. 20-11147)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>903</u></a> (41 pgs)	Statement of Financial Affairs - Non-Individual <i>for AV International Ventures S.A., (Case No. 20-11148)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>904</u></a> (39 pgs)	Statement of Financial Affairs - Non-Individual <i>for AV Investments One Colombia S.A.S., (Case No. 20-11135)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>905</u></a> (40 pgs)	Statement of Financial Affairs - Non-Individual <i>for AV Investments Two Colombia S.A.S., (Case No. 20-11136)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>906</u></a> (40 pgs)	Statement of Financial Affairs - Non-Individual <i>for AV Taca International Holdco S.A., (Case No. 20-11149)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>907</u></a> (85 pgs)	Statement of Financial Affairs - Non-Individual <i>for Avianca Costa Rica S.A., (Case No. 20-11150)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>908</u></a> (56 pgs)	Statement of Financial Affairs - Non-Individual <i>for Avianca Holdings S.A., (Case No. 20-11133)</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>909</u></a>	Statement of Financial Affairs - Non-Individual <i>for Avianca Leasing, LLC,</i>



	(41 pgs)	(Case No. 20-11151) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">910</a> (233 pgs)	Statement of Financial Affairs - Non-Individual for <i>Avianca, Inc.</i> , (Case No. 20-11132) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">911</a> (172 pgs)	Statement of Financial Affairs - Non-Individual for <i>Avianca-Ecuador S.A.</i> , (Case No. 20-11152) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">912</a> (41 pgs)	Statement of Financial Affairs - Non-Individual for <i>Aviaservicios, S.A.</i> , (Case No. 20-11153) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">913</a> (45 pgs)	Statement of Financial Affairs - Non-Individual for <i>Aviateca, S.A.</i> , (Case No. 20-11154) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">914</a> (39 pgs)	Statement of Financial Affairs - Non-Individual for <i>Avifreight Holding Mexico, S.A.P.I. De C.V.</i> , (Case No. 20-11155) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">915</a> (39 pgs)	Statement of Financial Affairs - Non-Individual for <i>C.R. Intl Enterprises, Inc.</i> , (Case No. 20-11156) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">916</a> (41 pgs)	Statement of Financial Affairs - Non-Individual for <i>Grupo Taca Holdings Limited</i> , (Case No. 20-11157) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">917</a> (40 pgs)	Statement of Financial Affairs - Non-Individual for <i>International Trade Marks Agency Inc.</i> , (Case No. 20-11158) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">918</a> (39 pgs)	Statement of Financial Affairs - Non-Individual for <i>Inversiones del Caribe, S.A.</i> , (Case No. 20-11159) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">919</a> (42 pgs)	Statement of Financial Affairs - Non-Individual for <i>Islena de Inversiones, S.A. de C.V.</i> , (Case No. 20-11160) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">920</a> (41 pgs)	Statement of Financial Affairs - Non-Individual for <i>Latin Airways Corp.</i> , (Case No. 20-11161) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">921</a> (46 pgs)	Statement of Financial Affairs - Non-Individual for <i>Latin Logistics, LLC</i> , (Case No. 20-11162) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#">922</a> (43 pgs)	Statement of Financial Affairs - Non-Individual for <i>Nicaraguense de Aviacion Sociedad Aonima (Nica, S.A.)</i> , (Case No 20-11163) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)

09/08/2020	<a href="#"><u>923</u></a> (60 pgs)	Statement of Financial Affairs - Non-Individual for <i>Regional Express Americas S.A.S.</i> , (Case No. 20-11137) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>924</u></a> (40 pgs)	Statement of Financial Affairs - Non-Individual for <i>Ronair N.V.</i> , (Case No. 20-11164) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>925</u></a> (41 pgs)	Statement of Financial Affairs - Non-Individual for <i>Servicio Terrestre, Aereo y Rampa S.A.</i> , (Case No. 20-11165) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>926</u></a> (46 pgs)	Statement of Financial Affairs - Non-Individual for <i>Servicios Aeroportuarios Integrados Sai S.A.S.</i> , (Case No. 20-11138) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>927</u></a> (41 pgs)	Statement of Financial Affairs - Non-Individual for <i>Taca de Honduras, S.A. de C.V.</i> , (Case No. 20-11166) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>928</u></a> (43 pgs)	Statement of Financial Affairs - Non-Individual for <i>Taca de Mexico, S.A.</i> , (Case No. 20-11167) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>929</u></a> (149 pgs)	Statement of Financial Affairs - Non-Individual for <i>Taca International Airlines S.A.</i> , (Case No. 20-11168) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>930</u></a> (41 pgs)	Statement of Financial Affairs - Non-Individual for <i>Taca S.A.</i> , (Case No. 20-11169) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>931</u></a> (164 pgs)	Statement of Financial Affairs - Non-Individual for <i>Tampa Cargo S.A.S.</i> , (Case No. 20-11139) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/08/2020	<a href="#"><u>932</u></a> (43 pgs)	Statement of Financial Affairs - Non-Individual for <i>Technical And Training Services, S.A. De C.V.</i> , (Case No. 20-11170) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/08/2020)
09/09/2020	<a href="#"><u>933</u></a> (6 pgs)	Motion for Reclamation of Claim / <i>Debtors' Reclamation Notice and Settlement Notice Under Order Pursuant to 11 U.S.C. §§ 105 and 546(c) Establishing and Implementing Exclusive and Global Procedures for Treatment of Reclamation Claims</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. Responses due by 9/29/2020,. (Fleck, Evan) (Entered: 09/09/2020)
09/09/2020	<a href="#"><u>934</u></a> (9 pgs)	Certificate of Mailing of Claims Agent <i>re Order Authorizing Debtors to Employ and Retain Seabury Securities LLC and Seabury International Corporate Finance LLC as Financial Advisor and Investment Banker to Debtors and Debtors in Possession Nunc Pro Tunc to the Petition Date Pursuant to Amended Engagement Letter</i> (related document(s) <a href="#"><u>766</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 09/09/2020)

09/09/2020	<a href="#"><u>935</u></a> (14 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on or Before August 31, 2020</i> (related document(s) <a href="#"><u>791</u></a> , <a href="#"><u>792</u></a> , <a href="#"><u>772</u></a> , <a href="#"><u>789</u></a> , <a href="#"><u>790</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 09/09/2020)
09/10/2020	<a href="#"><u>936</u></a> (10 pgs)	Statement of No Objection / <i>Certificate of No Objection Regarding Matters Scheduled for September 16 Hearing</i> (related document(s) <a href="#"><u>791</u></a> , <a href="#"><u>792</u></a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/10/2020)
09/11/2020	<a href="#"><u>937</u></a> (3 pgs)	Order Signed on 9/11/2020 (I) Authorizing the Debtors to File Backstop Commitment Letter Under Seal and (II) Granting Related Relief. (Related Doc # <a href="#"><u>792</u></a> ) (Calderon, Lynda) (Entered: 09/11/2020)
09/11/2020	<a href="#"><u>938</u></a> (3 pgs)	Order Signed on 9/11/2020 Authorizing Incurrence and Payment of Certain Break-Up Fee, Transaction Expenses, and Indemnification in Connection with Postpetition Financing. (Related Doc # <a href="#"><u>791</u></a> ) (Calderon, Lynda) (Entered: 09/11/2020)
09/11/2020	<a href="#"><u>939</u></a> (2 pgs)	Notice of Hearing / <i>Notice of Cancellation of Hearing scheduled for September 16, 2020 at 10:00 a.m. (prevailing Eastern Time)</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/11/2020)
09/11/2020	<a href="#"><u>940</u></a> (6 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on September 1, 2020</i> (related document(s) <a href="#"><u>794</u></a> , <a href="#"><u>793</u></a> , <a href="#"><u>795</u></a> , <a href="#"><u>796</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 09/11/2020)
09/11/2020	<a href="#"><u>941</u></a> (6 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Second Supplemental Declaration of Peter Barlow in Support of Debtors' Application for an Order Pursuant to Section 327(e) of the Bankruptcy Code Authorizing and Approving Employment and Retention of Smith, Gambrell &amp; Russell, LLP as Special Aviation Counsel to the Debtors Effective Nunc Pro Tunc to Petition Date; 2) Supplemental Declaration of Evan R. Fleck in Support of Debtor's Application for Entry of Order Authorizing Employment and Retention of Milbank LLP as Attorneys for Debtors and Debtors in Possession Nunc Pro Tunc to Petition Date</i> (related document(s) <a href="#"><u>840</u></a> , <a href="#"><u>839</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 09/11/2020)
09/14/2020	<a href="#"><u>942</u></a> (2 pgs)	Order, Signed on 9/14/2020, Granting Application for Pro Hac Vice Admission of Stephanie B. Gonzalez (Related Doc # <a href="#"><u>846</u></a> ). (Anderson, Deanna) (Entered: 09/14/2020)
09/14/2020	<a href="#"><u>943</u></a> (6 pgs)	Statement / <i>Notice Of Rejection Of Certain Executory Contracts and Unexpired Leases</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/14/2020)
09/14/2020	<a href="#"><u>944</u></a> (8 pgs)	Stipulation and Order, Signed on 9/14/2020, Authorizing Debtors to Reject Certain Unexpired Leases With Engine Counterparty and to Abandon Certain Aircraft Engines (International Aero Engines AG Model V2527E-A5, MSN V13143). (related document(s) <a href="#"><u>848</u></a> ) (Anderson, Deanna). <b>Related Document Number Modified on 9/14/2020 (Bush, Brent)</b> (Entered: 09/14/2020)
09/14/2020	<a href="#"><u>945</u></a> (19 pgs)	First Stipulation and Order, signed on 9/14/2020, Between Debtors and Engine Counterparties Concerning Certain Aircraft Engines (Bank of

		Utah, Wells Fargo, Credit Agricole). (related document(s) <a href="#">847</a> ) (Anderson, Deanna) (Entered: 09/14/2020)
09/14/2020	<a href="#">946</a> (7 pgs)	Stipulation and Order, signed on 9/14/2020, Authorizing Debtors to Reject Certain Unexpired Leases With Engine Counterparty and to Abandon Certain Aircraft Engines (ESN 994437). (related document(s) <a href="#">849</a> ) (Anderson, Deanna) (Entered: 09/14/2020)
09/14/2020	<a href="#">947</a> (18 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on September 3, 2020</i> (related document(s) <a href="#">848</a> , <a href="#">845</a> , <a href="#">844</a> , <a href="#">847</a> , <a href="#">849</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 09/14/2020)
09/14/2020	<a href="#">948</a> (9 pgs)	Certificate of Mailing of Claims Agent <i>re Memorandum Opinion Granting in Part and Denying in Part Debtors' Motion to Reject the USAV Agreements</i> (related document(s) <a href="#">850</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 09/14/2020)
09/14/2020	<a href="#">949</a> (9 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Monthly Operating Report for Avianca Holdings S.A., et al., for the Period July 1, 2020 Through July 31, 2020; and 2) Periodic Report Pursuant to Bankruptcy Rule 2015.3</i> (related document(s) <a href="#">853</a> , <a href="#">852</a> ) filed by Kurtzman Carson Consultants. (Kass, Albert) (Entered: 09/14/2020)
09/14/2020	<a href="#">950</a> (13 pgs)	Certificate of Mailing of Claims Agent <i>re Debtors' Reclamation Notice and Settlement Notice Under Order Pursuant to 11 U.S.C. §§ 105 and 546(c) Establishing and Implementing Exclusive and Global Procedures for Treatment of Reclamation Claims</i> (related document(s) <a href="#">933</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 09/14/2020)
09/14/2020	<a href="#">951</a> (25 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on September 4, 2020</i> (related document(s) <a href="#">433</a> , <a href="#">688</a> , <a href="#">608</a> , <a href="#">165</a> , <a href="#">41</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 09/15/2020)
09/15/2020	<a href="#">952</a> (93 pgs; 6 docs)	Motion for Relief from Stay <i>Automatic Stay Pursuant to 11 U.S.C. § 362(d)</i> ; filed by Stephanie B. Gonzalez on behalf of Swissport USA, Inc. with hearing to be held on 10/14/2020 at 10:00 AM at Courtroom 523 (MG) Responses due by 10/7/2020,. (Attachments: # <a href="#">1</a> Memorandum of Law in Support of Motion for Relief from the Automatic Stay # <a href="#">2</a> Declaration of Stephanie B. Gonzalez # <a href="#">3</a> Exhibits A & B to Declaration of Stephanie B. Gonzalez # <a href="#">4</a> Proposed Order # <a href="#">5</a> Certificate of Service) (Gonzalez, Stephanie) (Entered: 09/15/2020)
09/15/2020		Receipt of Motion for Relief from Stay (fee)( <a href="#">20-11133-mg</a> ) [motion.185] ( 181.00) Filing Fee. Receipt number A14328424. Fee amount 181.00. (Re: Doc # <a href="#">952</a> ) (U.S. Treasury) (Entered: 09/15/2020)
09/17/2020	<a href="#">953</a> (5 pgs)	<i>Stipulation and Agreed Order for Limited Relief from the Automatic Stay to Effectuate a Setoff</i> Filed by Sandeep Qusba on behalf of JPMorgan Chase Bank, N.A.. (Qusba, Sandeep) (Entered: 09/17/2020)
09/17/2020	<a href="#">954</a> (10 pgs)	Notice of Presentment of <i>Stipulation between Debtors and JPMorgan Chase Bank, N.A.</i> filed by Sandeep Qusba on behalf of JPMorgan Chase Bank, N.A.. with presentment to be held on 9/24/2020 at 12:00 PM at Courtroom 501 (RG) Objections due by 9/22/2020, (Qusba, Sandeep) (Entered: 09/17/2020)
09/17/2020	<a href="#">955</a>	Certificate of Mailing of Claims Agent <i>re Certificate of No Objection</i>



	(9 pgs)	<i>Regarding Matters Scheduled for September 16 Hearing</i> (related document(s) <a href="#">936</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 09/17/2020)
09/18/2020	<a href="#">956</a> (3 pgs)	Notice of Appearance <i>and Demand for Service of Papers</i> filed by Sandeep Qusba on behalf of JPMorgan Chase Bank, N.A.. (Qusba, Sandeep) (Entered: 09/18/2020)
09/18/2020	<a href="#">957</a> (3 pgs)	Notice of Appearance <i>and Demand for Service of Papers</i> filed by Nicholas E. Baker on behalf of JPMorgan Chase Bank, N.A.. (Baker, Nicholas) (Entered: 09/18/2020)
09/18/2020	<a href="#">958</a> (3 pgs)	Notice of Appearance <i>and Demand for Service of Papers</i> filed by Jamie Fell on behalf of JPMorgan Chase Bank, N.A.. (Fell, Jamie) (Entered: 09/18/2020)
09/18/2020	<a href="#">959</a> (46 pgs; 2 docs)	Notice of Appeal (related document(s) <a href="#">850</a> ) filed by Glenn M. Kurtz on behalf of USAV Secured Lender Group. (Attachments: # <a href="#">1</a> Exhibit A - Memorandum Opinion Granting in Part and Denying in Part Debtors' Motion to Reject the USAV Agreements)(Kurtz, Glenn) (Entered: 09/18/2020)
09/18/2020		Receipt of Notice of Appeal( <a href="#">20-11133-mg</a> ) [appeal.97] ( 298.00) Filing Fee. Receipt number A14342178. Fee amount 298.00. (Re: Doc # <a href="#">959</a> ) (U.S. Treasury) (Entered: 09/18/2020)
09/18/2020		Receipt of Notice of Appeal( <a href="#">20-11133-mg</a> ) [appeal.97] ( 298.00) Filing Fee. Receipt number A14342178. Fee amount 298.00. (Re: Doc # <a href="#">959</a> ) (U.S. Treasury) (Entered: 09/18/2020)
09/18/2020	<a href="#">960</a> (46 pgs)	Notice of Appeal (related document(s) <a href="#">850</a> ) filed by Sheron Korpus on behalf of USAVflow Limited. (Korpus, Sheron) (Entered: 09/18/2020)
09/18/2020		Receipt of Notice of Appeal( <a href="#">20-11133-mg</a> ) [appeal.97] ( 298.00) Filing Fee. Receipt number A14342534. Fee amount 298.00. (Re: Doc # <a href="#">960</a> ) (U.S. Treasury) (Entered: 09/18/2020)
09/21/2020	<a href="#">961</a> (17 pgs)	Third Monthly Fee Statement of <i>Alvarez &amp; Marsal North America, LLC for Payment of Compensation and Reimbursement of Expenses as Financial Advisor to the Official Committee of Unsecured Creditors for the Period from March 1, 2020 through August 31, 2020</i> Filed by Brett H. Miller on behalf of Alvarez & Marsal North America, LLC. (Miller, Brett) (Entered: 09/21/2020)
09/21/2020	<a href="#">962</a> (27 pgs)	Third Monthly Fee Statement of <i>Alton Aviation Consultancy LLC for Specialized Aviation Advisory Services Rendered and Reimbursement of Expenses Incurred as Professionals for the Official Committee of Unsecured Creditors for the Period August 1, 2020 through August 31, 2020</i> Filed by Brett H. Miller on behalf of Alton Aviation Consultancy LLC. (Miller, Brett) (Entered: 09/21/2020)
09/21/2020	<a href="#">963</a> (19 pgs)	Third Monthly Fee Statement of <i>Jefferies LLC for Allowance of Compensation Earned and Reimbursement of Expenses Incurred for the Period from August 1, 2020 To and Including August 31, 2020</i> Filed by Brett H. Miller on behalf of Jefferies LLC. (Miller, Brett) (Entered: 09/21/2020)

09/21/2020	<a href="#">964</a> (358 pgs)	Motion to Authorize / <i>Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Grant Liens and Superpriority Administrative Expense Claims, (II) Modifying the Automatic Stay, and (III) Granting Related Relief</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 10/5/2020 at 10:00 AM at Courtroom 523 (MG) Responses due by 9/28/2020,. (Fleck, Evan) (Entered: 09/21/2020)
09/21/2020	<a href="#">965</a> (157 pgs)	Motion to Authorize / <i>Debtors' Motion for Entry of an Order (I) Authorizing Debtors' Entry Into a Securities Purchase Agreement; (II) Authorizing Debtors' Assumption of the Assumed Lifemiles Commercial Agreements and the Second Amended And Restated Shareholders Agreement; and (III) Granting Related Relief</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 10/5/2020 at 10:00 AM at Courtroom 523 (MG) Responses due by 9/28/2020,. (Fleck, Evan) (Entered: 09/21/2020)
09/21/2020	<a href="#">966</a> (30 pgs)	Declaration of John E. Luth in Support of (I) <i>Debtors' Motion for Entry of an Order (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Granting Superpriority Administrative Expense Claims, and (C) Granting Related Relief, and (II) Debtors' Motion For Entry Of An Order (A) Authorizing Debtors' Entry Into A Securities Purchase Agreement; And (B) Granting Related Relief</i> (related document(s) <a href="#">964</a> , <a href="#">965</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/21/2020)
09/21/2020	<a href="#">967</a> (18 pgs)	Motion to Authorize / <i>Debtors' Motion for (I) Authorization to File DIP Fee Letters Under Seal and (II) Granting Related Relief</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 10/5/2020 at 10:00 AM at Courtroom 523 (MG) Responses due by 9/28/2020,. (Fleck, Evan) (Entered: 09/21/2020)
09/21/2020	<a href="#">968</a> (28 pgs)	Statement / <i>Notice of Assumption of Certain Executory Contracts (as Amended) in Connection With Debtors' Continued Relationship With United Airlines, Inc.</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/21/2020)
09/22/2020	969	<b>(Wrong PDF File Attached. See Document #970 For The Correct Entry)</b> Motion to Approve / <i>Debtors' Motion for Entry of an Order Directing Certain Orders in Chapter 11 Cases of Avianca Holdings S.A., et al. be Made Applicable to Subsequent Debtors</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 10/5/2020 at 10:00 AM at Courtroom 523 (MG) Responses due by 9/28/2020,. (Fleck, Evan) Modified on 9/22/2020 (Richards, Beverly). (Entered: 09/22/2020)
09/22/2020	<a href="#">970</a> (32 pgs)	Motion to Approve / <i>Debtors' Motion for Entry of an Order Directing Certain Orders in Chapter 11 Cases of Avianca Holdings S.A., et al. be Made Applicable to Subsequent Debtors</i> filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with hearing to be held on 10/5/2020 at 10:00 AM at Courtroom 523 (MG) Responses due by 9/28/2020,. (Fleck, Evan) (Entered: 09/22/2020)
09/22/2020	<a href="#">971</a> (2 pgs)	Notice of Hearing / <i>Notice of Revised Omnibus Hearing Time and Establishment of Additional Omnibus Hearing Dates Pursuant to Order Implementing Certain Notice and Case Management Procedures</i> (related document(s) <a href="#">525</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/22/2020)



09/22/2020	<a href="#"><u>972</u></a> (18 pgs)	Monthly Fee Statement / <i>Monthly Fee Application Of Kurtzman Carson Consultants LLC As Administrative Advisor For The Debtors For Allowance Of Compensation For Professional Services Rendered And For Reimbursement Of Actual And Necessary Expenses Incurred From July 1, 2020 Through And Including July 31, 2020</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/22/2020)
09/23/2020	<a href="#"><u>973</u></a> (8 pgs)	Declaration / <i>First Supplemental Declaration of Samuel Aguirre in Support of the Application of Debtors for Entry of Order Authorizing Employment and Retention of FTI Consulting, Inc. as Financial Advisor to the Debtors Nunc Pro Tunc to the Petition Date</i> (related document(s) <a href="#"><u>254</u></a> , <a href="#"><u>175</u></a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/23/2020)
09/23/2020	<a href="#"><u>974</u></a> (12 pgs)	Affidavit of Service of <i>Ulises Perez Acosta re: <a href="#"><u>959</u></a> Notice of Appeal on September 18, 2020.</i> Filed by Glenn M. Kurtz on behalf of USAV Secured Lender Group. (Kurtz, Glenn) (Entered: 09/23/2020)
09/24/2020	<a href="#"><u>975</u></a> (9 pgs)	Declaration / <i>Second Supplemental Declaration of Ginger Hughes in Support of The Debtors' Application for Entry of Order Authorizing Employment and Retention of Seabury Securities LLC and Seabury International Corporate Finance LLC as Financial Advisor and Investment Banker to Debtors and Debtors in Possession Nunc Pro Tunc to the Petition Date</i> (related document(s) <a href="#"><u>174</u></a> , <a href="#"><u>232</u></a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/24/2020)
09/24/2020	<a href="#"><u>976</u></a> (41 pgs)	Fourth Monthly Fee Statement of <i>FTI Consulting, Inc. for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Financial Advisor to the Debtors From August 1, 2020 Through and Including August 31, 2020</i> (related document(s) <a href="#"><u>254</u></a> ) Filed by Evan R. Fleck on behalf of FTI Consulting, Inc.. (Fleck, Evan) (Entered: 09/24/2020)
09/24/2020	<a href="#"><u>977</u></a> (27 pgs)	Second Monthly Fee Statement of <i>Ropes &amp; Gray LLP, Special Government Investigations Counsel to the Debtors, for Allowance of Compensation and Reimbursement of Expenses for the Period August 1, 2020 through August 31, 2020</i> Filed by Mark R. Somerstein on behalf of Ropes & Gray LLP. (Somerstein, Mark) (Entered: 09/24/2020)
09/28/2020	<a href="#"><u>978</u></a> (58 pgs)	Third Monthly Fee Statement of <i>Morrison &amp; Foerster LLP as Counsel to the Official Committee of Unsecured Creditors for Compensation and Reimbursement of Expenses Incurred for the Period August 1, 2020 through August 31, 2020</i> Filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. (Miller, Brett) (Entered: 09/28/2020)
09/28/2020	<a href="#"><u>979</u></a> (12 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Order (I) Authorizing the Debtors to File Backstop Commitment Letter Under Seal and (II) Granting Related Relief; 2) Order Authorizing Incurrence and Payment of Certain Break-Up Fee, Transaction Expenses, and Indemnification in Connection with Postpetition Financing; and 3) Notice of Cancellation of Hearing Scheduled for September 16, 2020 at 10:00 a.m. (Prevailing Eastern Time)</i> (related document(s) <a href="#"><u>938</u></a> , <a href="#"><u>937</u></a> , <a href="#"><u>939</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 09/28/2020)
09/28/2020	<a href="#"><u>980</u></a>	Certificate of Mailing of Claims Agent <i>re 1) Second Supplemental</i>

	(10 pgs)	<i>Declaration of Peter Barlow in Support of Debtors' Application for an Order Pursuant to Section 327(e) of the Bankruptcy Code Authorizing and Approving Employment and Retention of Smith, Gambrell &amp; Russell, LLP as Special Aviation Counsel to the Debtors Effective Nunc Pro Tunc to Petition Date; and 2) Supplemental Declaration of Evan R. Fleck in Support of Debtor's Application for Entry of Order Authorizing Employment and Retention of Milbank LLP as Attorneys for Debtors and Debtors in Possession Nunc Pro Tunc to Petition Date</i> (related document(s) <a href="#">840</a> , <a href="#">941</a> , <a href="#">839</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 09/28/2020)
09/28/2020	<a href="#">981</a> (21 pgs)	Certificate of Mailing of Claims Agent <i>re Documents Served on or Before September 17, 2020</i> (related document(s) <a href="#">943</a> , <a href="#">946</a> , <a href="#">945</a> , <a href="#">944</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 09/28/2020)
09/28/2020	<a href="#">982</a> (4 pgs)	Civil Cover Sheet from U.S. District Court, Case Number: 20-cv-8008 Judge Laura Taylor Swain (related document(s) <a href="#">959</a> ) (Rouzeau, Anatin). (Entered: 09/28/2020)
09/28/2020	<a href="#">983</a> (17 pgs; 2 docs)	Objection to Motion / <i>Reservation of Rights of Citibank, N.A. to DIP Motion of the Debtors</i> (related document(s) <a href="#">964</a> ) filed by Keith A. Simon on behalf of Citibank, N.A.. (Attachments: # <a href="#">1</a> Exhibit A - Stipulation) (Simon, Keith) (Entered: 09/28/2020)
09/29/2020	<a href="#">984</a> (6 pgs)	Order, Signed on 9/29/2020, Establishing Procedures for Remote Evidentiary Hearing on October 5, 2020 in Connection With Debtors Motion for an Order Authorizing the Debtors to Obtain PostPetition Financing and Related Matters. (related document(s) <a href="#">964</a> , <a href="#">965</a> , <a href="#">967</a> , <a href="#">970</a> ) Evidentiary Hearing Using Zoom for Government to be Held on 10/5/2020 at 10:00 AM (EST). (Anderson, Deanna) (Entered: 09/29/2020)
09/29/2020	<a href="#">985</a> (9 pgs; 2 docs)	<i>Objection Of Topcast Aviation USA, Inc. To Debtors' Reclamation Notice And Settlement Notice Under Order Pursuant To 11 U.S.C. §§ 105 And 546(c) Establishing And Implementing Exclusive And Global Procedures For Treatment Of Reclamation Claim</i> (related document(s) <a href="#">933</a> ) filed by Thomas R. Slome on behalf of Topcast Aviation USA, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1) (Slome, Thomas) (Entered: 09/29/2020)
09/29/2020	<a href="#">986</a> (39 pgs)	Fourth Monthly Fee Statement of <i>Smith, Gambrell &amp; Russell, LLP, Special Aviation Counsel to the Debtors, for Allowance of Compensation and Reimbursement of Expenses for the Period August 1, 2020 Through August 31, 2020</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/29/2020)
09/29/2020	<a href="#">987</a> (27 pgs; 4 docs)	Objection to Motion <i>For Entry Of An Order Pursuant To 11 U.S.C. §§ 105(A), 363(B) &amp; 502(A) and Fed. R. Bankr. P. 9019(B) Establishing Procedures For Settling Certain Claims</i> (related document(s) <a href="#">964</a> ) filed by Gary D. Bressler on behalf of United States Fire Insurance Company and its affiliated sureties. (Attachments: # <a href="#">1</a> Declaration of Davis Thomas # <a href="#">2</a> Exhibits to Declaration # <a href="#">3</a> Certificate of Service) (Bressler, Gary) (Entered: 09/29/2020)
09/29/2020	<a href="#">988</a> (34 pgs; 4 docs)	Objection to Motion <i>For Entry Of An Order Pursuant To 11 U.S.C. §§ 105(A), 363(B) &amp; 502(A) and Fed. R. Bankr. P. 9019(B) Establishing Procedures For Settling Certain Claims</i> (related document(s) <a href="#">360</a> ) filed by Gary D. Bressler on behalf of Chubb Seguros Columbia S.A. and its affiliated sureties. (Attachments: # <a href="#">1</a> Declaration of Shrimati Balram # <a href="#">2</a>

		Exhibits to Declaration # <a href="#">3</a> Certificate of Service) (Bressler, Gary) (Entered: 09/29/2020)
09/29/2020	<a href="#">989</a> (6 pgs)	Stipulation and Agreed Order between JPMorgan Chase Bank, N.A. and Avianca Holdings S.A. for Limited Relief from the Automatic Stay to Effectuate a Setoff Filed by Sandeep Qusba on behalf of JPMorgan Chase Bank, N.A.. (Qusba, Sandeep) (Entered: 09/29/2020)
09/29/2020	<a href="#">990</a> (403 pgs)	Notice of Presentment of Second Stipulation and Order Between Debtors and Aircraft Counterparties Concerning Certain Aircraft filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with presentment to be held on 10/7/2020 at 12:00 PM at Courtroom 523 (MG) Objections due by 10/6/2020, (Fleck, Evan) (Entered: 09/29/2020)
09/29/2020	<a href="#">991</a> (11 pgs)	Notice of Presentment of Stipulation between Debtors and JPMorgan Chase Bank, N.A. filed by Sandeep Qusba on behalf of JPMorgan Chase Bank, N.A.. with presentment to be held on 10/7/2020 at 12:00 PM at Courtroom 501 (RG) Objections due by 10/5/2020, (Qusba, Sandeep) (Entered: 09/29/2020)
09/30/2020	<a href="#">992</a> (5 pgs)	So Ordered Stipulation and Agreed Order Signed on 9/30/2020 for Limited Relief from the Automatic Stay to Effectuate Setoff. (Calderon, Lynda) (Entered: 09/30/2020)
09/30/2020	<a href="#">993</a> (2 pgs)	Order Signed on 9/30/2020 Relating to October 5, 2020 Hearing on DIP Motion. (Calderon, Lynda) (Entered: 09/30/2020)
09/30/2020	<a href="#">994</a> (7 pgs)	Statement / Notice Of Rejection Of Certain Executory Contracts And Unexpired Leases filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 09/30/2020)
10/01/2020	<a href="#">995</a> (4 pgs; 2 docs)	Notice of Withdrawal of Limited Objection to Debtors Motion for Entry of an Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Grant Liens and Superpriority Administrative Expenses Claims, (II) Modifying the Automatic Stay, and (III) Granting Related Reliefs (related document(s) <a href="#">988</a> ) filed by Gary D. Bressler on behalf of Chubb Seguros Columbia S.A. and its affiliated sureties. (Attachments: # <a href="#">1</a> Certificate of Service)(Bressler, Gary) (Entered: 10/01/2020)
10/01/2020	<a href="#">996</a> (4 pgs; 2 docs)	Notice of Withdrawal of Limited Objection to Debtors Motion for Entry of an Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Grant Liens and Superpriority Administrative Expenses Claims, (II) Modifying the Automatic Stay, and (III) Granting Related Reliefs (related document(s) <a href="#">987</a> ) filed by Gary D. Bressler on behalf of United States Fire Insurance Company and its affiliated sureties. (Attachments: # <a href="#">1</a> Certificate of Service)(Bressler, Gary) (Entered: 10/01/2020)
10/01/2020	<a href="#">997</a> (2 pgs)	Notice of Appearance filed by Michael R. Caruso on behalf of DFASS Group and its Affiliates (T/A 3 Sixty Duty Free & More). (Caruso, Michael) (Entered: 10/01/2020)
10/01/2020	998	<b>(This Entry Has Been Refiled. See Document #<a href="#">999</a> For The Correct Entry)</b> Statement / Notice of Filing in Response to Order Relating to October 5, 2020 Hearing on DIP Motion [Docket No. 993] (related document(s) <a href="#">933</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings

		S.A.. (Fleck, Evan) Modified on 10/2/2020 (Richards, Beverly). (Entered: 10/01/2020)
10/01/2020	<a href="#">999</a> (6 pgs)	Statement / Notice of Filing in Response to Order Relating to October 5, 2020 Hearing on DIP Motion [Docket No. 993] (related document(s) <a href="#">993</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 10/01/2020)
10/01/2020	<a href="#">1000</a> (3 pgs)	Statement / Debtors' Witness and Exhibit List (related document(s) <a href="#">965</a> , <a href="#">966</a> , <a href="#">970</a> , <a href="#">964</a> , <a href="#">967</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 10/01/2020)
10/01/2020	<a href="#">1001</a> (143 pgs)	Notice of Proposed Order / Notice of Filing of Revised Form of Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, and (B) Grant Liens and Superpriority Administrative Expense Claims, (II) Modifying the Automatic Stay, and (III) Granting Related Relief Notice of Filing of Revised Form of Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, and (B) Grant Liens and Superpriority Administrative Expense Claims, (II) Modifying the Automatic Stay, and (III) Granting Related Relief (related document(s) <a href="#">964</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with hearing to be held on 10/5/2020 at 10:00 AM at Courtroom 523 (MG) Objections due by 9/28/2020, (Fleck, Evan) (Entered: 10/01/2020)
10/01/2020	<a href="#">1002</a> (15 pgs)	Notice of Proposed Order / Notice of Filing of Revised Form of Order (I) Authorizing Debtors' Entry Into a Securities Purchase Agreement; (II) Authorizing Debtors' Assumption of the Assumed Lifemiles Commercial Agreements and the Second Amended And Restated Shareholders Agreement; and (III) Granting Related Relief (related document(s) <a href="#">965</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with hearing to be held on 10/5/2020 at 10:00 AM at Courtroom 523 (MG) Objections due by 9/28/2020, (Fleck, Evan) (Entered: 10/01/2020)
10/01/2020	1003	<b>(Wrong PDF File Attached. See Document #1009 For The Correct Entry)</b> Statement of No Objection / Certificate of No Objection Regarding Matters Scheduled for October 5, 2020 Hearing (related document(s) <a href="#">1001</a> , <a href="#">964</a> , <a href="#">965</a> , <a href="#">1002</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) Modified on 10/2/2020 (Richards, Beverly). (Entered: 10/01/2020)
10/01/2020	<a href="#">1004</a> (16 pgs)	Certificate of Mailing of Claims Agent re: Documents Served on or before September 22, 2020 (related document(s) <a href="#">964</a> , <a href="#">972</a> , <a href="#">965</a> , <a href="#">971</a> , <a href="#">966</a> , <a href="#">967</a> , <a href="#">970</a> , <a href="#">968</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 10/01/2020)
10/01/2020	<a href="#">1005</a> (10 pgs)	Certificate of Mailing of Claims Agent re: First Supplemental Declaration of Samuel Aguirre in Support of the Application of Debtors for Entry of Order Authorizing Employment and Retention of FTI Consulting, Inc. as Financial Advisor to the Debtors Nunc Pro Tunc to the Petition Date (related document(s) <a href="#">973</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 10/01/2020)
10/01/2020	<a href="#">1006</a> (15 pgs)	Certificate of Mailing of Claims Agent re: 1) Second Supplemental Declaration of Ginger Hughes in Support of the Debtors' Application for Entry of Order Authorizing Employment and Retention of Seabury Securities LLC and Seabury International Corporate Finance LLC as Financial Advisor and Investment Banker to Debtors and Debtors in Possession Nunc Pro Tunc to the Petition Date; and 2) Fourth Monthly



		<i>Fee Statement of FTI Consulting, Inc. for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Financial Advisor to the Debtors From August 1, 2020 Through and Including August 31, 2020</i> (related document(s) <a href="#">976</a> , <a href="#">975</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 10/01/2020)
10/01/2020	<a href="#">1007</a> (11 pgs)	Certificate of Mailing of Claims Agent re: <i>Notice of Commencement of Chapter 11 Bankruptcy Cases</i> filed by Kurtzman Carson Consultants. (Kass, Albert) (Entered: 10/01/2020)
10/02/2020	<a href="#">1008</a> (4 pgs)	Notice of Appearance and Request For Notices and Documents filed by Pedro A. Jimenez on behalf of Ad Hoc Group of 2023 Noteholders. (Jimenez, Pedro) (Entered: 10/02/2020)
10/02/2020	<a href="#">1009</a> (21 pgs)	Statement of No Objection / <i>Certificate of No Objection Regarding Matters Scheduled for October 5, 2020 Hearing</i> (related document(s) <a href="#">1001</a> , <a href="#">964</a> , <a href="#">965</a> , <a href="#">1003</a> , <a href="#">1002</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 10/02/2020)
10/02/2020	<a href="#">1010</a> (4 pgs)	Notice of Agenda / <i>Agenda of Matters Scheduled for Hearing on October 5, 2020 at 10:00 a.m. (Eastern Time)</i> (related document(s) <a href="#">964</a> , <a href="#">965</a> , <a href="#">967</a> , <a href="#">970</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with hearing to be held on 10/5/2020 at 10:00 AM at Courtroom 523 (MG) (Fleck, Evan) (Entered: 10/02/2020)
10/02/2020	<a href="#">1011</a> (7 pgs)	Statement / <i>Notice of Filing of Corrected Response to Order Relating to October 5, 2020 Hearing on DIP Motion [Docket No. 993]</i> (related document(s) <a href="#">999</a> , <a href="#">993</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 10/02/2020)
10/02/2020	<a href="#">1012</a> (180 pgs)	Fourth Monthly Fee Statement of Milbank LLP for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Counsel to the Debtors From August 1, 2020 Through and Including August 31, 2020 Filed by Evan R. Fleck on behalf of Milbank LLP. (Fleck, Evan) (Entered: 10/02/2020)
10/02/2020	<a href="#">1013</a> (320 pgs)	Statement / <i>Notice of Filing of DIP Notes Documents</i> (related document(s) <a href="#">964</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 10/02/2020)
10/02/2020	<a href="#">1014</a> (341 pgs; 8 docs)	Statement of Issues and Designation of Record filed by Glenn M. Kurtz on behalf of USAV Secured Lender Group. (Attachments: # <a href="#">1</a> Exhibit A - # <a href="#">2</a> Exhibit B # <a href="#">3</a> Exhibit C # <a href="#">4</a> Exhibit D # <a href="#">5</a> Exhibit E # <a href="#">6</a> Exhibit F # <a href="#">7</a> Exhibit G)(Kurtz, Glenn) (Entered: 10/02/2020)
10/02/2020	<a href="#">1015</a> (11 pgs)	Designation of Contents (appellant). / <i>Designation Of Record And Statement Of Issues On Appeal Pursuant To Fed. R. Bankr. 8009(a)</i> filed by Sheron Korpus on behalf of USAVflow Limited. (Korpus, Sheron) (Entered: 10/02/2020)
10/03/2020	<a href="#">1016</a> (3 pgs)	Notice of Withdrawal of Reservation of Rights of Citibank, N.A. (related document(s) <a href="#">983</a> ) filed by Keith A. Simon on behalf of Citibank, N.A.. (Simon, Keith) (Entered: 10/03/2020)
10/03/2020	<a href="#">1017</a> (318 pgs)	Statement / <i>Notice of Filing of Revised DIP Credit Agreement</i> (related document(s) <a href="#">964</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 10/03/2020)

10/03/2020	<a href="#"><u>1018</u></a> (4 pgs)	Statement of the Official Committee of Unsecured Creditors in Support of Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, and (B) Grant Liens and Superpriority Administrative Expense Claims, (II) Modifying the Automatic Stay, and (III) Granting Related Relief (related document(s) <a href="#"><u>964</u></a> ) filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. with hearing to be held on 10/5/2020 (check with court for location) (Miller, Brett) (Entered: 10/03/2020)
10/04/2020	<a href="#"><u>1019</u></a> (5 pgs)	Statement / Notice of Filing of Demonstrative Exhibit (related document(s) <a href="#"><u>964</u></a> , <a href="#"><u>984</u></a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 10/04/2020)
10/04/2020	<a href="#"><u>1020</u></a> (5 pgs)	Notice of Agenda / Amended Agenda of Matters Scheduled for Hearing on October 5, 2020 at 10:00 a.m. (Eastern Time) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. with hearing to be held on 10/5/2020 at 10:00 AM at Courtroom 523 (MG) (Fleck, Evan) (Entered: 10/04/2020)
10/05/2020	<a href="#"><u>1021</u></a> (3 pgs)	Notice of Appearance and Request for Service of Papers filed by Keith Wofford on behalf of Elliott Investment Management L.P.. (Wofford, Keith) (Entered: 10/05/2020)
10/05/2020	<a href="#"><u>1022</u></a> (4 pgs)	Application for Pro Hac Vice Admission of Stephen Moeller-Sally filed by Keith Wofford on behalf of Elliott Investment Management L.P.. (Wofford, Keith) (Entered: 10/05/2020)
10/05/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#"><u>20-11133-mg</u></a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14398751. Fee amount 200.00. (Re: Doc # <a href="#"><u>1022</u></a> ) (U.S. Treasury) (Entered: 10/05/2020)
10/05/2020	<a href="#"><u>1023</u></a> (38 pgs)	Statement / Notice Of Fourth Amended OCP List (related document(s) <a href="#"><u>445</u></a> , <a href="#"><u>303</u></a> , <a href="#"><u>260</u></a> , <a href="#"><u>178</u></a> , <a href="#"><u>660</u></a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 10/05/2020)
10/05/2020	<a href="#"><u>1024</u></a> (6 pgs)	Declaration and Disclosure Statement of Jose Luis Suarez on Behalf of Gomez Pinzon Abogados S.A.S. filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 10/05/2020)
10/05/2020	<a href="#"><u>1025</u></a> (6 pgs)	Declaration and Disclosure Statement of Guillermo Lopez Davis on Behalf of Bufete Lopez Cordero & CIA, S.A.S. filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 10/05/2020)
10/05/2020	<a href="#"><u>1026</u></a> (2 pgs)	Order, Signed on 10/5/2020, Granting Application for Pro Hac Vice Admission of Stephen Moeller-Sally (Related Doc # <a href="#"><u>1022</u></a> ). (Anderson, Deanna) (Entered: 10/05/2020)
10/05/2020	<a href="#"><u>1027</u></a> (6 pgs)	Declaration and Disclosure Statement of Gaston Arcal on Behalf of Gaston Arcal Abogado. filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 10/05/2020)
10/05/2020	<a href="#"><u>1028</u></a> (3 pgs)	Order, Signed on 10/5/2020, (I) Authorizing the Debtors to File DIP Fee Letters Under Seal and (II) Granting Related Relief (Related Doc # <a href="#"><u>967</u></a> ). (Anderson, Deanna) (Entered: 10/05/2020)



10/05/2020	<a href="#"><u>1029</u></a> (5 pgs)	Order, Signed on 10/5/2020, (I) Authorizing Debtors' Entry Into a Securities Purchase Agreement; (II) Authorizing Debtors' Assumption of the Assumed Lifemiles Commercial Agreements and the Second Amended And Restated Shareholders Agreement; and (III) Granting Related Relief (Related Doc # <a href="#"><u>965</u></a> ). (Anderson, Deanna) (Entered: 10/05/2020)
10/05/2020	<a href="#"><u>1030</u></a> (6 pgs)	Order, Signed on 10/5/2020, Directing Certain Orders in Chapter 11 Cases of Avianca Holdings S.A., et al. be Made Applicable to Subsequent Debtors (Related Doc # <a href="#"><u>970</u></a> ). The chapter 11 cases of the Additional Debtors (Case Nos. 20-12255 and 20-12256) are consolidated for procedural purposes only and shall be jointly administered by the Court. The docket in Case No. 20-11133 (MG) should be consulted for all matters affecting this case. (Anderson, Deanna) (Entered: 10/05/2020)
10/05/2020	<a href="#"><u>1031</u></a> (67 pgs)	Final Order, Signed on 10/5/2020, (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, and (B) Grant Liens and Superpriority Administrative Expense Claims, (II) Modifying the Automatic Stay, and (III) Granting Related Relief (Related Doc # <a href="#"><u>964</u></a> ). (Anderson, Deanna) (Entered: 10/05/2020)
10/05/2020	<a href="#"><u>1032</u></a> (5 pgs)	Certificate of Mailing of Claims Agent <i>re Second Monthly Fee Statement of Ropes &amp; Gray LLP, Special Government Investigations Counsel to the Debtors, for Allowance of Compensation and Reimbursement of Expenses for the Period August 1, 2020 Through August 31, 2020</i> (related document(s) <a href="#"><u>977</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 10/05/2020)
10/06/2020	<a href="#"><u>1033</u></a> (45 pgs)	Monthly Fee Statement / <i>Monthly Fee Statement of Seabury Securities LLC for Professional Services and Disbursements for the Period of August 1, 2020 Through August 31, 2020</i> Filed by Evan R. Fleck on behalf of Seabury Securities LLC. (Fleck, Evan) (Entered: 10/06/2020)
10/06/2020	<a href="#"><u>1034</u></a> (2 pgs; 2 docs)	Application for Pro Hac Vice Admission filed by Thomas S. Kiriakos on behalf of Bank of America N.A.. (Attachments: # <a href="#"><u>1</u></a> Proposed Order) (Kiriakos, Thomas) (Entered: 10/06/2020)
10/06/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#"><u>20-11133-mg</u></a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14405290. Fee amount 200.00. (Re: Doc # <a href="#"><u>1034</u></a> ) (U.S. Treasury) (Entered: 10/06/2020)
10/06/2020	<a href="#"><u>1035</u></a> (2 pgs; 2 docs)	Application for Pro Hac Vice Admission filed by Alexander Berk on behalf of Bank of America N.A.. (Attachments: # <a href="#"><u>1</u></a> Proposed Order) (Berk, Alexander) (Entered: 10/06/2020)
10/06/2020		Receipt of Application for Pro Hac Vice Admission( <a href="#"><u>20-11133-mg</u></a> ) [motion,122] ( 200.00) Filing Fee. Receipt number A14405376. Fee amount 200.00. (Re: Doc # <a href="#"><u>1035</u></a> ) (U.S. Treasury) (Entered: 10/06/2020)
10/06/2020	1039	Transcript regarding Hearing Held on 10/05/2020 RE: Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Grant Liens and Superpriority Administrative Expense Claims, (II) Modifying the Automatic Stay and (III) Granting Related Relief. (Doc## 964, 966, 983, 984, 987, 988, 993, 995, 996, 998, 999, 1000, 1001, 1003, 1004, 1009, 1013, 1017, 1018, 1019, 1020) Debtors' Motion for Entry of an Order (I) Authorizing Debtors' Entry Into a Securities Purchase Agreement; (II) Authorizing

		Debtors' Assumption of the Assumed Lifemiles Commercial Agreements and the Second Amended And Restated Shareholders Agreement; and (III) Granting Related Relief. (Doc # 965, 984, 1002, 1003) Debtors' Motion for (I) Authorization to File DIP Fee Letters Under Seal and (II) Granting Related Relief. (Doc# 967, 984) Debtors' Motion for Entry of an Order Directing Certain Orders in Chapter 11 Cases of Avianca Holdings S.A., et al. be Made Applicable to Subsequent Debtors. (Doc# 970, 984). <b>Remote electronic access to the transcript is restricted until 1/4/2021.</b> The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: eScribers, LLC.]. (See the Courts Website for contact information for the Transcription Service Agency.) (RE: related document(s) <a href="#">1001</a> , <a href="#">1013</a> , <a href="#">964</a> , <a href="#">1020</a> , <a href="#">1018</a> , <a href="#">984</a> , <a href="#">999</a> , <a href="#">965</a> , <a href="#">1003</a> , <a href="#">995</a> , <a href="#">1009</a> , <a href="#">966</a> , <a href="#">967</a> , <a href="#">988</a> , <a href="#">987</a> , <a href="#">1017</a> , <a href="#">983</a> , <a href="#">1004</a> , <a href="#">1002</a> , <a href="#">1019</a> , <a href="#">993</a> , <a href="#">970</a> , <a href="#">1000</a> , <a href="#">998</a> , <a href="#">996</a> ). Notice of Intent to Request Redaction Deadline Due By 10/13/2020. Statement of Redaction Request Due By 10/27/2020. Redacted Transcript Submission Due By 11/6/2020. Transcript access will be restricted through 1/4/2021. (Lewis, Tenille) (Entered: 10/07/2020)
10/07/2020	<a href="#">1036</a> (18 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Order Establishing Procedures for Remote Evidentiary Hearing on October 5, 2020 in Connection With Debtors' Motion for an Order Authorizing the Debtors to Obtain Postpetition Financing and Related Matters; 2) Fourth Monthly Fee Statement of Smith, Gambrell &amp; Russell, LLP, Special Aviation Counsel to the Debtors, for Allowance of Compensation and Reimbursement of Expenses for the Period August 1, 2020 Through August 31, 2020; and 3) Notice of Presentment of Second Stipulation and Order Between Debtors and Aircraft Counterparties Concerning Certain Aircraft</i> (related document(s) <a href="#">984</a> , <a href="#">986</a> , <a href="#">990</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 10/07/2020)
10/07/2020	<a href="#">1037</a> (1 pg)	Order, Signed on 10/7/2020, Granting Application for Pro Hac Vice Admission of Thomas S. Kiriakos (Related Doc # <a href="#">1034</a> ). (Anderson, Deanna) (Entered: 10/07/2020)
10/07/2020	<a href="#">1038</a> (1 pg)	Order, Signed on 10/7/2020, Granting Application for Pro Hac Vice Admission of Alexander F. Berk (Related Doc # <a href="#">1035</a> ). (Anderson, Deanna) (Entered: 10/07/2020)
10/07/2020	<a href="#">1040</a> (15 pgs)	Fourth Monthly Fee Statement of <i>Alvarez &amp; Marsal North America, LLC for Payment of Compensation and Reimbursement of Expenses as Financial Advisor to the Official Committee of Unsecured Creditors for the Period from September 1, 2020 through September 30, 2020</i> Filed by Brett H. Miller on behalf of Alvarez & Marsal North America, LLC. (Miller, Brett) (Entered: 10/07/2020)
10/07/2020	<a href="#">1041</a> (2 pgs)	Civil Cover Sheet from U.S. District Court, Case Number: 20-cv-8364 (related document(s) <a href="#">960</a> ) (Rouzeau, Anatin). (Entered: 10/07/2020)
10/07/2020	<a href="#">1042</a> (98 pgs)	Statement / <i>Notice of Filing of Colombian Injunction Orders</i> (related document(s) <a href="#">964</a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 10/07/2020)
10/07/2020	<a href="#">1043</a> (3 pgs)	Affidavit of Service (related document(s) <a href="#">978</a> ) Filed by Brett H. Miller on behalf of Official Committee Of Unsecured Creditors. (Miller, Brett) (Entered: 10/07/2020)
10/07/2020	<a href="#">1044</a>	Affidavit of Service (related document(s) <a href="#">961</a> , <a href="#">963</a> , <a href="#">962</a> ) Filed by Brett H.

	(3 pgs)	Miller on behalf of Official Committee Of Unsecured Creditors. (Miller, Brett) (Entered: 10/07/2020)
10/07/2020	<a href="#">1045</a> (88 pgs)	Application to Employ /Debtors' Application for Entry of an Order Pursuant to 11 U.S.C. §§ 327(a), 328(a) and 1107(b) of Bankruptcy Code and Fed. R. Bankr. P. 2014, 2016 and 5002 Authorizing Employment and Retention of Quinn Emanuel Urquhart & Sullivan LLP as Special Litigation Counsel to Debtors and Debtors in Possession Nunc Pro Tunc to September 10, 2020 filed by Evan R. Fleck on behalf of Quinn Emanuel Urquhart & Sullivan LLP Responses due by 11/12/2020,. (Fleck, Evan) (Entered: 10/07/2020)
10/07/2020	<a href="#">1046</a> (6 pgs)	Second Stipulation and Agreed Order, signed on 10/7/2020, Between JPMorgan Chase Bank, N.A. and Avianca Holdings S.A. for Limited Relief From the Automatic Stay to Effectuate a Setoff. (related document(s) <a href="#">991</a> ) (Anderson, Deanna) (Entered: 10/07/2020)
10/07/2020	<a href="#">1047</a> (15 pgs; 2 docs)	Notice of Presentment Of Stipulation Between Debtors And Bank Of America N.A. filed by Thomas S. Kiriakos on behalf of Bank of America N.A.. with presentment to be held on 10/14/2020 (check with court for location) Objections due by 10/13/2020, (Attachments: # <a href="#">1</a> Annex A: Stipulation And Agreed Order)(Kiriakos, Thomas) (Entered: 10/07/2020)
10/07/2020	1048	<b>(Document Filed In The Wrong Case. See Adversary Proceeding No. 20-01189 For The Correct Entry)</b> Notice of Appearance in Adversary Proceeding and Request for Service of Papers filed by Glenn M. Kurtz on behalf of USAV Secured Lender Group. (Kurtz, Glenn) Modified on 10/8/2020 (Richards, Beverly). (Entered: 10/07/2020)
10/07/2020	<a href="#">1049</a> (13 pgs)	Certificate of Mailing of Claims Agent <i>re 1) Stipulation and Agreed Order for Limited Relief from the Automatic Stay to Effectuate a Setoff; 2) Order Relating to October 5, 2020 Hearing on DIP Motion; and 3) Notice of Rejection of Certain Executory Contracts and Unexpired Leases</i> (related document(s) <a href="#">994</a> , <a href="#">992</a> , <a href="#">993</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 10/07/2020)
10/07/2020	<a href="#">1050</a> (16 pgs)	Certificate of Service (related document(s) <a href="#">1014</a> ) filed by Brandon Batzel on behalf of USAV Secured Lender Group. (Batzel, Brandon) (Entered: 10/07/2020)
10/07/2020	<a href="#">1051</a> (9 pgs)	Certificate of Mailing of Claims Agent <i>re: Documents Served on October 1, 2020</i> (related document(s) <a href="#">1001</a> , <a href="#">999</a> , <a href="#">1003</a> , <a href="#">1002</a> , <a href="#">1000</a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 10/07/2020)
10/08/2020	<a href="#">1052</a> (20 pgs)	Second Stipulation and Order, signed on 10/8/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (Airbus - MSN 1368 All Parties Agreement). (related document(s) <a href="#">990</a> ) (Anderson, Deanna) (Entered: 10/08/2020)
10/08/2020	<a href="#">1053</a> (20 pgs)	Second Stipulation and Order, Signed on 10/8/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft. (Airbus - MSN 1534 All Parties Agreement) (related document(s) <a href="#">990</a> ) (Anderson, Deanna) (Entered: 10/08/2020)
10/08/2020	<a href="#">1054</a> (20 pgs)	Second Stipulation and Order, Signed on 10/8/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft. (Airbus MSN 3869) (related document(s) <a href="#">990</a> ) (Anderson, Deanna) (Entered: 10/08/2020)

10/08/2020	<a href="#"><u>1055</u></a> (20 pgs)	Second Stipulation and Order, signed on 10/8/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft. (Airbus - MSN 5057) (related document(s) <a href="#"><u>990</u></a> ) (Anderson, Deanna) (Entered: 10/08/2020)
10/08/2020	<a href="#"><u>1056</u></a> (20 pgs)	Second Stipulation and Order, signed on 10/8/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft. (Airbus - MSN 5119) (related document(s) <a href="#"><u>990</u></a> ) (Anderson, Deanna) (Entered: 10/08/2020)
10/08/2020	<a href="#"><u>1057</u></a> (20 pgs)	Second Stipulation and Order, signed on 10/8/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft. (Airbus - MSN 5333) (related document(s) <a href="#"><u>990</u></a> ) (Anderson, Deanna) (Entered: 10/08/2020)
10/08/2020	<a href="#"><u>1058</u></a> (20 pgs)	Second Stipulation and Order, signed on 10/8/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft (Airbus - MSN 5936). (related document(s) <a href="#"><u>990</u></a> ) (Anderson, Deanna) (Entered: 10/08/2020)
10/08/2020	<a href="#"><u>1059</u></a> (22 pgs)	Second Stipulation and Order, signed on 10/8/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft. (Airbus - MSN's 1009, 4200) (related document(s) <a href="#"><u>990</u></a> ) (Anderson, Deanna) (Entered: 10/08/2020)
10/08/2020	<a href="#"><u>1060</u></a> (23 pgs)	Second Stipulation and Order, signed on 10/8/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft. (Airbus - MSN's 1380, 1428, 1448) (related document(s) <a href="#"><u>990</u></a> ) (Anderson, Deanna) (Entered: 10/08/2020)
10/08/2020	<a href="#"><u>1061</u></a> (22 pgs)	Second Stipulation and Order, signed on 10/8/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft. (Airbus - MSN's 1506, 5944). (related document(s) <a href="#"><u>990</u></a> ) (Anderson, Deanna) (Entered: 10/08/2020)
10/08/2020	<a href="#"><u>1062</u></a> (24 pgs)	Second Stipulation and Order, signed on 10/8/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft. (Airbus - MSN's 3647, 3691). (related document(s) <a href="#"><u>990</u></a> ) (Anderson, Deanna) (Entered: 10/08/2020)
10/08/2020	<a href="#"><u>1063</u></a> (22 pgs)	Second Stipulation and Order, signed on 10/8/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft. (Airbus - MSN's 4287, 4345). (related document(s) <a href="#"><u>990</u></a> ) (Anderson, Deanna) (Entered: 10/08/2020)
10/08/2020	<a href="#"><u>1064</u></a> (22 pgs)	Second Stipulation and Order, signed on 10/8/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft. (Airbus - MSN's 5068, 5219, 5238, 5280, etcetera). (related document(s) <a href="#"><u>990</u></a> ) (Anderson, Deanna) (Entered: 10/08/2020)
10/08/2020	<a href="#"><u>1065</u></a> (25 pgs)	Second Stipulation and Order, signed on 10/8/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft. (Airbus - MSN's 6167, 6174, 6068, 6099). (related document(s) <a href="#"><u>990</u></a> ) (Anderson, Deanna) (Entered: 10/08/2020)
10/08/2020	<a href="#"><u>1066</u></a> (19 pgs)	Second Stipulation and Order, signed on 10/8/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft. (ATR - MSN 1185). (related document(s) <a href="#"><u>990</u></a> ) (Anderson, Deanna) (Entered: 10/08/2020)
10/08/2020	<a href="#"><u>1067</u></a> (20 pgs)	Second Stipulation and Order, signed on 10/8/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft. (ATR - MSN's 1092, 1116, 1142, 1160). (related document(s) <a href="#"><u>990</u></a> ) (Anderson, Deanna) (Entered: 10/08/2020)

10/08/2020	<a href="#"><u>1068</u></a> (20 pgs)	Second Stipulation and Order, signed on 10/8/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft. (ATR - MSN's 1114, 1126, 1151, 1124). (related document(s) <a href="#"><u>990</u></a> ) (Anderson, Deanna) (Entered: 10/08/2020)
10/08/2020	<a href="#"><u>1069</u></a> (20 pgs)	Second Stipulation and Order, signed on 10/8/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft. (ATR - MSN's 1167, 1174). (related document(s) <a href="#"><u>990</u></a> ) (Anderson, Deanna) (Entered: 10/08/2020)
10/08/2020	<a href="#"><u>1070</u></a> (20 pgs)	Second Stipulation and Order, signed on 10/8/2020, Between Debtors and Aircraft Counterparties Concerning Certain Aircraft. (JOLCO - MSN 65315). (related document(s) <a href="#"><u>990</u></a> ) (Anderson, Deanna) (Entered: 10/08/2020)
10/08/2020	<a href="#"><u>1071</u></a> (5 pgs)	Amended Notice of Hearing on Motion for Relief from Automatic Stay Pursuant to 11 U.S.C. 362(d) (related document(s) <a href="#"><u>952</u></a> ) filed by Nora Devitt on behalf of Allianz Global Corporate & Specialty AG, Swissport USA, Inc.. with hearing to be held on 10/14/2020 at 02:00 PM at Teleconference Line (CourtSolutions) (MG) (Devitt, Nora) (Entered: 10/08/2020)
10/08/2020	<a href="#"><u>1072</u></a> (17 pgs)	Memorandum of Law in Support of Avianca Holdings S.A.'s Opposition to Swissport USA, Inc's and its Insurer Allianz Global Corporate & Specialty's Motion for Relief From the Automatic Stay Pursuant to 11 U.S.C. § 362(d) (related document(s) <a href="#"><u>952</u></a> ) filed by Evan R. Fleck on behalf of Avianca Holdings S.A.. (Fleck, Evan) (Entered: 10/08/2020)
10/08/2020	<a href="#"><u>1073</u></a> (14 pgs)	Certificate of Mailing of Claims Agent re: Documents served on October 2, 2020 (related document(s) <a href="#"><u>1009</u></a> , <a href="#"><u>1010</u></a> , <a href="#"><u>1011</u></a> , <a href="#"><u>1012</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 10/08/2020)
10/09/2020	<a href="#"><u>1074</u></a> (118 pgs)	Application to Employ KPMG LLP (US) as Tax Consulting Services Provider / Notice of Presentment of Debtors' Application for Entry of Order Authorizing Employment and Retention of KPMG LLP (US) to Provide Tax Consulting Services to the Debtors Effective as of the Petition Date filed by Evan R. Fleck on behalf of Avianca Holdings S.A. with presentment to be held on 10/23/2020 at 12:00 PM at Courtroom 523 (MG). (Fleck, Evan) (Entered: 10/09/2020)
10/09/2020	<a href="#"><u>1075</u></a> (18 pgs)	Certificate of Mailing of Claims Agent re: Documents Served on or Before October 5, 2020 (related document(s) <a href="#"><u>1013</u></a> , <a href="#"><u>1020</u></a> , <a href="#"><u>1025</u></a> , <a href="#"><u>1023</u></a> , <a href="#"><u>1028</u></a> , <a href="#"><u>1031</u></a> , <a href="#"><u>1030</u></a> , <a href="#"><u>1027</u></a> , <a href="#"><u>1017</u></a> , <a href="#"><u>1024</u></a> , <a href="#"><u>1029</u></a> , <a href="#"><u>1019</u></a> ) filed by Kurtzman Carson Consultants.(Kass, Albert) (Entered: 10/09/2020)

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<b>Billable Pages:</b>	30	<b>Cost:</b>	3.00



**EXHIBIT 2**

**U.S. Bankruptcy Court  
Southern District of New York (Manhattan)  
Adversary Proceeding #: 20-01189-mg**

*Assigned to:* Judge Martin Glenn

*Date Filed:* 06/23/20

*Lead BK Case:* [20-11133](#)

*Lead BK Title:* Avianca Holdings S.A.

*Lead BK Chapter:* 11

*Demand:*

*Nature[s] of Suit:* 21 Validity, priority or extent of lien or other interest in property  
91 Declaratory judgment

***Plaintiff***

-----  
**Avianca Holdings S.A., et al.**

represented by **Evan R. Fleck**  
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Email: [efleck@milbank.com](mailto:efleck@milbank.com)

V.

***Defendant***

-----  
**USAVflow Limited**

represented by **Sheron Korpus**  
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Filing Date	#	Docket Text
06/23/2020	<u><a href="#">1</a></u> (394 pgs)	Adversary case 20-01189. Complaint against USAVflow Limited (Fee Amount \$ 350.). Nature(s) of Suit: (21 (Validity, priority or extent of lien or other interest in property)), (91 (Declaratory judgment)) Filed by Evan R. Fleck on behalf of Avianca Holdings S.A., et al.. (Fleck, Evan) (Entered: 06/23/2020)
06/23/2020		Receipt of Complaint( <u><a href="#">20-01189-mg</a></u> ) [cmp.cmp] ( 350.00) Filing Fee. Receipt number A14083652. Fee amount 350.00. (Re: Doc # <u><a href="#">1</a></u> ) (U.S. Treasury) (Entered: 06/23/2020)
06/24/2020	<u><a href="#">2</a></u> (2 pgs)	<b>Foreign Summons and Notice of Pre-Trial Conference</b> against USAVflow Limited . (Ortiz, Carmen) (Entered: 06/24/2020)
06/29/2020	<u><a href="#">3</a></u> (2 pgs)	Letter <i>Requesting Foreign Mailing Pursuant to Fed. R. Civ. P. 4(h)(2) and 4(f)(2)(C)(ii), as made applicable to this Proceeding by Fed. R. Bankr. P. 7004(a)(1)</i> Filed by Aaron Renenger. (Cantrell, Deirdra) (Entered: 06/29/2020)
06/29/2020	<u><a href="#">4</a></u> (1 pg)	Certificate of Mailing (related document(s) <u><a href="#">3</a></u> ) Filed by Clerk's Office of the U.S. Bankruptcy Court. (Cantrell, Deirdra) (Entered: 06/29/2020)
07/17/2020	<u><a href="#">5</a></u> (6 pgs; 2 docs)	<i>Stipulation and Agreement for an Order Enlarging the Time Under Which Defendant Must Respond to the Complaint</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A., et al.. (Attachments: # <u><a href="#">1</a></u> Exhibit A) (Fleck, Evan) (Entered: 07/17/2020)
07/21/2020	<u><a href="#">6</a></u> (2 pgs)	Order Signed on 7/21/2020 Enlarging the Time Under Which Defendant Must Respond to the Complaint to August 28, 2020. (related document(s) <u><a href="#">5</a></u> ) (Calderon, Lynda) (Entered: 07/21/2020)
08/27/2020	<u><a href="#">7</a></u> (6 pgs; 2 docs)	<i>Stipulation Amended Stipulation and Agreement for an Order Enlarging the Time Under Which Defendant Must Respond to the Complaint</i> Filed by Evan R. Fleck on behalf of Avianca Holdings S.A., et al.. (Attachments: # <u><a href="#">1</a></u> Exhibit A)(Fleck, Evan) (Entered: 08/27/2020)
09/18/2020	<u><a href="#">8</a></u>	Amended Order, signed on 9/18/2020, Enlarging the Time Under Which

	(2 pgs)	Defendant Must Respond to the Complaint Until 9/25/2020. (related document(s) <a href="#">7</a> ) (Anderson, Deanna) (Entered: 09/18/2020)
09/22/2020	<a href="#">9</a> (6 pgs)	Stipulation and Agreed Order Authorizing Intervention Filed by Evan R. Fleck on behalf of Avianca Holdings S.A., et al.. (Fleck, Evan) (Entered: 09/22/2020)
09/23/2020	<a href="#">10</a> (6 pgs)	Stipulation and Agreed Order Authorizing Intervention Signed on 9/23/2020. (related document(s) <a href="#">9</a> ) (Anderson, Deanna) (Entered: 09/23/2020)
09/25/2020	<a href="#">11</a> (29 pgs)	Motion to Dismiss Adversary Proceeding <i>Or In The Alternative To Stay Proceeding</i> filed by Sheron Korpus on behalf of USAVflow Limited. with hearing to be held on 10/14/2020 (check with court for location) (Korpus, Sheron) (Entered: 09/25/2020)
09/25/2020	<a href="#">12</a> (14 pgs; 2 docs)	Declaration <i>Of Sheron Korpus In Support Of Motion To Dismiss The Complaint Pursuant To Bankruptcy Rule 7012 Or In The Alternative To Stay Proceeding Pending Appeal Of Rejection Order</i> (related document(s) <a href="#">11</a> ) filed by Sheron Korpus on behalf of USAVflow Limited. (Attachments: # <a href="#">1</a> Exhibit A: Colombian Law Opinion) (Korpus, Sheron) (Entered: 09/25/2020)
09/25/2020	<a href="#">13</a> (5 pgs)	Notice of Hearing / <i>Defendants Notice Of Motion To Dismiss The Complaint Or In The Alternative To Stay Proceeding</i> (related document(s) <a href="#">11</a> ) filed by Sheron Korpus on behalf of USAVflow Limited. with hearing to be held on 10/14/2020 (check with court for location) (Korpus, Sheron) (Entered: 09/25/2020)
09/25/2020	<a href="#">14</a> (3 pgs)	Motion to Dismiss Adversary Proceeding / <i>USAV Secured Lender Groups Joinder to Motion to Dismiss the Complaint Pursuant to Bankruptcy Rule 7012 in the Alternative to Stay Proceedings Pending the Appeal of Rejection Order</i> (related document(s) <a href="#">11</a> ) filed by Glenn M. Kurtz on behalf of USAV Secured Lender Group. (Kurtz, Glenn) (Entered: 09/25/2020)
09/29/2020	<a href="#">15</a> (4 pgs)	Notice of Appearance in Adversary Proceeding filed by David J. Mark on behalf of USAVflow Limited. (Mark, David) (Entered: 09/29/2020)
09/29/2020	<a href="#">16</a> (4 pgs)	Notice of Appearance in Adversary Proceeding filed by Sheron Korpus on behalf of USAVflow Limited. (Korpus, Sheron) (Entered: 09/29/2020)
09/29/2020	<a href="#">17</a> (4 pgs)	Notice of Appearance in Adversary Proceeding filed by David S. Rosner on behalf of USAVflow Limited. (Rosner, David) (Entered: 09/29/2020)
09/30/2020	<a href="#">18</a> (2 pgs)	Corporate Ownership Statement . Corporate parents added to case: MaplesFS Limited. Filed by Sheron Korpus on behalf of USAVflow Limited. (Korpus, Sheron) (Entered: 09/30/2020)
10/07/2020	<a href="#">19</a> (4 pgs)	Stipulation and Agreed Order, Signed on 10/7/2020, Regarding Briefing Schedule. (related document(s) <a href="#">11</a> , <a href="#">14</a> ) Hearing to be held Telephonically on 11/4/2020 at 02:00 PM at Teleconference Line (CourtSolutions) (MG). (Anderson, Deanna) (Entered: 10/07/2020)
10/07/2020	<a href="#">20</a> (4 pgs)	Notice of Appearance in Adversary Proceeding <i>and Request for Service of Papers</i> filed by Glenn M. Kurtz on behalf of USAV Secured Lender

Group. (Kurtz, Glenn) (Entered: 10/07/2020)

10/08/2020	<a href="#"><u>21</u></a> (3 pgs)	Notice of Adjournment of Hearing on Defendant USAVflow Limited's Motion to Dismiss the Complaint Pursuant to Bankruptcy Rule 7012 or in the Alternative to Stay Proceeding Pending Appeal of Rejection Order (related document(s) <a href="#"><u>11</u></a> ) filed by Sheron Korpus on behalf of USAVflow Limited. with hearing to be held on 11/4/2020 at 02:00 PM at Teleconference Line (CourtSolutions) (MG) (Korpus, Sheron) (Entered: 10/08/2020)
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**EXHIBIT 3**



**Hearing Date and Time: July 15, 2020 at 10:00 AM (ET)**  
**Objection Deadline: July 2, 2020 at 4:00 PM (ET)**

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*Counsel for Debtors and  
 Debtors-In-Possession*

**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

-----X	:	
In re:	:	Chapter 11
	:	
AVIANCA HOLDINGS S.A., <i>et al.</i> , <sup>1</sup>	:	Case No. 20-11133 (MG)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----X		

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
 REJECTION OF CERTAIN EXECUTORY CONTRACTS**

The Debtors in these chapter 11 cases, and each Debtor's federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int'l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Islaña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors-in-possession (the “Debtors”), respectfully represent as follows in support of this motion (the “Motion”):

**RELIEF REQUESTED**

1. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as Exhibit C, authorizing them to reject each of the USAV Agreements (as defined herein) pursuant to section 365 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), *nunc pro tunc* to the date of the filing of this Motion.<sup>2</sup>

**PRELIMINARY STATEMENT**

2. Since late 2017, the Debtors have been party to a series of intertwined agreements with USAVflow Limited (“USAV”) pursuant to which the Debtors agreed to provide to USAV on an ongoing basis certain credit card receivables generated in the United States pursuant to credit card processing agreements in exchange for an initial purchase price of \$150 million plus continuing monthly installments of an additional purchase price. The USAV Agreements (as defined herein) remain in place, and absent rejection or other relief, will drain the Debtors’ estates of valuable postpetition resources.

3. As described further herein, because the USAV Agreements were executed simultaneously, are indivisible and dependent on one another, and require material ongoing performance by the Debtors and the relevant counterparties, the USAV Agreements constitute executory contracts. Moreover, the USAV Agreements involve valuable property: the credit card

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<sup>2</sup> Contemporaneously herewith, the Debtors are filing an adversary complaint (the “Complaint”) seeking (i) to recharacterize the transactions described herein as a financing and (ii) relief pursuant to section 552 of the Bankruptcy Code. To the extent the Court grants the relief requested in this Motion, it will not be necessary for the Court to reach the issues raised in the Complaint.

receivables generate a significant stream of revenue which will be crucial to the Debtors' ability to continue operations and to work productively toward a successful reorganization.

4. For these reasons, the Debtors seek to reject the USAV Agreements, thereby relieving the Debtors of burdensome continuing obligations under the USAV Agreements.

### **JURISDICTION**

5. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The bases for the relief requested herein are section 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

### **BACKGROUND**

7. Avianca is the second-largest airline group in Latin America and the most important carrier in the Republic of Colombia and in the Republic of El Salvador. It is the largest airline in the Republic of Colombia (the third largest Latin American economy), a code-share partner of United Airlines, and a member of the Star Alliance which, with 26 members, is the world's largest global airline alliance. Established in 1919, Avianca has a 100-year legacy as a leading provider of air travel and cargo services in the Latin American market and around the globe. Avianca is well respected throughout Latin America and maintains significant customer brand equity and market share in the regions it services.

8. The Debtors operate an extensive network of routes from their primary hubs in Bogotá and San Salvador (in addition to other focus markets) and offer passenger services on more than 5,350 weekly flights to more than 76 destinations in 27 countries. With approximately 18,900 employees and approximately \$3.9 billion in annual revenues, the Debtors play a key role in the Latin American airline market.

9. On March 20, 2020, the Republic of Colombia, consistent with what numerous other governments around the world have done, announced that it would close its airspace to address the spread of COVID-19. As a result of the restrictions imposed by the Colombian government, as well as similar measures in various other of the Debtors' primary markets, on March 24, 2020 the Debtors announced that they were suspending all scheduled passenger flights from March 25, 2020. This situation is ongoing, and no date has been established for restart of flights.

10. Accordingly, on May 10, 2020 (the "Petition Date"), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Each Debtor is continuing to operate its business and manage its properties as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

### **THE USAV AGREEMENTS**

11. As of the Petition Date, Aerovías del Continente Americano S.A. Avianca and certain of the Debtors (collectively, "Avianca") were parties to: (i) the Contract Rights and Receivables Sale, Purchase and Servicing Agreement (the "RSPA")<sup>3</sup> with USAV, an exempted company incorporated and registered under the laws of the Cayman Islands; (ii) the Receivables Maintenance Agreement (the "Undertaking Agreement") with USAV; (iii) the RSPA Assignment of Rights Agreement (the "Assignment Agreement")<sup>4</sup> with USAV; (iv) the Cash Management Agreement (the "Cash Management Agreement")<sup>5</sup> with USAV and Citibank N.A., as Administrative Agent and Collateral Agent ("Citibank"); (v) the Credomatic Notice of Transfer

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<sup>3</sup> The RSPA and the Undertaking Agreement (as defined below) are governed by the laws of Colombia.

<sup>4</sup> The Assignment Agreement (as defined herein) is governed by the laws of Costa Rica.

<sup>5</sup> The Cash Management Agreement, the Credomatic Notice, the Credomatic Consent and Agreement, and the AMEX Notice (as each is defined below) are all governed by the laws of New York.

(the “Credomatic Notice”) to BAC International Bank, Inc. (“Credomatic”) agreed to by, among others, Avianca, USAV, and Citibank; (vi) the Credomatic Consent and Agreement provided to Credomatic; (vii) the AMEX Notice and Consent provided to American Express Travel Related Services Company, Inc. and American Express Payment Services Limited (collectively, “AMEX”) agreed to by, among others, Avianca, USAV, and Citibank (the “AMEX Notice”); and (viii) the Expenses Agreement (the “Expenses Agreement”)<sup>6</sup> between Avianca and USAV. All of the foregoing agreements and instruments are hereafter referred to as the “USAV Agreements.”<sup>7</sup> True and complete copies of the USAV Agreements are attached to the *Declaration of Aaron L. Renenger in Support of Debtors’ Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts*, attached hereto as Exhibit B.

12. The RSPA is structured as a sale agreement, pursuant to which Avianca purportedly “sold” certain of its Contract Rights and Receivables under a credit card processing agreement between Avianca and Credomatic and a credit card processing agreement between Avianca and AMEX (together, the “Card Processing Agreements”), under which Credomatic and AMEX agreed, among other things, to pay Avianca for sales, including future sales, made by travel agencies in the United States (and cleared through the Airlines Reporting Corporation) of Avianca’s airline tickets and related services purchased in the United States with Visa or Mastercard credit cards and American Express credit cards, respectively. The purchase price under the RSPA was \$150 million plus the Additional Purchase Price, which is defined generally as the amount in any payment period that exceeds the amounts required for USAV’s monthly amortization payments. RSPA § 3.01(a).

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<sup>6</sup> The Expenses Agreement is governed by the laws of the Cayman Islands.

<sup>7</sup> Capitalized terms used but not defined herein have the meanings prescribed to them in the USAV Agreements, as applicable.

13. “Contract Rights” are defined in the RSPA as the contract rights of Avianca under the Card Processing Agreements “to (i) receive any kind of payments, indemnities or economic compensations derived therefrom on account of Specified Sales, including the right, among other things, to receive all future Collections derived therefrom; and (ii) to enforce the rights referred to in (i) against the respective Card Processors thereunder.” RSPA § 1.01.

14. “Receivables” are defined in the RSPA, in relevant part, as “any and all Collections accrued under the Card Processing Agreements that are due on account of Specified Sales from . . . AMEX or Credomatic to the Seller immediately prior to giving effect to this Agreement on the Effective Date (and due to the Purchaser immediately upon giving effect to this Agreement on the Effective Date).” RSPA § 1.01. In order to avoid a Retention Event under the RSPA, Avianca is required, among other things, to continue to make ticket sales and generate receivables, in order to maintain the required Collections Coverage Ratio. *Id.* At the same time, should Avianca meet these obligations, each month USAV is required to return excess Collections after reserving an amount necessary to satisfy its debt service reserve obligations. *Id.*

15. Under the Assignment Agreement, Avianca agreed to assign to USAV the interests in its card processing agreement with Credomatic in exchange for the purchase price paid under the RSPA. Assignment Agreement at ¶ 3.

16. Under the Undertaking Agreement, Avianca agreed to carry out certain duties and responsibilities as a servicer of the Contract Rights and Receivables. These duties and responsibilities include, but are not limited to (i) causing Credomatic and AMEX to comply with the obligations to make all payments under the Card Processing Agreements to the required account, (ii) investigating Collections that are delinquent and undertaking collection efforts as necessary to collect such Collections, and (iii) providing to USAV and Citibank monthly financial



statements regarding Collections in respect of the Contract Rights. Undertaking Agreement §§ 2.01, 3.02, 3.03.

17. The Cash Management Agreement governs the disbursement of funds to the parties, including in the case of a Trigger Event (defined in section 6.01 of the RSPA). Under this agreement, upon notice from the parties of major events, such as a Retention Event<sup>8</sup> or a Trigger Event, or “any unpaid fees, expenses or indemnities incurred by or claimed through or disburseable to [USAV] or the Administrative Agent,” *id.* § 2.06, 2.07(a), Citibank is required to adjust the payments made thereunder to conform with the priority of payments set forth in Article II of the Cash Management Agreement. *Id.* § 2.09(c).

18. Avianca provided written notice to Credomatic and AMEX of the assignment of the receivables relevant to their respective Card Processing Agreements to USAV, to which each counterparty consented. Each of AMEX and Credomatic were directed to forward any amounts payable with respect to the Card Processing Agreements directly to USAV’s account, or any other account to be designated by Citibank.

19. Avianca and USAV also simultaneously entered into the Expenses Agreement, under which Avianca agreed to indemnify and settle on USAV’s behalf certain costs, including but not limited to, “any and all fees and expenses [USAV] incurred in connection with its entry into and the performance of its obligations under any of the [USAV Agreements],” Expenses Agreement at ¶ 3.1, and “all costs, fees and expenses incurred by [USAV], [Citibank], and any other person contracted to provide services in relation to the Receivables or the Loan Agreement or the transactions contemplated thereby.” *Id.* at ¶ 3.5.

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<sup>8</sup> Under the RSPA, a Retention Event is triggered when the Collections Coverage Ratio is less than 2.5:1.0 on any date of determination. The Collections Coverage Ratio is the ratio between the amount of Collections deposited and the sum of the amount of Monthly Amortization plus interest payable on the next payment date.

20. On the same day it entered into the USAV Agreements with Avianca, USAV entered into a loan agreement (the “Loan Agreement”) with certain lenders and Citibank, as Administrative Agent and Collateral Agent, pursuant to which USAV borrowed \$150 million. The loans under the Loan Agreement are secured by, among other things, the receivables from the Card Processing Agreements. Each of Avianca Holdings S.A., Taca International Airlines S.A., Avianca Costa Rica S.A., and Trans American Airlines, S.A. is a guarantor of USAV’s obligations under the Loan Agreement. A true and correct copy of the Loan Agreement is also attached hereto as part of Exhibit B.

21. Under a security agreement dated December 12, 2017, USAV pledged to Citibank all of its rights in the Contract Rights, Receivables, Collections, and the account in which all payments on the assets “sold” under the RSPA were to be deposited. In addition, an Account Control Agreement was executed in respect of the New York Pass-Through Account (into which Avianca’s receivables are paid) granting control to Citibank, and pursuant to which amounts on deposit in the New York Pass-Through Account are swept into the Collections Account (an account established and maintained by USAV) on a daily basis.

22. On May 11, 2020, one day after the Petition Date, pursuant to section 2.09(b) of the Cash Management Agreement, Citibank, in its capacity as the Administrative Agent, notified the parties that a Retention Event under the RSPA has occurred and is continuing. In response, Avianca notified Citibank’s counsel of the automatic stay under section 362 of the Bankruptcy Code. As discussed further herein, the declaration of a Retention Event could have a significant impact on Avianca receiving the Additional Purchase Price from USAV.

## **BASIS FOR RELIEF REQUESTED**

### **A. The Court Should Permit the Debtors to Reject the USAV Agreements**

23. Courts in the Second Circuit have adopted two different standards to determine whether a contract is executory. A majority of courts subscribe to the “substantial performance” test, or what is commonly referred to as the “Countryman Test.” Under this test, an executory contract is characterized as one “under which the obligation of both the [debtor] and the other party to a contract are so far unperformed that failure of either to complete performance would constitute a material breach excusing the performance of the other.” *In re Penn Traffic Co.*, 524 F.3d 373, 379 (2d Cir. 2008) (finding that a contract is executory under section 365 where “performance remains due to some extent on both sides”). Alternatively, some courts follow the “functional approach,” under which a court “considers the goals that assumption or rejection were expected to accomplish. . . . These goals include: (1) taking advantage of contracts which will benefit the estate; (2) relieving the estate of burdensome contracts; (3) promoting the debtor’s fresh start; (4) permitting the allowance and determination of claims; and (5) preventing parties from remaining in doubt concerning their status vis-à-vis the estate.” *In re Bradlees Stores, Inc.*, No. 00-16033, 2001 WL 34809984, at \*5 (Bankr. S.D.N.Y. Mar. 28, 2001) (internal quotation marks and citation omitted), *aff’d* No. 00-16033 (BRL), 2001 WL 1112308 (S.D.N.Y. Sept. 20, 2001); *see In re Majestic Capital, Ltd.*, 463 B.R. 289, 300 (Bankr. S.D.N.Y. 2012) (holding that “the functional approach should be applied to allow the rejection of the present . . . contract,” after noting that the Southern District of New York “follows both the *Countryman* test and the functional approach”). Under either approach, the Court should permit the Debtors to reject the USAV Agreements, as (1) they contain a number of ongoing and unperformed obligations on both sides which renders them executory, and (2) rejection would relieve the estates of burdensome obligations that no longer confer any reasonable benefit on the Debtors’ estates.

24. Pursuant to the RSPA, Avianca is required to continue to perform or observe “any term or obligation under the Undertaking Agreement (except Sections 2.01(c), (d), (e), and (s)(i) and Section 2.02(c) thereof), any RSPA Security Document or any Notice and Consent.” RSPA § 6.01(c)(i). Pursuant to the Undertaking Agreement, Avianca agreed to carry out numerous duties and responsibilities as a Servicer, as well as to act as a Custodian. *See* Undertaking Agreement §§ 3.02 and 3.03. As Servicer, Avianca must (i) respond to inquiries of the Card Processors, correct errors, and settle claims and disputes relating to receivables (*see* Undertaking Agreement § 3.02(b)); (ii) manage, service, and administer the Contract Rights and the Collections (*id.* § 3.02(e)); (iii) use its best efforts to collect all payments called for under the terms and provisions of the Card Processing Agreements as and when the same become due (*id.* § 3.02(h)); and (iv) provide monthly statements regarding Collections to USAV and Citibank (*id.* § 3.02(k)). *See In re Helm*, 335 B.R. 528, 536 (Bankr. S.D.N.Y. 2006) (finding a contract to collect royalties “currently due or becoming due” to be executory where the plain language of the contract demonstrated the agreement was perpetual in term).

25. Additionally, the Undertaking Agreement requires Avianca to ensure that each of the Card Processing Agreements remains the legal, valid, and binding obligation of each of the parties thereto, to perform and observe all of its material covenants and obligations contained in each of them, and to “renew each Card Processing Agreement in accordance with the terms thereof and not consent to any termination by any Card Processor to any termination thereof.” Undertaking Agreement § 2.01(v). Thus, Avianca must continue to comply with its unperformed obligations under the Card Processing Agreements, which are themselves executory. *See, e.g., In re UAL Corp.*, 293 B.R. 183, 186, 188-89 (Bankr. N.D. Ill. 2003) (noting that United Airlines’ credit card processing agreement to process MasterCard and Visa purchases for its customers was

an executory contract subject to assumption or rejection as “the parties to the contract have substantial obligations remaining to be performed”).

26. In addition, Avianca must continue to generate Receivables sufficient to (i) pay to USAV the Monthly Settlement Amount (as defined in the Cash Management Agreement) and (ii) maintain a Collections Coverage Ratio of at least 1.75:1:00 at any date of determination. RSPA §§ 6.01(a), 6.01(b). Such obligations are also ongoing.

27. USAV also has ongoing obligations under the RSPA, including most significantly the continuing obligation to distribute funds and make payments to Avianca. For instance, under section 3.01(a)(ii) of the RSPA, USAV is required to make Additional Purchase Price payments to Avianca. While courts have found that contracts are not executory where the only remaining obligation is the payment of money by one party (and the other party has fully performed), if **both** parties have substantial unperformed obligations, the contract is executory notwithstanding that the uncompleted obligations of one of the parties is the payment of money. *See In re Teligent, Inc.*, 268 B.R. 723, 732 (Bankr. S.D.N.Y. 2001). In any event, USAV has other obligations under the USAV Agreements in addition to the obligations to pay the Additional Purchase Price, including the maintenance of books and records as required to comply with Cayman Islands law. RSPA § 3.04.

28. The continuing obligations of Avianca and USAV under the RSPA and the Undertaking Agreement render these contracts executory under the Countryman definition. The Court should also deem the USAV Agreements executory under the functional approach (which the Second Circuit has adopted at times) as rejection would relieve the estates of burdensome obligations. *See, e.g., In re Ideal Mortg. Bankers, Ltd.*, 539 B.R. 409, 437 (Bankr. E.D.N.Y. 2015) (“[E]ven though there may be material obligations outstanding on the part of only one of the parties

to the contract, [the contract] may nevertheless be deemed executory under the functional approach if its assumption [or] rejection would ultimately benefit the estate and its creditors.”) (internal quotation marks and citation omitted).

29. With respect to the Cash Management Agreement, the Expenses Agreement, and the agreements which are principally related to the assignment of the Card Processing Agreements (the Assignment Agreement, the Credomatic Notice, the Credomatic Consent and Agreement, and the AMEX Notice, (collectively, the “Assignment Agreements”)), while they may not be executory by their own terms, these agreements exist solely to effectuate the RSPA. For example, the RSPA notes that the Credomatic Notice, Credomatic Consent and Agreement, and AMEX Notice were executed “for the purpose of perfecting the Transfer to the Purchaser of the existing Contract Rights arising under the AMEX Contract and the Credomatic Contract,” as required by article 887 *et seq.* of the Colombian Code of Commerce. *See* RSPA § 2.01(b)(i). Thus, the Court should deem these agreements to be inseparable from the RSPA and Undertaking Agreement for purposes of rejection. *See, e.g., In re Atl. Comput. Sys., Inc.*, 173 B.R. 844, 855 (S.D.N.Y. 1994) (finding agreements to be so related such that they could not be construed separately for purposes of executory contract rejection); *see In re Arts Dairy, LLC*, 417 B.R. 495, 502 (Bankr. N.D. Ohio 2009) (“[D]ifferent obligations, contained in separately executed documents, can still be construed as a single contract for purposes of assumption or rejection under § 365. . . . The question in this regard is whether the contracts are divisible or indivisible”) (citations omitted).

30. Courts look to state law to determine whether contracts are inextricably related to one another. *In re Arts Dairy*, 417 B.R. at 503 (“Applicable nonbankruptcy law . . . controls the determination of whether agreements are divisible or indivisible.”). Under New York law, “[g]enerally, the rule is that separate contracts relating to the same subject matter and executed



simultaneously by the same parties may be construed as one agreement.” See *Williams v. Mobil Oil Corp.*, 83 A.D.2d 434, 439 (N.Y. App. Div. 2d Dep’t 1981); see also *Commander Oil Corp. v. Advance Food Serv. Equip.*, 991 F.2d 49, 53 (2d Cir. 1993) (applying New York law and finding that “[g]enerally, separate writings are construed as one agreement if they relate to the same subject matter and are executed simultaneously”); *Carvel Corp. v. Diversified Mgmt. Grp., Inc.*, 930 F.2d 228, 233 (2d Cir. 1991) (finding that various contemporaneously executed promissory notes and distributorship agreement must be treated as a single contract given that “[u]nder New York law, instruments executed at the same time, by the same parties, for the same purpose and in the course of the same transaction will be read and interpreted together”). Avianca and USAV entered into the USAV Agreements on the same day and in the course of the same transaction. Additionally, the agreements all refer to one another and were executed to effectuate or facilitate the assignment of Avianca’s rights in the Card Processing Agreements. As such, even if the Cash Management Agreement, the Expenses Agreement, or any of the Assignment Agreements do not constitute an executory contract taken separately, the Court should still permit their rejection in conjunction with the rejection of the RSPA and the Undertakings Agreement as all of the USAV Agreements constitute one transaction. See *In re Kopel*, 232 B.R. 57, 65 n.4 (Bankr. E.D.N.Y. 1999) (“Where several documents are construed as one contract, the debtor must assume or reject them together.”).

**B. Rejection of the USAV Agreements Constitutes Sound Exercise of the Debtors’ Business Judgment**

31. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, “subject to the court’s approval, may . . . reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). “The purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to ‘renounce title to and abandon burdensome property.’” *In re Orion*

*Pictures Corp.*, 4 F.3d 1095, 1098 (2d Cir. 1993); *see also In re Republic Airways Holdings Inc.*, 547 B.R. 578, 582 (Bankr. S.D.N.Y. 2016) (same).

32. The Supreme Court has recognized that “the authority to reject an executory contract” is not merely incidental, but rather “is vital to the basic purpose of a Chapter 11 reorganization, because rejection can release the debtor’s estate from burdensome obligations that can impede a successful reorganization.” *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984). Courts have similarly held that “[t]he right of a debtor in possession to reject certain contracts is fundamental to the bankruptcy system because it provides a mechanism through which severe financial burdens may be lifted while the debtor attempts to reorganize.” *Westbury Real Estate Ventures, Inc. v. Bradlees Stores, Inc. (In re Bradlees Stores, Inc.)*, 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996); *see also In re Ames Dep’t Stores, Inc.*, 306 B.R. 43, 51-52 (Bankr. S.D.N.Y. 2004) (“The ability to reject provides the trustee or debtor-in-possession with the means to relieve the estate of the duty to perform on burdensome obligations at the expense of all of the estate’s other creditors, and to avoid the incurrence of additional administrative expenses which lack a corresponding benefit to the estate.”).

33. The decision to seek rejection of an executory contract is in the Debtors’ reasonable business judgment. *See In re Orion Pictures*, 4 F.3d at 1098-99 (“[A] bankruptcy court reviewing a trustee’s or debtor-in-possession’s decision to assume or reject an executory contract [pursuant to section 365] should examine a contract and the surrounding circumstances and apply its best ‘business judgment’ to determine if it would be beneficial or burdensome to the estate to assume it.”); *In re Old Carco LLC*, 470 B.R. 688, 703 (S.D.N.Y. 2012) (holding that the business judgment standard “applies when a Bankruptcy Court approves a debtor’s assumption or rejection of a contract”); *In re Delta Air Lines, Inc.*, 359 B.R. 468, 476 (Bankr. S.D.N.Y. 2006) (“[T]he standard

for deciding a motion to reject an executory contract under Section 365(a) is the business judgment rule, which basically means that if it makes economic sense for the debtor in the judgment of management, the motion to reject will be granted.”).

34. The business judgment standard requires a court to approve a debtor's business decision unless that decision is the product of bad faith, whim, or caprice. *In re Bradlees Stores, Inc.*, 194 B.R. at 558 n.1. Courts generally will not second-guess a debtor's business judgment concerning executory contract rejection. *See, e.g., In re Grubb & Ellis Co.*, No. 12-10685 (MG), 2012 WL 1036071, at \*4 (Bankr. S.D.N.Y. Mar. 27, 2012) ("Courts should not generally interfere with business decisions absent a showing of 'bad faith, self-interest, or gross negligence.'") (citation omitted); *In re MF Glob. Holdings Ltd.*, 466 B.R. 239, 242 (Bankr. S.D.N.Y. 2012); *In re Balco Equities Ltd., Inc.*, 323 B.R. 85, 98 (Bankr. S.D.N.Y. 2005) ("A court 'should defer to a debtor's decision that rejection of a contract would be advantageous unless the decision is so unreasonable that it could not be based on sound business judgment, but only on bad faith or whim.'") (quoting *In re Sundial Asphalt Co.*, 147 B.R. 72, 84 (E.D.N.Y. 1992)). Furthermore, sound business judgment generally requires rejection where an executory contract is burdensome to the debtor's estate and the rejection would relieve the estate of such burden. *See, e.g., In re Orion Pictures*, 4 F.3d at 1098-99; *In re Stable Mews Assocs., Inc.*, 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984).

35. Rejection of the USAV Agreements is well within the Debtors' sound business judgment. Under the RSPA, USAV directly collects all payments made by Credomatic and AMEX on Avianca's receivables and reserves from them the amount for USAV's debt service, remitting the balance to Avianca. *See* Cash Management Agreement, Article II. Thus, while the RSPA requires Avianca to continue to incur costs to generate receivables, including all of the costs

incidental to providing and servicing flights, Avianca is not receiving the full benefit of the proceeds generated from those receivables. Conversely, if the USAV Agreements are rejected, the receivables generated by the Debtors will flow into the estates, enabling the Debtors to utilize the revenues generated by their operations for their reorganization.

36. Moreover, because a Retention Event has been declared, Avianca is not receiving even those financial benefits under the USAV Agreements it received prior to the declaration of the Retention Event. A Retention Event is triggered when the Collateral Coverage Ratio falls below a certain threshold, which entitles USAV to withhold the Additional Purchase Price from Avianca. RSPA § 3.01(a)(ii). If a Retention Event continues for three months, an Adjustment Event occurs, which can trigger an adjusted priority of payments that continues to trap cash and pay down installments of the loan in inverse order of maturity. Cash Management Agreement § 2.03.

37. If the USAV Agreements are rejected, however, the receivables generated by the Debtors must be delivered to the Debtors pursuant to section 542 of the Bankruptcy Code.

38. In light of the foregoing considerations, Avianca's business judgment in seeking relief from the burdensome obligations under the USAV Agreements cannot seriously be questioned.

**C. The Court Should Authorize Rejection of the USAV Agreements *Nunc Pro Tunc* to the Date of the Filing of this Motion**

39. The Debtors respectfully submit that the rejection of the USAV Agreements should be effective *nunc pro tunc* to the date of this Motion. Section 105(a) of the Bankruptcy Code vests the Court with expansive equitable powers to fashion any order or decree that is necessary to carry out the provisions of the Bankruptcy Code. 11 U.S.C. § 105(a).

40. While section 365 of the Bankruptcy Code does not address whether the Court may deem rejections effective *nunc pro tunc* to dates prior to entry of the order authorizing the rejection, courts have consistently held that bankruptcy courts may, in their discretion, authorize *nunc pro tunc* rejections under principles of equity. *In re Jamesway Corp.*, 179 B.R. 33, 38 (S.D.N.Y. 1995); *see also In re Thinking Machs. Corp.*, 67 F.3d 1021, 1028 (1st Cir. 1995) (“In the section 365 context, . . . bankruptcy courts may enter retroactive orders of approval, and should do so when the balance of equities preponderates in favor of such remediation.”); *In re CCI Wireless, LLC*, 297 B.R. 133, 140 (Bankr. D. Colo. 2003) (holding that “because section 365 does not, as a matter of law, prohibit selection of a retroactive date for rejection, the bankruptcy court has authority under section 365(d)(3) to set the effective date of rejection at least as early as the filing date of the motion to reject”).

41. In the present case, the balance of equities favors the *nunc pro tunc* relief. In light of the current global economic situation and the Debtors’ liquidity concerns, Avianca has determined that the USAV Agreements are no longer beneficial to the Debtors’ estates. The counterparties to the USAV Agreements are on notice as of the date of this Motion that the Debtors are seeking to reject the USAV Agreements. *See In re Cafeteria Operators, L.P.*, 299 B.R. 384, 394 (Bankr. N.D. Tex. 2003) (granting retroactive relief for contract rejection where debtors were “receiving no benefit” from the lease and the contract counterparties “had unequivocal notice of Debtors’ intent to reject prior to the filing of the Motions”).

42. Based on the foregoing, the Debtors respectfully submit that the relief requested in this Motion, including the rejection *nunc pro tunc* to the date of filing this Motion, is necessary and appropriate, in the best interest of the Debtors’ estates, and should be granted.

### **RESERVATION OF RIGHTS**

43. Nothing contained herein is intended to be or shall be construed as: (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors' or any appropriate party in interest's right to dispute any claim; or (iii) an approval or assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code.

### **NOTICE**

44. Notice of this Motion will be given to the following parties or, in lieu thereof, to their counsel, if known: (a) USAV; (b) Citibank; (c) AMEX; (d) Credomatic; (e) the Standard Parties (as defined in the *Order Implementing Certain Case Management and Notice Procedures* [Docket No. 47]); and (f) any party that has requested service pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no further notice need be given.

### **NO PRIOR REQUEST**

45. No prior request for the relief sought in this Motion has been made by the Debtors to this or to any other court.



### **CONCLUSION**

WHEREFORE, the Debtors request that this Court enter an order, substantially in the form attached hereto as Exhibit C, granting the relief requested herein and granting such other and further relief as is just and proper.

Dated: New York, New York  
June 23, 2020

**MILBANK LLP**

/s/ Evan R. Fleck

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**EXHIBIT 4**

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*Counsel for Debtors and  
 Debtors-In-Possession*

**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

-----X	:
In re:	: Chapter 11
	:
AVIANCA HOLDINGS S.A., <i>et al.</i> , <sup>1</sup>	: Case No. 20-11133 (MG)
	:
Debtors.	: (Jointly Administered)
	:
-----X	:

**DECLARATION OF ADRIAN NEUHAUSER IN SUPPORT OF DEBTORS'  
 MOTION FOR ENTRY OF AN ORDER AUTHORIZING REJECTION  
OF CERTAIN EXECUTORY CONTRACTS**

The Debtors in these chapter 11 cases, and each Debtor's federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int'l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Islaña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

Adrian Neuhauser, pursuant to section 1746 of title 28 of the United States Code, hereby declares under penalty of perjury as follows:

1. I am the Chief Financial Officer of Avianca Holdings S.A. (“Avianca”) and have served in this position since June 2019. I have more than twenty (20) years of experience in the financial sector and was most recently a Managing Director at Credit Suisse, based in Chile and covering airlines throughout Latin America from 2016 to 2019. I submit this Declaration in support of the *Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts* (the “Motion”), which was filed concurrently herewith by the above-captioned debtors and debtors-in-possession (the “Debtors”).<sup>1</sup>

2. As Chief Financial Officer at Avianca, I oversee Avianca’s corporate finance department and manage Avianca’s relationships with investors and funded debtholders. I also oversee, in coordination with Avianca’s treasury department and other Avianca employees, various matters related to the Debtors’ chapter 11 cases, including the matters described herein. I have knowledge of the matters discussed herein based on my employment at Avianca.

3. Prior to May 10, 2020 (the “Petition Date”), the Republic of Colombia announced that it would close airspace to address the spread of COVID-19. As a result of the restrictions imposed by the Colombian government, as well as similar measures taken in various other primary markets of Avianca and its affiliates, on March 24, 2020, Avianca announced that it was suspending all scheduled passenger flights beginning March 25, 2020. That suspension remains in place and has since been extended indefinitely.

4. On or about December 12, 2017, Avianca entered into various agreements with USAVflow Limited (“USAV”), an exempted company incorporated and registered under the laws

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<sup>1</sup> Capitalized terms used but not defined herein have the meanings ascribed to them in the Motion.

of the Cayman Islands. Pursuant to those agreements (the “USAV Agreements”), Avianca agreed to “sell” to USAV certain U.S. credit card receivables generated pursuant to credit card processing agreements with Credomatic and AMEX (the “Card Processing Agreements”) in exchange for an initial “purchase price” of \$150 million, plus additional monthly payments (the “Additional Purchase Price”). The Additional Purchase Price is equal to the amount of credit card receivables generated in any payment period that exceeds the amounts required for USAV to make monthly amortization payments under a loan agreement with certain third party lenders. In 2019, before travel restrictions caused by COVID-19 resulted in a significant drop in sales, Avianca produced, on average, \$53,771,139 in monthly credit card receivables, of which approximately \$49,000,000, on average, was passed on to Avianca in the form of the Additional Purchase Price.

5. It is my understanding that each of Avianca and USAV have material unperformed obligations under the USAV Agreements at this time. For example, Avianca must continue to furnish goods and services to its customers to generate receivables, perform numerous duties as the Servicer under the USAV Agreements, and respond to credit card processors’ inquiries regarding claims relating to the receivables. At the same time, USAV must continue to make the Additional Purchase Price payments to Avianca and maintain its books and records.

6. On or about May 11, 2020, Citibank, N.A. (“Citibank”), in its capacity as administrative agent under one of the USAV Agreements, the Cash Management Agreement, delivered a Notice of Retention Event declaring that “a Retention Event has occurred and is continuing” under section 2.09(b) of such agreement. Under section 3.01(ii) of another USAV Agreement, the Contract Rights and Receivables Sale, Purchase and Servicing Agreement (the “RSPA”), no Additional Purchase Price is payable during the continuance of a Retention Event.

Accordingly, pursuant to the terms of the USAV Agreements, USAV currently has no obligation to pass the proceeds of any credit card receivables to Avianca.

7. While the travel restrictions resulting from the COVID-19 pandemic have resulted in decreased revenue from the credit card receivables, I expect such restrictions will likely ease in the coming months. As such, business and travel will likely begin to return to prepetition levels, and I expect that the credit card receivables will again generate a significant stream of revenue which will be crucial to the Debtors' ability to meet various ordinary course obligations.

8. Moreover, because a Retention Event has been declared, I understand that USAV and/or Citibank may continue to withhold all revenues from credit card receivables subject to the USAV Agreements. The loss of this crucial revenue stream would jeopardize the Debtors' ability to continue operations and to work productively toward a successful reorganization.

9. In my business judgment, rejecting the USAV Agreements is in the best interests of the Debtors' estates because the outstanding obligations thereunder are unduly burdensome. Pursuant to the USAV Agreements, the Debtors continue to incur costs and expend efforts necessary to generate credit card receivables but do not receive the benefit of the proceeds generated by those costs and efforts. The Debtors and their estates would significantly benefit from rejecting the USAV Agreements.

10. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 23rd day of June, 2020  
in New York, New York

/s/ Adrian Neuhauser  
Adrian Neuhauser



**EXHIBIT 5**

## WHITE & CASE

Dated 12/12/2017

# Contract Rights and Receivables Sale, Purchase and Servicing Agreement

among

**Aerovías del Continente Americano S.A. Avianca**  
as the Seller and the Servicer

and

**USAVflow Limited**  
as the Purchaser

White & Case LLP  
1221 Avenue of the Americas  
New York, New York 10020

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#### EXHIBITS

Exhibit A	--	Form of AMEX Notice and Consent
Exhibit B	--	Form of Credomatic Notice and Consent
Exhibit C	--	Form of Seller Closing Certificate
Exhibit D	--	Form of Servicer Closing Certificate
Exhibit E	--	Form of Costa Rican Assignment Agreement

#### SCHEDULES

Schedule 3.01(b)	--	Projected Price Payment Schedule
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## CONTRACT RIGHTS AND RECEIVABLES SALE, PURCHASE AND SERVICING AGREEMENT

**THIS CONTRACT RIGHTS AND RECEIVABLES SALE, PURCHASE AND SERVICING AGREEMENT**, dated December 12, 2017 (this "Agreement"), is made by and among **AEROVIAS DEL CONTINENTE AMERICANO S.A. AVIANCA**, a Colombian *sociedad anónima*, as the Seller (in such capacity, the "Seller"), **USAVflow LIMITED**, an exempted company incorporated in the Cayman Islands with limited liability (the "Purchaser") and **AEROVIAS DEL CONTINENTE AMERICANO S.A. AVIANCA**, a Colombian *sociedad anónima*, as the Servicer (the Servicer together with the Purchaser and the Seller, the "Parties" and each, individually, a "Party").

### RECITALS:

The Seller is engaged in the business of air transportation of passengers and cargo and related services and provides its customers with the means of purchasing its goods and services through the use of Cards by having in place merchant credit card, and Card Processing Agreements with Card Processors. Such agreements provide for the processing of payments on behalf of the Seller of the goods and services that are purchased through the use of Cards;

The Seller entered into (a) the *CONVENIO REGIONAL DE AVIANCA-GRUPO BAC CREDOMATIC PARA EL PROCESAMIENTO DE TRANSACCIONES DE TARJETAS EN COMERCIOS AFILIADOS*, dated as of June 10, 2015 (the "Credomatic Master Agreement"), among the Seller, TACA International Airlines, S.A. and BAC International Bank, Inc. and its Subsidiaries ("Credomatic"), (b) the *MERCHANT APPLICATION & AGREEMENT*, dated March 17, 2016 (the "Credomatic Supplement") between Avianca, Inc., as agent on behalf of the Seller, and Credomatic, and (c) the *Assignment of Rights Agreement*, dated on or about the date hereof (the "Credomatic Assignment" and, collectively with the Credomatic Master Agreement and the Credomatic Supplement, including as modified pursuant to the Credomatic Notice and Consent (defined below), and all extensions, amendments, supplements, or replacements of such agreements among Credomatic and its affiliates and Avianca S.A. or any of its affiliates, including but not limited to the amendment to the Credomatic Master Contract dated November 29, 2017, collectively, the "Credomatic Contract"), among the Seller, TACA International Airlines, S.A., Avianca, Inc. and Credomatic, pursuant to which Credomatic agrees, among other things, to pay the Seller for goods and services of the Seller purchased in the United States with Visa® or MasterCard® Cards;

The Seller entered into the Airline Card Service Agreement, dated as of October 8, 2013 (as modified pursuant to the AMEX Notice and Consent (defined below), and all extensions, amendments, supplements, or replacements of such agreements among AMEX (defined below) and its affiliates and Avianca S.A. or any of its affiliates, collectively, the "AMEX Contract"), among American Express Travel Related Services Company, Inc. (together with its successors or assigns, "AMEX Inc."), American Express Payment Services Limited (together with its successors or assigns, "AMEX Limited"); and, collectively with AMEX Inc., "AMEX"), the Seller, Taca International Airlines S.A., Líneas Aéreas Costarricenses S.A., Trans American Airlines S.A. dba Taca Peru, Aviateca S.A., America Central Corporation and Lifemiles Corp., pursuant to which AMEX agrees, among other things, to pay the Seller for goods and services of the Seller purchased in the United States with the American Express® Card;

Article 887 of the Colombian Code of Commerce provides that any party to a mercantile contract of successive performance (*contratos de ejecución periódica o sucesiva*) can be replaced, partially or in whole, by a third party in all or part of the contractual positions under the contract;

Article 1959 of the Colombian Civil Code provides that any party may assign a receivable (*crédito*), provided that certain requirements set forth in Title XXV of such code are met;

In exchange for the Purchaser's payment of the Advance Payment and the Additional Purchase Price, the Seller hereby agrees, under said articles 887 and 1959, effective on the Effective Date to (i) sell and transfer to the Purchaser, and to be replaced by the Purchaser in the contractual positions under the Card Processing Agreements with respect to, all rights of the Seller in, to and under the Contract Rights; and (ii) sell and transfer to the Purchaser the Receivables;

The Seller and the Purchaser have agreed that the Advance Payment and the Additional Purchase Price for the Contract Rights and the Receivables shall be due and payable as provided herein;

For purposes of article 1618 of the Colombian Civil Code, it is the intention of the Seller to make a definitive and final transfer to the Purchaser of the Contract Rights and the Receivables which constitutes a "true sale"; and

The Parties have separately agreed that the Servicer will provide servicing duties in respect of the Contract Rights and the Receivables solely pursuant to the Undertaking Agreement as set forth therein.

**NOW, THEREFORE**, in consideration of the mutual covenants and premises herein contained, the Parties hereby agree as follows:

## ARTICLE I

### DEFINITIONS AND INTERPRETATION

**Section 1.01 Definitions.** Except as otherwise provided herein, capitalized terms used herein (including in the foregoing Recitals) and not otherwise defined herein shall have the following meanings:

"Account Control Agreement" means that certain Deposit Account Control Agreement, to be dated on or about the date hereof, among the Purchaser, the U.S. Account Bank and the Collateral Agent.

"Administration Agreement" means the administration agreement dated the date hereof entered into between the Purchaser and MaplesFS Limited.

"Additional Card Processing Agreement" means a Card Processing Agreement that is the subject of any Contract Rights and Receivables Addition.

"Additional Card Processor" means each Person who enters into a Notice and Consent with the Seller in connection with a Contract Rights and Receivables Addition.

"Additional Purchase Price" means, with respect to each Payment Period, the amount, if any, by which the Monthly Net Activity Amount for such Payment Period exceeds the amounts that will be required to be retained in the Collections Account or the Debt Service Reserve Account or disbursed from the Collections Account to Persons other than the Seller pursuant to Sections 2.01, 2.02, 2.03 and 2.04 of the Cash Management Agreement.

"Adjustment Event" means:

- (a) a Retention Event that has continued for three consecutive months;
- (b) any default, early amortization event or similar event shall occur with respect to any Indebtedness of the Seller or Avianca, Inc., Holdings or any Specified Subsidiary that exceeds in aggregate U.S.\$20,000,000 (including the Dollar equivalent of Indebtedness in any other currency) if the effect thereof is to accelerate the maturity thereof, or to permit the holder(s) of such Indebtedness, or an agent or trustee on its or their behalf, to accelerate the maturity thereof or to require the mandatory prepayment, defeasance or redemption thereof; or



(c) any final judgment or decree by a court or other adjudicatory authority of competent jurisdiction (not subject to appeal) for the payment of money in excess of U.S.\$20,000,000 (including the Dollar equivalent of Indebtedness in any other currency) is entered against the Seller or Avianca, Inc., Holdings or any Specified Subsidiary and remains outstanding for a period of 30 days following such final judgment and is not discharged, waived or stayed.

“Adjustment Event Priority of Payments” means the priority of payments set forth in Section 2.03 of the Cash Management Agreement.

“Administrative Agent” means Citibank, N.A., and its successors and assigns in such capacity under the Purchaser Credit Agreement.

“Administrative Agent’s Account” means the account maintained at Citibank, N.A., New York, New York USA, ABA No. 021000089, SWIFT: CITIUS33, Account No. 36852248, Account Name: Medium Term Finance, Ref: Avianca, or such other account as from time to time may be designated by the Administrative Agent to the Purchaser in writing.

“Advance Payment” means the amount of \$150,000,000, which is due and payable by the Purchaser to the Seller on the Effective Date, as provided in Section 3.01(a)(i), on account of the Transfer and Sale of the Contract Rights and the Receivables.

“Affiliate” means (i) with respect to the Seller and Holdings, means any Subsidiary of Holdings, and (ii) with respect to any other Person, another Person that, directly or indirectly, controls or is controlled by, or is under common control with, such Person. For purposes of this definition, the term “control” (including the terms “controlling”, “controlled by,” and “under common control with”) as used with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“Agents” means the Administrative Agent and the Collateral Agent.

“AMEX” has the meaning specified in the foregoing Recitals.

“AMEX Contract” has the meaning specified in the foregoing Recitals.

“AMEX Notice and Consent” means the written agreement dated as of, or on or about, the date hereof among the Seller, AMEX, the Purchaser, the Collateral Agent and the other parties thereto, substantially in the form of Exhibit A, pursuant to which (i) the transfer of the Contract Rights and Receivables from the Seller to Purchaser will be perfected as provided under Article 887 et. seq. of the Colombian Code of Commerce and Article 1959 et. seq. of the Colombian Civil Code, accordingly; and (ii) pursuant to New York law notice of such transfer will be given to, and such transfer will be consented to by, AMEX.

“Anti-Corruption Laws” means (a) the United States Foreign Corrupt Practices Act of 1977, (b) the United Kingdom Bribery Act of 2010, and (c) any other similar Applicable Law relating to bribery or corruption.

“Anti-Money Laundering Laws” means any Applicable Law related to money laundering or terrorism financing, including (a) 18 U.S.C. §§ 1956 and 1957, and (b) the Bank Secrecy Act, 31 U.S.C. §§ 5311 et seq., as amended by the Patriot Act, and its implementing regulations.

“Applicable Law” means any applicable statute, law, regulation, ordinance, rule, judgment, rule of common law, order, decree, approval, concession, grant, franchise, license, agreement, directive,

guideline, policy, requirement, or other governmental restriction or any similar form of decision of, or determination by (or any interpretation or administration of any of the foregoing by), any Governmental Authority, whether in effect as of the date hereof or hereafter.

“ARC” means Airlines Reporting Corporation, or any successor or replacement thereof.

“Authorized Signatory” means a person that has been duly authorized to execute or sign any Transaction Document or any document, certificate, or notice to be executed or signed under or in connection with any Transaction Document.

“Avianca, Inc.” means Avianca, Inc., a New York corporation.

“Break Costs” means the amount (if any), of “Break Costs” as notified by the Administrative Agent pursuant to Section 2.08 of the Cash Management Agreement.

“Business Day” means a day (other than Saturday or Sunday) on which commercial banks are not authorized or required to close in (i) London, United Kingdom, (ii) New York City, New York, or (iii) Bogotá, D.C., Colombia.

“Capital Lease Obligations” means an obligation that is required to be classified and accounted for as a capital lease for financial reporting purposes in accordance with IFRS, and the amount of Indebtedness represented by such obligation shall be the capitalized amount of such obligation determined in accordance with IFRS; and the stated maturity thereof shall be the date of the last payment of rent or other amount due under such lease prior to the first date upon which lease may be terminated by the lessee without payment of penalty.

“Card Processing Agreements” means the Credomatic Contract, the AMEX Contract, and each Additional Card Processing Agreement.

“Card Processors” means Credomatic, AMEX, and each Additional Card Processor.

“Cards” means credit, debit, charge and ATM cards under which cardholders purchase goods and services of the Seller and its Affiliates.

“Cash Management Agreement” means that certain Cash Management Agreement, dated as of the date hereof, among the parties hereto, Citibank, N.A., as Administrative Agent and Citibank, N.A., as Collateral Agent.

“Change of Control” means

(a) the direct or indirect sale or transfer (other than by way of merger or consolidation that is permitted hereby) of all or substantially all the assets of the Seller or Avianca, Inc. to another Person (in each case, unless such other Person is a Permitted Holder):

(b) the consummation of any transaction (including by merger, consolidation, acquisition, or any other means) as a result of which Permitted Holders cease to be the “beneficial owner” (as such term is used in Rule 13d-3 under the Exchange Act), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of Holdings (or its successors by merger, consolidation, or purchase of all or substantially all their assets) (on a fully diluted basis):  
or

(c) Holdings shall cease to (i) own, directly or indirectly, beneficially and of record more than 50% of the Voting Stock of the Seller or Avianca, Inc. or any Specified Subsidiary (in each case, on a fully diluted basis) or (ii) have the power to direct or cause the direction of the management and policies of the Seller or Avianca, Inc. or any Specified Subsidiary.

“Collateral” means the property, rights and accounts that, in accordance with the RSPA Security Documents, from time to time, are subject to any Lien in favor of the Purchaser.

“Collateral Agent” means Citibank, N.A. in its capacity as collateral agent under the Purchaser Credit Agreement, or its successor in such capacity.

“Collateral Trustee” means Citibank, N.A., London Branch in its capacity as collateral trustee under the Purchaser Credit Agreement, or its successor in such capacity.

“Collections” means all cash collections and other cash proceeds derived from the Contract Rights or the Receivables, whether received by the Seller, the Purchaser, or any other Person.

“Collections Account” means the Dollar deposit account with account number GB91CITI18500818821135 established and maintained by the Purchaser at the U.K. Account Bank in London, England, or any successor or replacement account, which account will be under the control of the Collateral Trustee pursuant to the U.K. Account Charge.

“Collections Coverage Ratio” means the ratio, as calculated by the Administrative Agent on the second Business Day after each Payment Date of (a) the amount of Collections deposited in the Collections Account during the immediately preceding Interest Period ending on such Payment Date to (b) the sum of the amount of the Surcharge plus the Monthly Amortization payable on the next succeeding Payment Date.

“Collections Origination Date” means, in respect of the Contract Rights, each date on which the obligation of the applicable Card Processor to pay Collections to the Purchaser accrues under the applicable Card Processing Agreement.

“Colombia” means the Republic of Colombia.

“Colombian Civil Code” means the Colombian *Código Civil*.

“Colombian Code of Commerce” means the Colombian *Código de Comercio*.

“Colombian Back-Up Security Agreement” means that certain Pledge over Contract Rights and Future Revenues (*Contrato de Prenda sobre Derechos Contractuales e Ingresos Futuros*), to be dated on or about the date hereof between the Seller and the Purchaser.

“Contract Rights” means the contract rights of the Seller under the Card Processing Agreements to (i) receive any kind of payments, indemnities or economic compensations derived therefrom on account of Specified Sales, including the right, among other things, to receive all future Collections derived therefrom; and (ii) to enforce the rights referred to in (i) against the respective Card Processors thereunder. For the avoidance of doubt, the Contract Rights shall not include (a) any obligation or liability of the Seller under the Card Processing Agreements or arising in any manner therefrom; or (b) the rights of the Seller:

(a) to honor Cards or conduct any Card sale as payment for travel costs or otherwise, or to request authorization to honor Cards;

(b) to submit Sales Slips for billing or issue credit slips in any manner provided by the applicable Card Processing Agreement;

(c) to request, to treat or to have access to confidential information pertaining to cardholder account information;

(d) to request or receive a restricted card list pursuant to the relevant Card Processing Agreement;

(e) to grant consent to a Card Processor to display or show the trademarks, logos or company names of the Seller in promotion, advertising, press releases or otherwise pursuant to the applicable Card Processing Agreement;

(f) to use trademarks and service marks of a card association in its advertising, press releases or otherwise pursuant to the applicable Card Processing Agreement;

(g) to handle all claims or complaints by a cardholder with respect to Card transactions;

(h) to receive documentation from a Card Processor that is required in connection with the defense of any claim of a cardholder asserted in connection with the applicable Card Processing Agreement; or

(i) to receive any Collections derived from sales which are not Specified Sales.

“Contract Rights and Receivables Addition” has the meaning specified in Section 2.03(b).

“Contract Rights and Receivables Addition Date” means the date on which any Contract Rights and Receivables Addition is completed pursuant to Section 2.03.

“Costa Rican Assignment Agreement” means that certain Costa Rican law governed RSPA Assignment Agreement, dated as of the date hereof, between the Seller and the Purchaser, substantially in the form of Exhibit E hereto.

“Costa Rican Back-Up Security Agreement” means that certain Costa Rican Back-Up Security Agreement, to be dated on or about the date hereof between the Seller and the Purchaser.

“Credomatic” has the meaning specified in the foregoing Recitals.

“Credomatic Contract” has the meaning specified in the foregoing Recitals.

“Credomatic Notice and Consent” means, collectively, one or more written agreements, instruments, or other documents dated as of, or on or about, the date hereof among the Seller, Credomatic, the Purchaser, the Collateral Agent and the other parties thereto, substantially in the form of Exhibit B, pursuant to which (i) the transfer of the Contract Rights and Receivables under the Credomatic Contract from the Seller to Purchaser will be perfected as provided under Article 887 et. seq. of the Colombian Code of Commerce and Article 1959 et. seq. of the Colombian Civil Code, accordingly; and (ii) pursuant to Costa Rican and Florida law notice of such transfer will be given to, and consented to by, Credomatic.

“Custodian” means, initially, Aerovías del Continente Americano S.A. Avianca and, thereafter, its successors and permitted assigns and designees appointed in accordance with the terms of this Agreement to carry out the duties and responsibilities provided in Article VII.

“Debt Service Reserve Account” means the Dollar deposit account with account number GB69CITI18500818821143 established and maintained by the Purchaser at the U.K. Account Bank in London, England, or any successor or replacement account, which account will be under the control of the Collateral Trustee pursuant to the U.K. Account Charge.

“Debt Service Required Amount” means the “Debt Service Required Amount” as notified by the Administrative Agent pursuant to Section 2.06(a) of the Cash Management Agreement.

“Defaulted Amount” means the unpaid amount of any Contract Rights, Collections or Receivables which is due and payable by a Card Processor but which has not been paid by a Card Processor in accordance with the applicable Card Processing Agreement; provided that, for the avoidance of doubt, if the failure of such Card Processor to make such payment is permitted under the applicable Card Processing Agreement as a result of a breach by the Seller or its Affiliates under such Card Processing Agreement, then the unpaid amount of such Contract Rights, Collections or Receivables shall be deemed not to be a Defaulted Amount.

“Delinquent” means, with respect to any Contract Rights, Collections or Receivables, any scheduled payment required to be made by the Card Processor with respect thereto that is more than 10 days after its originally scheduled due date.

“Dollars” and “\$” mean lawful money of the United States.

“Effective Date” means the date first set forth above.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to the Recipient or required to be withheld or deducted from a payment to the Recipient, Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits, in each case, (a) imposed as a result of such Recipient being organized under the laws of, or having its principal office in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (b) that are Other Connection Taxes.

“Expenses Agreement” means the Expenses Agreement dated December 12, 2017, between the Purchaser and the Seller, providing for the Seller to pay certain fees to the Purchaser and to pay various fees and expenses incurred by or payable to the Purchaser, Maples and Calder, and MaplesFS Limited, including all costs, fees and expenses incurred by the Purchaser and any other person contracted to provide services in relation to the Contract Rights and the Receivables, and other fees and expenses in connection with the organization, maintenance, and business of the Purchaser.

“Government Approvals” means approvals, authorizations, permits, consents, exemptions and licenses of or by, and notices to or filings or registrations with, any Governmental Authority.

“Governmental Authority” means any nation or government, any state or municipality, any multilateral or similar organization or any other agency, instrumentality or political subdivision thereof and any entity exercising executive, legislative, judicial, monetary, regulatory or administrative functions of or pertaining to the government of Colombia, England, the Cayman Islands or any other jurisdiction.

“Guarantee” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such other Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness (whether arising by virtue of partnership arrangements or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise) or (b) entered into for the purpose of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); provided, however, that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a corresponding meaning.

“Hedging Obligations” of any Person means the obligations of such Person pursuant to any interest rate swap, currency swap, credit default swap or other derivative transaction (where the primary purpose is to hedge or minimize some business, interest, currency or credit risk).

“Holdings” means Avianca Holdings S.A., a Panamanian company.



“IFRS” means the International Financial Reporting Standards as adopted in the English language by the International Accounting Standards Board.

“Indebtedness” means with respect to any Person on any date of determination (without duplication):

(a) the principal in respect of (i) indebtedness of such Person for money borrowed and (ii) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable, including, in each case, any premium on such indebtedness to the extent such premium has become due and payable;

(b) all Capital Lease Obligations of such Person;

(c) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business and other monetary obligations to trade creditors existing on the Effective Date);

(d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in clauses (a) through (c) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the 20th Business Day following payment on the letter of credit);

(e) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any capital stock or, with respect to any Subsidiary of such Person, the liquidation preference with respect to any capital stock (but excluding, in each case, any accrued dividends);

(f) all obligations of the type referred to in clauses (a) through (e) of other Persons and all dividends of other Persons for the payment of which, in either case, such Person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including by means of any Guarantee;

(g) all obligations of the type referred to in clauses (a) through (f) of other Persons secured by any Lien on any property or asset of such Person (solely if such obligation is not assumed by such Person), the amount of such obligation being deemed to be the lesser of the value of such property or assets or the amount of the obligation so secured; and

(h) to the extent not otherwise included in this definition, Hedging Obligations of such Person.

The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations at such date; provided, however, that (i) the amount outstanding at any time of any Indebtedness issued with original issue discount is the amount of the liability in respect thereof determined in accordance with IFRS and (ii) Indebtedness shall not include any liability for foreign, federal, state, local or other taxes.

“Indemnified Person” has the meaning specified in the Undertaking Agreement.



“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Seller under any Transaction Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Insolvency Event” means, with respect to any Person (a) the making of a general assignment for the benefit of creditors, (b) the filing of a voluntary petition in bankruptcy, (c) being adjudged as bankrupt or insolvent, or having had entered against such Person an order for relief in any bankruptcy or insolvency proceeding, (d) the filing by such Person of a petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under Law 1116 or any other Applicable Law, (e) the filing by such Person of an answer or other pleading admitting or failing to contest the material allegations of a petition filed against such Person in any proceeding specified in clause (g) below, (f) seeking, consenting to or acquiescing in the appointment of a custodian, trustee, receiver or liquidator of such Person, in or out of court, or of all or any substantial part of the assets of such Person or (g) the failure to obtain dismissal within 60 days of the commencement of any proceeding against such Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any Applicable Law, or the entry of any order appointing a trustee, liquidator or receiver of such Person or of such Person’s assets or any substantial portion thereof; provided that an Insolvency Event with respect to the Seller, shall not be deemed to have occurred or to be continuing on account of the fact that the Seller has been placed and remains “under supervision” by the Colombian Superintendency of Ports and Transportation unless that entity imposes restrictions or requirements on the Seller, in addition to those in effect as of the Effective Date, that (i) increase the burdens on the Seller of complying with such “supervision” or (ii) are otherwise reasonably likely to have a Material Adverse Effect.

“Law 1116” means Colombian Law 1116 of 2006, which establishes the Corporate Insolvency Regime for Colombia.

“Lender” has the meaning assigned to such term in the Purchaser Credit Agreement.

“Lien” means any *caución* (as defined in the Colombian Civil Code), *garantía mobiliaria*, lien, security interest, hypothecation, assignment, pledge, mortgage, deed of trust, or other charge, encumbrance, or claim of any kind, including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease or other conveyance in the nature thereof, having substantially the same economic effect as any of the foregoing and any filing of or agreement to give any public notice under any Applicable Law of any jurisdiction to evidence any of the foregoing.

“Liquidated Damages” has the meaning specified in Section 6.02.

“Loss” means any liability, damages, cost, loss or expense (including legal fees, costs and expenses and any value-added tax thereon) related to or arising from the inaccuracy or alleged inaccuracy of any representation and warranty made by the Seller or Servicer hereunder or under the Transaction Documents or any breach or alleged breach by the Seller or Servicer of any of its undertakings in this Agreement or any of the Transaction Documents or the occurrence of any Trigger Event or Adjustment Event, or otherwise as a result of the transactions contemplated hereby, including in pursuant to the Purchaser Finance Documents.

“Material Adverse Effect” means any material adverse effect on, or a material adverse change in: (a) the business, property, assets, liabilities, condition (financial or otherwise), results of operations or prospects of the Seller, (b) the ability of the Seller, the Servicer or Avianca, Inc. to perform its respective obligations under the Transaction Documents to which it is a party, (c) the rights and/or remedies the Purchaser is purported to have under any Transaction Document, (d) the economic or financial condition or stability (financial, political or otherwise) of the Cayman Islands, Colombia, Panama, Peru, Costa Rica or El Salvador, (e) the validity and enforceability of any Transaction Document, (f) the Liens granted to

the Purchaser pursuant to the Transaction Documents or the value thereof, or (g) the Contract Rights or the Receivables or the Collections in respect of either, including on the timeliness, payment frequency, collectability, amount, or ability to calculate the amount of such Collections.

“Monthly Amortization” means, with respect to each Payment Period, the sum of the amounts that will be required to be disbursed pursuant to Sections 2.02(a)(i), (b) and (c) of the Cash Management Agreement for such Payment Period.

“Monthly Net Activity Amount” means, with respect to any Payment Period, the sum of all Collections paid to the Collections Account on account of Net Activity with respect to the Contract Rights in such Payment Period.

“Monthly Settlement Amount” means “Principal Payment Amount” as defined in the Cash Management Agreement.

“Net Activity” means with respect to any Card Processor and the applicable Contract Rights in respect of any Card Processing Agreement, on any day or during any period, the total net amount that is, for purposes of the definition of “Monthly Net Activity Amount” and Section 4.01(n), payable to the Purchaser or, for purposes of Section 2.02(f), Section 3.01(c) and Section 3.02 hereunder, and Section 3.02(k) and Section 3.02(l) of the Undertaking Agreement, paid to the Collections Account by the Card Processor under its respective Card Processing Agreement on such day or during such period, which amount shall be equal to the sum of the total face value of all charges made by holders of Cards processed under such Card Processing Agreement relating to the Contract Rights in such period, minus all discounts, credits, and other amounts deducted by such Card Processor from the amounts due to the Purchaser on such day or during such period under such Card Processing Agreement pursuant to such Card Processing Agreement.

“New York Pass-Through Account” means the Dollar deposit account with account number 11925000 established and maintained by the Purchaser at the U.S. Account Bank in New York, New York, or any successor or replacement account, which account will be under the control of the Collateral Agent pursuant to the Account Control Agreement.

“Notice and Consents” means, collectively, the Credomatic Notice and Consent, the AMEX Notice and Consent and each Supplemental Notice and Consent.

“OFAC” means the U.S. Treasury Department Office of Foreign Assets Control.

“Officer’s Certificate” means a certificate signed by an Authorized Signatory.

“Organizational Documents” means with regard to any Person: (a) its articles of incorporation, deed of incorporation or other similar document, (b) its estatutos sociales, by-laws, articles of association or other similar document, (c) any certificate of designation or other document relating to the rights of preferred shareholders or other holders of capital stock of such Person, (d) any shareholder rights agreement, registration rights agreement, joint venture agreement or other similar agreement relating to such Person and (e) all resolutions and consents of the shareholders (or similar owners), the board of directors (or any committee thereof) or similar governing body of such Person.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Transaction Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Transaction Document.

“Party” has the meaning specified in the introduction to this Agreement.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272, of the United States.

“Payment Date” means, for each Payment Period, the last day of the Payment Period.

“Payment Period” means the period commencing on the Effective Date and ending on the date that is one calendar month thereafter; and thereafter each period commencing on the last day of the preceding Payment Period and ending on the date one month thereafter, provided that (a) any Payment Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Payment Period shall end on the first preceding Business Day; and (b) any Payment Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Payment Period) shall end on the last Business Day of the calendar month at the end of such Payment Period; provided that until the Purchaser Credit Agreement obligations shall be paid in full, “Payment Period” shall mean “Interest Period” as defined in the Purchaser Credit Agreement.

“Permitted Holders” means any or all of the following:

- (a) Mr. Germán Efromovich, his spouse and their respective parents, aunts, uncles, brothers, sisters, nephews, nieces, in-laws and other family members (by marriage, adoption or otherwise) and the respective children, grandchildren and spouses of any of the foregoing;
- (b) Roberto Jose Kriete Avila, his spouse and their respective parents, aunts, uncles, brothers, sisters, nephews, nieces, in-laws and other family members (by marriage, adoption or otherwise) and their respective children, grandchildren and spouses of any of the foregoing;
- (c) the respective ancestors, descendants, spouses, heirs, legatees and successors of any Person described in paragraphs (a) and (b) above or in this paragraph (c);
- (d) the executor, administrator, or other representative of any Person described in paragraphs (a), (b) or (c) above who is deceased, incompetent, or incapacitated;
- (e) any trust or other entity in which any of the Persons described in paragraphs (a), (b), (c), or (d) above has an interest, whether or not fixed or exclusive; and
- (f) any Affiliate of any one or more of the persons described in paragraphs (a), (b), (c), (d) or (e) above.

“Permitted Termination” means, with respect to a Card Processing Agreement, any termination of the Card Processing Agreement which is (a) initiated by the Card Processor thereunder without the Seller’s consent in accordance with the terms of the Card Processing Agreement, (b) is initiated by the Seller without the consent of the Card Processor thereunder in accordance with the terms of the Card Processing Agreement on account of an Insolvency Event of the Card Processor thereunder, (c) is initiated (with the consent of the Administrative Agent, at the direction of the Required Lenders in accordance with the Purchaser Credit Agreement) by the Seller without the consent of the Card Processor

thereunder in accordance with the terms of the Card Processing Agreement on account of a material breach by the Card Processor thereunder of the provisions of the Card Processing Agreement or (d) is requested by the Seller on account of its good faith dissatisfaction with the performance of the Card Processor thereunder and is agreed to by the Card Processor thereunder, provided that a Contract Rights and Receivables Addition for a replacement Card Processing Agreement has already been consummated prior to such termination.

“Person” means any legal person or entity, including any individual, partnership, joint venture, corporation, association, joint-stock company, trust, limited liability company, limited liability partnership, unincorporated organization, governmental entity or other entity of similar nature.

“Potential Event” means any event that is, or after notice or passage of time or both would be, a Trigger Event or an Adjustment Event, pursuant to clauses (b) and (c) of the definition thereof.

“Priority of Payments” means the Standard Daily Priority of Payments, the Standard Payment Date Priority of Payments, the Adjustment Event Priority of Payments or the Trigger Event Priority of Payments, as the context may require.

“Projected Price Payment” has the meaning specified in Section 3.01(b).

“Projected Price Payment Schedule” has the meaning specified in Section 3.01(b).

“Purchase Price” has the meaning specified in Section 3.01(a).

“Purchaser” has the meaning specified in the introductory paragraph hereof.

“Purchaser Credit Agreement” means that certain Loan Agreement, dated as of the date hereof, among the Purchaser, as borrower, the guarantors party thereto, the Administrative Agent, the Collateral Agent, the lenders party thereto from time to time.

“Purchaser Finance Documents” means the Purchaser Credit Agreement, all Credit Documents (as defined in the Purchaser Credit Agreement) and all other documents and instruments executed and/or delivered in connection therewith.

“Purchaser Finance Parties” means the Person(s) from time to time (i) providing financing or refinancing to, (ii) arranging financing or refinancing for, or (iii) acting as an agent with respect to financing or refinancing for, the Purchaser under the Purchaser Financing in respect of its funding or refinancing of the Advance Payment paid to the Seller under this Agreement, including the Administrative Agent and Collateral Agent and the Collateral Trustee.

“Purchaser Financing” means the financing arrangements provided to the Purchaser pursuant to the Purchaser Credit Agreement and the other Purchaser Finance Documents, which may be in the form of a loan, note or bond, pursuant to which the Purchaser funds the Advance Payment paid to the Seller under this Agreement and the financing arrangements, if any, pursuant to which the Purchaser refinances from time to time the indebtedness the Purchaser shall have incurred pursuant to the Purchaser Credit Agreement and the other Purchaser Finance Documents.

“Receivables” means any and all Collections accrued under the Card Processing Agreements that are due on account of Specified Sales from (a) AMEX or Credomatic to the Seller immediately prior to giving effect to this Agreement on the Effective Date (and due to the Purchaser immediately upon giving effect to this Agreement on the Effective Date) and (b) each Additional Card Processor to the Seller immediately prior to giving effect to this Agreement and the applicable Notice and Consent on the applicable Contract Rights and Receivables Addition Date (and due to the Purchaser immediately upon



giving effect to this Agreement and the applicable Notice and Consent on the applicable Contract Rights and Receivables Addition Date).

“Receivables Files” means, with respect to each of the Contract Rights and Receivables, the following:

(a) the electronic ledgers used by the Seller or the Servicer as a master record of the Contract Rights and the Collections and all documents representing the Receivables, including all billing data and other related records;

(b) executed copies of all agreements and other documentation governing the Contract Rights and the Receivables and all amendments, supplements or modifications to any such agreements and/or other documentation; and

(c) any and all other documents and/or records that the Seller or the Servicer shall keep on file in accordance with its normal policies and procedures with respect to the Contract Rights and the Receivables and similar contract rights and receivables.

“Recipient” means (a) the Administrative Agent, (b) the Purchaser, (c) the Servicer or (d) any other Person receiving a payment from the Seller hereunder or a disbursement pursuant hereto or pursuant to the Cash Management Agreement, as applicable.

“Reference Period” means, at any date of determination, the most recently completed four consecutive fiscal quarters of Holdings on or immediately prior to such date.

“Related Party” means, in respect of any Person, any Affiliate of that Person or any officer, director, employee, advisors or agent of that Person or any such Affiliate or any Person by whom any of them is controlled.

“Required Lenders” has the meaning assigned to such term in the Purchaser Credit Agreement.

“Retention Event” means the Collections Coverage Ratio is less than 2.5:1.0 on any date of determination.

“RSPA Security Documents” means the Colombian Back-Up Security Agreement, the Costa Rican Back-Up Security Agreement, all additional security documents as might be required for any necessary Contract Rights and Receivables Addition and all other documents, instruments and filings to be executed and delivered by the Seller and/or the Purchaser, in connection with such agreements and the transactions contemplated thereby.

“Sale” means the transaction occurring on account of the Seller’s selling, assigning, and transferring to the Purchaser the Contract Rights and the Receivables hereunder.

“Sales Slip” means a sales slip under a Card evidencing a payment obligation of the holder of the Card in respect of goods or services purchased by such holder using such Card.

“Sanctioned Jurisdiction” means any country or territory that is the subject of Sanctions broadly restricting or prohibiting dealings with, in or involving such country or territory.

“Sanctioned Person” means any individual or entity that is, or is owned or controlled by Persons that are, (a) identified on a Sanctions List, (b) organized, domiciled or resident in a Sanctioned Jurisdiction, (c) with whom dealings are restricted or prohibited under Sanctions or (d) otherwise the subject or target of any Sanctions.

“Sanctions” means any economic or financial sanctions or trade embargoes imposed, administered or enforced by (a) the United States (including OFAC and the United States Department of State), (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) the United Kingdom (including Her Majesty’s Treasury) or (e) any Governmental Authority in the jurisdiction of the Seller or its Affiliates.

“Sanctions List” means the list of designated individuals or entities that are the subject of Sanctions, including, without limitation, in (a) the Specially Designated Nationals and Blocked Persons List maintained by OFAC, (b) the Consolidated United Nation Security Council Sanctions List, (c) the consolidated list of persons, groups and entities subject to EU financial sanctions maintained by the European Union and (d) the Consolidated List of Financial Sanctions Targets in the U.K. maintained by Her Majesty’s Treasury of the United Kingdom.

“Seller” has the meaning specified in the introductory paragraph hereof.

“Seller’s Account” means account of the Seller no. 964258057 maintained at JPMORGAN CHASE BANK, N.A., ABA No. 021000021; Reference: Aerovías de Continente Americano S.A. Avianca.

“Service” means, initially, Aerovías del Continente Americano S.A. Avianca and, thereafter, its successors and permitted assigns and designees appointed in accordance with the terms of the Undertaking Agreement to carry out the duties and responsibilities provided in Article III of the Undertaking Agreement.

“Solvent” means, when used with respect to any Person, that at the time of determination: (a) the assets of such Person, at a fair valuation, are in excess of the total amount of its debts (including contingent liabilities); (b) the present fair saleable value of its assets is greater than its probable liability on its existing debts as such debts become absolute and matured; (c) it is then able and expects to be able to pay its debts (including contingent liabilities and other commitments) as they mature; (d) it has capital sufficient to carry on its business as conducted and as proposed to be conducted; (e) it is “solvent” as such term is defined in the Uniform Commercial Code as in effect in the State of New York and is in compliance with each applicable solvency standard under the Applicable Laws of each jurisdiction other than the United States or any state, commonwealth or territory thereof where it is organized or maintains assets or conducts its business; and (f) with respect to the Seller that, at the time of determination its financial status (i) is sufficiently sound to enable it to comply with its existing obligations under the Transaction Documents, (ii) has not resulted in, and is not likely to lead to, a dissolution status of the Seller under article 457(2) of the Colombian Code of Commerce or otherwise, and or (iii) has not triggered, and is not expected to trigger, an Insolvency Event of the Seller including under article 9 of Law 1116.

“Specified Sales” means the sales, including future sales, made by travel agencies in the United States and cleared through ARC of airline tickets or related services provided by the Seller where payment in the case of any such sale is made by a MasterCard® Card, Visa® Card, or American Express® Card, however branded, or any one or more of such Cards, including all such sales identified by those certain merchant codes set forth in any Notice and Consent or any notice given by a Card Processor to the Purchaser and the Collateral Agent from time to time as provided in the Notice and Consent by and among, inter alia, the Purchaser, the Seller, the Collateral Agent, and such Card Processor; provided that with respect to each Card Processing Agreement, “Specified Sales” shall include only “Specified Sales” as defined in the Notice and Consent relating to such Card Processing Agreement.

“Specified Subsidiary” means each of TACA International Airlines, S.A., a company organized under the laws of El Salvador, Avianca Costa Rica S.A., a company organized under the laws of Costa



Rica, and Trans American Airlines, S.A., a company organized under the laws of Peru, and any successors or assigns of each of the foregoing.

“Standard Daily Priority of Payments” means the priority of payments set forth in Section 2.01 of the Cash Management Agreement.

“Standard Payment Date Priority of Payments” means the priority of payments set forth in Section 2.02 of the Cash Management Agreement.

“Subsidiary” means, in respect of any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of capital stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by (a) such Person, (b) such Person and one or more Subsidiaries of such Person or (c) one or more Subsidiaries of such Person.

“Supplemental Notice and Consent” means a Notice and Consent among the Card Processor and its applicable Affiliates, the Seller and its applicable Affiliates, the Purchaser and the Collateral Agent, in such form as the Collateral Agent shall approve in its sole discretion, with respect to any Card Processor in connection with any Contract Rights and Receivables Addition.

“Surcharge” means (a) “Interest Amount” as defined in the Cash Management Agreement or (b) “Interest Accrued” as defined the Cash Management Agreement.

“Taxes” means all present and future sales, use, gross receipts, general corporation, franchise, income, mortgage, profits, withholding, intangibles, property (tangible and intangible), privilege, license, value added, ad valorem, capital, severance production, excise, stamp and other taxes, duties and other similar government charges and assessments imposed by or on behalf of any government or taxing authority (including interest, fines or penalties thereon and additions thereto).

“Transaction Documents” means, collectively, this Agreement, the Costa Rican Assignment Agreement, the Expenses Agreement, the Administration Agreement, the Undertaking Agreement, the RSPA Security Documents, the Cash Management Agreement, the Card Processing Agreements, each Notice and Consent, and each other transfer, assignment or other document executed and delivered by the Seller and/or the Servicer in connection with the foregoing.

“Transfer” means (i) in respect of the Contract Rights, the “*cesión de contrato*” set forth in article 887 of the Colombian Code of Commerce; and (ii) in respect of the Receivables, the “*cesión*” set forth in article 1959 of the Colombian Civil Code, all of which, pursuant to the term of this Agreement.

“Trigger Event Priority of Payments” means the priority of payments set forth in Section 2.04 of the Cash Management Agreement.

“Trigger Events” means each of the events specified in Section 6.01.

“U.K. Account Bank” means the Collateral Agent, in its capacity as account bank under the U.K. Account Charge, or any other financial institution satisfactory to the Required Lenders.

“U.K. Account Charge” means the English law security agreement dated as of the date hereof and entered into between the Purchaser as chargor, the Collateral Trustee and the U.K. Account Bank.

“U.S. Account Bank” means the Collateral Agent, in its capacity as account bank under the Account Control Agreement, or any other financial institution satisfactory to the Required Lenders.

“Undertaking Agreement” means the Receivables Maintenance Agreement, dated the date hereof, by and among the Seller, the Servicer and the Purchaser.

“United States” and “U.S.” means the United States of America and the territories and possessions thereof.

“Unsettled Balance” means, at any date of determination, the difference of (a) the Advance Payment less (b) the aggregate Monthly Settlement Amounts distributed to the Administrative Agent for the benefit of the Lenders and by the Administrative Agent to the Lenders in accordance with the Purchaser Credit Agreement up to such time in accordance with the applicable Priority of Payments.

“Unwind Amount” means an amount equal to, at any date of determination, the sum, without duplication, of (a) the Unsettled Balance, plus (b) the accrued and unpaid Surcharge on the Unsettled Balance through the date of payment of the Unsettled Balance in full, plus (c) all other amounts (including enforcement costs and expenses) due and payable to the Agents or the Collateral Trustee (for their own accounts or for the account or benefit of any other Person), including the Indemnified Persons (other than the Purchaser), plus (d) any Break Costs.

“Voting Stock” of a Person means all classes of capital stock or other interests (including partnership interests) of such Person then-outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof.

#### **Section 1.02 Other Interpretive Provisions.**

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words “hereof,” “herein,” “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement, and any subsection, Section, Article, Schedule, and Exhibit references are to this Agreement unless otherwise specified.

(c) The term “documents” includes any and all documents, instruments, written agreements, certificates, indentures, notices, and other writings, however evidenced (including electronically).

(d) The term “including” is not limiting and (except to the extent specifically provided otherwise) shall mean “including without limitation.”

(e) Unless otherwise specified, in the computation of periods of time from a specified date to a later specified date, the word “from” shall mean “from and including,” the words “to” and “until” each shall mean “to but excluding,” and the word “through” shall mean “to and including.”

(f) The terms “may” and “might” and similar terms used with respect to the taking of an action by any Person shall reflect that such action is optional and not required to be taken by such Person.

(g) Unless otherwise expressly provided herein: (i) references to agreements (including this Agreement) and other documents shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent that such amendments and other modifications are not prohibited by any Transaction Document, and (ii) references to any Applicable Law are to be construed as including all statutory and regulatory provisions or rules consolidating, amending, replacing, supplementing, interpreting or implementing such Applicable Law.

(h) The Transaction Documents are the result of negotiations among and have been reviewed by counsel to the Purchaser, the Seller and the Servicer and are the products of all of such Parties. Accordingly, they shall not be construed against any Party merely because of any such Party's involvement in their preparation.

(i) The specification of dollar amounts hereunder in U.S. Dollars shall be deemed to include U.S. Dollars and the equivalent thereof in other currencies.

## ARTICLE II

### PURCHASE, SALE AND TRANSFER

#### **Section 2.01 Purchase, Sale and Transfer of the Contract Rights and Receivables.**

Subject to the terms and conditions of this Agreement, in reliance on the recitals, agreements, representations, and warranties herein contained and made pursuant hereto:

(a) In accordance with article 905 of the Colombian Code of Commerce and other Applicable Law:

(i) effective on the Effective Date the Seller sells to the Purchaser, and the Purchaser buys from the Seller, finally, definitively, and irrevocably, the existing (as of the date hereof) Contract Rights arising under and the Receivables accrued under the AMEX Contract and the Credomatic Contract; and

(ii) effective on each applicable Contract Rights and Receivables Addition Date, and subject to the conditions precedent set forth in Section 2.03 herein, the Seller shall sell to the Purchaser, and the Purchaser shall buy from the Seller, finally, definitively, and irrevocably, the Contract Rights arising under and the Receivables accrued under the applicable Additional Card Processing Agreement.

(b) In accordance with articles 887 *et. seq.* of the Colombian Code of Commerce and other Applicable Law:

(i) effective on the Effective Date, the Seller shall, for the purpose of perfecting the Transfer to the Purchaser of the existing Contract Rights arising under the AMEX Contract and the Credomatic Contract, execute the applicable Notice and Consents relating thereto with the intention that, from the date of execution of the applicable Notice and Consents, for all legal and contractual purposes the Contract Rights under the AMEX Contract and the Credomatic Contract will belong to the Purchaser, as its final, definitive and indefeasible property with all privileges set forth in the first paragraph of article 669 of the Colombian Civil Code; and

(ii) effective on each applicable Contract Rights and Receivables Addition Date, the Seller shall, for the purpose of perfecting the Transfer to the Purchaser of the Contract Rights arising under each Additional Card Processing Agreement, execute the applicable Notice and Consent relating thereto with the intention that, as from the date of execution of the applicable Notice and Consent, for all legal and contractual purposes, the Contract Rights under such Additional Card Processing Agreement will belong to the Purchaser, as its final, definitive and indefeasible property with all privileges set forth in the first paragraph of article 669 of the Colombian Civil Code.

(c) In accordance with article 1959 of the Colombian Civil Code and other Applicable Law:

(i) effective on the Effective Date, the Seller hereby acknowledges that it has, for the purposes of perfecting among the Parties the Transfer of the Receivables accrued under the

AMEX Contract and the Credomatic Contract, delivered to the Purchaser a copy of the AMEX Contract and a copy of the Credomatic Contract, respectively, and the Purchaser hereby acknowledges receipt of a copy of the AMEX Contract and a copy of the Credomatic Contract, with the intention of perfecting the transfer of the Receivables under the AMEX Contract and the Credomatic Contract among the Parties and producing the result that, as from the Effective Date, for all legal and contractual purposes, the Receivables under the AMEX Contract and the Credomatic Contract will belong to the Purchaser, as its final, definitive and indefeasible property; and

(ii) effective on each applicable Contract Rights and Receivables Addition Date, the Seller shall, for the purpose of perfecting among the Parties the Transfer of the Receivables accrued under each Additional Card Processing Agreement, deliver to the Purchaser a copy of the applicable Additional Card Processing Agreement and execute the applicable Notice and Consent, and the Purchaser will acknowledge receipt of a copy of the applicable Additional Card Processing Agreement, with the intention of perfecting the transfer of the Receivables accrued under the applicable Additional Card Processing Agreement among the Parties and producing the result that, as from the applicable Contract Rights and Receivables Addition Date, for all legal and contractual purposes, the Receivables accrued under the Additional Card Processing Agreement will belong to the Purchaser, as its final, definitive and indefeasible property.

(d) In accordance with article 1960 et. seq. of the Colombian Civil Code and other Applicable Law, for all legal and contractual purposes:

(i) the Transfer of the Receivables accrued under the AMEX Contract and the Credomatic Contract will be binding on each applicable Card Processor upon the execution of the applicable Notice and Consent; and

(ii) the Transfer of the Receivables accrued under each Additional Card Processing Agreement will be binding on the Card Processor party thereto upon the execution of the applicable Notice and Consent.

(e) The Parties intend that the Transfer and the Sale shall be, and shall be treated by the Parties and all third parties as, a final, definitive, and irrevocable sale to the Purchaser from the Seller and not as a lending transaction.

(f) The Parties do not intend that the Transfer and the Sale includes the sale of entire contractual position of the Seller under the Card Processing Agreements. To the contrary, without any prejudice whatsoever of the right and title of the Purchaser to the Contract Rights and the Receivables and of the Purchaser to enforce the Contract Rights of the Seller against the Card Processors, the Seller will remain with and retain the contract rights under the Card Processing Agreements other than the Contract Rights and will retain the contractual relationship with the Card Processors.

(g) The Seller hereby authorizes the Purchaser on the Effective Date and from time to time thereafter to file one or more UCC-1 financing statements pursuant to the Uniform Commercial Code as in effect in any state of the United States, for the purpose of perfecting the sale of the Contract Rights and Receivables sold hereunder under the Applicable Laws of the United States and the states thereof.

(h) With respect to the Contract Rights and Receivables relating to the Credomatic Contract, simultaneously herewith, the applicable parties thereto shall execute and deliver the Costa Rican Assignment Agreement, to perfect the sale of such Contract Rights and Receivables under Costa Rican law.

(i) The Seller and the Servicer agree that they shall from time to time at the Seller's cost, execute and deliver all such additional assignments and other transfers as may be requested by the Purchaser or the Administrative Agent (at the direction of the Required Lenders in accordance with the Purchaser Credit Agreement) necessary or desirable under Applicable Law to perfect the title to the Contract Rights and the Receivables in the Purchaser.

**Section 2.02 Effective Date.** The Transfer and the Sale of the existing Contract Rights and Receivables under the AMEX Contract and the Credomatic Contract shall be effective as from the Effective Date upon satisfaction of each of the conditions precedent set forth in this Section 2.02:

(a) *Purchase Price:* payment by the Purchaser to the Seller of the Advance Payment.

(b) *Closing documents:* the Purchaser and the Administrative Agent shall have received the following documents in form and substance satisfactory to the Purchaser and the Lenders:

(i) Each Transaction Document, duly executed and delivered by the parties thereto, each of which shall be in full force and effect;

(ii) Legal opinions dated the Effective Date and addressed to the Purchaser, the Administrative Agent, the Lenders and the other Purchaser Finance Parties from (i) Costa Rican counsel, (ii) Colombian counsel to the Seller, (iii) Cayman counsel to Seller and (iv) New York counsel to the Seller, in each case in form and substance satisfactory to the Purchaser Finance Parties;

(iii) a certificate dated the Effective Date, addressed to the Purchaser, the Administrative Agent and the other Purchaser Finance Parties and signed by a duly Authorized Signatory on behalf of each of the Seller and Avianca, Inc. in the form set forth in Exhibit C and Exhibit D, respectively;

(iv) Audited consolidated financial statements of Holdings (including a balance sheet, statement of operations and statement of cash flows) as of and for the fiscal year ended on December 31, 2016.

(c) *MAE:* There shall not have occurred a Material Adverse Effect.

(d) *No Trigger Event or Adjustment Event:* No Potential Event, Trigger Event or Adjustment Event shall have occurred and be continuing.

(e) *No Retention Event:* No Retention Event shall have occurred and be continuing.

(f) *Collections Activity Statement.* The Seller shall have delivered to the Purchaser and the Administrative Agent a statement, in the form of the Monthly Servicer's Statement required pursuant to Section 3.02(k) of the Undertaking Agreement (for the month ending December 6<sup>th</sup>, 2017) and otherwise in form and substance acceptable to the Lenders, regarding Collections in respect of the Contract Rights, including Collections derived on account of Net Activity with respect to each Card Processor, and certain other matters, certified as accurate and truthfully prepared;

(g) *Authorizations:* The Purchaser and the Seller shall have obtained all authorizations, approvals, licenses, registrations and consents required in or by Applicable Law in connection with execution of the Transaction Documents and the performance of their obligations thereunder.

(h) *Collections:* The Purchaser and the Administrative Agent shall have received all data, reports, and/or other documentation fairly stating that the gross amount of sales that, if made after the date hereof, would fall under the definition of Specified Sales (a) in 2012 were \$369,151,330, (b) in



2013 were \$407,038,709, (c) in 2014 were \$403,216,884, (d) in 2015 were \$460,083,247, and that the net amount (including, but not limited to, net of any discount rate, any charges, any chargebacks, any refunds, any fees and any other amounts owed to the Card Processor under the relevant Card Processing Agreement) of collections paid to the Seller on account of such sales (e) in 2016 were \$456,909,053 and (f) in 2017, through October 31, were \$454,396,385, and the Purchaser Finance Parties shall be reasonably satisfied that the net amounts due and payable on the Collections shall on an annual basis be sufficient to support the Loans (as defined in the Purchaser Credit Agreement).

(i) *Collections Agreements:* The Card Processing Agreements and the Notice and Consents shall be in full force and effect, no default or event of default shall have occurred and be continuing thereunder, and the Purchaser shall have legal title to the Contract Rights and the Receivables and the Colombian Back-Up Security Agreement and Costa Rican Back-Up Security Agreement shall each have been registered as a moveable guarantee in their respective jurisdictions.

(j) *Bondholder Consents:* The holders of the ordinary bonds of the Seller, dated September 4, 2009, shall have provided all consents to the transactions contemplated hereby as are required to permit such transactions under the documents evidencing and securing such bonds, in the form of the Acta Asamblea Extraordinaria de Tenedores de los Bonos Emitidos por Aerovías del Continente Americano Avianca S.A. Emission Agosto de 2009, dated October 19, 2017.

(k) *Accuracy of Representations:* The representations and warranties by the Seller and the Servicer in this Agreement and the other Transaction Documents shall be true and correct as of the Effective Date.

(l) *RSPA Security Documents:* The Purchaser and the Seller shall each have taken all actions, and provided evidence thereof to the Administrative Agent, required to be taken by them on or prior to the Effective Date pursuant to the RSPA Security Documents, and there shall be no outstanding governmental filings (including financing statements under the Uniform Commercial Code) against any of the Contract Rights or the Receivables or the Collections, including the following: UCC-1 and other statements under the Uniform Commercial Code shall have been filed in the appropriate filing office, the Colombian Back-Up Security Agreement shall have been registered in the moveable guarantee registry of Colombia as a movable guarantee, and the Costa Rican Back-Up Security Agreement shall have been registered in the moveable guarantee registry of Costa Rica as a movable guarantee.

(m) *Know Your Customer:* The Purchaser, the Administrative Agent and each Purchaser Finance Party shall have received all necessary credit and other internal approvals, completed its due diligence with scope and results satisfactory to it in its sole discretion and received “know your customer” approval for the Servicer, the Seller and each Card Processor required under applicable client onboarding procedures or “know your customer” or anti-money laundering rules and regulations, including the Patriot Act.

(n) *Certificate of Good Standing:* such documents and other certifications that the Administrative Agent, acting at the direction of the Lenders in accordance with the Purchaser Credit Agreement, may reasonably require to evidence that Seller and Servicer are duly organized or formed and that Seller and Servicer are validly existing, in good standing and qualified to engage in business in each jurisdiction where their conduct of business requires such qualification.

(o) *Process Agent Acceptance:* evidence that the Process Agent mentioned in Section 3.10 of the Cash Management Agreement has agreed to receive process in the manner specified therein, in form reasonably satisfactory to the Lenders;

## **Section 2.03 Third Party Liability.**



(a) In consideration for the payment of the Purchase Price, including but not limited to all payments made pursuant to Section 3.01(f), (i) pursuant to article 1965 of the Colombian Civil Code the Seller shall warrant to the Purchaser the existence of the Receivables; and (ii) pursuant to article 890 of the Colombian Code of Commerce, the Seller shall warrant to the Purchaser the existence and validity of the Card Processing Agreements. Purchaser shall bear the risk of the insolvency of a Card Processor solely to the extent set forth in Section 3.01(f).

(b) As a consequence of the foregoing, upon the termination of any Card Processing Agreement pursuant to a Permitted Termination, or upon any of them being declared illegal or invalid or, for any reason whatsoever, if the Card Processing Agreements cease to exist, the Seller shall within 10 days of such termination, illegality, invalidity, or extinguishment, as the case may be, take all actions as shall be necessary or appropriate to effect a replacement (a “**Contract Rights and Receivables Addition**”) of the Contract Rights impaired as a result of such termination, illegality, invalidity, or extinguishment, as the case may be, by:

(i) entering into a new Card Processing Agreement and a Notice and Consent with respect thereto to complete a Transfer and Sale of the Contract Rights and Receivables relating thereto;

(ii) delivering to the Administrative Agent and the Purchaser legal opinions dated the date of the Contract Rights and Receivables Addition Date and addressed to the Purchaser, the Administrative Agent and the other Purchaser Finance Parties from Colombian counsel to the Seller, and such other counsel as the Purchaser Finance Parties shall reasonably request, in each case in form and substance satisfactory to the Purchaser Finance Parties;

(iii) delivering to the Administrative Agent and the Purchaser a certificate dated the date of the Contract Rights and Receivables Addition Date, addressed to the Purchaser, the Administrative Agent and the other Purchaser Finance Parties and signed by a duly Authorized Signatory on behalf of each of the Seller in the form set forth in Exhibit C, respectively;

(iv) confirming to the Administrative Agent that the Purchaser and the Seller shall have obtained all authorizations, approvals, licenses, registrations and consents required in or by Applicable Law in connection with execution of the documents necessary for the Contract Rights and Receivables Addition and the performance of their obligations thereunder and hereunder;

(v) confirming to the Administrative Agent and the Purchaser that the related Notice and Consents shall be in full force and effect, and no default or event of default shall have occurred and be continuing thereunder;

(vi) granting a back-up security interest in favor of the Purchaser over the new Card Processing Agreement and the Contract Rights thereunder; and

(vii) delivering to the Purchaser and the Administrative Agent or assuring that the Purchaser and the Administrative Agent have otherwise received any documentation that the Purchaser or the Administrative Agent (acting at the direction of the Lenders in accordance with the Purchaser Credit Agreement) shall have reasonably determined is necessary to effect such Contract Rights and Receivables Addition, in the form and substance satisfactory to the Purchaser and the Administrative Agent.

**Section 2.04 Restrictions on Sales, etc.** The Seller shall not sell, transfer, or assign, or purport to sell, transfer, or assign, the Contract Rights or the Receivables (or any portion thereof) to any Person other than the Purchaser, or to create or suffer to exist a Lien on any Contract Rights, any Receivables or the Collections, except in favor of the Purchaser.

**Section 2.05 Waiver of Rights.** The Seller unconditionally and irrevocably waives any rights it may claim to have under article 870 of the Colombian Code of Commerce and under articles 1546 and 1609 of the Colombian Civil Code or otherwise to rescind this Agreement or any other Transaction Document for any reason or to refrain from complying with its obligations hereunder (including as a result of the failure by the Purchaser to satisfy any of its obligations hereunder, including the making of any payment pursuant to Section 3.01(a)(ii)). As a result of such waiver, the Seller understands, acknowledges, and agrees that: (a) its remedies in the case of a failure by the Purchaser to make one or more payments of Additional Purchase Price hereunder shall be limited to the right to make a claim against the Purchaser for payment of any Additional Purchase Price payments that are past due and unpaid, and (b) the Seller shall not be entitled to and shall not attempt to, under any circumstances, reclaim any right, title, or interest in, to or under any of the Contract Rights or the Receivables.

**Section 2.06 Property Rights.**

(a) As a consequence of the Transfer and the Sale of the Contract Rights as provided for in Section 2.01 above, the Purchaser will have the sole, exclusive and unencumbered right to receive all Collections derived from (i) the Receivables, and (ii) the Contract Rights accrued now or hereafter under the Card Processing Agreements.

(b) The Seller acknowledges and agrees that the Contract Rights, Receivables and Collections referred to in (a) shall under no circumstances be considered the property of the Seller, and that the Purchaser's use of said Collections shall not be restricted in any way by the terms of this Agreement, any other Transaction Document or Applicable Law.

**Section 2.07 Nonpetition Covenant.** The Seller shall not acquiesce in, petition for, or otherwise invoke or cause the Purchaser to invoke the process of any Governmental Authority for, the commencement or continuation of a case or proceeding concerning the Purchaser under any Cayman Islands, Colombian, or other bankruptcy, insolvency, or similar Applicable Law, or the appointment of a receiver, liquidator, purchaser, custodian, sequestrator, or other similar official of the Purchaser or for any substantial part of its property, or the ordering of the winding-up or liquidation of the affairs of the Purchaser.

**Section 2.08 Languages.** This Agreement is being signed in the English and Spanish languages. In the event of any conflict between the English and the Spanish versions of this Agreement, the Spanish version shall prevail.

**ARTICLE III**

**CONSIDERATION**

**Section 3.01 Purchase Price.**

(a) In consideration of the Sale and Transfer of the Contract Rights, the Receivables and the Collections derived therefrom, the Purchaser shall pay to the Seller a purchase price (the "Purchase Price") in an amount equal to the sum of the Advance Payment and the Additional Purchase Price with respect to each Payment Period, which shall be due and payable, as follows:

(i) The Advance Payment, which shall be due and payable on the Effective Date.

(ii) The Additional Purchase Price with respect to each Payment Period, which shall be due and payable in installments, (A) as provided in Section 2.01(c), Section 2.02(f) and Section 2.03(e) of the Cash Management Agreement and (B) payable pursuant to Section 3.01(f); *provided* that no Additional Purchase Price shall be paid during the continuance of a Retention Event, an

Adjustment Event or a Trigger Event. The Seller hereby acknowledges and irrevocably agrees to the payment of the Additional Purchase Price on such terms and conditions.

(b) Without affecting the Purchaser's obligations set forth above in clause (a)(ii), based on the information of the Collections provided by the Seller to the Purchaser concerning the historical collections the Seller has received from the Card Processors on account of Specified Sales, the Purchaser expects, but will not have the obligation to make, Additional Purchase Price payments according to the payment schedule set forth in Schedule 3.01(b) (the "Projected Price Payment Schedule") and each of the projected payments included in the Projected Price Payment Schedule, a "Projected Price Payment").

(c) Given that the installments of the Additional Purchase Price shall be paid based on the actual amounts paid to the Collections Account on account of Net Activity with respect to the Contract Rights in each Payment Period as from the date hereof, the Parties hereby acknowledge and irrevocably agree that the Projected Price Payment Schedule and Projected Price Payments shall be adjusted automatically on each Payment Date to reflect the actual amount of each installment of Additional Purchase Price due as provided in clause (a)(ii) above.

(d) For the avoidance of doubt, the payment by the Purchaser to the Seller of the Purchase Price shall be consideration for the Sale and Transfer of the existing Contract Rights and the Receivables hereunder, which shall be effective on the Effective Date with respect to the AMEX Contract and the Credomatic Contract and shall be effective on the applicable Contract Rights and Receivables Addition Date with respect to each Additional Card Processing Agreement.

(e) The Seller hereby irrevocably waives its right to request the resolución of the Agreement, pursuant to article 1546 of the Colombian Civil Code and article 870 of the Colombian Code of Commerce, upon any failure of the Purchaser to pay when due the Additional Purchase Price. As a consequence, upon any such breach, the Seller irrevocably consent and agrees that its sole remedy shall be a claim for monetary damages hereunder.

(f) Notwithstanding anything to the contrary in this Agreement, to the extent that the amounts that have been paid by Purchaser to Seller, or disbursed to the Seller hereunder, as Additional Purchase Price have been adversely affected by any default in payment by any Card Processor, the Purchaser shall pay the Seller such defaulted amount after disbursement to the Purchaser and the Administrative Agent and the payment in full to the Purchaser Finance Parties of all of the obligations under the Purchaser Financing.

**Section 3.02 Surcharge.** The Surcharge, which is deducted from the Net Activity in the calculation the Additional Purchase Price, is intended to compensate the Purchaser for making the Advance Payment in advance of the Collections Origination Dates with respect to the Contract Rights purchased hereunder.

**Section 3.03 Break Costs.** The Seller shall pay to the Purchaser, by depositing such amounts in the Collections Account, the Break Costs if all or any part of any amount of any Monthly Settlement Amount is disbursed to the Administrative Agent pursuant to the Cash Management Agreement or if all or any part of the Liquidated Damages (and applied by the Administrative Agent to the component of the Liquidated Damages calculated by reference to the Unsettled Balance) is disbursed to the Administrative Agent pursuant to the Cash Management Agreement on a day other than a Payment Date.

**Section 3.04 Maintenance of Records.** The Purchaser shall keep books and records as required to comply with the Cayman Islands Companies Law (2013 Revision), Section 59(1).

**Section 3.05 Payments to the Seller.** Whenever any amount is due, owing or payable to the Seller under or in connection with this Agreement or the other Transaction Documents, payment of such sum into the Seller's Account shall constitute complete discharge of the obligation to pay such amounts. The Seller hereby irrevocably acknowledges and agrees that any amount due and payable from time to time by the Purchaser shall be payable in accordance with the applicable Priority of Payments.

**Section 3.06 Payments by the Seller.** Whenever any amount is due, owing or payable by the Seller under or in connection with this Agreement or the other Transaction Documents, all payments by the Seller to any Party hereunder shall be calculated and made without (and free and clear of any deduction for) set-off, counterclaim, defense or recoupment. The obligations of the Seller under this Agreement are independent from, and are not affected by, any obligations, rights or remedies arising out of or in connection with any other agreements among the Parties.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES

**Section 4.01 Representations and Warranties of the Seller.** The Seller hereby represents and warrants to the other Parties hereto (which representations and warranties constitute, and shall be deemed to be, obligations of the Seller pursuant to the Applicable Laws of Colombia, the breach or inaccuracy with respect to which shall give rise to the remedies provided for in this Agreement and the other Transaction Documents) on the date hereof, the date of each Contract Rights and Receivables Addition Date and the date of each Collections Origination Date, that:

(a) It has been duly organized, is validly existing as a sociedad anónima in good standing under the Applicable Laws of Colombia, has the corporate power and authority to own, lease, and operate its property and to conduct the business in which it is currently engaged, and has its principal office at Avenida Calle 26, No. 59-15 Piso 10, Bogotá, D.C., Colombia;

(b) It is duly qualified to transact business and has obtained all necessary licenses and approvals in each jurisdiction in which the conduct of its business or its ownership, leasing, or operating of property requires such qualification, licenses and approvals;

(c) It has the corporate power and authority to execute this Agreement and each other Transaction Document to which it is a party and to carry out the terms and perform its obligations set forth herein and therein; it has full power and authority to sell and Transfer the Contract Rights and the Receivables pursuant to this Agreement and each other Transaction Document to which it is a party and has duly authorized such Sale and Transfer to the Purchaser by all necessary corporate action; and the execution, delivery, and performance of this Agreement and each other Transaction Document to which it is a party have been duly authorized by the Seller by all necessary corporate action;

(d) Except for the registration of the Colombian Back-Up Security Agreement with the Colombian *Registro de Garantías Mobiliarias* and the registration of the Costa Rican Back-Up Security Agreement with the Costa Rican *Registro de Garantías Mobiliarias*, no authorization, consent or approval or filing, notice, registration, or other action of any Governmental Authority of Colombia, the Cayman Islands, Costa Rica or the United States, or any statute thereof, any other Person that has not been obtained or made, is (i) necessary for the due execution, delivery, and performance by the Seller of this Agreement or any other Transaction Document to which it is a party or (ii) required to be obtained prior to the execution, delivery, and performance of this Agreement or any other Transaction Document to which it is a party for the validity or enforceability thereof against the Seller or any Card Processor or



(iii) necessary to effect or perfect the Purchaser's ownership of the Contract Rights and Receivables under all Applicable Law or the Liens purported to be created under the Transaction Documents;

(e) The execution and delivery of this Agreement and each other Transaction Document to which it is a party and the undertaking and performance by it of the obligations expressed to be assumed by it herein and therein and the use of proceeds (i) will not conflict with, or result in a breach of or default under, (A) any Applicable Laws, (B) its articles of incorporation, bylaws or other Organizational Documents or (C) any agreement or instrument to which it is a party or by which it is bound or (ii) result in the creation or imposition of any Lien (other than the Liens created thereunder) upon any of the property or assets of the Seller or its Subsidiaries;

(f) This Agreement and each other Transaction Document to which it is a party has been duly authorized, executed, and delivered by the Seller and is a legal, valid, and binding obligation of the Seller, enforceable in accordance with its terms and each of the Transaction Documents is (or upon its coming into effect will be) in proper legal form under its governing law for the enforcement thereof against the parties thereto under such law, and constitutes a legal, valid and binding obligation thereof, enforceable in accordance with its terms. Subject to the preceding sentence, all formalities required in Colombia, Costa Rica, the U.S. or any state thereof and the jurisdiction of incorporation of each party thereto for the validity and enforceability (including any necessary registration, recording or filing with any court or other Governmental Authority) of each Transaction Document have been accomplished, and no Taxes are required to be paid for the validity and enforceability thereof;

(g) The Seller has previously furnished to the Purchaser the consolidated financial statements (including a balance sheet, statement of operations and statement of cash flows) of Holdings: (a) as of and for the fiscal year ended on December 31, 2016, audited by and accompanied by the opinion of an internationally recognized independent public accountant and (b) as of and for the fiscal quarter ended on March 31, 2017. Such financial statements: (x) were prepared in good faith in accordance with IFRS consistently applied throughout the period covered thereby, other than with respect to mandatory changes required by IFRS; (y) fairly present the financial condition of Holdings and its consolidated Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with IFRS consistently applied throughout the period covered thereby, other than with respect to mandatory changes required by IFRS; and (z) show all its material Indebtedness and other liabilities, direct or contingent, and Holdings and its consolidated Subsidiaries as of the date thereof;

(h) There are no litigations, investigations, arbitrations or other proceedings or investigations pending or, to the Seller's knowledge, threatened, before any Governmental Authority having jurisdiction over the Seller or its Subsidiaries or any of their property that individually or in the aggregate (i) assert the invalidity of this Agreement or any other Transaction Document, (ii) seek to prevent the consummation of any of the transactions contemplated by this Agreement or any other Transaction Document, (iii) seek any determination or ruling that could be reasonably likely to have a Material Adverse Effect, or (iv) if adversely determined, could be reasonably likely to result in a Material Adverse Effect;

(i) It is not in violation of any Applicable Law applicable to it or any of its properties, the violation of which could be reasonably likely to result in a Material Adverse Effect;

(j) There are no Taxes imposed or levied on, or with respect to, payments to be made pursuant to this Agreement or otherwise in respect of the transactions contemplated hereby;

(k) There are no Taxes imposed or levied on, or with respect to, the execution, delivery, enforcement, or admissibility in evidence of this Agreement, any other Transaction Document or any other document to be furnished hereunder or thereunder;

(l) There are no Taxes imposed or levied on the Purchaser or on the income, assets, or operations of the Purchaser with respect to the transactions contemplated by this Agreement;

(m) Under the Applicable Laws of Colombia, the Cayman Islands, or any other jurisdiction, or any Governmental Authority of any thereof or therein, each of the Seller and its Subsidiaries is subject to civil and commercial law with respect to its obligations under the Transaction Documents to which it is a party, and the execution, delivery and performance by it of such Transaction Documents constitute private and commercial acts rather than public or governmental acts and neither the Seller nor its Subsidiaries nor any of their property has any immunity from jurisdiction of any court or from any action, suit, set-off or proceeding, or other legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);

(n) It has (a) (i) entered into no contracts, letters of intent, memoranda of understanding, or other agreements or arrangements, (ii) made no change to its internal policies, procedures, or business practices, and (iii) made no plans to enter into any such agreements or arrangements or to make any such change, and (b) to its knowledge, no event or circumstance has occurred (other than changes in general economic conditions) that, in the case of either of the foregoing clause (a) or clause (b) of this Section 6.01(n) could reasonably be expected to have a material adverse effect on the Net Activity due or to become due under any Card Processing Agreement on an annual basis going forward;

(o) The Purchase Price is fair and has been agreed on an arm's length basis and on market conditions, taking into consideration the economics of this Agreement;

(p) The purpose and the effect of this Agreement is to sell the Receivables and the existing Contract Rights on market terms conditions.

(q) It is not and shall not be in violation of any terms or provisions of any Card Processing Agreement and there are no material disputes between the Seller or any of its Affiliates and any Card Processor with respect to any of the terms of the settlement arrangements of the Seller with such Card Processor or any other issues under the Card Processing Agreement between the Seller and such Card Processor;

(r) It is not aware of any basis, considering its financial condition, upon which the transactions contained in this Agreement are capable of being affected by any *acción revocatoria* under Colombian law, including under article 74 of Law 1116, and the Seller shall, from the date hereof, take all additional steps necessary or advisable to avoid affecting or impairing the rights of its creditors;

(s) Both before and after giving effect to this Agreement and the other Transaction Documents and the entering into of the transactions contemplated hereby and thereby, the Seller was and is Solvent;

(t) All of the Collections were originated and shall be originated by the Seller or its agents or on its behalf in the ordinary course of business, and the Card Processing Agreements relating thereto were fully and properly executed by the parties thereto and constitute the enforceable obligations thereof;

(u) (i) Immediately prior to giving effect to the Sale and Transfer hereunder, all of the Contract Rights and the Receivables (and the Collections derived therefrom) are legally and beneficially owned by the Seller, free and clear of any Lien, and have not been sold, transferred, assigned, pledged, or otherwise conveyed by the Seller to any Person other than to the Purchaser pursuant to this Agreement; and (ii) the Sale and Transfer made pursuant to this Agreement convey to the Purchaser good and valid title to all of the Contract Rights and Receivables (and the Collections derived therefrom) and



vests the Purchaser with the definitive and infeasible ownership (with all privileges set forth in the first paragraph of article 669 of the Colombian Civil Code), to (w) all of the Contract Rights and Receivables, (x) all funds collected or to be collected in respect of all of the Collections as well as all income and proceeds of the foregoing and (y) all performance rights of any nature whatsoever under the Card Processing Agreements (except those explicitly excluded from the Receivables pursuant to the definition thereof);

(v) The Sales and Transfers made pursuant to this Agreement constitute final and definitive Sales and Transfers, as the case may be, of the Contract Rights and the Receivables from the Seller to the Purchaser, under the Applicable Laws of Colombia, and any other Applicable Laws, and it is the intention of the Seller that the title to such Contract Rights and Receivables not be part of the Seller's estate in the event of an Insolvency Event in respect of the Seller or any Affiliate thereof;

(w) The irrevocable instructions given by the Seller to each Card Processor in each applicable Notice and Consent are binding on the Seller and do not contravene (i) any provision of Applicable Law or the Organizational Documents of the Seller or its Affiliates, (ii) any agreement or other instrument binding upon the Seller or its Affiliates, (iii) any judgment, order or decree of any Governmental Authority having jurisdiction over the Seller or its Affiliates or (iv) any other Applicable Laws to which the Seller or its Affiliates is subject and each Notice and Consent is enforceable against the parties thereto and sufficient to legally obligate each such Card Processor to make payments of the Collections for the benefit of the Purchaser directly to the New York Pass-Through Account;

(x) The Collections represent the genuine, legal, valid, and binding payment obligation of each Card Processor, enforceable by the holder thereof in accordance with its terms, except as (i) the enforceability thereof may be limited by bankruptcy, insolvency or similar Applicable Laws affecting creditors' rights generally and (ii) the availability of equitable remedies may be limited by equitable principles of general applicability;

(y) The Contract Rights, the Receivables and the Collections are not the subject and shall not be the subject of any other sale or Lien by the Seller, other than in connection with the transactions contemplated by this Agreement and the other Transaction Documents;

(z) All of the Receivables have arisen in all material respects in accordance with the terms and conditions of a Card Processing Agreement and in compliance with all Applicable Laws of all applicable jurisdictions, and no Receivables have been originated in, or are subject to the Applicable Laws of, any jurisdiction under which the sale, transfer and/or assignment of such Receivables under this Agreement is unlawful, void or voidable;

(aa) With respect to the Contract Rights and Receivables: (i) no Contract Rights or Receivables have been subordinated or rescinded, with the exception of the subordination of security interests under the Colombian Back-Up Security Agreement and the Costa Rican Back-Up Security Agreement, (ii) no actions, suits, proceedings, or investigations are pending or threatened in respect of such Contract Rights or Receivables, (iii) no amounts due in respect of Receivables are Delinquent, (iv) no Card Processor has made any chargebacks or imposed any other charges upon the Seller under its Card Processing Agreement except in the ordinary course of business and consistent with past practice under such Card Processing Agreement, (v) each of the Seller and its Affiliates and each Card Processor is in compliance in all material respects with the terms and conditions of each Card Processing Agreement;

(bb) The Purchaser has no obligation or liability to any Card Processor or other Person in respect of the Contract Rights or the Receivables (other than the obligation of the Purchaser to pay the Purchase Price to the Seller), any contracts relating thereto, or any airline transportation services related thereto;

(cc) The payment obligations of the Seller under this Agreement and each other Transaction Document to which it is a party will be direct, general, unconditional and unsubordinated obligations of the Seller and will, except to the extent secured pursuant to the Transaction Documents, rank at least pari passu in priority of payment with all other existing and future unsecured and unsubordinated indebtedness of the Seller, other than any indebtedness mandatorily preferred by Applicable Laws;

(dd) The Seller's only Subsidiaries, as of the date hereof, are as follows: Tampa Cargo S.A.S. – Avianca, Inc. - Latin Logistics LLC - Avianca Leasing LLC - Aviation Leasing Services Inc. - International Trade Marks Agency Inc. - Aviation Leasing Services Investment S.A. - AVSA Properties I Inc. - AVSA Properties II Inc. - AVSA Properties III Inc. - AVSA Properties IV Inc. - AVSA Properties V Inc. - AVA Leasing I LLC - Tri-aircraft Leasing LLC - Tri-aircraft Leasing II LLC - Octo-Aircraft Leasing LLC - Uni-Aircraft Leasing LLC - Ronair N.V. - Tampa Interholding B.V. - Tampa Cargo Logistics Inc. - Avifreight México S.A.P.I de C.V. - Aero Transporte de Carga Unión S.A. de C.V. Aerounión;

(ee) No Trigger Event, Potential Event, Retention Event or Adjustment Event has occurred and is continuing;

(ff) Since December 31, 2016, no event or circumstance exists that has had or could reasonably be expected to have a Material Adverse Effect;

(gg) The RSPA Security Documents provide the Purchaser with effective, valid, legally binding and enforceable first priority Liens on all of the Collateral described therein;

(hh) Neither Holdings and its Subsidiaries nor the Seller has any Indebtedness other than Indebtedness set forth in the financial statements previously delivered to the Purchaser or pursuant to this Agreement the Transaction Documents and the Purchaser Finance Documents;

(ii) Each of the Seller and its Subsidiaries is in compliance with all Applicable Laws and Government Approvals in respect of the conduct of its businesses and the ownership of its properties, except such non-compliance as could not reasonably be expected to result in a Material Adverse Effect; provided, however, that where such compliance relates to any Anti-Corruption Laws or Sanctions, such Person is in compliance in all respects and subject to no exceptions;

(i) Each of the Seller and its Subsidiaries has conducted its businesses in compliance with all applicable Anti-Money Laundering Laws. None of the Seller or any of its Subsidiaries or any of their respective directors, officers or employees (i) has taken any action that would constitute or give rise to a violation of Anti-Corruption Laws or (ii) is or has been subject to any action, proceeding, litigation, claim or, to the Seller's knowledge, investigation with regard to any actual or alleged violation of any Anti-Corruption Laws or Anti-Money Laundering Laws. The Seller and its Subsidiaries have implemented, maintained and enforced policies and procedures designed to promote and achieve compliance by the Seller and its Subsidiaries with all applicable Anti-Money Laundering Laws and Anti-Corruption Laws;

(ii) None of the Seller or any of its Subsidiaries or any of their respective directors, officers, Affiliates, agents or employees (i) is a Sanctioned Person, (ii) is currently engaging or has during the five years prior to the date hereof engaged in any dealings or transactions with, involving or for the benefit of a Sanctioned Person, or in or involving any Sanctioned Jurisdiction in violation of Sanctions, or (iii) is subject to any action, proceeding, litigation, claim or, to the Seller's knowledge, investigation with regard to any actual or alleged violation of Sanctions;

(jj) Each of Holdings and its Subsidiaries has filed, has caused to be filed or has been included in all material Tax returns (national, departmental, local, municipal and foreign) required to be filed and has paid all material Taxes due with respect to the years covered by such returns; provided, however, that Holdings and its Subsidiaries will not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings properly instituted and diligently conducted, and for which Holdings or its Subsidiaries, as applicable, has set aside on its books adequate reserves with respect thereto in accordance with IFRS;

(kk) None of the Seller nor its Subsidiaries is required to register as an “investment company,” as such term is defined in the Investment Company Act of 1940, as amended;

(ll) The Seller has disclosed to the Purchaser all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries or Affiliates is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No information, report, financial statement, exhibit or schedule furnished by or on behalf of the Seller or any of their Subsidiaries to the Purchaser in connection with the negotiation of any Transaction Document or included therein or delivered pursuant thereto contained, contains any material misstatement of fact or omitted, omits or will omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were, are or will be made, not misleading; provided that to the extent any such information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast or projection, the Seller represents only that it acted in good faith and utilized reasonable assumptions (based upon accounting principles consistent with its historical audited financial statements) and due care in the preparation of such information, report, financial statement, exhibit or schedule;

(mm) There are no strikes, work stoppages, slowdowns or lockouts pending or threatened against or involving Holdings or any of its Subsidiaries. There are no unfair labor practices, grievances, complaints or arbitrations pending or, to the Seller’s knowledge, threatened, against or involving Holdings or any of its Subsidiaries, nor are there any arbitrations or grievances threatened or involving Holdings or any of its Subsidiaries;

(nn) It is not necessary in order for the Purchaser or any Agent to enforce any rights or remedies under the Transaction Documents, or solely by reason of the execution, delivery and performance by the Seller or its Subsidiaries of the Transaction Documents, that the Purchaser or any Agent be licensed or qualified with any Governmental Authority, or be entitled to carry on business in any relevant jurisdiction. Neither the Purchaser nor any Agent is or will be deemed to be resident, domiciled or carrying on business in any relevant jurisdiction by reason only of the execution, performance and/or enforcement of any Transaction Document;

(oo) Each Receivables File sets forth an accurate and complete list of all Contract Rights, Receivables and Collections that have been sold and assigned by the Seller to the Purchaser and the information contained therein accurately identifies it as being sold and transferred to the Purchaser hereunder and indicates that the Purchaser is the owner of such rights and that the Collateral Agent has a security interest therein; and

(pp) It is a sophisticated entity with respect to the terms of the transactions contemplated by the Transaction Documents. It has adequate information to make an informed decision regarding the sale of the Contract Rights and Receivables pursuant to the Transaction Documents. It is acting for its own account and it has made its own independent decision to enter into the Transaction Documents and as to whether the sale of the Contract Rights and Receivables pursuant thereto is proper for it based on its own judgment and upon advice of such advisers as it deems necessary. It is not relying

on any communication (written or oral) of the other parties to this Agreement or the other Transaction Documents as investment advice or as a recommendation to sell the Contract Rights and Receivables hereunder. It is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of the transactions contemplated by the Transaction Documents.

(qq) The gross amount of sales that, if made after the date hereof, would fall under the definition of Specified Sales (a) in 2012 were \$369,151,330, (b) in 2013 were \$407,038,709, (c) in 2014 were \$403,216,884, (d) in 2015 were \$460,083,247, and the net amount (including, but not limited to, net of any discount rate, any charges, any chargebacks, any refunds, any fees and any other amounts owed to the Card Processor under the relevant Card Processing Agreement) of collections paid to the Seller on account of such sales (e) in 2016 were \$456,909,053 and (f) in 2017, through October 31, were \$454,396,385. Since the beginning of 2013 and through October 31 2017, such net amount of collections paid to the Seller on account of such sales has historically approximated 96% or more of the gross amount of such collections.

(rr) Holdings, the Specified Subsidiaries and the Seller have each previously furnished to the Administrative Agent their consolidated financial statements (including a balance sheet, statement of operations and statement of cash flows): (a) as of and for the fiscal year ended on December 31, 2016, audited by and accompanied by the opinion of an internationally recognized independent public accountant and (b) as of and for the fiscal quarter ended on September 30, 2017. Such financial statements: (x) were prepared in good faith in accordance with IFRS consistently applied throughout the period covered thereby, other than with respect to mandatory changes required by IFRS; (y) fairly present its financial condition and its consolidated Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with IFRS consistently applied throughout the period covered thereby, other than with respect to mandatory changes required by IFRS; and (z) show all its material indebtedness and other liabilities, direct or contingent, and its consolidated Subsidiaries as of the date thereof.

(ss) There is no litigation, investigation, arbitration or other proceeding pending or, to the knowledge of Holdings, the Specified Subsidiaries and the Seller after due and diligent investigation, threatened in writing against any of Holdings, the Specified Subsidiaries and the Seller or any of their Subsidiaries before any arbitrator or Governmental Authority that, solely in the case of Holdings, the Seller or each Specified Subsidiary: (a) in the aggregate, has had or, if adversely determined, could reasonably be expected to have a Material Adverse Effect or (b) could reasonably be expected to materially and adversely affect the legality, validity, binding effect or enforceability of any of the Transaction Documents or Purchaser Finance Documents.

(tt) Each of the Transaction Documents is (or upon its coming into effect will be) in proper legal form under its governing law for the enforcement thereof against the parties thereto under such laws, and constitutes a legal, valid and binding obligation thereof, enforceable in accordance with its terms. Subject to the preceding sentence, all formalities required in the U.S. and Colombia for the validity and enforceability (including any necessary registration, recording or filing with any court or other Governmental Authority) of each Transaction Document have been accomplished, and no taxes are required to be paid for the validity and enforceability thereof.

(uu) The instructions to the Card Processors found in the Notices and Consents are sufficient to legally obligate each such Card Processor to make payments of the Collections directly to the New York Pass-Through Account in order to discharge the Collections owed to the Purchaser with respect to the relevant Card Processing Agreement;

(vv) Seller and its Subsidiaries are subject to civil and commercial law with respect to their obligations under the Transaction Documents to which they are a party, and the execution, delivery



and performance by them of such Transaction Documents constitute private and commercial acts rather than public or governmental acts. Neither Seller nor any of its Subsidiaries nor any of their respective properties is entitled to immunity on the grounds of sovereignty or otherwise from the jurisdiction of any court or from any action, suit, set-off or proceeding, or service of process in connection therewith, arising under the Transaction Documents; and

(ww) Seller has not owned or leased the aircraft identified as MSN 4175 and MSN 6992 in UCC-1 financing statements 2015080610 and 2015080609, respectively, naming Seller as debtor and Wells Fargo Bank Northwest, N.A. Owner Trustee as secured party, filed in the office of the District of Columbia Recorder of Deeds and the Liens described therein do not affect the Seller of the Contract Rights, Receivables or Collections sold or transferred hereunder.

**Section 4.02 Representations and Warranties of the Purchaser.** The Purchaser hereby represents and warrants to the other Parties hereto (which representations and warranties constitute, and shall be deemed to be, obligations of the Purchaser pursuant to the Applicable Laws of Colombia, the breach or inaccuracy with respect to which shall give rise to the remedies provided for in this Agreement) on the date hereof that:

(a) It has been duly organized, is validly existing as a company incorporated and in good standing under the Applicable Laws of the Cayman Islands, has the corporate power and authority to own, lease, and operate its property and to conduct the business in which it is currently engaged, and has its principal office at Queensgate House, South Church Street, George Town, Grand Cayman, Cayman Islands;

(b) It is duly qualified to transact business and has obtained all necessary licenses and approvals in each jurisdiction in which the conduct of its business or its ownership, leasing, or operating of property requires such qualification, licenses and approvals;

(c) It has the corporate power and authority to execute and deliver this Agreement and to carry out the terms set forth herein; it has full power and authority to enter into and perform its obligations under this Agreement; and the execution, delivery, and performance of this Agreement have been duly authorized by the Purchaser by all necessary corporate action;

(d) No authorization or approval or filing, notice, registration, or other action of any Governmental Authority of Colombia, the Cayman Islands, or the United States that has not been obtained, is (i) necessary for the due execution, delivery, and performance by the Purchaser of this Agreement or (ii) required to be obtained prior to the execution, delivery, and performance of this Agreement for the validity or enforceability thereof against the Purchaser; and

(e) This Agreement has been duly authorized, executed, and delivered by the Purchaser and is a legal, valid, and binding obligation of the Purchaser, enforceable in accordance with its terms.

**Section 4.03 Representations and Warranties of the Servicer.** The Servicer hereby represents and warrants to the other Parties hereto (which representations and warranties constitute, and shall be deemed to be, obligations of the Servicer pursuant to the Applicable Laws of Colombia, the breach or inaccuracy with respect to which shall give rise to the remedies provided for in this Agreement) on the date hereof, the date of each Contract Rights and Receivables Addition Date and the date of each Collections Origination Date that:

(a) It has been duly organized, is validly existing as a corporation in good standing under the Applicable Laws of the of its jurisdiction of organization, has the corporate power and authority to own, lease, and operate its property and to conduct the business in which it is currently engaged and

has its principal office as of the date hereof at Avenida Calle 26, No. 59-15, 10th Floor, Bogotá, D.C., Colombia;

(b) It is duly qualified to transact business and has obtained all necessary licenses and approvals in each jurisdiction in which the conduct of its business or its ownership, leasing, or operating of property requires such qualification, licenses and approvals;

(c) It has the corporate power and authority to execute this Agreement and each other Transaction Document to which it is a party and to carry out the terms and perform its obligations set forth herein and therein; and the execution, delivery, and performance of this Agreement and each other Transaction Document to which it is a party have been duly authorized by the Servicer by all necessary corporate action;

(d) No authorization or approval or filing, notice, registration, or other action of any Governmental Authority of Colombia, the Cayman Islands, Costa Rica or the United States, or any statute thereof, or any other Person that has not been obtained or made, is (i) necessary for the due execution, delivery, and performance by the Servicer of this Agreement or any other Transaction Document to which it is a party or (ii) required to be obtained prior to the execution, delivery, and performance of this Agreement or any other Transaction Document to which it is a party for the validity or enforceability thereof against the Servicer;

(e) The execution and delivery of this Agreement and each other Transaction Document to which it is a party and the undertaking and performance by it of the obligations expressed to be assumed by it herein and therein (i) will not conflict with, or result in a breach of or default under, (A) any Applicable Laws, (B) its articles of incorporation, bylaws or other Organizational Documents or (C) any agreement or instrument to which it is a party or by which it is bound or (ii) result in the creation or imposition of any Lien (other than the Liens created thereunder) upon any of the property or assets of the Servicer;

(f) This Agreement and each other Transaction Document to which it is a party has been duly authorized, executed, and delivered by the Servicer and is a legal, valid, and binding obligation of the Servicer, enforceable in accordance with its terms and each of the Transaction Documents is (or upon its coming into effect will be) in proper legal form under its governing law for the enforcement thereof against the parties thereto under such law, and constitutes a legal, valid and binding obligation thereof, enforceable in accordance with its terms. Subject to the preceding sentence, all formalities required in Colombia, Costa Rica, the U.S. or any state thereof and the jurisdiction of incorporation of each party thereto for the validity and enforceability (including any necessary registration, recording or filing with any court or other Governmental Authority) of each Transaction Document have been accomplished, and no Taxes are required to be paid for the validity and enforceability thereof;

(g) It is not in violation of any Applicable Law applicable to it or any of its properties, the violation of which could be reasonably likely to result in a Material Adverse Effect;

(h) Under the Applicable Laws of Colombia, the Cayman Islands, or any other jurisdiction, or any Governmental Authority of any thereof or therein, the Servicer is subject to civil and commercial law with respect to its obligations under the Transaction Documents to which it is a party, and the execution, delivery and performance by it of such Transaction Documents constitute private and commercial acts rather than public or governmental acts and neither the Servicer nor any of its property has any immunity from jurisdiction of any court or from any action, suit, set-off or proceeding, or other legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);



(i) Both before and after giving effect to this Agreement and the other Transaction Documents and the entering into of the transactions contemplated hereby and thereby, the Servicer was and is Solvent;

(j) (i) Immediately prior to giving effect to the Sale and Transfer hereunder, all of the Contract Rights and the Receivables are legally and beneficially owned by the Seller, free and clear of any Lien, and have not been sold, transferred, assigned, pledged, or otherwise conveyed by the Seller to any Person other than to the Purchaser pursuant to this Agreement; and (ii) the Sale made pursuant to this Agreement conveys to the Purchaser good and valid title to all of the Contract Rights and Receivables and vests in the Purchaser exclusive ownership of, and all right, title, and interest of the Seller in and to (w) all of the Contract Rights and Receivables, (x) all funds collected or to be collected in respect of all of the Collections as well as all income and proceeds of the foregoing and (y) all performance rights of any nature whatsoever under the Card Processing Agreements (except those explicitly excluded from the Receivables pursuant to the definition thereof);

(k) The Servicer is in compliance with all Applicable Laws and Government Approvals in respect of the conduct of its businesses and the ownership of its properties, except such non-compliance as could not reasonably be expected to result in a Material Adverse Effect; provided, however, that where such compliance relates to any Anti-Corruption Laws or Sanctions, such Person is in compliance in all respects and subject to no exceptions;

(i) The Servicer has conducted its businesses in compliance with all applicable Anti-Money Laundering Laws. Neither of the Servicer nor any of its directors, officers or employees (i) has taken any action that would constitute or give rise to a violation of Anti-Corruption Laws or (ii) is or has been subject to any action, proceeding, litigation, claim or, to the Servicer's knowledge, investigation with regard to any actual or alleged violation of any Anti-Corruption Laws or Anti-Money Laundering Laws. The Servicer has implemented, maintained and enforced policies and procedures designed to promote and achieve compliance by the Servicer with all applicable Anti-Money Laundering Laws and Anti-Corruption Laws;

(ii) Neither of the Servicer nor any of its directors, officers, Affiliates, agents or employees (i) is a Sanctioned Person, (ii) is currently engaging or has during the five years prior to the date hereof engaged in any dealings or transactions with, involving or for the benefit of a Sanctioned Person, or in or involving any Sanctioned Jurisdiction in violation of Sanctions, or (iii) is subject to any action, proceeding, litigation, claim or, to the Servicer's knowledge, investigation with regard to any actual or alleged violation of Sanctions;

(l) The Servicer has filed, has caused to be filed or has been included in all material Tax returns (national, departmental, local, municipal and foreign) required to be filed and has paid all material Taxes due with respect to the years covered by such returns; provided, however, that the Servicer will not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings properly instituted and diligently conducted, and for which the Servicer has set aside on its books adequate reserves with respect thereto in accordance with IFRS;

(m) The Servicer is not required to register as an "investment company," as such term is defined in the Investment Company Act of 1940, as amended;

(n) The Servicer has disclosed to the Purchaser all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries or Affiliates is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No information, report, financial statement, exhibit or schedule furnished by or on behalf of the Servicer or any of their Subsidiaries to the Purchaser in connection with the negotiation

of any Transaction Document or included therein or delivered pursuant thereto contained, contains any material misstatement of fact or omitted, omits or will omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were, are or will be made, not misleading; provided that to the extent any such information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast or projection, the Servicer represents only that it acted in good faith and utilized reasonable assumptions (based upon accounting principles consistent with its historical audited financial statements) and due care in the preparation of such information, report, financial statement, exhibit or schedule;

(o) It is not necessary in order for the Purchaser or any Agent to enforce any rights or remedies under the Transaction Documents, or solely by reason of the execution, delivery and performance by the Seller or its Subsidiaries of the Transaction Documents, that the Purchaser or any Agent be licensed or qualified with any Governmental Authority, or be entitled to carry on business in any relevant jurisdiction. Neither the Purchaser nor any Agent is or will be deemed to be resident, domiciled or carrying on business in any relevant jurisdiction by reason only of the execution, performance and/or enforcement of any Transaction Document;

(p) Each Receivables File sets forth an accurate and complete list of all Contract Rights, Receivables and Collections that have been sold and assigned by the Seller to the Purchaser and the information contained therein accurately identifies it as being sold and transferred to the Purchaser hereunder and indicates that the Purchaser is the owner of such rights and that the Collateral Agent has a security interest therein; and

(q) It is a sophisticated entity with respect to the terms of the transactions contemplated by the Transaction Documents. It has adequate information to make an informed decision regarding the sale of the Contract Rights and Receivables pursuant to the Transaction Documents. It is acting for its own account and it has made its own independent decision to enter into the Transaction Documents and as to whether the sale of the Contract Rights and Receivables pursuant thereto is proper for it based on its own judgment and upon advice of such advisers as it deems necessary. It is not relying on any communication (written or oral) of the other parties to this Agreement or the other Transaction Documents as investment advice or as a recommendation to sell the Contract Rights and Receivables hereunder. It is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of the transactions contemplated by the Transaction Documents.

## ARTICLE V

[RESERVED.]

## ARTICLE VI

### TRIGGER EVENTS AND REMEDIES

**Section 6.01** **Trigger Events**. Each of the following events shall constitute a “Trigger Event”:

(a) (i) the Seller or the Servicer fails to pay any amount due under this Agreement or any other Transaction Document when due or any Monthly Settlement Amount or Surcharge is not paid or disbursed to the Administrative Agent’s Account when due unless (x) the amount in the Collections Account is sufficient on such due date to pay or disburse all amounts due on such date and (y) such amount is paid or disbursed from the Collections Account to pay such amount in full within 3 Business Days of its due date or (ii) upon any application or attempted application of funds pursuant to the Cash Management Agreement, the cash standing to the credit of the Collections Account and the Debt Service

Reserve Account is insufficient to pay or disburse the Monthly Settlement Amount or Surcharge due on such date;

(b) the Collections Coverage Ratio is below 1.75:1.00 at any date of determination, a Retention Event occurs and continues for six consecutive months, or an Adjustment Event as described in clause (b) or (c) of the definition thereof occurs and continues for 10 consecutive days;

(c) the Seller or the Servicer fails duly to perform or observe:

(i) any term or obligation under the Undertaking Agreement (except Sections 2.01(c), (d), (e), and (s)(i) and Section 2.02(c) thereof), any RSPA Security Document or any Notice and Consent; or

(ii) any other term or obligation contained hereunder or in any other Transaction Document to which it is a party and such failure shall continue unremedied for 30 days after the earlier of (i) the Seller obtaining knowledge of such failure or (ii) written notice thereof having been given by the Purchaser to the Seller;

(d) any representation, warranty, certification or statement made or deemed to be made by the Seller, the Servicer or Holdings in any Transaction Document, or any certificate, financial statement or other document delivered pursuant to or in connection with any Transaction Document shall prove to have been incorrect when made, repeated or delivered (or deemed made, repeated or delivered) or the Seller, the Servicer or Holdings shall provide the Purchaser with material false information;

(e) a Card Processing Agreement is terminated by any party for any reason, unless such termination is a Permitted Termination and the Seller and the Servicer complete a Contract Rights and Receivables Addition acceptable to the Purchaser (with the consent of the Administrative Agent acting at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement) promptly (and in any event within 10 days) following such termination;

(f) the Seller or the Servicer or any of their Affiliates breaches its obligations under a Card Processing Agreement and such breach gives the relevant Card Processor the right to terminate the Card Processing Agreement, unless the relevant Card Processor in writing waives its right to terminate the Card Processing Agreement on account of such breach;

(g) a Card Processor fails to make payments under the relevant Card Processing Agreement into the New York Pass-Through Account for 10 consecutive days, unless the Card Processing Agreement is terminated within such 10 days in connection with a Permitted Termination;

(h) any Insolvency Event occurs with respect to the Seller (other than a filing for, or a commencement of, a restructuring process of the Seller pursuant to Law 1116, while the effects set forth under article 16 of said law (or other similar under other bankruptcy law in Colombia), are legal and binding) or the Servicer or any Affiliate thereof, or any of them shall admit in writing its inability to pay its debts generally;

(i) (i) the capacity or ability of the Seller to operate domestic and/or international flights is materially impaired for any reason or (ii) the capacity or ability of the Specified Subsidiaries, individually or collectively, to operate domestic and/or international flights is materially impaired for any reason, unless the gross revenue generated by their domestic and international flights immediately before such material impairment constituted less than 30% of the gross revenue generated by the Seller and all Specified Subsidiaries in the aggregate in the previous 12 months;

(j) any Change of Control occurs;

(k) (i) any Transaction Document (other than a Card Processing Agreement) or any term thereof (A) shall be revoked, terminated, become void or cease to be in full force and effect, (B) shall become, or the performance of or compliance with any obligation thereunder shall become, unlawful, or (C) shall be repudiated (or purportedly repudiated) by any party thereto or its legality, validity or enforceability shall be challenged by any Person; or (ii) the Seller or the Servicer shall deny that it has any or further liability or obligation under any Transaction Document;

(l) (i) the Purchaser shall cease to have the benefit of, as contemplated under the Transaction Documents effective, valid, legally binding and enforceable first priority perfected ownership interests in, or Liens securing or purported to be securing the Seller's obligations to the Purchaser on the Contract Rights and Receivables sold hereunder to the Purchaser as provided herein, or (ii) the Seller or any of its Affiliates shall, directly or indirectly, contest the effectiveness, validity, legality, binding nature, enforceability or priority of such Liens;

(m) any Government Approval at any time necessary to enable the Seller or the Servicer to comply with any of its obligations under any of the Transaction Documents shall be revoked, withdrawn, withheld or otherwise not in full force and effect or shall be modified or amended in a manner that has had or could reasonably be expected to have a Material Adverse Effect;

(n) any change in Applicable Law shall occur affecting the Seller, the Servicer, Holdings or any of their respective Subsidiaries if the effect thereof has or could reasonably be expected to have a Material Adverse Effect;

(o) a moratorium shall be declared by any Governmental Authority having jurisdiction in respect of any Indebtedness owed by, or other obligations of, the Seller or the Servicer to the Purchaser, or any Governmental Authority of any applicable jurisdiction declares any general payment delay, refusal to pay or acknowledge a payment obligation, repudiation or other action (whether or not formally announced), which in any such case relates to Indebtedness or any category of Indebtedness or obligation not to be paid in accordance with its terms or prevents the availability of foreign exchange to or by the Seller or the Servicer for the purpose of performing any obligation under this Agreement or any other Transaction Document;

(p) it is or becomes unlawful for the Seller or the Servicer to perform any of its obligations under the Transaction Documents to which it is a party;

(q) any event or series of events occurs which, in the reasonable opinion of the Purchaser or the Administrative Agent (at the instruction of the Lenders acting reasonably), has or is reasonably likely to have a Material Adverse Effect (other than pursuant to clause (d) of the definition of Material Adverse Effect), and such event or series of events continues unremedied for 30 days after the Purchaser or the Administrative Agent provides to the Seller in writing a notice specifying with reasonable particularity such event or series of events that in its reasonable opinion has or is reasonably likely to have a Material Adverse Effect; or

(r) following a disbursement from the Debt Service Reserve Account pursuant to the Cash Management Agreement, the Debt Service Reserve Account does not have a balance at least equal to the Debt Service Required Amount within 3 Business Days of such disbursement.

**Section 6.02 Remedies.** Upon the occurrence of a Trigger Event, the Purchaser may or the Administrative Agent (at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement) shall prematurely terminate (*resolver*) this Agreement, upon written notice to the Parties to this Agreement (with a copy to the Administrative Agent in the case of a notice by the Purchaser). As a consequence of the early termination (*resolución*) of this Agreement, the Parties agree that the Seller shall pay to the Purchaser liquidated damages (*cláusula penal como estimación mínima y anticipada de*



*perjuicios*) (the “Liquidated Damages”) in an amount equal to the Unwind Amount, which Liquidated Damages shall be due and payable by the Seller upon such demand without the need of a court procedure or any other procedure whatsoever to adjudicate the Seller in default (*mora*) or for any other purpose. At any time while the Liquidated Damages are not paid in full, the Seller hereby irrevocably authorizes the Purchaser, the Servicer and the Agents to apply the amount of all Collections (including, without limitation, all cash standing to the credit of the New York Pass-Through Account, the Collections Account and the Debt Service Reserve Account) to the payment of the Liquidated Damages and disburse such Collections in accordance with the Trigger Event Priority of Payments. In any event, the Purchaser may exercise from time to time all other rights and remedies provided hereunder or under any other Transaction Document and all rights and remedies under Applicable Law, including to a purchaser of similar assets. The exercise of any one or more of the rights under this Section 6.02 shall not preclude the subsequent exercise of any other rights or remedies exercisable hereunder, under any other Transaction Documents or under Applicable Law. The Seller and the Purchaser agree and acknowledge that the Purchaser may pursue additional damages, if not covered by the Liquidated Damages, under the other provisions of the Transaction Documents. Once the Liquidated Damages is paid in full as provided for hereunder, the Purchaser may proceed to unwind the purchase and sale by transferring back to the Seller the Contract Rights, the Receivables, and all Collections derived therefrom.

**Section 6.03 Automatic Trigger Event.** In the case of a Trigger Event specified in Section 6.01(h), and notwithstanding the availability of other remedies under Section 6.02, the Liquidated Damages shall automatically become and be forthwith due and payable and all amounts deposited in the New York Pass-Through Account, the Collections Account and the Debt Service Reserve Account shall be disbursed to repay such amounts.

**Section 6.04 Retention Events and Adjustment Events.** Upon the occurrence and during the continuance of a Retention Event or an Adjustment Event, the Purchaser or the Administrative Agent (in accordance with Section 2.09(b) of the Cash Management Agreement or at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement) may, upon written notice to the other Parties, in each case with a copy to the Administrative Agent, instruct the Collateral Agent that a Retention Event or an Adjustment Event (as applicable) has occurred and the Collateral Agent may adjust the payments made to conform to the applicable Priority of Payments.

**Section 6.05 Limitations under Colombian Laws.** The Parties agree that no provision of this Agreement shall: (a) prevent the commencement of a proceeding under Law 1116 or the filing of a petition in Colombia to commence a proceeding under Law 1116 with respect to the Seller, whether in a voluntary or involuntary manner; (b) be construed to mean that the purpose of such provision is to prevent or create obstacles to prevent, directly or indirectly, proceedings from being commenced in Colombia under Law 1116 with respect of the Seller; (c) prohibit the Seller from negotiating a restructuring agreement under Law 1116; or (d) impose any restrictions or unfavorable effects (*efectos desfavorables*) upon the Seller for the negotiation or execution of a restructuring agreement under Law 1116.

## ARTICLE VII

### PAYMENTS AND TAXES

**Section 7.01 Payments to the Purchaser.** Notwithstanding anything to the contrary herein, the parties hereto hereby agree that any payments made to or to be disbursed to the Purchaser in accordance with any Priority of Payments in respect of the Surcharge or any Monthly Settlement Amount or Break Costs, or any portion of the Liquidated Damages relating to the foregoing amounts, shall be made to the Administrative Agent’s Account; *provided* that any amounts to be paid in connection with any fees, expenses or indemnities or other amounts shall be paid as directed by the intended ultimate recipient of such amount.

## **Section 7.02 Taxes.**

(a) Any and all payments made by the Seller to, or disbursed under the Cash Management Agreement to, any Recipient (including, but not limited to, any Surcharge, Monthly Settlement Amount and Unwind Amount, or related concepts under the Cash Management Agreement or any other Transaction Document) made under any Transaction Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of the Seller) requires the deduction or withholding of any Tax from any such payment by the Seller, then the Seller shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the Seller shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 7.02) the Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) The Seller shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the recipient timely reimburse it for the payment of, any Other Taxes.

(c) The Seller shall indemnify any recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 7.02) payable or paid by such Recipient or required to be withheld or deducted from a payment to such recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Seller by Purchaser shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Taxes by the Seller to a Governmental Authority pursuant to this Section 7.02, the Seller shall deliver to the applicable Recipient the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to such Recipient.

## **ARTICLE VIII**

**[RESERVED.]**

## **ARTICLE IX**

## **MISCELLANEOUS**

**Section 9.01 Rights Confined to Parties.** Except as set forth in Section 9.14, nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any Person, other than the Parties and their successors and assigns, any right, remedy or claim under or by reason of this Agreement, and the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the Parties and their respective successors and permitted assigns. Notwithstanding anything in the foregoing to the contrary, the Parties hereto acknowledge and agree that (a) the Seller may not assign its rights or obligations hereunder, (b) pursuant hereto the Purchaser may assign the Receivables and the Collections and all its rights hereunder in accordance with the terms of the Purchaser Finance Documents and the transactions in connection therewith, and (c) as a result of such assignment by the Purchaser, the rights of the Purchaser under this Agreement may be enforced by the Collateral Agent on behalf of the Purchaser Finance Parties.



**Section 9.02 Amendment or Waiver.** Any provision of this Agreement may be amended or waived only with the written consent of each of the Seller, the Purchaser and the Administrative Agent (acting at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement); provided that any amendment that affects the rights or obligations of the Servicer hereunder shall require also the written consent of the Servicer.

**Section 9.03 Binding Upon Assigns.** Except as otherwise provided herein, the provisions of this Agreement (including any amendments, modifications and waivers hereof properly adopted) shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. Neither the Purchaser nor the Seller nor the Servicer may assign or otherwise transfer any of its respective rights or obligations hereunder without the prior written consent of the Administrative Agent (acting at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement).

**Section 9.04    Waiver of Immunity.** This Agreement and any other documents delivered pursuant hereto, and any actions taken hereunder, constitute commercial acts by the Seller and the Purchaser. To the extent that the Seller or the Purchaser, or any of their respective assets, may have, or may hereafter become entitled to or have attributed to it, any right of immunity, on the grounds of sovereignty or otherwise, from any legal action, suit or proceeding, from set-off or counterclaim, from the jurisdiction of any competent court, from service of process upon it or any agent, from attachment prior to judgment, from attachment upon or in aid of execution of judgment, or from execution of judgment or other legal process or proceeding for the giving of any relief or for the enforcement of judgments, in any jurisdiction, each of the Seller and the Purchaser hereby irrevocably and unconditionally and to the fullest extent permitted by law waives, and agrees not to plead or claim, any such immunity for itself or any of its property, assets or revenues wherever located with respect to its obligations, liabilities or any other matter under or arising out of or in connection with this Agreement, any of the other Transaction Documents, or any document delivered pursuant hereto or thereto; it being intended that the foregoing waiver and agreement shall be effective, irrevocable and not subject to withdrawal in any and all jurisdictions.

**Section 9.05 Arbitration.** All disputes arising out of or in connection with this Agreement shall be finally settled by arbitration under the Rules of Arbitration of the International Chamber of Commerce. There shall be three arbitrators. The language of arbitration shall be English. The seat of arbitration shall be Miami, Florida.

**Section 9.06 Notices.** All notices and other communications hereunder shall be made in writing and in English (by letter, electronic mail (provided that in such case of any Agent, such electronic notice shall be delivered in a “.pdf” attachment)) and shall be sent as follows:

(a) if to the Purchaser, to it at c/o P.O. Box 1093, Boundary Hall, Cricket Square, Grand Cayman KY1-1102, Cayman Islands; Attention: The Directors; Facsimile No.: (345) 945-7100; Telephone No.: (345) 945-7099; Email: [info@maplestfs.com](mailto:info@maplestfs.com);

with copies to:

Citibank, N.A.  
388 Greenwich Street  
New York, NY 10013  
Attn: Miriam Y. Molina  
Tel.: (212) 816-5576  
Email: [miriam.molina@citi.com](mailto:miriam.molina@citi.com)

and

Citibank, N.A  
1615 Brett Rd  
Building #3  
New Castle, DE 19720  
Attn: Bank Loans, Syndication Department  
Facsimile: +1(646) 274-5080

and with a copy to the Collateral Agent to it as set forth below.

and

(b) if to the Seller, to it at Aerovías del Continente Americano S.A. Avianca, Centro Administrativo, Avenida Calle 26 No. 59-15 Piso 10, Bogotá, D.C., Colombia; Attention: Vicepresidente Financiero; Facsimile No.: 571-413-9809; Telephone No.: 571-295-6765; Email: [Lucia.avila@Avianca.com](mailto:Lucia.avila@Avianca.com);

and

(c) if to the Servicer, to it at Aerovías del Continente Americano S.A. Avianca, Centro Administrativo, Avenida Calle 26 No. 59-15 Piso 10, Bogotá, D.C., Colombia; Attention: Vicepresidente Financiero; Facsimile No.: 571-413-9809; Telephone No.: 571-295-6765; Email: [Lucia.avila@Avianca.com](mailto:Lucia.avila@Avianca.com);

and

(d) if to the Administrative Agent, to it at Citibank, N.A., 388 Greenwich Street, New York, NY 10013, USA, Attn: Miriam Y. Molina, Tel.: (212) 816-5576, Email: [miriam.molina@citi.com](mailto:miriam.molina@citi.com);

with copies to:

Citibank, N.A  
1615 Brett Rd  
Building #3  
New Castle, DE 19720  
Attn: Bank Loans, Syndication Department  
Facsimile: +1(646) 274-5080

and with a copy to the Collateral Agent to it as set forth below.

and

(e) if to the Collateral Agent, to it at Citibank, N.A., 388 Greenwich Street, New York, NY 10013, USA, Attn: Karen Abarca, Tel.: (212) 816-7759, Email: [karen.abarca@citi.com](mailto:karen.abarca@citi.com);

Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when personally delivered or, in the case of a facsimile, or mailed notice, upon receipt, and in the case of email, upon confirmation of receipt, in each case given or addressed as aforesaid. Any Party may change its address or facsimile number for notices and other communications hereunder by notice to the other Parties (including notice to the Administrative Agent). Any notice given by e-mail shall be accompanied by an electronic request for a return receipt, and a copy of the notice

(including on diskette or compact disc) shall, within two (2) Business Days thereafter, be mailed to the addressee.

**Section 9.07 Construction.** The Table of Contents hereto and the Article and Section headings herein are for convenience only and shall not affect the construction hereof.

**Section 9.08 Severability.** To the extent permitted by law, any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 9.09 GOVERNING LAW.** THE PROVISIONS OF THIS AGREEMENT, AND ALL THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF COLOMBIA, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

**Section 9.10 Use of English Language.** All certificates, reports, notices, and other documents and communications given or delivered pursuant to this Agreement shall be in the English language or accompanied by a certified English translation thereof.

**Section 9.11 Currency.** Payment of the Purchase Price and all other amounts payable by the Purchaser or the Seller under this Agreement shall be made in United States Dollars.

**Section 9.12 Counterparts.** This Agreement may be executed in two or more counterparts (including via facsimile), each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

**Section 9.13 Limited Recourse.** Notwithstanding any other provision of this Agreement, each party hereto hereby agrees that the Purchaser's obligations under this Agreement shall be limited recourse obligations of the Purchaser, with recourse being limited to the assets (other than the ordinary share capital and any transaction fee charged by the Purchaser pursuant to the Administration Agreement) of the Purchaser at such time available for application by or on behalf of the Purchaser in making payments in accordance with this Agreement. The parties hereby acknowledge and agree that the Purchaser's obligations under this Agreement are solely the corporate obligations of the Purchaser, and that none of the officers, directors, shareholders or agents of the Purchaser, any of its Affiliates or any other Person shall be personally liable to make any payments of principal, interest or any other sum now or hereafter owing by the Purchaser hereunder. After the Purchaser's assets (other than the ordinary share capital and any transaction fee charged by the Purchaser pursuant to the Administration Agreement) are realized and exhausted, all sums due but still unpaid in respect of the Purchaser's obligations hereunder shall be extinguished and shall not thereafter revive with respect to the Purchaser and its liability hereunder, and the Seller shall not have the right to proceed against the Purchaser or any of its Affiliates or any of its officers, directors, shareholders or agents for the satisfaction of any monetary claim or for any deficiency judgment remaining after foreclosure of any of its assets.

No party hereto shall take any steps for the purpose of procuring the appointment of any examiner, administrator, receiver, liquidator, provisional liquidator, bankruptcy trustee or administrative receiver or the making of any administrative order or court order or application or for instituting any bankruptcy, examinership, reorganization, arrangement, insolvency, winding up, liquidation, composition or any like proceedings under Applicable Law in respect of the Purchaser or its Affiliates or in respect of any of their liabilities, including, without limitation, as a result of any claim or interest of such parties.

The provisions of this Section 9.13 shall survive termination of this Agreement.

**Section 9.14 Third-Party Beneficiaries.**

(a) Except as set forth in Section 9.14(b) below, the Parties do not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

(b) The parties hereby designate the Administrative Agent as a third-party beneficiary of this Agreement, having the right to enforce this Agreement.

**Section 9.15 The Agents.** It is acknowledged and agreed to by all Parties that the Agents are not a party to this Agreement and shall have no duties or obligations under or in connection with this Agreement. In relation to the giving of any consent, approval or notice by any Agent, or the taking of any other action by any Agent, it is acknowledged and accepted by the Parties that in all cases such Agent shall be acting, giving, withholding or otherwise undertaking and exercising such action solely on behalf of the Lenders and as directed by the Lenders in accordance with the terms of the Purchaser Finance Documents. The Parties acknowledge and agree that they will not have any rights against the Agents hereunder, and hereby release, waive, discharge, exculpate and covenant not to sue any Agent for any action taken or omitted by such Agent under this Agreement, and from any costs, claim, loss, expense or liability resulting therefrom.

[signature page follows]

**IN WITNESS WHEREOF**, the Parties have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the day and year first above written.

**USAVflow Limited, as the Purchaser**



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By:  
Name: Peter Lundin  
Title: Director

*Signature page to Contract Rights and Receivables Sale, Purchase and Servicing Agreement*

Aerovías del Continente Americano S.A. Avianca, as the Seller

By:

Name: ROBERTO HED

Title:

*Signature page to Contract Rights and Receivables Sale, Purchase and Servicing Agreement*



Aerovías del Continente Americano S.A. Avianca, as the Servicer

By:

Name: ROBERTO HELD

Title:

*Signature page to Contract Rights and Receivables Sale, Purchase and Servicing Agreement*

EXHIBIT A

Form of AMEX Notice and Consent

## FORM OF AMEX NOTICE AND CONSENT

American Express Travel Related Services Company, Inc.  
3 World Financial Center  
200 Vesey Street, 40th Floor  
New York, NY 10285  
Attention: President, Global Merchant Services / General Counsel's Office / Merchant Services  
Practice Group

and

American Express Payment Services Limited  
Merchant Services  
P.O. Box 72  
Brighton BN88 IAH

With copy to:

American Express Company (Mexico), S.A. de C.V.  
Complejo Tecnoparque  
Eje 5 Norte No. 990 Edificio C  
Colonia Santa Bárbara  
Azcapotzalco  
Mexico, D.F.  
Attention: Vice President and General Manager, Merchant Services Americas, LAC

December 12, 2017

### NOTICE AND CONSENT

Ladies and Gentlemen:

Reference is made to (a) Contract Rights and Recievables Sale, Purchase and Servicing Agreement, to be dated on or about the date hereof (as amended, amended and restated, supplemented, or otherwise modified from time to time, the "**RSPA**"), between Aerovias del Continente Americano S.A. Avianca, a company organized under the laws of Colombia ("**Avianca S.A.**"), as the Seller and as the Servicer and USAVflow Limited, a company organized under the laws of the Cayman Islands (the "**Company**"), as the Purchaser, (b) the Receivables Maintenance Agreement, to be dated on or about the date hereof (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Undertaking Agreement**"), between Avianca S.A. and the Company, (c) the Cash Management Agreement to be dated on or about the date hereof (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Cash Management Agreement**"), among Avianca S.A., the Company, Avianca USA and Citibank, N.A. as Administrative Agent (in such capacity,

the “**Administrative Agent**”) and as Collateral Agent (in such capacity, the “**Collateral Agent**”), (d) the Pledge over Contract Rights and Future Revenues (*Contrato de Prenda sobre Derechos Contractuales e Ingresos Futuros*), to be dated on or about the date hereof (as amended, amended and restated, supplemented, or otherwise modified from time to time, the “**Colombian Security Agreement**”), between Avianca S.A. and the Company, (e) the Security Agreement, to be dated on or about the date hereof (as amended, amended and restated, supplemented, or otherwise modified from time to time, the “**New York Security Agreement**” and collectively with the RSPA, the Undertaking Agreement, the Cash Management Agreement and the Colombian Security Agreement, the “**Agreements**”), by and between the Company, as grantor, and the Collateral Agent, and (f) that certain Airline Card Service Agreement, dated as of October 8, 2013 (as modified pursuant to this Notice and Consent, and all extensions, amendments, supplements, or replacements of such agreements among AMEX (as defined below) and its affiliates and Avianca S.A. or any of its affiliates, collectively, the “**AMEX Contract**”), among American Express Travel Related Services Company, Inc. (together with its successors or assigns, “**AMEX Inc.**”), American Express Payment Services Limited (together with its successors or assigns, “**AMEX Limited**”; and, collectively with AMEX Inc., “**AMEX**”), Avianca S.A., Taca International Airlines S.A., Líneas Aéreas Costarricenses S.A., Trans American Airlines S.A. dba Taca Peru, Aviateca S.A., America Central Corporation and Lifemiles Corp. (collectively, the “**Carriers**”), pursuant to which AMEX agrees to pay the Seller for goods and services of the Seller purchased with the American Express Card in the United States;

Capitalized terms used but not defined herein shall have the meanings given on Schedule 1 hereto.

#### 1. Notice

The Carriers, Avianca, Inc. (“**Avianca USA**”) and the Company hereby give AMEX written notice that,

- (i) pursuant to, and subject to the terms and conditions of, the RSPA, Avianca S.A. will sell to the Company, and the Company will buy from Avianca S.A., finally, definitively, and irrevocably, the Assigned Contract Rights and the Assigned Receivables;
- (ii) pursuant to the Colombian Security Agreement, Avianca S.A. will grant to the Company a security interest (garantía mobiliaria) in certain contingent future receivables associated with, and assign to the Company, as collateral, all of Avianca S.A.’s right, title, and interest in and to the Assigned Contract Rights and the Assigned Receivables; and
- (iii) pursuant to the New York Security Agreement, the Company will grant to the Collateral Agent a first priority security interest in, and lien on, all of

the Company's right, title, and interest in and to the Assigned Contract Rights and the Assigned Receivables.

2. Carriers and Avianca USA Acknowledgment and Agreement and Avianca S.A. Agreement

Pursuant to and in connection with the AMEX Contract, the Carriers and Avianca USA acknowledge and agree (i) that Avianca S.A. is the sole owner of the Assigned Contract Rights and the Assigned Receivables and therefore entitled to all amounts payable in respect of the Assigned Contract Rights and the Assigned Receivables and (ii) that after giving effect to the transactions described in 1 above, the Company is the sole owner of the Assigned Contract Rights and the Assigned Receivables and therefore entitled to all amounts payable in respect to the Assigned Contract Rights and the Assigned Receivables.

The Carriers and Avianca USA hereby confirm that any and all payments that have been received by Avianca USA under the AMEX Contract have been received solely in Avianca USA's capacity as agent, and Avianca USA disclaims any entitlement to or ownership of those payments.

Avianca S.A. hereby agrees that it shall promptly notify AMEX and the Collateral Agent of any changes, modifications or supplements to the merchant numbers that fairly identify the Specified Sales by delivering a Merchant ID Supplement.

### 3. AMEX Representations and Agreements

Pursuant to and in connection with section 10.(g) of the AMEX Contract, which requires AMEX's prior written consent for the assignment of rights under the AMEX Contract, by AMEX's signature below, AMEX unconditionally and irrevocably:

- (i) acknowledges, and consents to, the transactions described in section 1 set forth above;
- (ii) (a) represents that, to its knowledge, immediately before giving effect to the transactions described in 1 above, Avianca S.A. is entitled under the AMEX Contract to the Assigned Contract Rights and Assigned Receivables and (b) agrees that after giving effect to the transactions described in 1 above, (x) the Company is entitled under the AMEX Contract to the Assigned Contract Rights and Assigned Receivables and (y) AMEX will make all applicable payments with respect to the Assigned Contract Rights and the Assigned Receivables, including, without limitation, in respect of any airline ticket sales and related services identified by those certain merchant numbers, geographic jurisdictions

and/or other distinguishing characteristics specified on Exhibit A hereto, in accordance with the instructions set forth below;

- (iii) represents that Exhibit A hereto sets forth as of the date hereof the merchant numbers that fairly identify the Specified Sales and agrees that it will (x) use commercially reasonable efforts to notify the Collateral Agent of any changes to such merchant numbers and (y) promptly acknowledge and accept any Merchant ID Supplement properly delivered to it by Avianca S.A. and reflecting all merchant numbers associated at such time with all Specified Sales;
- (iv) represents that, to its knowledge, the Carriers are not in breach of any obligation under the AMEX Contract;
- (v) represents that, to its knowledge, it has not received notice of any currently effective assignment of, or pledge of any security interest in, any of the Assigned Contract Rights or the Assigned Receivables; and
- (vi) agrees that if it enters into any other contract or replacement contract with the Carriers or any of their affiliates with respect to the Specified Sales, such contract will be automatically subject to this Notice and Consent and the defined term "AMEX Contract" shall be deemed to include any such contract for all purposes hereunder.

#### 4. Directions Regarding Payments

In connection with the Agreements, notwithstanding anything to the contrary set forth in the AMEX Contract, the Carriers, Avianca USA and the Company hereby irrevocably authorize and instruct AMEX to pay all amounts payable by AMEX in respect of the Assigned Contract Rights and the Assigned Receivables in U.S. dollars to the Company's account specified below:

ACH to:	Citibank, N.A.
ABA:	021000089
SWIFT:	CITIUS33
Cr:	A & T Account Administration
A/C #:	36114317
Reference:	11925000
Beneficiary Name:	USAVflow Ltd

or to such other account as may from time to time be designated in writing by the Collateral Agent to AMEX by sending a written request (together with a copy of this Notice and Consent) via first class mail or overnight delivery to:

American Express Travel Related Services Company, Inc.



20022 N. 31st Avenue  
Mail Code: 08-03-17  
Phoenix, AZ 85027  
Attn: Banking Team

and otherwise to act in accordance with the payment instructions of the Collateral Agent in connection therewith, in each case, without further instruction from the Carriers, Avianca USA or the Company and (ii) cease making any such payments to any other account(s).

Notwithstanding anything to the contrary herein, each of the Carriers, Avianca USA and the Company acknowledge and agree that AMEX is not required to alter its regular course of business with respect to acceptance of payment instructions from merchants and that American Express will have no liability if it acts in accordance with payment instructions received from an employee or agent of Carriers acting with apparent authority.

#### 5. Limited Recourse

Notwithstanding any other provision of this Notice and Consent, each party hereto hereby agrees that the Company's obligations under this Notice and Consent shall be limited recourse obligations of the Company, with recourse being limited to the assets (other than the ordinary share capital and any transaction fee charged by the Company pursuant to the administration agreement dated the date hereof entered into between the Company and MaplesFS Limited) of the Company at such time available for application by or on behalf of the Company in making payments in accordance with this Notice and Consent. The parties hereby acknowledge and agree that the Company's obligations under this Notice and Consent are solely the corporate obligations of the Company, and that none of the officers, directors, shareholders or agents of the Company, any of its affiliates or any other person shall be personally liable to make any payments of principal, interest or any other sum now or hereafter owing by the Company hereunder. After the Company's assets (other than the ordinary share capital and any transaction fee charged by the Company pursuant to the administration agreement dated the date hereof entered into between the Company and MaplesFS Limited) are realized and exhausted, all sums due but still unpaid in respect of the Company's obligations hereunder shall be extinguished and shall not thereafter revive with respect to the Company and its liability hereunder, and the parties hereto shall not have the right to proceed against the Company or any of its affiliates or any of its officers, directors, shareholders or agents for the satisfaction of any monetary claim or for any deficiency judgment remaining after foreclosure of any of its assets.

No party hereto shall take any steps for the purpose of procuring the appointment of any examiner, administrator, receiver, liquidator, provisional liquidator, bankruptcy trustee or administrative receiver or the making of any administrative order or court order or application or for instituting any bankruptcy, examinership, reorganization, arrangement, insolvency, winding up, liquidation, composition or any like proceedings under applicable law in respect of the Company or its affiliates or in respect of any of their liabilities, including, without limitation, as a result of any claim or interest of such parties.

The provisions of this Section 5 shall survive termination of this Notice and Consent.

6. Other Provisions

This Notice and Consent supersedes all prior payment instructions from the Carriers or Avianca USA to AMEX with respect to amounts payable to Avianca S.A., the other Carriers, Avianca USA or the Company in respect of the Assigned Contract Rights and the Assigned Receivables.

All notices related to this Notice and Consent (i) to AMEX should be made to the address set forth above, (ii) to Collateral Agent should be made to the address set forth on its signature page below and (iii) to Avianca S.A., the Company or any Carrier should be made to the address set forth below:

Aerovías del Continente Americano S.A. Avianca  
Centro Administrativo  
Avenida Calle 26 No. 59-15 Piso 10  
Bogotá, D.C.  
Colombia  
Attention: Vicepresidente Financiero;  
E-mail: lucia.avila@avianca.com;

Company, Avianca USA and the Carriers agree that such payment instructions may not be revoked or changed and this Notice and Consent may not be amended without the prior written consent of the Collateral Agent, except that Company, Avianca USA and the Carriers hereto hereby agree that Exhibit A may be amended by the delivery of a Merchant ID Supplement from Avianca S.A. to AMEX and the Collateral Agent, and such amendment shall be effective upon the acceptance and acknowledgment thereof by AMEX and the Collateral Agent

Nothing in this Notice and Consent shall be construed as creating or implying any additional obligation of AMEX under the AMEX Contract, except as expressly provided herein, and nothing contained herein shall otherwise amend or modify the terms and conditions of the AMEX Contract. For the avoidance of doubt, Company, Avianca USA, and the Carriers each acknowledge that AMEX retains all of its rights under the AMEX Contract, including, but not limited to, AMEX's right to Chargeback and exercise Protective Actions under Section 3 of the AMEX Contract.

THIS NOTICE AND CONSENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (NOT INCLUDING SUCH STATE'S CONFLICT OF LAWS PROVISIONS OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

The Company, Avianca USA, and Carriers will indemnify and hold harmless AMEX from any and all liabilities, claims, demands, actions or judgments, including but not limited to attorneys' fees, arising out of or resulting from their respective acts or omissions, or those of their respective employees, officers or agents in connection arising or resulting from AMEX's compliance with the terms of this Notice and Consent.

Notwithstanding the fact that this Notice and Consent is governed by the law of the State of New York, it perfects the transfer (*tradición*) of the Assigned Contract Rights and the Assigned Receivables to be sold by Avianca S.A. to the Company under the RSPA, pursuant to articles 887 *et seq* of the Colombian Commercial Code and article 1959 of the Colombian Civil Code, respectively, and the transfer of a security interest in and lien on the Assigned Contract Rights and the Assigned Receivables to be created by Avianca S.A. in favor of the Company under the Colombian Security Agreement pursuant to Secured Transaction Law 1676 of 2013.

This Notice and Consent may be executed in any number of counterparts and by different parties on separate counterparts. Each of such counterparts shall be deemed to be an original, and all of such counterparts, taken together, shall constitute but one and the same agreement. Delivery of an executed counterpart of this Notice and Consent by electronic mail shall be equally as effective as delivery of a manually executed counterpart.

Any reference to the Collateral Agent in this Notice and Consent shall be construed as a reference to the Collateral Agent acting as agent for and on behalf of the Lenders and in accordance with the Purchaser Credit Agreement (as defined in the RSPA). In relation to the giving of any consent, approval or direction by the Collateral Agent hereunder, it is acknowledged and accepted by the parties hereto that in all cases the Collateral Agent shall be acting, giving, withholding or otherwise undertaking and exercising such action solely on behalf of the Lenders and as directed in accordance with the terms of the Purchaser Credit Agreement. Under no circumstances shall the Collateral Agent be under any obligation to any party hereto to give any consent, approval or direction, or take any other action in connection with this Notice and Consent. The Collateral Agent shall have no liability to AMEX, the Carriers or to any other party hereto in connection with this Notice and Consent or for or in connection with any action or inaction on its part under or in connection with this Notice and Consent, and such parties agree that any such liability shall be excluded to the fullest extent permitted by applicable law. Nothing herein shall be construed to be an agreement by the Collateral Agent to any of the provisions contained herein, it being understood and agreed by all parties hereto that the Lenders have agreed to the terms of this Notice and Consent and pursuant to the Purchaser Credit Agreement have instructed the Collateral Agent to enter into this Notice and Consent, as agent for and on behalf of the Lenders. The Collateral Agent shall be entitled to all of the rights, benefits, privileges, protections and indemnities provided to it in the Purchaser Credit Agreement as if specifically set forth herein.

*[Remainder of page intentionally left blank]*

Please acknowledge your receipt of this Notice and Consent and your agreement to the payment terms specified above by executing this Notice and Consent where indicated below and returning it in pdf format by electronic mail to the Company and the Collateral Agent. Thank you for your cooperation in this matter.

Very truly yours,

AEROVIAS DEL CONTINENTE AMERICANO  
S.A. AVIANCA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TACA INTERNATIONAL AIRLINES S.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LÍNEAS AÉREAS COSTARRICENSES S.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TRANS AMERICAN AIRLINES S.A. DBA  
TACA PERÚ

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

AVIATECA S.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Signature page to AMEX Notice and Consent*

AMERICA CENTRAL CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LIFEMILES CORP

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

USAVFLOW LIMITED

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

AVIANCA, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Signature page to AMEX Notice and Consent*

ACCEPTED AND AGREED AS OF THE DATE  
FIRST WRITTEN ABOVE

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Signature page to AMEX Notice and Consent*



AMERICAN EXPRESS PAYMENT SERVICES LIMITED

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Signature page to AMEX Notice and Consent*

Citibank, N.A., as Collateral Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for Notices:

Citibank, N.A.

388 Greenwich Street

New York, NY 10013

Attn: Karen Abarca

Tel.: (212) 816-7759

E-mail: karen.abarca@citi.com / cts.spag@citi.com

*Signature page to AMEX Notice and Consent*

## SCHEDULE 1

### DEFINED TERMS

“**ARC**” means Airlines Reporting Corporation, or any successor or replacement thereof.

“**Assigned Contract Rights**” means the contract rights of Avianca S.A. under the AMEX Contract to (a) receive any kind of payments, indemnities or economic compensations derived from Specified Sales, including the right, among other things, to receive all future Collections derived therefrom; and (b) to enforce the rights referred to in (a) against AMEX. For the avoidance of doubt, the Assigned Contract Rights shall not include (x) any obligation or liability of Avianca S.A. under the AMEX Contract or arising in any manner therefrom; or (y) the rights of Avianca S.A.:

- (i) to honor Cards or conduct any Card sale as payment for travel costs or otherwise, or to request authorization to honor Cards;
- (ii) to submit Sales Slips for billing or issue credit slips in any manner provided by AMEX Contract;
- (iii) to request, to treat or to have access to confidential information pertaining to cardholder account information;
- (iv) to request or receive a restricted card list pursuant to the AMEX Contract;
- (v) to grant consent to AMEX to display or show the trademarks, logos or company names of Avianca S.A. in promotion, advertising, press releases or otherwise pursuant to the AMEX Contract;
- (vi) to use trademarks and service marks of a card association in its advertising, press releases or otherwise pursuant to the AMEX Contract;
- (vii) to handle all claims or complaints by a cardholder with respect to Card transactions;
- (viii) to receive documentation from AMEX that is required in connection with the defense of any claim of a cardholder asserted in connection with the AMEX Contract; or
- (ix) to receive any Collections derived from sales which are not Specified Sales.

“**Assigned Receivables**” means any and all Collections accrued under the AMEX Contract in respect of Specified Sales that are due by AMEX to Avianca S.A. immediately prior to giving effect to the RSPA on the date of the RSPA.

“**Cards**” means credit, debit, charge and ATM cards under which cardholders purchase goods and services of Avianca S.A and its affiliates.

*Schedule 1*

“**Collections**” means all cash collections and other cash proceeds derived from the Assigned Contract Rights or the Assigned Receivables, whether received by Avianca S.A., the Company, or any other Person.

“**Merchant ID Supplement**” means a notice, substantially in the form of Exhibit B hereto.

“**Sales Slip**” means a sales slip under a Card evidencing a payment obligation of the holder of the Card in respect of goods or services purchased by such holder using such Card.

“**Specified Sales**” means the sales, including future sales, made by travel agencies in the United States and cleared through ARC of airline tickets or related services provided by the Receivables Seller where payment in the case of any such sale is made by an American Express® Card, however branded, or any one or more of such Cards, including all such sales identified by those certain merchant codes set forth on Exhibit A hereto, with such changes, if any, as shall have been made from time to time after delivery and acceptance of a Merchant ID Supplement.

*Schedule 1*

EXHIBIT A

MERCHANT NUMBERS

7992700286

Exhibit A

EXHIBIT B  
MERCHANT ID SUPPLEMENT

This Merchant ID Supplement, dated as of [●], is delivered pursuant to the Notice and Consent, dated as of December 12, 2017 (as it may from time to time be amended, modified or supplemented in accordance with its terms, the “**Notice and Consent**”), among Aerovías del Continente Americano S.A. Avianca (“**Avianca S.A.**”), Taca International Airlines S.A., Líneas Aéreas Costarricenses S.A., Trans American Airlines S.A. dba Taca Peru, Aviateca S.A., America Central Corporation, Lifemiles Corp., USAVflow Limited, American Express Travel Related Services Company, Inc. (together with its successors or assigns, “**AMEX Inc.**”), American Express Payment Services Limited (together with its successors or assigns, “**AMEX Limited**”; and, collectively with AMEX Inc., “**AMEX**”) and Citibank, N.A. Capitalized terms used herein but not defined herein are used with the meanings given them in the Notice and Consent.

Avianca S.A. represents and warrants that the attached replacement Exhibit A accurately and completely lists all merchant numbers that fairly identify the Specified Sales and hereby agrees that such replacement Exhibit A will replace Exhibit A to the Notice and Consent from and after the date of this Merchant ID Supplement.

IN WITNESS WHEREOF, Avianca S.A. has caused this Merchant ID Supplement to be duly executed and delivered by its duly authorized officer or representative as of the date first written above.

AEROVIAS DEL CONTINENTE AMERICANO  
S.A. AVIANCA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit B



ACCEPTED AND AGREED AS OF THE DATE  
FIRST WRITTEN ABOVE

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit B

AMERICAN EXPRESS PAYMENT SERVICES LIMITED

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit B

ACCEPTED AND AGREED AS OF THE DATE  
FIRST WRITTEN ABOVE

Citibank, N.A., as Collateral Agent

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

Exhibit B

REPLACEMENT EXHIBIT A

Exhibit B

EXHIBIT B

Form of Credomatic Notice and Consent





## **1. Notice of Transfer of Receivables**

- (i) pursuant to, and subject to the terms and conditions of, the RSPA and the Costa Rican Assignment Agreement, Avianca S.A. will sell to the Company, and the Company will buy from Avianca S.A., finally, definitively, and irrevocably, the Assigned Contract Rights and the Assigned Receivables;
- (ii) pursuant to the Colombian Back-Up Security Agreement, Avianca S.A. will grant to the Company a security interest (*garantía mobiliaria*) in certain contingent future receivables associated with, and assign to the Company, as collateral, all of Avianca S.A.'s right, title, and interest in and to the Assigned Contract Rights and Assigned Receivables;

- (iii) pursuant to the Costa Rican Back-Up Security Agreement, Avianca S.A. will grant to the Company a security interest (*garantía mobiliaria*) in all of Avianca S.A.'s right, title, and interest in and to the Assigned Contract Rights and Assigned Receivables;
- (iv) pursuant to the New York Security Agreement, the Company will grant to the Collateral Agent a first priority security interest in, and lien on, all of the Company's right, title, and interest in and to the Assigned Contract Rights and Assigned Receivables; and
- (v) Avianca USA is authorized to act, and is acting, on behalf of Avianca S.A. as its agent and attorney-in-fact for all purposes of the Credomatic Contracts.

## **2. Consent and Agreement**

(i) The Client, Avianca USA and the Company hereby unconditionally and irrevocably authorize and request Credomatic to execute and deliver to the Collateral Agent the enclosed Credomatic Consent and Agreement (the "**Credomatic Consent and Agreement**"), and each of the Client, Avianca USA and the Company (each, together with their respective successors and permitted assigns, individually, a "**Notice Party**" and all, collectively, the "**Notice Parties**") and the Collateral Agent (as agent for and on behalf of and as instructed by each of the Lenders) hereby agree to the terms and conditions thereof.

(ii) The Credomatic Consent and Agreement, when executed and delivered by Credomatic (or any Credomatic company, as applicable), will be effective only (A) in connection with the sale and transfer of the Assigned Receivables and Assigned Contract Rights under the Agreements and (B) to the extent necessary to satisfy the payment obligations referred to in Section 3(a) hereof. The provisions of the Credomatic Consent and Agreement do not extend to any (x) future sale, assignment, transfer or other disposition of receivables or contract rights (other than as specified in section 1), or (y) any creation and issuance of securities or obligations or any additional or subsequent indebtedness secured by the Assigned Receivables or Assigned Contract Rights other than as created under the Agreements as in effect as of the date hereof (any such transaction described in this clause (c), a "**Future Transaction**").

(iii) Neither of the Credomatic companies shall have any obligation to consent or otherwise agree to any Future Transaction.

(iv) Avianca S.A. and Avianca USA agree to notify Credomatic at least 20 Business Days in advance of any Future Transaction (other than as notified in Section 1).

## **3. Payment Instructions.**

(a) Each Notice Party hereby unconditionally and irrevocably authorizes and directs Credomatic (and, specifically, its subsidiary Credomatic of Florida Inc.), from and after the

date specified as its effective date in the Consent and Agreement until the termination of this Notice of Transfer under Section 5 hereof, (i) to remit all amounts payable by Credomatic to Avianca S.A., Avianca USA and the Company in respect of the Assigned Contract Rights and Assigned Receivables (net of Incidental Charges but without any set-off, counterclaim, deduction or withholding, other than those derived from the Credomatic Agreement or otherwise related to Incidental Charges) in U.S. dollars through the Federal Reserve Bank's Automated Clearing House Network ("FedACH") to the Company's account specified below (the "**Directed Amounts**"):

ACH to:	Citibank, N.A.
ABA:	021000089
SWIFT:	CITIUS33
Cr:	A & T Account Administration
A/C #:	36114317
Reference#	11925000
Beneficiary Name:	USAVflow Ltd

or to such other account as may from time to time be designated in writing by the Collateral Agent to Credomatic and the Company (any such account the "**Collection Account**"), without further instruction from the Avianca S.A., Avianca USA or the Company and (ii) to cease making any such payments to any other account(s).

(b) (i) Credomatic will be required to make payments of Directed Amounts pursuant to subsection 3.(a) to the extent that amounts are available and due and owing to Avianca S.A. or Avianca USA, respectively, under the Credomatic Contracts, (ii) subsection 3.(a) shall in no way be construed to increase the amounts owed by, create any additional payment obligation and/or waive any rights of any of the Credomatic companies under the Credomatic Contracts or the Credomatic Card Program except as expressly set out in section 3.(a), and (iii) subsection 3(a) shall in no way be construed to limit, impair, or otherwise affect any rights of the Credomatic companies from time to time to create a reserve account or otherwise reserve from amounts otherwise owing to Avianca S.A., Avianca USA or the Company, respectively, in accordance with the provisions of Section 9 of the Credomatic Master Agreement or the terms of the Credomatic Card Program to provide for chargebacks or other set-offs, counterclaims, deductions or withholdings derived from the Credomatic Agreement or otherwise related to Incidental Charges.

(c) Nothing contained in this Notice of Transfer, the Agreements or any other agreement or document delivered in connection herewith or therewith shall interfere with Credomatic's (or any of the Credomatic companies') right to enforce its rights and remedies *vis-a-vis* the Client or the Client Affiliates or any other party under any Credomatic Contracts or the Credomatic Card Program, including, without limitation, (i) termination of Avianca S.A., TACA International Airlines, S.A. or any Client Affiliate's participation in any Credomatic Contracts for breaches thereof or pursuant to any other terms of such Credomatic Contracts or the Credomatic Card Program, or (ii) Credomatic's right to amend or

alter the terms of any such Credomatic Contracts in order to comply with changes or requirements of the Card Programs. Furthermore, in case of amendments or alterations to the Credomatic Card Program, Credomatic's obligations pursuant to the Consent and Agreement are to be performed in accordance with the Card Programs as so altered or amended.

(d) Nothing contained in this Notice of Transfer, the Agreements or any other agreement or document delivered in connection herewith or therewith shall interfere with any of the BdB Lenders' rights pursuant to the BdB Loan Agreement.

(e) This Notice of Transfer and the authorization and directions given herein supersede any other payment instructions from the Client, any Client Affiliate or the Company.

#### **4. Representations, Warranties and Covenants.**

(a) Avianca S.A. and Avianca USA each represents and warrants that, in spite of the fact that the Credomatic USA Supplement was executed solely by Avianca USA, Avianca USA has been acting at all times as an agent on behalf of Avianca S.A. and that, therefore, immediately before giving effect to the transactions described herein, Avianca S.A. should be construed as the sole owner of the Assigned Contract Rights and Assigned Receivables. Avianca S.A. and Avianca USA each further represent and warrant that such agency relationship with regard to the contract rights and receivables arising from or related to such Credomatic USA Supplement has been duly documented and that no third parties (including creditors of Avianca USA) have any right or claim over any contract rights or receivables arising from or related to the Credomatic USA Supplement.

(b) Each Notice Party represents and warrants that this Notice of Transfer constitutes its legal, valid and binding obligations enforceable against it in accordance with its respective terms, except as such enforcement may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(c) The Client and Avianca USA each represents and warrants that each Credomatic Security Document to which it is a party constitutes its legal, valid and binding obligations enforceable against it in accordance with its respective terms, except as such enforcement may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles, and that the execution, delivery and performance of the Notice of Transfer and each such Credomatic Security Document by each such party that is a party thereto, does not and will not contravene the Agreements or the laws or regulations of any applicable jurisdiction.

(d) The Client, the Company and Avianca USA each further represents and warrants that (i) each of this Notice of Transfer and each such Credomatic Security Document does not violate or conflict with any agreement, document or other restriction of any kind or character to which it or any of its respective properties is bound or subject, (ii) its instructions contained in this Notice of Transfer are binding on it, (iii) this Notice of Transfer constitutes the only



authorization required from it, and (iv) no authorization is required from any authority in any of the applicable jurisdictions or from any other Person in order for Credomatic to make payments in accordance herewith and with the Consent and Agreement.

(e) The Client, Avianca USA, and the Company each represents and agrees that neither Credomatic nor any Credomatic company has prepared or participated in the preparation of the Agreements, any private placement memorandum, offering circular or supplement thereto or amendment thereof concerning the Agreements or any related offering materials relating to any security, and each such party represents and warrants that neither Credomatic nor any Credomatic company will be liable to any party to the Agreements, any Secured Party or any holder of any such securities for any loss, damage or expense such party or holder may suffer or incur in connection with its participation in the Agreements, its loan or its investment in any such securities; provided that Credomatic (and each Credomatic company, as applicable) shall remain liable to pay to the Company the amounts due pursuant to paragraph (a), clauses (ii) and (iii) of the Credomatic Consent and Agreement. Each such party further represents that neither Credomatic nor any Credomatic company has had access to the wording of the Agreements. The Client, Avianca USA, and the Company understand and agree that neither Credomatic nor any Credomatic company makes any representation or warranty as to the amount, type or nature of any Assigned Receivables and/or Assigned Contract Rights that will be created or that are currently in existence.

(f) Neither Credomatic nor any Credomatic company shall be liable for any obligation or duty of any Person under, or the accuracy, completeness, veracity or sufficiency of, the Notice of Transfer, the Credomatic Consent and Agreement, or any of the Agreements or other agreement, document or instrument delivered in connection therewith; and neither Credomatic nor any Credomatic company shall have any duty to ascertain or to inquire as to the performance or observance on the part of any Person (other than Credomatic) of any of the terms, covenants or conditions of any of the aforementioned Notice of Transfer, Credomatic Consent and Agreement, Agreements or other agreements, documents or instruments. Furthermore, neither Credomatic nor any Credomatic company shall have any duty to monitor or verify the accuracy of the information that Client, Avianca USA and/or the Company make with regard to the Assigned Receivables and/or Assigned Contract Rights.

(g) The Client represents and warrants that it is in compliance in all material respects with its obligations *vis-à-vis* Credomatic and/or its affiliates.

(h) The Client, Avianca USA, and the Company each agree to notify Credomatic promptly after an officer of any such parties obtains actual knowledge of the occurrence of any event that, with the giving of notice or passage of time, or both would become an event of default, an acceleration event or any event that could have the effect of triggering a special allocation of the Collections or payments under any of the Agreements or a repurchase of any certificates, notes or other securities issued in accordance with the Agreements (an "Incipient Event").

(i) The Client, Avianca USA, and the Company each agrees to comply at all times with any applicable law, rule or regulation of any jurisdiction, in each case applicable

to or binding upon such party or any of its property or to which such party or any of its property is subject, prohibiting or otherwise relating to money laundering, such as, by way of example, the U.S.A. Patriot Act (2001), the U.S. Bank Secrecy Act, Federal Corrupt Practices Act, any interim or final regulation thereunder, or any statute, interim or final regulation or executive order enforced by the United States Department of Treasury Office of Foreign Assets Control (“**OFAC**”) (such laws, rules or regulations hereinafter jointly referred to as “**Money Laundering Laws**”). Furthermore, each Notice Party agrees to maintain appropriate compliance and internal anti-money laundering policies and procedures designed to ensure its compliance with such Money Laundering Laws.

(j) The Client, Avianca USA, and the Company each agrees, subject to laws specifically applicable to such party, to comply with any reasonable requests for information made by Credomatic, concerning any such party and arising in connection with any Money Laundering Laws; *provided* that no such party shall be required to disclose to Credomatic any confidential information which such party is specifically prohibited from disclosing pursuant to a contractual obligation binding on it or any such laws to which it is subject. Without limiting the generality of the foregoing, each Notice Party agrees to notify Credomatic as soon as it knows (or, exercising reasonable diligence in its administration of the Agreements which it is a party, should know) that payments by Credomatic or any Credomatic company are being made, directly or indirectly, to a Person who is or an entity that is (or a Person or entity controlled by a Person who is or an entity that is) (i) listed on the list of specially designated nationals and blocked persons promulgated by OFAC (the “**OFAC List**”) or any list of known or suspected terrorists, terrorist funding organizations or money-launderers administered by OFAC or promulgated by the President of the United States of America or any agency of the federal government of the United States of America, (ii) a government body, including any political subdivision, agency, or instrumentality thereof, of any country subject to, or is a political faction or party or an official or employee of any government subject to, sanctions enforceable by OFAC or another agency, (iii) a national of, or located in, or affiliated with the government of Cuba, Iran or Syria (until such time as the general counsel or any counsel to Credomatic determines otherwise), (iv) any other entity or Person with whom U.S. persons are prohibited from doing or facilitating business under any statute, interim or final regulation or executive order enforced by OFAC or another agency or (v) is acting for the benefit of, or on behalf of, any Person or entity described in clause (i)- (iv) in connection with any transaction under or contemplated by this Notice of Transfer, the Credomatic Consent and Agreement or the Agreements (a “Prohibited Person”). For the purpose of the foregoing definition of Prohibited Person, the term “controlled by”, includes the ownership of five percent or more of any class of voting securities of an entity, the equity securities of which are not publicly traded.

(k) Avianca S.A. hereby agrees that it shall promptly notify Credomatic and the Collateral Agent of any changes, modifications or supplements to the merchant numbers that fairly identify the Specified Sales by delivering a Merchant ID Supplement.



## **5. Termination.**

(a) This Notice of Transfer, as it relates to the Credomatic Consent and Agreement, and the Credomatic Consent and Agreement shall automatically terminate upon the earlier to occur of (A) the Scheduled Termination Date or (B) delivery by the Collateral Agent to Credomatic of an executed notice of termination in the form attached as Annex A to the Credomatic Consent and Agreement (a “**Termination Notice**”). Each of the Notice Parties agrees to notify Credomatic in accordance herewith promptly upon the payment in full of obligations under the Loan Agreement, and following such notification, upon written request by Credomatic to the Collateral Agent, the Collateral Agent shall (at the direction of the Required Lenders (as defined in the Loan Agreement)) deliver a Termination Notice, without limitation of the right of the Collateral Agent (at the direction of the Required Lenders (as defined in the Loan Agreement)) to deliver a Termination Notice at any time.

(b) The Notice Parties hereby unconditionally and irrevocably authorize and direct Credomatic, upon termination of this Notice of Transfer and the Credomatic Consent and Agreement as provided in Section 5(a) above to redirect the Directed Amounts to (i) if Avianca S.A. and the Company have not at least 15 days before such termination given a joint written notice to Credomatic of details sufficient to identify the account to which the Directed Amounts should be redirected, the account specified in Schedule 2 hereto, and (ii) if Avianca S.A. and the Company have at least 15 days before such termination given joint written notice to Credomatic of details sufficient to specify a different account in a bank within the United States of America to which the Directed Amounts should be redirected, to the account so identified in such notice, and to pay the beneficiary of the bank account specified as provided in the foregoing clause (i) or clause (ii), as applicable, all amounts due from Credomatic to or for the account of such Client Affiliate with respect to settlements for Assigned Receivables and Assigned Contract Rights pursuant to the Credomatic Contracts.

(c) Each Client Affiliate will submit to Credomatic (or each applicable Credomatic company) any additional forms or agreement required by Credomatic (or such Credomatic company), confirming the foregoing instructions, no later than 21 days following the delivery of such notice of termination.

## **6. Other Limitations on Scope of Obligations.**

(a) Notwithstanding the provisions of any Agreements, except as set forth in Section 3(a), Credomatic’s duties and obligations in connection with the Agreements and this Notice of Transfer shall be determined solely by the express provisions of the Credomatic Consent and Agreement and this Notice of Transfer, and neither of the Credomatic companies shall be liable except for the performance of such duties and obligations as are specifically set forth in the Credomatic Consent and Agreement and in Section 3(a). No implied covenants or obligations shall be read into any Agreements against either of the Credomatic companies nor shall any Agreements be construed to modify, create or impose any obligation or duty upon either of the Credomatic companies in connection with the Credomatic Contracts, the Credomatic Card Program or such Agreements.

(b) In furtherance but without limitation of the generality of the provisions of this subsection:

(i) Except as expressly set forth Section 3(a) herein or in paragraph (a) of the Credomatic Consent and Agreement, nothing contained in any Agreements or any other agreement or document delivered in connection therewith shall limit or otherwise impair the rights or remedies of Credomatic (or any Credomatic company) under the Credomatic Contracts or the Credomatic Card Program, all of which are hereby reserved, or interfere with the right of either Credomatic company to enforce its rights and remedies vis-a-vis the Client, Avianca USA, the Company or any of the Client Affiliates or any other party under any of the Credomatic Security Documents, the Credomatic Contracts or Credomatic Card Program, including, without limitation termination of such Credomatic Contracts for breaches thereof, or upon the occurrence of a Fundamental Change with respect to Client, Avianca USA, the Company or any of the Client Affiliates or otherwise in accordance with the Credomatic Contracts or the Credomatic Card Program.

(ii) Neither of the Credomatic companies shall be liable or deemed to be in breach of the Credomatic Consent and Agreement for any actions by it taken in good faith which impair or could impair the Assigned Receivables or Assigned Contract Rights in circumstances where such actions by it were taken (x) in the exercise of its rights or the fulfillment of its obligations with respect to the Assigned Receivables or Assigned Contract Rights in accordance with this Notice of Transfer and the Credomatic Consent and Agreement, (y) in accordance with the Credomatic Contracts or the Credomatic Card Program, or (z) because of actions or inactions in breach of the Credomatic Contracts on the part of the Client, Avianca USA, the Company or any of the Client Affiliates, such as its obligation to pay the Credomatic companies. Without limiting the generality of the foregoing, such actions by a Credomatic company could include but would not be limited to termination of the Client, Avianca USA, the Company or any of the Client Affiliates' contractual relationship with Credomatic, upon the occurrence of a Fundamental Change or any event described in Section 6(b)(iii).

(iii) A good faith determination by any counsel to either of the Credomatic companies that: (x) its performance under this Notice of Transfer or the Credomatic Consent and Agreement will cause it to violate any Money Laundering Law, or (y) the Client, Avianca USA, the Company or any of the Client Affiliates has violated any Money Laundering Law, then, and in any such event, each Credomatic company shall have the right to take measures available to it under applicable law or under the Credomatic Contracts, the Credomatic Card Program and the Credomatic Consent and Agreement.

(iv) Neither of the Credomatic companies shall be liable (x) to any Person for the due execution, legality, validity, enforceability, genuineness or sufficiency of any Agreements (other than for its obligations under the Credomatic Consent and Agreement) or (y) for any obligation or duty of any Notice Party or any other Person under the Agreements, including without limitation the obligation of Avianca S.A. to authorize travel agencies in the United States to accept payment for airline tickets or related services provided by Avianca S.A. by a Master Card® Card or Visa® Card, however branded, or any one or more of said Cards, only

through the Credomatic companies using the merchant codes set forth on Exhibit A hereto (as amended pursuant to a Merchant ID Supplement from time to time), for complying with Client's ordinary course of business requests to open new merchant codes or to amend or close the merchant codes set forth on Exhibit A hereto, or for any loss or damages suffered by any Person on account of any Notice Party's or other Person's breach of any such obligation or duty, or any other agreements, documents or instruments executed and delivered in connection herewith or therewith. Neither of the Credomatic companies shall have any duty to ascertain or to inquire as to the performance or observance on the part of any other Person of any of the terms, covenants or conditions of any Agreements or other agreements, documents or instruments executed and delivered in connection herewith or therewith.

(v) Nothing contained in any of the Agreements or any other agreements, documents or instruments executed and delivered in connection herewith or therewith shall be construed to impose a duty on either of the Credomatic companies to monitor or verify the accuracy of the information that Client, Avianca USA, the Company or any of the Client Affiliates (or any successor) provides to either of the Credomatic companies with respect to which amounts are payable to or for the account of the foregoing from the Credomatic companies in connection with the Receivables.

Without limiting the rights and obligations of the Client, Avianca USA, the Company or any of the Client Affiliates under the Credomatic Contracts or the Credomatic Card Program, each of the Notice Parties covenants and agrees, to the extent permitted by law, not to initiate or voluntarily participate in any suit or other legal action against a Credomatic company arising out of or based upon any action (or failure to act) of either of the Credomatic companies, taken (or, in the case of a failure to act, not taken) in good faith that could impair the Assigned Receivables, in each case, in the circumstances described in this Section 6. For the avoidance of doubt, each of the Notice Parties acknowledges and agrees that any actions (and any failure to act) on the part of a Credomatic company, as applicable, taken or not taken in accordance with Section 6(b), which shall not constitute a breach of the terms of, or a failure to perform under, this Notice of Transfer or the Credomatic Consent and Agreement.

Neither of the Credomatic companies shall have or incur any liability for any non-performance (or delay in performance) of its obligations under the Credomatic Consent and Agreement to the extent such non-performance (or delay in performance) is caused by (i) any operational failure or problem on the part of any Notice Party, or (ii) any unforeseen circumstance not within the reasonable control of a Credomatic company including, without limitation, any act of God, strike, civil commotion, act of terrorism, riot, war, threat of war, political upheaval and any fire, explosion, storm, flood, earthquake or other natural physical disaster; provided that the Credomatic companies shall continue payments under paragraph (a) of the Credomatic Consent and Agreement as promptly as practicable following any change in such circumstance permitting continuation of payments. In no event shall a Credomatic company be liable for any indirect, special, incidental or punitive losses or damages of any kind whatsoever, including lost profits, relating to its obligations under the Credomatic Consent and Agreement.

(vi) This Notice of Transfer supersedes all prior payment instructions from the Client or Avianca USA to Credomatic with respect to amounts payable to Avianca USA, Avianca S.A. or the Company in respect of the Contract Rights and Receivables. All notices related to this Notice of Transfer and the Credomatic Acknowledgment and Consent to the Client and Credomatic the Company and the Collateral Agent to the addresses set forth herein or on the signature pages below.

#### **7. Governing Law; Consent to Jurisdiction.**

(a) This Notice of Transfer and the Credomatic Consent and Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflict of laws other than Sections 5-1401 and 5-1402 of the New York General Obligations Law.

(b) This Notice of Transfer, the Credomatic Consent and Agreement, the Credomatic Security Documents and any other documents delivered pursuant hereto or thereto, and any actions taken hereunder, constitute commercial acts by the Notice Parties that are party to such documents or agreements. To the extent that the Client, Avianca USA, the Company or any of the Client Affiliates, or any of their respective assets, may have, or may hereafter become entitled to or have attributed to it, any right of immunity, on the grounds of sovereignty or otherwise, from any legal action, suit or proceeding, from setoff or counterclaim, from the jurisdiction of any competent court, from service of process upon it or any agent, from attachment prior to judgment, from attachment upon or in aid or execution of judgment, or from execution of judgment or other legal process or proceeding for the giving of any relief or for the enforcement of judgments, in any jurisdiction, each of the Client, Avianca USA, the Company or any of the Client Affiliates hereby irrevocably and unconditionally and to the fullest extent permitted by law waives, and agrees not to plead or claim, any such immunity for itself or any of its property, assets or revenues, wherever located, with respect to its obligations, liabilities or any other matter under or arising out of or in connection with this Notice of Transfer, the Credomatic Consent and Agreement, any Credomatic Security Document or any document delivered pursuant hereto or thereto (collectively, the “**Credomatic Documents**”), in each case for the benefit of each Credomatic company and its successors and assigns, it being intended that the foregoing waiver and agreement shall be effective, irrevocable and not subject to withdrawal in any and all jurisdictions.

(c) Each Notice Party hereby irrevocably agrees that any legal action, suit or proceeding brought by or against any of them with respect to any matter under or arising out of or in any way connected with any of the Credomatic Documents or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding may be brought in the courts of the State of New York in the Borough of Manhattan, New York, or of the United States of America in the Borough of Manhattan, New York, and by execution and delivery of this agreement, each Notice Party and the Collateral Agent (acting for and on behalf of the Lenders) hereby irrevocably accepts and submits to the non-exclusive jurisdiction of the aforesaid courts in person, generally and unconditionally, with respect to any such action, suit or proceeding for itself and in respect of its property, assets and revenues.



(d) Each of the Client and the Company hereby irrevocably designates, appoints and empowers National Registered Agents, Inc., with offices on the date hereof at 111 Eighth Avenue, New York, New York 10011, and its successors, as its Process Agent to receive, accept and acknowledge for and on its behalf and on behalf of its property, service of any and all legal process, summons, notices and documents which may be served in any such action, suit or proceeding in the courts of the State of New York or of the United States of America in the State of New York, which service may be made on such designee, appointee and agent in accordance with legal procedures prescribed for such courts. The Client, Avianca USA and the Company will take any and all action necessary to continue such designation by it in full force and effect and to advise Credomatic and the Collateral Agent of any change of address of such Process Agent; and should such Process Agent become unavailable for this purpose for any reason, the Client, Avianca USA and the Company will forthwith irrevocably designate a new Process Agent within New York, New York, which shall agree to act as such, with the powers and for the purposes specified in this subsection. Each of the Client, Avianca USA and the Company further irrevocably consents and agrees to the service upon it of any and all legal process, summons, notices and documents out of any of the aforesaid courts in any such action, suit or proceeding by hand delivery, to it at its address set forth in Section 9 hereof or to any other address of which it shall have given notice pursuant to Section 9 hereof or to its then Process Agent. Each of the Client, Avianca USA and the Company agrees that service upon it or any such Process Agent for it as provided for herein shall, to the fullest extent permitted by law, constitute valid and effective personal service upon it and that the failure of any such Process Agent to give any notice of such service to the Client, Avianca USA and the Company, as the case may be, shall not impair or affect in any way the validity of such service or any judgment rendered in any action or proceeding based thereon.

(e) In addition, each Notice Party hereby irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings brought in any such court arising out of or in connection with any of the Credomatic Documents brought in any of the aforesaid courts, and hereby further irrevocably and unconditionally waives and agrees, to the fullest extent permitted by law, not to plead or claim that any such action, suit or proceeding brought in any such court has been brought in an inconvenient or inappropriate forum.

**(f) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE EXTENT PERMITTED BY LAW, TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS NOTICE OF TRANSFER OR THE CONSENT AND AGREEMENT OR ANY COUNTERCLAIM RELATING THERETO.**

(g) Notwithstanding the fact that this Notice of Transfer is governed by the law of the State of New York, it perfects the transfer (*tradición*) of the Assigned Contract Rights and Assigned Receivables to be sold by Avianca S.A. to the Company under the RSPA, pursuant to (i) articles 887 et seq of the Colombian Commercial Code and (ii) the transfer of contract rights for Cesión under Costa Rican Law and articles 1104 of the Costa Rican Civil

Code and 491 of the Costa Rican Commercial Code and the transfer of a security interest in and lien on the Assigned Contract Rights and Assigned Receivables to be created by Avianca S.A. in favor of the Company under the Colombian Back-Up Security Agreement, pursuant to the Colombian Secured Transactions Law 1676 of 2013.

#### **8. Conditions to Effectiveness.**

The Credomatic Consent and Agreement shall not be delivered, and neither Credomatic nor any Credomatic company shall have any obligations hereunder, unless, on or prior to the Closing Date, the following conditions are fulfilled:

(a) Credomatic (and each applicable Credomatic company) shall have received and approved copies of all forms and any other documentation, in the form attached hereto as Exhibit C, which Credomatic agrees is all that currently is required (i) from each Notice Party under the Credomatic Contracts to direct the payment of amounts payable in respect of Assigned Receivables and Assigned Contract Rights to the corresponding bank specified in the Credomatic Consent and Agreement, and (ii) to implement the operational changes required by all such documentation and the Credomatic Consent and Agreement;

(b) Credomatic shall have received a manually-signed, fully-executed copy of this Notice of Transfer;

(c) Credomatic shall have received manually-signed copies of all Credomatic Security Documents requested by it and such documents shall be in full force and effect;

(d) Credomatic shall have received copies of the Agreements, as executed;

(e) Credomatic shall have received favorable legal opinions, dated the Closing Date in respect of which the Credomatic companies have received written permission from the authors of such opinions allowing the Credomatic companies to rely thereon, from counsel to the Client, Avianca USA and the Company, each in form and substance reasonably acceptable to Credomatic;

(f) No Fundamental Change shall have occurred and be continuing.

Credomatic's delivery to the Notice Parties and the Collateral Agent of an executed copy of the executed Credomatic Consent and Agreement shall be deemed to be evidence of satisfaction of the foregoing conditions precedent.

#### **9. Notices.**

All notices, requests, demands or other communications to or upon the Credomatic companies or any Notice Party or the Collateral Agent shall be in writing and shall become effective when received. Any written notice shall either be mailed, certified or registered mail, return receipt requested with proper postage for airmail prepaid, or confirmed facsimile, or by overnight delivery service (providing for delivery receipts) or delivered by



hand or by electronic mail. All notices, requests, demands or other communications under this Notice of Transfer shall be addressed to Credomatic and/or the Client (or the applicable Client Affiliates) and made to (a) in the case of the Client and Avianca USA, the address set forth on Avianca S.A.'s signature pages, (b) in the case of the other parties hereto, the addresses set forth on their respective signature pages below (or such other address as shall be specified by one party hereto to each of the other parties) and (c) in the case of Credomatic, the address set forth on Credomatic's signature page of the Consent.

#### **10. Assignments; Amendments.**

None of Client, the Company and the Client Affiliates shall assign or amend this Notice of Transfer without the prior written consent of the Collateral Agent and Credomatic; nor shall Credomatic assign or amend the Credomatic Consent and Agreement without the prior written consent of the Collateral Agent and Avianca S.A., except that the Parties hereto hereby agree that Exhibit A may be amended by the delivery of a Merchant ID Supplement from Avianca S.A. to Credomatic and the Collateral Agent, and such amendment shall be effective upon the acceptance and acknowledgment thereof by Credomatic and the Collateral Agent.

#### **11. Confidentiality.**

(a) Without the prior written consent of Credomatic, none of the Notice Parties shall distribute copies of (or otherwise disclose the contents of) any of the agreements and documents comprising the Credomatic Contracts or the Credomatic Card Program to any Person, except to the extent provided in subsection (c).

(b) Except as required to consummate the transactions contemplated by the Agreements and except to the extent provided in subsection (c), each of the Notice Parties, on their own behalf and on behalf of their respective officers, employees, agents, advisers, and consultants, agrees that the terms of this Notice of Transfer, the Credomatic Consent and Agreement, the Credomatic Contracts, the Credomatic Card Program and the Credomatic Security Documents, and the substance of the negotiations (but not the fact that negotiations occurred) among the parties hereto shall be confidential, and except as required to consummate the transactions contemplated by the Agreements, may not be disclosed to any third party (save to any of its officers, employees, agents, advisers, and consultants) or used in any way without the prior written consent of Credomatic.

(c) The Notice Parties' obligations of confidentiality in this Section shall not apply to information that (i) was in the public domain prior to the date of this Notice of Transfer or subsequently came into the public domain through no fault of the receiving party (or its officers, employees, agents, advisers, and consultants), (ii) was received by any party (or any of its officers, employees, agents, advisers, and consultants) from a third party that, to the receiving party's knowledge, is not bound by any obligation of confidentiality to any other party in respect of such information (iii) is disclosed by the receiving party in order to enforce this Notice of Transfer, the Credomatic Consent and Agreement or any Credomatic Security Document or the rights of such party hereunder or thereunder, (iv) is disclosed in response to a valid order of a court with competent jurisdiction or governmental authority,

and (v) is disclosed at the request, and subject to the confidentiality statements, of any rating agency then rating any of the Notice Parties or their affiliates. Unless prohibited by law, rule or regulation, written notice of the fact of such disclosure shall promptly be delivered to Credomatic.

## **12. Counterparts.**

(a) This Notice of Transfer may be executed in any number of counterparts and by different parties on separate counterparts. Each of such counterparts shall be deemed an original, and it shall not be necessary in making proof of this Notice of Transfer to produce or account for more than one such counterpart.

(b) Credomatic will kindly indicate their understanding and agreement with the above by signing 7 copies of the Credomatic Consent and Agreement, retaining one copy for their records, delivering one copy to each of the Collateral Agent, the Client, Avianca USA and the Company for its files.

## **13. The Collateral Agent**

Any reference to the Collateral Agent in this Notice of Transfer shall be construed as a reference to the Collateral Agent acting as agent for and on behalf of the Lenders and in accordance with the Loan Agreement. In relation to the giving of any consent, approval or direction by the Collateral Agent hereunder, it is acknowledged and accepted by the parties hereto that in all cases the Collateral Agent shall be acting, giving, withholding or otherwise undertaking and exercising such action solely on behalf of the Lenders and as directed in accordance with the terms of the Loan Agreement. Under no circumstances shall the Collateral Agent be under any obligation to any party hereto to give any consent, approval or direction, or take any other action in connection with this Notice of Transfer. The Collateral Agent shall have no liability to Credomatic or to any other party hereto in connection with this Notice of Transfer or for or in connection with any action or inaction on its part under or in connection with this Notice of Transfer, and such parties agree that any such liability shall be excluded to the fullest extent permitted by applicable law. Nothing herein shall be construed to be an agreement by the Collateral Agent to any of the provisions contained herein, it being understood and agreed by all parties hereto that the Lenders have agreed to the terms of this Notice of Transfer and pursuant to the Loan Agreement have instructed the Collateral Agent to enter into this Notice of Transfer, as agent for and on behalf of the Lenders. The Collateral Agent shall be entitled to all of the rights, benefits, privileges, protections and indemnities provided to it in the Loan Agreement as if specifically set forth herein.

## **14. Limited Recourse**

Notwithstanding any other provision of this Notice of Transfer, each party hereto hereby agrees that the Company's obligations under this Notice of Transfer shall be limited recourse obligations of the Company, with recourse being limited to the assets (other than the ordinary share capital and any transaction fee charged by the Company pursuant to the administration

agreement dated the date hereof entered into between the Company and MaplesFS Limited) of the Company at such time available for application by or on behalf of the Company in making payments in accordance with this Notice of Transfer. The parties hereby acknowledge and agree that the Company's obligations under this Notice of Transfer are solely the corporate obligations of the Company, and that none of the officers, directors, shareholders or agents of the Company, any of its affiliates or any other Person shall be personally liable to make any payments of principal, interest or any other sum now or hereafter owing by the Company hereunder. After the Company's assets (other than the ordinary share capital and any transaction fee charged by the Company pursuant to the administration agreement dated the date hereof entered into between the Company and MaplesFS Limited) are realized and exhausted, all sums due but still unpaid in respect of the Company's obligations hereunder shall be extinguished and shall not thereafter revive with respect to the Company and its liability hereunder, and the parties hereto shall not have the right to proceed against the Company or any of its affiliates or any of its officers, directors, shareholders or agents for the satisfaction of any monetary claim or for any deficiency judgment remaining after foreclosure of any of its assets.

No party hereto shall take any steps for the purpose of procuring the appointment of any examiner, administrator, receiver, liquidator, provisional liquidator, bankruptcy trustee or administrative receiver or the making of any administrative order or court order or application or for instituting any bankruptcy, examinership, reorganization, arrangement, insolvency, winding up, liquidation, composition or any like proceedings under applicable law in respect of the Company or its affiliates or in respect of any of their liabilities, including, without limitation, as a result of any claim or interest of such parties.

The provisions of this Section 14 shall survive termination of this Notice of Transfer.

*[Remainder of page intentionally left blank]*

Please acknowledge your receipt of this Notice of Transfer and execute the attached Credomatic Consent and Agreement and return it in pdf format by electronic mail to the Company and the Collateral Agent. Thank you for your cooperation in this matter.

Very truly yours,

AEROVÍAS DEL CONTINENTE  
AMERICANO S.A. AVIANCA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address for Notices:  
Aerovías del Continente Americano S.A.  
Avianca,  
Centro Administrativo,  
Avenida Calle 26 No. 59-15 Piso 10  
Bogotá, D.C., Colombia  
Attention: Vicepresidente Financiero  
Facsimile No.: 571-413-9809  
Telephone No.: 571-295-6765  
E-mail: Lucia.avila@Avianca.com

TACA INTERNATIONAL AIRLINES S.A.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Credomatic Notice of Transfer - Signature Page]

AVIANCA, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Credomatic Notice of Transfer - Signature Page]



USAVFLOW LIMITED

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for Notices:

USAVflow Limited  
c/o P.O. Box 1093GT,  
Queensgate House,  
South Church Street, Georgetown,  
Grand Cayman, Cayman Islands;  
Attention: The Directors;  
Facsimile No.: (345) 945-7100;  
Telephone No.: (345) 945-7099;  
E-mail: info@maplesfinance.com;

CITIBANK, N.A., as  
Collateral Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for Notices:

Citibank, N.A.

Agency & Trust

388 Greenwich Street

New York, New York 10013

Attention: Karen Abarca

Tel: (212) 816-7759

Email: [karen.abarca@citi.com](mailto:karen.abarca@citi.com) /cts.spag@citi.com

[Credomatic Notice of Transfer - Signature Page]

## SCHEDULE 1

### DEFINED TERMS

“**ARC**” means Airlines Reporting Corporation, a company which provides ticket transaction settlement services between airlines and travel agencies (both traditional and online) and the travel management companies that sell their products in the United States, or any successor or replacement thereof.

“**Assigned Contract Rights**” means the contract rights of Avianca S.A. under the Credomatic Contracts (including, specifically, the Credomatic USA Supplement) to (a) receive any kind of payments, indemnities or economic compensations derived therefrom on account of Specified Sales, including the right, among other things, to receive all future Collections derived therefrom; and (b) to enforce the rights referred to in (a) against Credomatic. For the avoidance of doubt, the Assigned Contract Rights shall not include (x) any obligation or liability of Avianca S.A. under the Credomatic Contracts or arising in any manner therefrom; (y) any rights of TACA International Airlines, S.A. or its subsidiaries under the Credomatic Contracts or (z) the rights of Avianca S.A.:

- (i) to honor Cards or conduct any Card sale as payment for travel costs or otherwise, or to request authorization to honor Cards;
- (ii) to submit Sales Slips for billing or issue credit slips in any manner provided by Credomatic Contracts;
- (iii) to request, to treat or to have access to confidential information pertaining to cardholder account information;
- (iv) to request or receive a restricted card list pursuant to the Credomatic Contracts;
- (v) to grant consent to Credomatic to display or show the trademarks, logos or company names of Avianca S.A. in promotion, advertising, press releases or otherwise pursuant to the Credomatic Contracts;
- (vi) to use trademarks and service marks of a card association in its advertising, press releases or otherwise pursuant to the Credomatic Contracts;
- (vii) to handle all claims or complaints by a cardholder with respect to Card transactions;
- (viii) to receive documentation from Credomatic that is required in connection with the defense of any claim of a cardholder asserted in connection with the Credomatic Contracts; or

- (ix) to receive any Collections derived from sales which are not Specified Sales.

**“Assigned Receivables”** means any and all Collections accrued under the Credomatic Contracts that are due on account of Specified Sales from Credomatic to Avianca S.A. immediately prior to giving effect to the RSPA on the date of the RSPA. For the avoidance of doubt, the Receivables shall not include any and all Collections accrued under the Credomatic Contracts that are due by Credomatic to TACA International Airlines, S.A. or its subsidiaries.

**“BdB Lenders”** means Banco de Bogotá S.A., New York Agency and any other Person that shall have become a party to the BdB Loan Agreement pursuant to an assignment, other than any such Person that ceases to be a party thereto pursuant to an assignment.

**“BdB Loan Agreement”** means the Credit and Guaranty Agreement, (dated as of June 16, 2015) among Taca International Airlines S.A. (as Borrower), Avianca Holdings S.A. (as Guarantor), Fiduciaria Bogotá S.A. (as Administrative Agent), and the BdB Lenders.

**“Card Programs”** means the Credomatic Card Program and all current or future credit and debit card programs administered (pursuant to each of their respective regulations, by-laws, operating regulations, agreements or arrangements) by Visa, MasterCard, American Express, Discover, Diners Club, JCP and/or any other card networks included in the Credomatic Contracts, as applicable.

**“Cards”** means credit, debit, charge and ATM cards under which cardholders purchase goods and services of Avianca S.A.

**“Closing Date”** means the date on which the Agreements are executed and become effective.

**“Collections”** means all cash collections and other cash proceeds derived from the Assigned Contract Rights or the Assigned Receivables, whether received by the Seller, the Purchaser, or any other Person.

**“Credomatic Card Program”** means (i) the Visa and MasterCard credit and debit card programs administered by Credomatic or its affiliates pursuant to (a) the Visa agreements, Visa by-laws, Visa operating regulations, Visa Base II clearing and settlement system regulations, and any other agreements or arrangements governing the rights, duties and obligations of the Visa companies and their respective clients with respect to the procedures administered by the Visa companies for the clearing and settlement of paper (collectively the **“Visa Regulations”**), in each case as such Visa Regulations, and other agreements and arrangements may be amended, restated, superseded or replaced from time to time; (b) the MasterCard by-laws, MasterCard rules, MasterCard operating regulations and MasterCard agreement and any other agreements or arrangements regulating the rights, duties and obligations of MasterCard and its members with respect to the procedures administered by MasterCard for the clearing and settlement of paper (collectively the **“MasterCard Regulations”**), in each case as such MasterCard Regulations and other agreements or arrangements may be amended, restated, superseded or replaced from time to time; (ii) any agreements, by-laws, rules, operating regulations or arrangements similar to the ones described

in the previous subsection (i) but regulating the rights, duties and obligations with regard to other Card Programs; and (iii) Credomatic's internal by-laws, rules, regulations, guidelines, requirements relating to Credomatic's participation in any such Card Programs and Credomatic's relationship with its cardholders and acquirers and other clients, partners or customers.

**"Credomatic Security Documents"** means (i) the Indemnification Agreement, dated on or about the date hereof between Avianca S.A. and Credomatic delivered to Credomatic in connection with the Consent and Agreement, (ii) any other agreement, instrument, letter of credit or arrangement securing, guaranteeing or in any way supporting Avianca S.A.'s, the Client's or any Client Affiliate's obligation to pay any claims arising from any Credomatic Agreement or any other agreement or instrument delivered to Credomatic as collateral or security in connection with the transaction contemplated by the Agreements or with the Credomatic Consent and Agreement, and (iii) any other agreement, instrument or document which is supplemental to, or in substitution for, or in furtherance of any of (i) and (ii) above.

**"Incidental Charges"** means and includes each amount from time to time falling due to or for the account of Credomatic (or any of its affiliates) in relation to services provided by Credomatic for Avianca S.A. or any of its affiliates, Avianca USA, and/or the Company to Credomatic, including, without limitation, charges in respect of: (i) service, license or royalty fees, transaction fees, collateral and other assessments; clearing and settlement fees, late settlement fees; chargebacks and second chargebacks, the creation, funding, or maintenance of a reserve account, arbitration, dispute resolution or compliance settlements; arbitration, dispute resolution or compliance fees; reversals of any amounts improperly credited, credit refunds or other adjustments; international outgoing interchange fees; and any other charges arising out of the normal course of any of Credomatic's acquisition and related clearing and settlement pursuant to the Credomatic Contracts, to the Credomatic Card Program and to any applicable rules and regulations, (ii) each amount in respect of legal expenses reasonably incurred by Credomatic (or any of its affiliates) in connection with or arising directly out of any competing claims of third parties which may arise relating to amounts payable by the Client, Avianca USA, and/or the Company to or for the account of Credomatic (or any of its affiliates) pursuant to the Credomatic Agreement and the Credomatic Consent and Agreement; (iii) any other obligations at any time owing by Avianca S.A. or any of its affiliates or the Company to Credomatic (or any of its affiliates) under any of the Credomatic Contracts or the Credomatic Card Program.

**"Fundamental Change"** means and shall be construed, in accordance with the Credomatic Contracts or the Credomatic Card Program, to include any of the following events: (A) the Client, Avianca USA, the Company or any of the Client Affiliates becomes insolvent, (B) (i) a voluntary or involuntary petition shall be filed by or against the Client, Avianca USA, the Company or any of the Client Affiliates, or (ii) any similar proceeding or action shall be commenced or taken by or against the Client, Avianca USA, the Company, or any of the Client Affiliates, (iii) any of the Client Affiliates or the Client, Avianca USA, the Company or any of the Client Affiliates shall consent to or acquiesce in any such proceeding or action, (1) which seeks liquidation, reorganization, possession or similar

relief with respect to it or its debts under applicable bankruptcy, insolvency or similar law, (2) which seeks controlled administration or preliminary concordat, or (3) which seeks the appointment of a trustee, receiver, liquidator, custodian, examiner, intervenor or other similar official of the Client, Avianca USA, the Company or any of the Client Affiliates for all or any substantial part of its property, (C) a general moratorium shall be imposed on the payment or performance of debts or contractual obligations of the Client, Avianca USA, the Company or any of the Client Affiliates, (D) all or a substantial part of the properties of the Client, Avianca USA, the Company or any of the Client Affiliates shall be condemned, seized or otherwise appropriated or custody of such properties shall be assumed by any governmental authority or court or other Person or entity purporting to act under the authority of the government of any jurisdiction, or the Client, Avianca USA, the Company or any of the Client Affiliates shall be prevented from exercising normal control over all or a substantial part of its property, (E) any authorization of any governmental authority (including, without limitation, any foreign exchange authorization), which is necessary for the fulfillment by the Client, Avianca USA, the Company or any of the Client Affiliates of any obligation to Credomatic, shall be suspended, revoked, withdrawn, modified or withheld or shall otherwise fail to remain valid or cease to exist, and (F) Client, Avianca USA, the Company or any of the Client Affiliates shall have failed to fulfill any material obligation to Credomatic under the Credomatic Contracts or the Credomatic Card Program as a result of either (i) a determination by any court of competent jurisdiction or governmental authority that the performance of its obligations under the Credomatic Contracts or the Credomatic Card Program violates law or regulation of any governmental authority, including without limitation the U.S. USA Patriot Act (2001), or (ii) any publicly known action or inaction by a third party or third parties, including, without limitation, terrorist acts, armed hostilities or labor strikes, and it shall have failed to cure such nonperformance within a reasonable period of time following notice from Credomatic of such failure.

“**Lenders**” means each Person who is or from time to time becomes a party as a lender to the Purchaser Credit Agreement (as defined in the RSPA).

“**Merchant ID Supplement**” means a notice, substantially in the form of Exhibit B hereto.

“**Person**” shall mean any legal person, including any individual, partnership, corporation (including a business trust), joint stock company, trust, joint venture, unincorporated association, limited liability company or other entity, or a government or any political subdivision or agency thereof.

“**Sales Slip**” means a sales slip under a Card evidencing a payment obligation of the holder of the Card in respect of goods or services purchased by such holder using such Card.

“**Scheduled Termination Date**” means June 12, 2023 as such date may be extended to a new date (the “**New Termination Date**”), which is not more than six months following the later of the Scheduled Termination Date and the latest occurring New Termination Date, by written notice from the Collateral Agent to Credomatic prior to such date.

“**Specified Sales**” means the sales, including future sales, made by travel agencies in the United States and cleared through ARC of airline tickets or related services provided by



Avianca S.A. where payment in the case of any such sale is made by a Master Card® Card or Visa® Card, however branded, or any one or more of said Cards, including all such sales identified by those certain merchant codes set forth on Exhibit A hereto, with such changes, if any, as shall have been made from time to time after delivery and acceptance of a Merchant ID Supplement.

SCHEDULE 2

ACCOUNT INFORMATION

ACH to:	Citibank, N.A.
ABA:	021000089
SWIFT:	CITIUS33
Cr:	A & T Account Administration
A/C #:	36114317
Reference:	11925000
Beneficiary Name:	USAVflow Ltd

EXHIBIT A  
MERCHANT CODES

Credomatic FL (VI/MC): 5610-014001084970

EXHIBIT B  
MERCHANT ID SUPPLEMENT

This Merchant ID Supplement, dated as of [●], is delivered pursuant to the Notice of Transfer, dated as of December 12, 2017 (as it may from time to time be amended, modified or supplemented in accordance with its terms, the “**Notice**”), among Aerovías del Continente Americano S.A. Avianca (“**Avianca S.A.**”), Taca International Airlines S.A., BAC International Bank, Inc., on behalf of itself and its subsidiaries (collectively, “**Credomatic**”) and Citibank, N.A. Capitalized terms used herein but not defined herein are used with the meanings given them in the Notice.

Avianca S.A. represents and warrants that the attached replacement Exhibit A accurately and completely lists all merchant numbers that fairly identify the Specified Sales and hereby agrees that such replacement Exhibit A will replace Exhibit A to the Notice from and after the date of this Merchant ID Supplement.

IN WITNESS WHEREOF, Avianca S.A. has caused this Merchant ID Supplement to be duly executed and delivered by its duly authorized officer or representative as of the date first written above.

AEROVÍAS DEL CONTINENTE AMERICANO  
S.A. AVIANCA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACCEPTED AND AGREED AS OF THE DATE  
FIRST WRITTEN ABOVE

BAC INTERNATIONAL BANK, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACCEPTED AND AGREED AS OF THE DATE  
FIRST WRITTEN ABOVE

CITIBANK, N.A., as Collateral Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



REPLACEMENT EXHIBIT A

EXHIBIT C  
REQUIRED FORMS AND DOCUMENTATION

**Exhibit C**  
**to Credomatic Notice of Transfer**

See the following attached documents:

1. ABA/DDA Change Request Form
2. Bank Letter together with the completed form above confirming the designated Account legal name, Account number, and the ABA routing number referred to in the form above



**CREDOMATIC**

Member BAC | CREDOMATIC Network



BAC Florida

Credomatic of Florida, Inc  
9150 S. Dadeland Blvd.  
Suite 800  
Miami, Florida 33156

Tel: 305-372-3012  
Fax: 305-670-5251  
www.credomaticusa.com

## ABA/DDA Change Request

Merchant Account #:		
Merchant Name (DBA):		
Requested By:		
Phone #:		
	Current	New
Bank Name		
ABA/Routing Number		
DDA/Account Number		

Merchant Signature: \_\_\_\_\_ Date \_\_\_\_\_

Merchant Owner/Principal Name: \_\_\_\_\_  
(Printed)

**NOTE: CHANGES TO BANKING INFORMATION WILL NOT BE PROCESSED WITHOUT A VOIDED CHECK OR BANK LETTER.**

\*Please note: A Support Representative will contact you to verify the above information\*







## FORM OF CREDOMATIC CONSENT AND AGREEMENT

December 12, 2017

BAC International Bank, Inc., on behalf itself and its subsidiaries (collectively, “**Credomatic**” and each a “**Credomatic Company**”), hereby acknowledges receipt of and consents to all the terms of the Notice of Transfer, dated December 12, 2017 (the “**Notice**”), delivered by Aerovias del Continente Americano S.A. Avianca, a company organized under the laws of Colombia (“**Avianca S.A.**”), USAVflow Limited, a company organized under the laws of the Cayman Islands (the “**Company**”), Avianca, Inc., a corporation organized under the laws of the State of New York (“**Avianca USA**”), and Citibank, N.A., as Collateral Agent for the Lenders as defined therein (in such capacity, together with its successors and assigns in such capacity, the “**Collateral Agent**”). Capitalized terms used but not defined herein shall have the meanings given in the Notice.

(a) For good and valuable consideration given by Avianca S.A., its subsidiaries and the Company, and subject to the terms of the Notice, Credomatic unconditionally and irrevocably:

- (i) acknowledges, and consents to, the transactions described in Section 1 (“**Notice and Transfer of Receivables**”) of the Notice;
- (ii) represents that, to the best of its understanding pursuant to the representations made by the Notice Parties, immediately before giving effect to the transactions described in Section 1 of the Notice, Avianca S.A. is the owner of the Assigned Contract Rights and Assigned Receivables and agrees that after giving effect to the transactions described in Section 1 of the Notice, the Company is the owner of the Assigned Contract Rights and Assigned Receivables and agrees to make all applicable payments under the Credomatic Contracts, in respect of Specified Sales in accordance with the instructions set forth in Section 3 (a) of the Notice unless and until such Notice is terminated in accordance with Section 5(a) of the Notice; *provided that* all such payments shall be made in United States dollars in immediately available and freely transferable funds and *provided further that*, except for payment of the Directed Amounts to the account specified in the Notice, neither Credomatic nor any Credomatic Company shall have any further obligation with respect to receipt by any party of any amounts to be paid pursuant to this clause (ii), including but not limited to amounts that may be withheld from such payments on account of taxes.
- (iii) waives any right to set off, deduct or apply any deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held by Credomatic on behalf of Avianca S.A. or the Company (in each case, other than those deposits held in relation to the Credomatic Contracts) or other obligations at any time owing by Credomatic to

Avianca S.A. or the Company under any agreement other than the Credomatic Contracts against the obligations of the Client under the Credomatic Contracts and amounts payable under clause (ii) above; *provided, however*, that Credomatic and the Credomatic companies shall at all times have the right to set off any and all Incidental Charges owed to or for the account of Credomatic (or the Credomatic companies) (y) against any and all amounts due from Credomatic (or the Credomatic companies) to or for the account of Client or each of the Client Affiliates; and/or, (z) against any and all amounts due from Credomatic (or the Credomatic companies) to or for the account of (or deposited in accounts held by Credomatic, or the Credomatic companies on behalf of) the Company or the Collateral Agent under clause (ii) above, whether such amounts are due by reason of Receivables, Contract Rights or otherwise;

- (iv) represents that Exhibit A hereto is a true and correct and complete copy of the Credomatic Contracts that are relevant to Specified Sales as of the date hereof and agrees that it will promptly acknowledge and accept any Merchant ID Supplement properly delivered to it by Avianca S.A. and reflecting all merchant numbers associated at such time with all Specified Sales;
- (v) represents that, based on its understanding of the representations made by the Notice Parties in the Notice , Exhibit B to the Notice sets forth the merchant codes that fairly identify the sales and services associated with the Assigned Contract Rights and Assigned Receivables as of the date hereof.
- (vi) agrees that the Collateral Agent (for and on behalf of the Lenders) shall be an express and intended third party beneficiary of the agreements contained herein;
- (vii) agrees that it shall simultaneously copy all notices made by Credomatic to the Client under the Credomatic Contracts, to Avianca S.A., Avianca USA, the Company and the Collateral Agent in accordance with Section 9 of the Notice.
- (viii) represents that Client is not in breach of any material obligation under the Credomatic Contracts;
- (ix) represents it has not received notice of any currently effective assignment of, or pledge of any security interest with regard to any of the Assigned Contract Rights or Assigned Receivables;
- (x) agrees that, as long as this Credomatic Consent and Agreement remains in effect, it will not consent to any assignment of, or pledge of any security interest in any of the Assigned Contract Rights or Assigned Receivables to any Person other than pursuant to the Notice;

- (xi) agrees not to enter into any other contract or replacement contract with the Client or any of its affiliates with respect to the Specified Sales without the previous written consent of the Collateral Agent, and to transact all business in respect of the Specified Sales under the current Credomatic Contracts as extended; *provided, however, that*, such limitation shall not limit or otherwise impair Credomatic's rights or remedies under the Credomatic Contracts, including, without limitation, its rights under clause 3 of the Credomatic Master Agreement or its rights to modify, amend, replace or update the Credomatic Contracts in a way that does not materially affect the Specified Sales, the Assigned Receivables or the Assigned Contract Rights; and *provided further, that* such limitation shall not limit or otherwise impair Credomatic's rights to enter into new contractual relationships with other Client Affiliates that are not being processed, acquired or otherwise serviced by Credomatic as of the date hereof.
- (xii) this Consent and Agreement shall remain in full force and effect until terminated in accordance with Section 5(a) of the Notice; and
- (xiii) all notices, requests, demands or other communications to or upon Credomatic or any Notice Party shall be made in accordance with Section 9 of the Notice;

(b) Credomatic is executing this Credomatic Consent and Agreement in reliance upon the agreements, representations and warranties on the part of each of the Notice Parties contained in the Notice, particularly those contained in Sections 4 and 6 thereof. Except as expressly set forth in Section 3(a) to the Notice and in paragraph (a) above, nothing contained herein, in the Notice or in any Agreements shall limit or otherwise impair either Credomatic's or the Credomatic companies' rights or remedies under the Credomatic Contracts or the Credomatic Card Program, all of which are hereby reserved, and neither Credomatic nor any of the Credomatic companies shall be liable or deemed to be in breach of this Credomatic Consent and Agreement for any actions by either Credomatic or the Credomatic companies taken in good faith which impair or could impair the Receivables in circumstances where such actions by such Credomatic company were taken (i) in the exercise of its rights or the fulfillment of its obligations with respect to the Receivables in accordance with the Notice and this Credomatic Consent and Agreement, (ii) in accordance with the Credomatic Contracts and/or the Credomatic Card Program, or (iii) because of actions or inactions in breach of the Credomatic Contracts or the Credomatic Card Program on the part of the Client and/or any of the Client's affiliates, such as their respective obligations to pay Credomatic or fulfill their obligations to their respective clients. Without limitation of the generality of the foregoing, such actions by a Credomatic company could include but would not be limited to termination of any of the Client's or the Client Affiliate's corresponding Credomatic Contract upon the occurrence of a Fundamental Change or otherwise in accordance with the Credomatic Contracts or any event described in Section 6 of the Notice. Except as expressly set forth in Section 3(a) to the Notice and in paragraph (a) above, nothing contained herein, in the Notice or in any Agreement shall modify, create or impose any obligations or duties upon either of the Credomatic companies in connection with the Credomatic Card Program.

(c) Credomatic is executing this Credomatic Consent and Agreement only in connection with the Agreements to the extent described in the Notice. This Credomatic Consent and Agreement shall be effective as of the date hereof, subject to the conditions, in the Notice. Credomatic's consent, representations and agreements hereunder expressly do not extend to any Future Transaction.

*[next page is signature page]*

EXECUTION VERSION

This Consent and Agreement shall be binding upon Credomatic and its respective successors and assigns and shall inure to the benefit of Client, the Company and the Collateral Agent, with respect to their interests in the Receivables, and their respective successors and assigns.

BAC International Bank, Inc.,  
as Credomatic

By: \_\_\_\_\_  
Name: RODOLFO TABASH ESPINACH  
Title: President and Attorney-in-Fact

Address for Notices:  
DIRECCIÓN REGIONAL DE TARJETAS  
Attn: Juan Carlos Páez Mena  
COO Card Business  
BAC | Credomatic  
COSTA RICA, San José, Escazú, Guachipelín  
Oficentro Plaza Roble, Edificio Terrazas B  
Cuarto Piso

NOTICE OF TERMINATION

BAC INTERNATIONAL BANK, INC.  
DIRECCIÓN REGIONAL DE TARJETAS  
Attn: Juan Carlos Páez Mena  
COO Card Business  
BAC | Credomatic  
COSTA RICA, San José, Escazú, Guachipelín  
Oficentro Plaza Roble, Edificio Terrazas B  
Cuarto Piso

[Date]

Ladies and Gentlemen:

Reference is made to the Consent and Agreement, dated December 12, 2017 (the “**Credomatic Consent**”), given by Credomatic to Citibank, N.A., as Collateral Agent for the Lenders as defined therein (in such capacity, together with its successors and assigns in such capacity, the “**Collateral Agent**”). Capitalized terms used but not defined herein shall have the meanings given in the Credomatic Consent.

In accordance with paragraph (a), clause (xii) of the Credomatic Consent, the undersigned hereby notifies Credomatic that the Credomatic Consent is hereby terminated.

Accordingly, you are authorized to redirect all amounts payable by Credomatic to Avianca S.A., Avianca USA, and the Company in respect of the Assigned Contract Rights and Assigned Receivables to the bank account specified in Schedule 2 to the Notice, so that Credomatic shall no longer have obligations to follow the instructions of the Collateral Agent pursuant to the Notice and the Credomatic Consent.

CITIBANK, N.A., as  
Collateral Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



EXHIBIT C

Form of Seller Closing Certificate

[•], 2017

I, the undersigned, a director of AEROVIAS DEL CONTINENTE AMERICANO S.A. AVIANCA, a Colombian *sociedad anónima* incorporated, registered and existing under the laws of Colombia (the “Seller”), DO HEREBY CERTIFY that:

1. This Certificate is furnished pursuant to Section 2.02(b)(iii) of the Contract Rights and Receivables Sale, Purchase and Servicing Agreement, dated as of December 12, 2017, between the Seller, USAVflow as the Purchaser thereto, and Aerovías del Continente Americano S.A. Avianca as the Servicer thereto (the “RSPA”). Unless otherwise defined herein, capitalized terms used in this Certificate have the meanings assigned to those terms in the RSPA.
2. Attached hereto as Annex A is a true, correct and complete copy of the resolutions of the Seller approving the execution, delivery and performance of the Transaction Documents, which resolutions are in full force and effect without modification or amendment as of the date hereof.
3. Attached hereto as Annex B is a true, correct and complete copy of the organizational documents and by-laws of the Servicer.
4. Attached hereto as Annex C is a true and correct copy of each of the Card Processing Agreements, as in effect as of the date hereof
5. The persons listed on Annex D hereto are duly authorized and qualified to sign the RSPA, the other documents to which the Seller is a party and all documents delivered in connection therewith (the “Transaction Documents”) and instructions and certificates in connection therewith on behalf of the Seller and the signatures set forth opposite the names of such individuals are true and correct manual signatures of such individuals or a facsimile thereof.
6. On the date hereof, the representations and warranties of the Seller in the Transaction Documents are true and correct.
7. On the date hereof, no event or circumstance has occurred or is in existence that has had or could reasonably be expected to have a Material Adverse Effect.
8. The Seller has taken all actions required to be taken by the Seller pursuant to the Transaction Documents on or prior to the date thereof.

IN WITNESS WHEREOF, I have hereunto set my hand on behalf of the Seller as of the date first written above.

AEROVIAS DEL CONTINENTE AMERICANO  
S.A. AVIANCA

By: \_\_\_\_\_  
Name:  
Title:

The undersigned, being the duly elected and qualified [ ] of the Seller, hereby certifies that [ ] is the duly elected and qualified [ ] of the Seller and that the foregoing signature appearing above her name is her genuine signature.

IN WITNESS WHEREOF, I have hereunto set my hand on behalf of the Seller as of the date first written above.

AEROVIAS DEL CONTINENTE AMERICANO  
S.A. AVIANCA

By: \_\_\_\_\_  
Name:  
Title:

ANNEX A - Resolutions

ANNEX B – Constitutional Documents

ANNEX C – Card Processing Agreements

ANNEX D – Incumbency

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[•]		
[•]		
[•]		



EXHIBIT D

Form of Avianca, Inc. Closing Certificate

I, the undersigned, \_\_\_\_\_ of AVIANCA, INC., a company duly incorporated in New York ("Avianca, Inc."), DO HEREBY CERTIFY that:

1. This Certificate is furnished pursuant to Section 2.02(b)(iii) of the Contract Rights and Receivables Sale, Purchase and Servicing Agreement, dated as of \_\_\_\_\_, 2017, between Aerovias del Continente Americano S.A. Avianca, as the Seller thereto, and USAVflow Limited, as the Purchaser thereto). Unless otherwise defined herein, capitalized terms used in this Certificate have the meanings assigned to those terms in the RSPA.
2. Attached hereto as Annex A is a true, correct and complete copy of the resolutions of Avianca, Inc. approving the execution, delivery and performance of the Transaction Documents, which resolutions are in full force and effect without modification or amendment as of the date hereof.
3. Attached hereto as Annex B is a true, correct and complete copy of the organizational documents and by-laws of Avianca, Inc..
4. The persons listed on Annex C hereto are duly authorized and qualified to sign the Transaction Documents to which Avianca, Inc. is a party and all documents delivered in connection therewith (the "Transaction Documents") and instructions and certificates in connection therewith on behalf of Avianca, Inc. and the signatures set forth opposite the names of such individuals are true and correct manual signatures of such individuals or a facsimile thereof.
5. On the date hereof, the representations and warranties of Avianca, Inc. in the Transaction Documents are true and correct.
6. On the date hereof, no event or circumstance has occurred or is in existence that has had or could reasonably be expected to have a Material Adverse Effect.
7. Avianca, Inc. has taken all actions required to be taken by Avianca, Inc. pursuant to the Transaction Documents on or prior to the date thereof.

IN WITNESS WHEREOF, I have hereunto set my hand on behalf of Avianca, Inc. as of the date first written above.

AVIANCA, INC.

By: \_\_\_\_\_  
Name:  
Title:

The undersigned, being the duly elected and qualified [ ] of Avianca, Inc., hereby certifies that [ ] is the duly elected and qualified [ ] of Avianca, Inc. and that the foregoing signature appearing above her name is her genuine signature.

IN WITNESS WHEREOF, I have hereunto set my hand on behalf of Avianca, Inc. as of the date first written above.

AVIANCA, INC.

By: \_\_\_\_\_  
Name:  
Title:

ANNEX A - Resolutions

ANNEX B – Constitutional Documents

ANNEX C – Incumbency

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[•]		
[•]		
[•]		

EXHIBIT E

Form of Costa Rican Assignment Agreement



## **FORM OF RSPA ASSIGNMENT OF RIGHTS AGREEMENT**

This RSPA ASSIGNMENT OF RIGHTS AGREEMENT, dated as of December 12, 2017 (this “Agreement”) is made by and between (i) Aerovias del Continente Americano, S.A. AVIANCA, a corporation constituted under the laws of Colombia (“Avianca”), and (ii) USAVflow Limited, an exempted company incorporated with limited liability in the Cayman Islands (“USAVflow”) (together the “Parties” and each individually, a “Party”).

### **RECITALS**

WHEREAS, reference is made to the AVIANCA-BAC CREDOMATIC Regional Agreement for the Processing of Credit Card Transactions in Affiliated Commercial Establishments, dated as of June 10, 2015, between the Parties (the “Credomatic Master Agreement”) pursuant to which BAC International Bank, Inc. (“BAC Credomatic”) serves Avianca’s card processing agent for sales generated through the cards and in the locations and/or channels specified in the Credomatic Master Agreement.

WHEREAS, reference is made to the Merchant Application & Agreement dated March 17, 2016 among Avianca, Inc., a corporation organized under the laws of the State of New York (“Avianca, Inc.”) and Credomatic of Florida, Inc. (the “Credomatic Supplement”), a “Local Contract” as defined under the Credomatic Master Agreement (together with the Credomatic Master Agreement, the “Assigned Agreements”).

WHEREAS, reference is made to the Mutual Assignment of Rights Agreement, dated as of the date hereof, among Avianca, Taca International Airlines S.A. (TACA), and BAC Credomatic (the “Taca Assignment”) pursuant to which Avianca’s and Taca’s respective rights under the Assigned Agreements were divided into “Avianca Contract Rights” and “Taca Contract Rights,” and TACA assigned all such “Avianca Contract Rights” to Avianca and Avianca assigned all such “TACA Contract Rights” to TACA.

WHEREAS, under the Assigned Agreements, Avianca is entitled to rights to payments due on account of the sale of the goods and services it provides in the business of air transportation of passengers and cargo.

WHEREAS, reference is made to the Contract Rights and Receivables Sale, Purchase and Servicing Agreement, dated as of the date hereof among Avianca, USAVflow and, Avianca, Inc. (the “RSPA”) pursuant to which Avianca sold and USAVflow purchased those certain Avianca Contract Rights falling within the definitions of “Collections,” “Contract Rights,” or “Receivables” set forth in the RSPA..

NOW, THEREFORE, in consideration of the previous and of the covenants hereinafter contained, it is agreed as follows:

### **1. Definitions**

Capitalized terms not defined herein shall have the meaning ascribed to them in the Credomatic Master Agreement.

“Avianca Contract Rights” means the contract rights of Avianca under the Assigned Agreements, now existing or hereafter arising to (a) receive any kind of payments, indemnities or economic compensations derived from any ticket sales or other sales by Avianca, and including all such amounts relating to merchant identification codes pertaining to Avianca, including the right, among other things, to receive all future Collections derived therefrom; and (b) to enforce the rights referred to in (a) against BAC Credomatic.

## **2. Confirmation of Avianca, Inc.’s Role**

The Parties hereby confirm that (i) Avianca, Inc. has acted, and will continue to act, as an agent on behalf of Avianca under the Credomatic Supplement, (ii) Avianca, Inc. executed and delivered the Credomatic Supplement on behalf of Avianca, which is the Merchant pursuant to such agreement, (iii) at all times, including immediately prior to the effective date of such agreements, Avianca (and not Avianca, Inc.) is and has been a party to the Credomatic Master Agreement and the Credomatic Supplement and therefore entitled to all amounts payable in respect of the Avianca Contract Rights from Credomatic under said agreements and (iii) any and all payments that have been received by Avianca, Inc. under the Credomatic Master Agreement and/or the Credomatic Supplement have been received solely in Avianca, Inc.’s capacity as agent and Avianca, Inc. disclaims any entitlement to or ownership of those payments.

## **3. Assignment**

In exchange for the payment of the Advance Payment and the Additional Purchase Price (as defined in the RSPA), Avianca hereby irrevocably assigns to USAVflow, and USAVflow hereby irrevocably assumes from Avianca, as of the date of this Agreement, all the Avianca Contract Rights under the Assigned Agreements.

The Parties hereby confirm that the Avianca Contract Rights are fully transferable and that this assignment complies with all assignment requirements under the Assigned Agreements.

The Parties further confirm that the Assigned Agreements are currently valid and in force and there are no outstanding or reasonably foreseeable claims amongst the Parties related to the functioning of the Assigned Agreements and/or related to the rights and obligations that each Party derives from such Assigned Agreements.

## **4. Notice and Consent**

The Parties acknowledge notice and consent to the described assignment pursuant to the terms of the Credomatic Master Agreement and article 491 of the Costa Rican Commerce Code.

The Parties further acknowledge that BAC Credomatic, it has been given notice of and acknowledged its consent to this Assignment in the Credomatic Notice and Consent Agreement, dated as of the date hereof a copy of which is attached to this Agreement as Exhibit A.

## **5. Governing Law**

This Agreement shall be governed by the Laws of Costa Rica and may be translated into Spanish by an official translator in accordance to Article 395 of the Costa Rican Civil Code.

The Parties are also authorized to go before a Costa Rican Notary Public so that he or she may grant a certain date to this Agreement in accordance with Article 491 of the Costa Rican Commerce Code.

## **6. Limited Recourse**

Notwithstanding any other provision of this Agreement, each party hereto hereby agrees that USAVflow's obligations under this Agreement shall be limited recourse obligations of USAVflow, with recourse being limited to the assets (other than the ordinary share capital and any transaction fee charged by USAVflow pursuant to the Administration Agreement) of USAVflow at such time available for application by or on behalf of USAVflow in making payments in accordance with this Agreement. The parties hereby acknowledge and agree that USAVflow's obligations under this Agreement are solely the corporate obligations of USAVflow, and that none of the officers, directors, shareholders or agents of USAVflow, any of its Affiliates or any other Person shall be personally liable to make any payments of principal, interest or any other sum now or hereafter owing by USAVflow hereunder. After USAVflow's assets (other than the ordinary share capital and any transaction fee charged by USAVflow pursuant to the Administration Agreement) are realized and exhausted, all sums due but still unpaid in respect of USAVflow's obligations hereunder shall be extinguished and shall not thereafter revive with respect to USAVflow and its liability hereunder, and the parties hereto shall not have the right to proceed against USAVflow or any of its Affiliates or any of its officers, directors, shareholders or agents for the satisfaction of any monetary claim or for any deficiency judgment remaining after foreclosure of any of its assets.

No party hereto shall take any steps for the purpose of procuring the appointment of any examiner, administrator, receiver, liquidator, provisional liquidator, bankruptcy trustee or administrative receiver or the making of any administrative order or court order or application or for instituting any bankruptcy, examinership, reorganization, arrangement, insolvency, winding up, liquidation, composition or any like proceedings under Applicable Law in respect of USAVflow or its Affiliates or in respect of any of their liabilities, including, without limitation, as a result of any claim or interest of such parties.

The provisions of this Section 6 shall survive termination of this Agreement.

## **7. Miscellaneous**

This Agreement shall be binding upon and shall take effect to the benefit of the parties hereto and their respective successors and permitted assigns.

This Agreement shall constitute an integral part of the Assigned Agreements and of any existing or successive agreements derived from such Assigned Agreements.

[Signature pages follow]



IN WITNESS WHEREOF, the Parties hereto execute this Agreement in the date written above.

\_\_\_\_\_  
Avianca  
Aerovías del Continente Americano, S.A. Avianca

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
USAVflow  
USAVflow, Limited

Name: \_\_\_\_\_

Title: \_\_\_\_\_



Exhibit A  
Credomatic Notice and Consent

Schedule 3.01b

Projected Price Payment Schedule

Month	2017	2018	2019	2020	2021	2022
January		46,674,759	45,889,017	48,583,942	51,452,481	54,383,469
February		42,745,021	41,694,640	44,282,524	46,904,458	49,629,001
March		49,930,014	49,320,745	52,104,580	55,160,232	58,278,472
April		41,159,901	40,054,651	42,573,984	45,112,613	47,781,268
May		51,852,870	51,382,792	54,368,990	57,468,446	60,725,371
June		44,535,429	43,757,078	46,378,219	49,082,988	51,966,564
July		49,051,102	48,487,309	51,310,694	54,276,640	57,386,392
August		47,249,194	46,607,624	49,440,950	52,271,055	55,313,839
September		46,202,719	45,546,799	48,232,765	51,061,333	54,003,005
October		49,284,390	48,832,483	51,700,017	54,692,453	57,806,065
November		46,295,536	45,663,976	48,349,467	51,205,632	54,164,938
December	22,420,323	38,390,283	37,437,407	39,719,197	42,117,715	17,118,813
<b>Total</b>	<b>\$22,420,323</b>	<b>\$553,371,219</b>	<b>\$544,674,521</b>	<b>\$577,045,329</b>	<b>\$610,806,046</b>	<b>\$618,557,197</b>

**EXHIBIT 6**

**Dated 12/12/2017**

## **Receivables Maintenance Agreement**

between

**Aerovías del Continente Americano S.A. Avianca**  
as the Seller and the Servicer

and

**USAVflow Limited**  
as the Purchaser

White & Case LLP  
1221 Avenue of the Americas  
New York, New York 10020

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## RECEIVABLES MAINTENANCE AGREEMENT

**THIS RECEIVABLES MAINTENANCE AGREEMENT**, dated December 12, 2017 (this “Agreement”), is made by and among **AEROVIAS DEL CONTINENTE AMERICANO S.A. AVIANCA**, a Colombian *sociedad anónima*, as the Seller (in such capacity, the “Seller”), **USAVflow LIMITED**, an exempted company incorporated in the Cayman Islands with limited liability (the “Purchaser”) and **AEROVIAS DEL CONTINENTE AMERICANO S.A. AVIANCA**, a Colombian *sociedad anónima*, as the Servicer (the Servicer, together with the Purchaser and the Seller, the “Parties” and each, individually, a “Party”).

### RECITALS:

The Seller is engaged in the business of air transportation of passengers and cargo and related services and provides its customers with the means of purchasing its goods and services through the use of Cards by having in place merchant credit card, Card Processing Agreements with Card Processors. Such agreements provide for the processing of payments on behalf of the Seller of the goods and services that are purchased through the use of Cards;

The Seller, the Purchaser and the Servicer have entered into that certain Contract Rights and Receivables Sale, Purchase and Servicing Agreement, dated as of the date hereof (the “RSPA”), pursuant to which the Seller sold certain Contract Rights and Receivables (each as defined therein) to the Purchaser; and

Pursuant to the terms of the RSPA, the Parties have agreed to enter into this Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants and premises herein contained, the Parties hereby agree as follows:

## ARTICLE I DEFINITIONS AND INTERPRETATION

### **Section 1.01**    Definitions.

(a) All capitalized terms used but not defined herein shall have the meaning specified in the RSPA;

(b) Except as otherwise provided herein, capitalized terms used herein (including in the foregoing Recitals) and not otherwise defined herein shall have the following meanings:

“Adjusted EBITDA” means, with respect to any period for any Person, such Person’s Consolidated EBITDA adjusted to exclude income or expenses resulting from foreign currency adjustments, derivative financial instruments, other financial income and transactions with Affiliates, in each case determined for such Person and its Subsidiaries on a consolidated basis and as set forth in the consolidated income statement of such Person in accordance with IFRS for such period.

“Adjusted EBITDAR” means with respect to any period for any Person, such Person’s Adjusted EBITDA adjusted to exclude aircraft and other related rent expenses payable during such period, in each case determined for such Person and its Subsidiaries on a consolidated basis and as set forth in the consolidated income statement of such Person in accordance with IFRS for such period.

“Adjusted EBITDAR Coverage Ratio” means, at any date of determination, with respect to Holdings and its Subsidiaries on a consolidated basis, the ratio of (a) Adjusted EBITDAR for the



Reference Period most recently ended on or before such date to (b) the sum of (i) aircraft and other related rent expenses, plus (ii) interest expense, in each case for such Reference Period.

“Affiliate” means (i) with respect to the Seller and Holdings, other than for the purposes of Section 2.01(j), means any Subsidiary of Holdings, and (ii) with respect to any other Person, and with respect to the Seller and Holdings for the purposes of Section 2.01(j), another Person that, directly or indirectly, controls or is controlled by, or is under common control with, such Person. For purposes of this definition, the term “control” (including the terms “controlling,” “controlled by,” and “under common control with”) as used with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“Air Travel Receivables” of a Person means such Person’s rights to receive payment on account of its sale of any airline tickets or rendition of related services, including the right to receive all collections derived therefrom, whether paid for by Cards or otherwise.

“Avianca” means Aerovías del Continente Americano S.A. Avianca.

“Capitalization Ratio” means, at any date of determination, with respect to Holdings and its Subsidiaries on a consolidated basis, the ratio of:

(a) the sum of (i) the aggregate amount of Holdings' Indebtedness, plus (ii) scheduled annual rental payments under aircraft operating leases payable by Holdings or its Subsidiaries as of such date of determination, multiplied by seven, less (iii) the aggregate amount of cash of Holdings and its Subsidiaries;

to

(a) the sum of (i) the amount resulting from the calculation in clause (a) above plus (ii) the amount of shareholders' equity of Holdings as of such date;

in each case without duplication.

“Cash Equivalents” as to any Person, means (a) securities issued or directly and fully guaranteed or insured by the U.S. or any agency or instrumentality thereof (provided that the full faith and credit of the U.S. is pledged in support thereof) having maturities of not more than one year from the date of acquisition by such Person, (b) time deposits, demand deposits and certificates of deposit of any commercial bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the U.S., any State thereof or the District of Columbia having capital, surplus and undivided profits aggregating in excess of U.S.\$500,000,000, having maturities of not more than one year from the date of acquisition by such Person, (c) repurchase obligations with a term of not more than 90 days for underlying securities of the types described in subsection (a) above entered into with any bank meeting the qualifications specified in subsection (b) above, (d) commercial paper issued by any issuer rated at least A-1 by S&P or at least P-1 by Moody's or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and in each case maturing not more than one year after the date of acquisition by such Person, or (v) investments in money market funds substantially all of whose assets are comprised of securities of the types described in subsections (a) through (d) above.

“Compliance Certificate” means, with respect to Holdings, a certificate substantially in the form of Exhibit D signed by the Chairman or Vice Chairman of its board of directors, its President, Vice President, Secretary, Assistant Secretary, Chief Financial Officer, Comptroller, Treasurer, Assistant Treasurer, or other Authorized Signatory and delivered to the Administrative Agent and to the Purchaser.

“Consolidated EBITDA” for any Reference Period, with respect to Holdings and its Subsidiaries on a consolidated basis, means Consolidated Net Income for such period plus, without duplication and to the extent deducted in calculating Consolidated Net Income for such period, the sum of (a) Consolidated Interest Expense for such period, (b) the sum of federal, state, local and foreign income taxes accrued or paid in cash during such period, (c) the amount of depreciation and amortization expense deducted in determining Consolidated Net Income, (d) any extraordinary, unusual or non-recurring items reducing Consolidated Net Income for such period, and (e) any non-cash items reducing Consolidated Net Income for such period, minus (i) any extraordinary, unusual or non-recurring items increasing Consolidated Net Income for such period and (ii) any non-cash items increasing Consolidated Net Income for such period.

“Consolidated Interest Expense” for any Reference Period, with respect to Holdings and its Subsidiaries on a consolidated basis, means the total interest expense (including that portion attributable to capital leases in accordance with IFRS and capitalized interest) premium payments, debt discount, fees, charges and related expenses with respect to all outstanding Indebtedness of Holdings and its Subsidiaries, in each case whether or not paid in cash during such period.

“Consolidated Net Income” for any Reference Period, means the consolidated net income (or loss) of Holdings and its Subsidiaries, determined on a consolidated basis in accordance with IFRS.

“Contracting Party” has the meaning specified in Section 2.01(j).

“Core Assets” means assets used or useful in the business of providing air transportation for passengers and cargo, owning, servicing, and maintaining aircraft, aircraft engines, propellers, and spare parts for such property, owning, leasing, and maintaining facilities in order to conduct such business, or providing other services and selling merchandise related thereto, or any one of more of the foregoing activities.

“Dispose” means to, directly or indirectly, consummate any sale, lease, transfer or other disposition (or series of related sales, leases, transfers or dispositions), including any disposition by means of a merger, consolidation or similar transaction, of any property or assets. “Disposition” means any such sale, lease, transfer or other disposition (or series of related sales, leases, transfers or dispositions).

“Incur” means to issue, assume, Guarantee, incur or otherwise become liable for, provided, however, that any Indebtedness or capital stock of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Subsidiary at the time it becomes a Subsidiary. The term “Incurrence” when used as a noun shall have a correlative meaning. The accretion of principal of a non-interest bearing or other discount security, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms and the payment of dividends on capital stock in the form of additional shares of the same class of capital stock shall not be deemed the Incurrence of Indebtedness.

“Indemnified Person” has the meaning specified in Section 4.14.

“Interest Period” has the meaning specified in the Purchaser Credit Agreement.

“Investment” means any direct or indirect acquisition or investment by any Person in another Person, whether by means of: (a) the purchase or other acquisition of any equity interest, notes, bonds, debentures or other securities of another Person, (b) a loan, advance or capital contribution to, guaranty or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit or all or a substantial part of the business of, such Person.

“Monthly Servicer’s Statement” has the meaning specified in Section 3.02(k).

“Permitted Lien” means any of the following:

- (a) Liens in favor of the Purchaser pursuant to the Transaction Documents;
- (b) Liens on any of the Seller, Holdings or a Specified Subsidiary, or any of their Subsidiary's, property or assets existing on the Effective Date and listed on Schedule 5.01(I), and any renewals, replacements, or extensions of such Liens, provided that (x) the aggregate principal amount of the Indebtedness, if any, or obligations secured by such Liens does not increase from the amount outstanding on the Effective Date, and (y) any such renewal, replacement, or extension does not encumber any additional assets or properties of Seller, Holdings, the Specified Subsidiaries or their Subsidiaries;
- (c) Liens for Taxes not yet due or which are being contested in good faith by appropriate proceedings properly instituted and diligently conducted, and for which Seller, Holdings, the relevant Specified Subsidiary or one of their Subsidiaries, as applicable, has set aside on its books adequate reserves with respect thereto in accordance with IFRS;
- (d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than ninety (90) days or which are being contested in good faith by appropriate proceedings properly instituted and diligently conducted, and for which Seller, Holdings, the relevant Specified Subsidiary or their relevant Subsidiary, as applicable, has set aside on its books adequate reserves with respect thereto in accordance with IFRS;
- (e) any Lien securing a judgment for the payment of money the entry of which shall not have constituted an Adjustment Event or a Trigger Event so long as such Lien is adequately bonded and any appropriate legal proceedings which may have been duly initiated for the review of the judgment have not been finally terminated or the period within which such proceeding may be initiated has not expired;
- (f) Liens arising solely by virtue of any statutory or common law provisions relating to bankers' Liens, rights of setoff, or similar rights and remedies with regard to deposit accounts or other funds maintained with depositary institutions;
- (g) licenses, sublicenses, leases, and subleases as they relate to any aircraft, airframe, engine, or related equipment and to the extent such licenses, sublicenses, leases, or subleases do not interfere in any material respect with the business of Holdings, Seller, the Specified Subsidiaries and their respective Subsidiaries, taken as a whole;
- (h) salvage or similar rights of insurers, in each case as it relates to any aircraft, airframe, engine, or other equipment installed on aircraft, if any;
- (i) Liens on aircraft, airframe, engines, and appliances, parts, components, instruments, appurtenances, furnishings, and other equipment installed on aircraft;
- (j) Liens on any of Seller's, Holdings', a Specified Subsidiary's or their Subsidiary's property securing Indebtedness or obligations Incurred as all or part of the purchase price of such property or for value given to enable Seller, Holdings or the relevant Specified Subsidiary, as applicable, to acquire rights in or the use of the property, and any renewals, replacements, or extensions of such Liens, provided that (x) the aggregate principal amount of the Indebtedness, if any, or obligations secured by such Liens does not increase from the amount of the Indebtedness or obligations so Incurred, and (y) any such renewal, replacement, or extension does not encumber any additional assets or properties of Seller, Holdings, the Specified Subsidiaries or their Subsidiaries;

(k) Liens on Seller's, Holdings' or a Specified Subsidiary's Air Travel Receivables; and

(l) other Liens (on assets or property that do not constitute Collateral) securing obligations in an aggregate amount not exceeding 50% of Consolidated EBITDA for the most recently ended Reference Period;

*provided* that under no circumstances shall a Lien on any of the Contract Rights or the Receivables sold hereunder or the Collections derived therefrom be considered to constitute a Permitted Lien, except a Lien created pursuant to the Transaction Documents.

"Restricted Payment" means, with respect to any Person, any dividend or other distribution (whether in cash, securities or other property) of such Person, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any capital stock of such Person, or on account of any return of capital to such Person's stockholders, partners or members (or the equivalent Persons thereof).

"Servicer" means, initially, Aerovías del Continente Americano S.A. Avianca and, thereafter, its successors and permitted assigns and designees appointed in accordance with the terms of this Agreement to carry out the duties and responsibilities provided in Article III.

#### **Section 1.02 Other Interpretive Provisions.**

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words "hereof," "herein," "hereunder" and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement, and any subsection, Section, Article, Schedule, and Exhibit references are to this Agreement unless otherwise specified.

(c) The term "documents" includes any and all documents, instruments, written agreements, certificates, indentures, notices, and other writings, however evidenced (including electronically).

(d) The term "including" is not limiting and (except to the extent specifically provided otherwise) shall mean "including without limitation."

(e) Unless otherwise specified, in the computation of periods of time from a specified date to a later specified date, the word "from" shall mean "from and including," the words "to" and "until" each shall mean "to but excluding," and the word "through" shall mean "to and including."

(f) The terms "may" and "might" and similar terms used with respect to the taking of an action by any Person shall reflect that such action is optional and not required to be taken by such Person.

(g) Unless otherwise expressly provided herein: (i) references to agreements (including this Agreement) and other documents shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent that such amendments and other modifications are not prohibited by any Transaction Document, and (ii) references to any Applicable Law are to be construed as including all statutory and regulatory provisions or rules consolidating, amending, replacing, supplementing, interpreting or implementing such Applicable Law.



(h) The Transaction Documents are the result of negotiations among and have been reviewed by counsel to the Purchaser, the Seller, the Servicer and the Administrative Agent and are the products of all of such Parties. Accordingly, they shall not be construed against any Party merely because of any such Party's involvement in their preparation.

(i) The specification of dollar amounts hereunder in U.S. Dollars shall be deemed to include U.S. Dollars and the equivalent thereof in other currencies.

## ARTICLE II COVENANTS

**Section 2.01 Covenants of the Seller.** The Seller hereby covenants and agrees with the Parties hereto:

(a) **Enforceability, Rank.**

(i) The Seller shall, and shall ensure that Holdings and each Specified Subsidiary shall, obtain, comply with the terms of and do all that is necessary to maintain in full force and effect all authorizations, approvals, licenses, registrations and consents required in or by Applicable Law to enable it lawfully to enter into and perform its obligations under the Transaction Documents to which it is a party, perform its business or ensure the legality, validity, enforceability or admissibility in evidence of the Transaction Documents in its jurisdiction of incorporation;

(ii) the Seller shall ensure that at all times its obligations under the Transaction Documents to which it is a party will at all times rank at least pari passu with all other present and future unsubordinated Indebtedness of the Seller, other than obligations mandatorily preferred by Applicable Law; and

(iii) the Seller shall not amend or modify its certificate of incorporation, by-laws or other Organizational Documents without the consent of the Purchaser and the Administrative Agent.

(b) **Corporate Existence.** The Seller shall do or cause to be done, and shall cause Holdings and each Specified Subsidiary to do or cause to be done, all things necessary to preserve and keep in full force and effect the corporate existence, rights (charter and statutory), licenses and franchises of it and its Subsidiaries.

(c) **Payment of Taxes and Other Claims.** The Seller shall, and shall cause Holdings and each Specified Subsidiary to, pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (a) all material taxes, assessments and governmental charges levied or imposed (i) upon such Person or any of its Subsidiaries or (ii) upon the income, profits or property of such Person or any of its Subsidiaries and (b) all material lawful claims for labor, materials and supplies, which, if unpaid, could reasonably be expected to become a Lien upon the property of such Person or any of its Subsidiaries; provided, however, that such Person will not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings properly instituted and diligently conducted, and for which such Person has set aside on its books adequate reserves with respect thereto in accordance with IFRS.

(d) **Maintenance of Properties.** The Seller shall, and shall cause Holdings and each Specified Subsidiary to, cause all material properties owned by it and its Subsidiaries or used or held for use in the conduct of their respective businesses to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the reasonable judgment of such

Person may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times.

(e) Insurance. The Seller shall, and shall cause Holdings and each Specified Subsidiary to, at all times keep all of such Person's and its respective Subsidiaries' properties that are of an insurable nature insured with insurers that are financially sound and responsible, against loss or damage to the extent that property of similar character is usually and customarily so insured by corporations in the relevant jurisdiction of such Person similarly situated and owning like properties.

(f) Books and Records; Reporting.

(i) The Seller shall keep proper books of record and account, in which full and correct entries will be made of all financial transactions and the assets and business of the Seller in compliance with IFRS.

(ii) The Seller shall deliver to the Purchaser and the Administrative Agent, prepared in accordance with IFRS:

(A) within 180 days after the end of each fiscal year, audited year-end consolidated financial statements of Holdings and its Subsidiaries and stand-alone financial statements of Seller and each Specified Subsidiary (including, in each case, a balance sheet, statement of operations, and statement of cash flows) reported by an internationally recognized independent public accountant; and

(B) within 90 days after the end of each of the first three fiscal quarters of each fiscal year, unaudited quarterly consolidated financial statements of Holdings and its Subsidiaries and stand-alone financial statements of Seller and each Specified Subsidiary (including, in each case, a balance sheet, statement of operations, and statement of cash flows).

(iii) The Seller, concurrently with any delivery of financial statements to the Purchaser, shall provide to the Purchaser and the Administrative Agent an Officer's Certificate of the Seller, stating that no Trigger Event, Potential Event, Retention Event or Adjustment Event has occurred and is continuing (or, if a Trigger Event, Potential Event, Retention Event or Adjustment Event has occurred, specifying the details of such Trigger Event, Potential Event, Retention Event or Adjustment Event, as applicable, and the action that the Seller has taken or proposes to take with respect thereto).

(iv) The Seller, concurrently with any delivery of financial statements to the Purchaser, shall ensure that Holdings provides to the Administrative Agent a Compliance Certificate of Holdings, stating that (A) no Trigger Event, Potential Event, Retention Event or Adjustment Event has occurred and is continuing (or, if a Trigger Event, Potential Event, Retention Event or Adjustment Event has occurred, specifying the details of such Trigger Event, Potential Event, Retention Event or Adjustment Event (as applicable) and the action that the Seller, the Servicer, Holdings or such Specified Subsidiary (as applicable) has taken or proposes to take with respect thereto) and (B) containing all information and calculations necessary for determining compliance by Holdings and its Subsidiaries with the provisions of this Agreement as of the last day of the fiscal quarter or fiscal year of Holdings, as the case may be.

(v) The Seller shall provide to the Purchaser and the Administrative Agent:

(A) promptly and in any event within one Business Day after the occurrence of any Trigger Event, Potential Event, Retention Event or Adjustment Event notice of such Trigger Event, Potential Event, Retention Event or Adjustment Event,



including the details thereof and the actions that are being taken or are proposed to be taken with respect thereto;

(B) promptly and in any event within two Business Days after the Seller, Holdings or any Specified Subsidiary obtains knowledge thereof, written notice of any litigation, claim, investigation, arbitration, other proceeding or controversy pending or, to its knowledge, threatened involving or affecting the Seller, Holdings, any Specified Subsidiary or any of their Subsidiaries: (i) that could give rise to a Lien on any of their properties, (ii) that could reasonably be expected to have a Material Adverse Effect or (iii) relating to any of the Transaction Documents;

(C) promptly and in any event within two Business Days after the Seller obtains knowledge thereof, written notice of any event, change, condition or circumstance that could reasonably be expected to have a Material Adverse Effect; and

(D) from time to time such other information with respect to the Seller, Holdings, any Specified Subsidiary or any of their Subsidiaries or the Transaction Documents and/or the transactions contemplated hereby or thereby as the Purchaser or the Administrative Agent (acting at the direction of any Lender pursuant to the Purchaser Credit Agreement) may reasonably request, including any documentation or other evidence to enable the Purchaser or the Administrative Agent or the Purchaser Finance Parties to carry out and be satisfied with the requirements of all applicable "know your customer" laws, regulations and codes of conduct.

(g) Further Assurances; Security Filings. The Seller shall perform or cause to be performed, from time to time, any and all acts (and execute any and all documents) as may be necessary or required by Applicable Law or reasonably requested by the Purchaser or the Administrative Agent (acting at the direction of any Lender pursuant to the Purchaser Credit Agreement) to maintain the title of the Purchaser to the Contract Rights and Receivables and to maintain each Lien created by the Transaction Documents in full force and effect and enforceable in accordance with its terms, including: (i) making filings and recordations, (ii) making payments of fees and other charges, (iii) issuing and, if necessary, filing or recording supplemental documentation, including continuation statements, (iv) publishing or otherwise delivering a notice to third parties, and (v) taking all other actions either necessary or required by Applicable Law or otherwise reasonably requested by the Purchaser to ensure that all after-acquired property intended to be covered by such title or Liens provides title or is subject to a valid and enforceable first priority Lien in favor of the Purchaser.

(h) Limitation on Indebtedness.

(i) Seller shall ensure that Holdings will maintain a Capitalization Ratio at all times during each Reference Period of not more than 0.86:1.00.

(ii) Seller shall ensure that Holdings will maintain an Adjusted EBITDAR Coverage Ratio at all times during each Reference Period of not less than 1.75:1.00.

(i) Limitation on Restricted Payments. The Seller shall not, and shall ensure that Holdings and the Specified Subsidiaries do not, directly or indirectly, make a Restricted Payment except to the extent that such a payment is required by Applicable Law; provided that the restrictions set forth in this clause shall not apply if immediately prior to and immediately after giving effect to such Restricted Payment, no Retention Event, Adjustment Event, Potential Event or Trigger Event shall have occurred and be continuing.

(j) Limitation on Affiliate Transactions. Seller shall ensure that none of the Seller nor Holdings nor any of the Specified Subsidiaries (each a “Contracting Party”) shall enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property, employee compensation arrangements or the rendering of any service) with any Affiliate of such Contracting Party (an “Affiliate Transaction”) unless (i) the transaction is with a Subsidiary of such Contracting Party or with another such Contracting Party or a Subsidiary of such other Contracting Party, or (ii) such transaction would be immaterial to the financial condition and results of operations of such Contracting Party and its Subsidiaries, taken as a whole, or (iii) the terms thereof, taken as a whole, are no less favorable to the Contracting Party than those that could be obtained at the time of such transaction in arm’s-length dealings with a Person that is not an Affiliate of such Contracting Party.

(k) Limitation on Sales of Assets. The Seller shall not, and shall ensure that Holdings, the Specified Subsidiaries and their Subsidiaries do not, Dispose of any of their property, whether now owned or hereafter acquired, or, in the case of Seller, the Specified Subsidiaries and any Subsidiary of Seller, the Specified Subsidiaries or Holdings, issue or sell any of Seller, Holdings, such Specified Subsidiary or such Subsidiary’s equity interests to any Person, except:

(i) Dispositions in the ordinary course of business, including (A) Dispositions of obsolete or worn-out property, aircraft and equipment, (B) Dispositions of aircraft and other equipment that has been leased to Seller, Holdings, the Specified Subsidiaries or any of their Subsidiaries pursuant to sale and leaseback transactions, (C) Dispositions of aircraft and other equipment replaced within 180 days of such Disposition by aircraft and other equipment of approximately the same or greater value or with approximately the same or greater passenger capacity in connection with the upgrading of the Seller’s, the Specified Subsidiaries’ or their Subsidiaries’ fleet of aircraft, or (D) leases and sub-leases of aircraft and related equipment to Affiliates;

(ii) Dispositions from Seller or Holdings or their Subsidiaries to Seller, Holdings or the Specified Subsidiaries;

(iii) Dispositions of assets not constituting Core Assets and not otherwise described in clauses (i) and (ii); provided that at least 75% of the consideration received thereof by Seller, Holdings, the Specified Subsidiaries or their Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; provided, further, that neither Seller nor Holdings nor the Specified Subsidiaries nor any of their Subsidiaries shall make Dispositions the proceeds of which are reinvested in Subsidiaries of Holdings and the Purchaser that are not Specified Subsidiaries;

(iv) Dispositions of assets that would not exceed on a cumulative basis (A) for the period beginning on the Effective Date and ending on the Payment Date of the last Monthly Settlement Amount, 15% of the aggregate value (in accordance with IFRS) of Holdings’ consolidated assets (as such value is adjusted as of the end of each fiscal year of Seller, Holdings and each Specified Subsidiary based on the inflation provision in IFRS), or (B) on a cumulative basis in any single fiscal year of Holdings commencing after the Effective Date 5% of the aggregate value (in accordance with IFRS) of Seller’s consolidated assets; and

(v) Dispositions of Air Travel Receivables on which Liens are not prohibited by Section 2.01(l);

Notwithstanding the foregoing provisions of this Section 2.01(k), no Disposition, other than Dispositions pursuant to Section 2.01(k)(i), shall be permitted if, at the time thereof, there shall exist and be continuing any Retention Event, Adjustment Event, Trigger Event or Potential Event.

(l) Limitation on Liens. The Seller shall not, and shall ensure Holdings, the Specified Subsidiaries and their Subsidiaries do not, directly or indirectly, create, Incur, assume or

otherwise cause or suffer to exist or become effective any Lien of any nature whatsoever on any of its assets, except for Permitted Liens.

(m) Limitation on Lines of Business.

(i) None of Seller, Holdings and the Specified Subsidiaries, nor any of their Subsidiaries, shall make any substantial change to the general nature of the business of such Person from that carried on at the date of this Agreement.

(ii) None of Seller, Holdings and the Specified Subsidiaries, nor any of their Subsidiaries, shall (A) change its name or take any other action (other than those permitted hereunder) that could reasonably be expected to adversely affect the priority, perfection or validity of the Sale or Transfer hereunder or the Liens created by the Transaction Documents, (B) change its country of domicile, (C) make or permit any material change in its accounting policies or reporting practices except as required by a change in IFRS or (D) change its fiscal year.

(n) Consolidation, Merger.

(i) Seller shall not consolidate or merge with or into, dissolve, liquidate, or convey, lease or transfer all or substantially all of its assets to, any Person in a single transaction or through a series of transactions.

(ii) Seller shall ensure that neither Holdings nor any of the Specified Subsidiaries shall consolidate or merge with or into, dissolve, liquidate, or convey, lease or transfer all or substantially all of its assets to, any Person in a single transaction or through a series of transactions, if an Event of Default (as defined in the Purchaser Credit Agreement) would occur under the Purchaser Credit Agreement on account of such consolidation, merger, dissolution, liquidation, conveyance, lease or transfer.

(o) Maintenance of Separateness. The Seller shall not, and shall ensure Holdings and the Specified Subsidiaries do not, take any action, or conduct its affairs in a manner, that could reasonably be expected to result in its corporate existence being ignored by any court of competent jurisdiction or in its assets and/or liabilities being substantively consolidated with those of the Purchaser in any Insolvency Event.

(p) [Reserved].

(q) [Reserved].

(r) Investment Company Act. The Seller shall not take (or permit any other Person to take) any action that could reasonably be expected to result in it being required to be registered as an "investment company" under the United States Investment Company Act of 1940.

(s) Compliance with Laws.

(i) The Seller shall, and shall cause Holdings and their Subsidiaries to, comply with all requirements of Applicable Law, including all relevant Government Approvals, except where any failure to so comply could not, individually or in the aggregate, have a Material Adverse Effect, and except that the Seller, Holdings or their Subsidiary (as applicable) may, at its expense, contest by appropriate proceedings conducted in good faith the validity or application of any such requirement of Applicable Law, so long as (A) none of the Seller, Holdings, their Subsidiaries or their Affiliates, the Purchaser or any of the Purchaser Finance Parties would be subject to any criminal liability for failure to comply therewith and (B) such contest does not involve any material risk of the sale, forfeiture or loss of any of the Contract Rights or the Receivables or the Collateral; provided, however, that the Seller shall,

and shall cause Holdings and their Subsidiaries to, comply with all Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions in all respects and subject to no exceptions.

(ii) Neither the Seller nor Holdings nor any of their Subsidiaries shall directly or indirectly use the Purchase Price proceeds, or contribute or otherwise make available such proceeds to any Person (A) to fund or facilitate any activities of or business with any person, or in any country or territory, that, at the time of such funding or facilitating, is a Sanctioned Person in violation of Sanctions; (B) to fund or facilitate any activities of or business in any Sanctioned Jurisdiction in violation of Sanctions; (C) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Law; (D) to engage in any transaction, activity or conduct that would violate applicable Anti-Money Laundering Laws; or (E) in any other manner that will result in a violation of Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions by any person (including any person participating in the Purchaser Credit Agreement).

(iii) Neither the Seller shall nor shall it permit Holdings or any of its Subsidiaries to permit any part of the funds used to make any payments to the Purchaser to be derived from a transaction with, or proceeds from, a Sanctioned Person or a Sanctioned Jurisdiction or use funds that were the subject of money laundering activities or any other activities unlawful under Applicable Law to make any payments to the Purchaser under this Agreement or any Transaction Document or otherwise make any payment to the Purchaser hereunder that would cause the Purchaser to be in violation of any Applicable Law.

(iv) The Seller shall, and shall cause Holdings, the Specified Subsidiaries and their Subsidiaries to, continue to maintain and enforce policies and procedures designed to promote and achieve compliance by the Seller, Holdings, the Specified Subsidiaries and their Subsidiaries with all applicable Anti-Corruption Laws, Anti Money Laundering Laws and Sanctions. The Seller shall promptly notify the Purchaser and the Administrative Agent, to the extent that any such notification does not violate Applicable Law (including any applicable privilege), in the event that (A) it, Holdings, the Specified Subsidiaries or any of their Subsidiaries, or any of their respective directors, officers, Affiliates, agents or employees becomes a Sanctioned Person; and/or (B) they, Holdings or the Specified Subsidiaries know or have reason to know that they, Holdings, the Specified Subsidiaries or any of their Subsidiaries, or any of their respective directors, officers, Affiliates, agents or employees may violate or has violated Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions in connection with this Agreement or in any other manner that will result in a violation of Applicable Law by any Person.

(t) Card Processing Agreements.

(i) Upon any amendment to a Card Processing Agreement, the Seller shall provide prompt notice and a copy of such amendment to the Purchaser.

(ii) The Seller shall promptly notify the Purchaser and the Administrative Agent of any additional applicable merchant numbers that identify Specified Sales.

(iii) To the extent that the Seller (which shall promptly notify the Purchaser and the Administrative Agent in writing thereof) or the Purchaser, or the Administrative Agent, shall at any time reasonably determine that the execution of a Notice and Consent is not sufficient to require a Card Processor in any jurisdiction to make payment of the Collections to the New York Pass-Through Account, the Seller shall take such other actions as requested by the Purchaser or the Administrative Agent to ensure that such Card Processor is so required.

(iv) If any funds are received by the Seller or any of its Affiliates from time to time in respect of Collections, the Seller shall: (A) promptly (and, in any event, within two Business



Days) after its receipt thereof, remit such funds to the Collections Account (and until so remitted, such funds shall be held in trust by the Seller for the benefit of the Collateral Agent) and (B) promptly (and, in any event, by no later than the Business Day after any such remittance): (x) notify the Purchaser and the Collateral Agent of its receipt of any such funds and of each such remittance by it (or on its behalf) into the Collections Account (specifying the amount and date of the remittance and the Card Processing Agreement, if any, with respect to which it received such funds) and (y) deliver to the Purchaser and the Collateral Agent evidence that it has sent a notice to the applicable Card Processor that all future payments on Collections are to be deposited into the New York Pass-Through Account.

(v) The Seller shall (A) ensure that each of the Card Processing Agreements remains the legal, valid and binding obligations of each of the parties thereto and perform and observe all of its material covenants and obligations contained in each Card Processing Agreement, (B) renew each Card Processing Agreement in accordance with the terms thereof and not consent to any termination by any Card Processor to any termination thereof, (C) not amend any Card Processing Agreement in any manner that could reasonably be expected to adversely affect the Contract Rights or the Receivables or the value thereof, without the prior written consent of the Purchaser and the Collateral Agent, (D) promptly notify the Purchaser and the Collateral Agent of any additional applicable merchant numbers that identify Specified Sales, (E) not enter into any other contract or replacement contract with any Card Processor or any of its affiliates with respect to the sale, through the travel agencies in the United States which are cleared through ARC of air transport and related services provided by Avianca S.A. without the previous written consent of the Purchaser and the Collateral Agent, and transact all such business under the current Card Processing Agreement as extended, and (F) notwithstanding any Insolvency Event of the Seller, Holdings or any of its Affiliates or any purported termination as a result thereof, continue, to the extent permitted by Applicable Law, to maintain the validity of each Card Processing Agreement, provided that the Seller shall not be obligated to comply with the foregoing provisions of this clause (v) with respect to any Card Processing Agreement which has been, or is being, terminated by a Permitted Termination.

(vi) The Seller shall not take any action to cause any Contract Rights, Receivables or rights to Collections to be evidenced by an instrument (as such term is defined in the UCC) except to the extent that causing any Contract Rights, Receivables or rights to Collections is required for the collection of such rights or for the enforcement of any rights therein and the original of such instrument has been delivered to the Purchaser, which shall simultaneously have delivered such instrument to the Collateral Agent.

(vii) The Seller shall not sell, assign, transfer or to any other Person any rights in any Card Processing Agreement, or grant a Lien in such rights in favor of any Person, except the Sale and Transfer by the Seller hereunder and under the other Transaction Documents and the Liens granted thereunder and except for any sale, assignment, or transfer of Air Travel Receivables which (A) does not affect any Contract Rights, Receivables, or Collections subject to such Sale and Transfer hereunder, (B) does not have a Material Adverse Effect, and (C) is otherwise not prohibited by any other provision of this Agreement or the other Transaction Documents.

(u) Obligations under Notice and Consents. The Seller shall comply with all of its obligations under the Notice and Consents.

**Section 2.02 Covenants of the Servicer.** The Servicer hereby covenants and agrees with the Parties hereto:

(a) Enforceability, Rank.

(i) the Servicer and its Subsidiaries shall obtain, comply with the terms of and do all that is necessary to maintain in full force and effect all authorizations, approvals, licenses,

registrations and consents required in or by Applicable Law to enable it lawfully to enter into and perform its obligations under the Transaction Documents to which it is a party, perform its business or ensure the legality, validity, enforceability or admissibility in evidence of the Transaction Documents in its jurisdiction of incorporation;

(ii) the Servicer shall ensure that at all times its obligations under the Transaction Documents to which it is a party will at all times rank at least pari passu with all other present and future unsubordinated Indebtedness of the Seller, other than obligations mandatorily preferred by Applicable Law;

(iii) the Servicer shall not amend or modify its certificate of incorporation, by-laws or other Organizational Documents without the consent of the Purchaser and the Administrative Agent; and

(b) Corporate Existence. The Servicer shall do or cause to be done all things necessary to preserve and keep in full force and effect the corporate existence, rights (charter and statutory), licenses and franchises of the Servicer and its Subsidiaries.

(c) Payment of Taxes and Other Claims. The Servicer shall pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (i) all material taxes, assessments and governmental charges levied or imposed (A) upon the Servicer or any of its Subsidiaries or (B) upon the income, profits or property of the Servicer or any of its Subsidiaries and (ii) all material lawful claims for labor, materials and supplies, which, if unpaid, could reasonably be expected to become a Lien upon the property of the Servicer or any of its Subsidiaries; provided, however, that the Servicer will not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings properly instituted and diligently conducted, and for which the Servicer has set aside on its books adequate reserves with respect thereto in accordance with IFRS.

(d) Books and Records; Reporting. The Servicer shall keep proper books of record and account, in which full and correct entries will be made of all financial transactions and the assets and business of the Servicer in compliance with IFRS.

(e) Maintenance of Separateness. The Servicer shall not take any action, or conduct its affairs in a manner, that could reasonably be expected to result in its corporate existence being ignored by any court of competent jurisdiction or in its assets and/or liabilities being substantively consolidated with those of any other Person in any Insolvency Event.

(f) Investment Company Act. The Servicer shall not take (or permit any other Person to take) any action that could reasonably be expected to result in it being required to be registered as an "investment company" under the United States Investment Company Act of 1940.

(g) Obligations under Notice and Consents. The Servicer shall comply with all of its obligations under the Notice and Consents.

### ARTICLE III ADMINISTRATION AND SERVICING OF RECEIVABLES

**Section 3.01 Appointment of Servicer and Custodian of Receivables Files.** To assure uniform quality in servicing the Receivables, Avianca hereby agrees to act as the Servicer to carry out the duties and responsibilities of the Servicer provided in Section 3.02 and, in such capacity, to carry out the duties and responsibilities of the Custodian as provided in Section 3.03. For all legal and contractual purposes the servicing agreement shall be deemed to be a separate contract from the purchase and sale



contained herein. As a consequence, for no reason shall the servicing agreement contained herein recharacterize the purchase and sale agreement as an executory contract (*contrato de ejecución sucesiva*).

**Section 3.02 Duties and Responsibilities of Servicer.** The Servicer shall act as servicer of the Contract Rights and the Receivables, and, in such capacity, will carry out the following duties and responsibilities with respect to such Contract Rights and Receivables:

(a) to take all best efforts to cause each Card Processor to comply with its obligation under the Notice and Consent to which it is a party to make all payments under its Card Processing Agreement with the Seller to the New York Pass-Through Account;

(b) to respond to inquiries of Card Processors with respect to the Contract Rights and the Collections and correct errors and settle claims and disputes relating to Receivables;

(c) promptly to investigate Collections that are Delinquent and promptly to undertake such collection efforts as are necessary to collect such Collections in accordance with its normal policies and procedures;

(d) to post all payments, report tax information, if required, account for the Contract Rights and the Collections, and furnish to the Purchaser monthly, quarterly, annual, and such other periodic reports and/or statements and information as the Purchaser may reasonably require with respect to the Collections and otherwise comply with all terms and conditions applicable to the Servicer described herein;

(e) to manage, service, and administer the Contract Rights and the Collections with reasonable care and in accordance with all Applicable Law, using that degree of skill and attention that the Servicer exercises with respect to all comparable receivables that the Servicer services for itself; and to have full power and authority, acting alone, to do any and all things in connection with such managing, servicing, and administration, subject to the provisions of this Agreement, that it may deem necessary or desirable;

(f) not to take any action to cause any Collections to be evidenced by a negotiable or similar instrument, except to the extent that (i) causing such Collections to be evidenced by such an instrument is reasonably necessary or appropriate for the collection of such Collections or for the enforcement of any rights therein, and (ii) the original of such instrument forthwith upon the execution thereof is delivered to the Purchaser or its nominee;

(g) not to agree to any change in the settlement currency of any Collections arising under each Card Processing Agreement to receive net payments from the relevant Card Processor in Dollars, for settlement in the United States;

(h) to use all best efforts to collect all payments called for under the terms and provisions of the Card Processing Agreements as and when the same shall become due and at all times to instruct each Card Processor to make payments or transfer payments collected in respect of the Contract Rights, as applicable, directly into the New York Pass-Through Account in accordance with the instructions set forth in the respective Notice and Consents and instructions of the Purchaser to be provided from time to time and, in the event the Servicer receives any such payments, promptly to transfer any such payments to the Collections Account;

(i) not to permit any rescission or cancellation of any Collections, not to discharge, waive, amend, extend the time for payment of, or otherwise modify the terms of any Contract Rights, and not to release any Card Processor from its obligations with respect to any Collections or Receivables;

(j) to cooperate with the Purchaser or the Administrative Agent (acting at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement) in notifying the Card Processors of any change in payment instructions with respect to the Receivables approved in writing by the Administrative Agent (acting at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement);

(k) The Servicer shall provide to the Purchaser and the Administrative Agent, not later than the 5th Business Day after the last day of each Interest Period, a monthly statement substantially in the form of Exhibit B (the "Monthly Servicer's Statement"), regarding Collections in respect of the Contract Rights, including Collections derived on account of Net Activity with respect to each Card Processor for such Interest Period, and certain other matters for such Interest Period, accompanied by an Officer's Certificate stating that such Monthly Servicer's Statement is accurately and truthfully prepared;

(l) to deliver to the Purchaser and the Administrative Agent any information relating to the Contract Rights and Collections thereof, Net Activity, and such other information as the Purchaser may reasonably request from time to time;

(m) Reserved;

(n) Reserved;

(o) to carry out the duties and responsibilities of the custodian as set forth in Section 3.03; and

(p) to provide to the Purchaser and the Administrative Agent such financial statements, certificates, and information as the Purchaser or the Administrative Agent (acting at the direction of any Lender pursuant to the Purchaser Credit Agreement) shall from time to time request.

**Section 3.03 Duties of Servicer as Custodian.** The Servicer agrees to act as the agent of the Purchaser as custodian of the Receivables Files, which are hereby constructively delivered, or will be constructively delivered from time to time on and after the Effective Date, to the Purchaser with respect to each of the Contract Rights and the Receivables, and, in such capacity, will carry out the following duties and responsibilities:

(a) to hold the Receivables Files on behalf of the Purchaser and maintain such accurate and complete accounts, records, and computer systems pertaining to each Receivables File as shall enable the Purchaser to obtain the benefits of this Agreement and to preserve its interest in the Receivables;

(b) to act with reasonable care and in accordance with all requirements of Applicable Law and this Agreement, using that degree of skill and attention that the Servicer exercises with respect to the receivable files relating to all comparable receivables that the Servicer services for itself;

(c) promptly to report to the Purchaser any failure on its part to hold the Receivables Files and maintain its accounts, records, and computer systems as provided herein and promptly to take appropriate action to remedy any such failure;

(d) to maintain each Receivables File at its office at Avenida Calle 26 No. 59-15 Piso 10, Bogotá, Colombia, or at such other office as shall be specified by not less than thirty (30) days' prior written notice to the Purchaser;

(e) to (i) permit the Purchaser, through its duly authorized agents, representatives, attorneys, or auditors, the Agents, or its assignees or other third parties acting on its or their behalf: (A) to inspect and to obtain copies of the Receivables Files and the related accounts, records and computer

systems maintained by the Servicer, (B) to visit the offices and properties of the Servicer (or any subservicer) for the purpose of inspecting such accounts, records, and computer systems, and (C) to discuss the Receivables Files and the related accounts, records, and computer systems maintained by the Servicer (or any subservicer) with the principal officers of the Servicer or its independent accountants (and by this provision the Servicer authorizes such accountants to discuss with any Person so designated the Receivables Files and the related accounts, records, and computer systems maintained by the Servicer) at such times during normal business hours as the Purchaser or its assignees may reasonably request upon five (5) Business Days' prior notice, and (ii) provide such copies or reproductions of the Receivables Files and the related accounts, records, and computer systems as the Purchaser, its assignees or the Administrative Agent (acting at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement) may reasonably request; and

(f) upon reasonable prior written instruction from the Purchaser or its assignees, to deliver any Receivables File to the Purchaser or its agents at such place or places as the Purchaser or its assignees may designate, as soon as practicable, but in any event within five (5) Business Days of such instruction.

**Section 3.04 Instructions: Authority to Act.** The Servicer shall be deemed to have received instructions with respect to the Receivables Files upon its receipt of written instructions signed by an Authorized Signatory of the Purchaser or a representative of its assignees or the Administrative Agent (acting at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement).

**Section 3.05 Purchaser's Duty with Regard to Servicing.** Upon request from, and at the expense of, the Servicer, the Purchaser shall furnish the Servicer with any documents necessary or appropriate to enable the Servicer to carry out its servicing and administrative duties hereunder. Without limiting the generality of the foregoing, the Purchaser shall upon the written request of the Servicer furnish the Servicer with any powers of attorney and other documents reasonably necessary or appropriate to enable the Servicer to carry out its servicing and administrative duties hereunder.

**Section 3.06 Enforcement of Receivables.** If the Servicer shall commence a legal proceeding to enforce a Contract Right or the Receivables, it shall commence such proceedings in the name of and for the benefit of the Purchaser. If in any enforcement suit or legal proceeding it shall be held that the Servicer may not enforce a Contract Right on the ground that it shall not be a real party in interest or a holder entitled to enforce such Contract Right, the Purchaser may, at the Servicer's expense and direction, take steps to enforce such Contract Right, including bringing suit in its own name.

**Section 3.07 Custodian's Indemnification.** The Servicer as custodian shall indemnify the Purchaser, its assignees, the Purchaser Finance Parties and each of their respective officers, directors, and agents for any and all liabilities, obligations, losses, direct compensatory damages, payments, costs, or expenses of any kind whatsoever that may be imposed on, incurred by, or asserted against any of them as the result of any breach of this Agreement or any Transaction Document by the Servicer or any act taken or omission made by the Servicer not in accordance with its duties and responsibilities hereunder; provided, however, that the Servicer shall not be liable to any of them for any portion of any such amount resulting from the gross negligence or willful misconduct of such Person as determined by a court of competent jurisdiction by a final and non-appealable judgment.

**Section 3.08 Effective Period.** Avianca's appointment as Servicer, and the Servicer's appointment as Custodian, as provided herein shall become effective as of the Effective Date and shall continue in full force and effect until its receipt of written notice from the Purchaser relieving it of such appointments pursuant to Section 3.12. Avianca shall not be permitted to resign from its appointment as Servicer hereunder.

**Section 3.09 Appointment of Subservicer.** The Servicer may at any time, and from time to time, appoint one or more subservicers to perform all or any portion of its obligations as Servicer hereunder; provided, however, the Servicer shall remain fully responsible for the performance of any such servicing obligations.

**Section 3.10 Servicing Fees.** In the event that Avianca's or a successor Servicer's appointment as Servicer and Custodian hereunder is terminated as provided herein, the Seller shall thereafter pay the successor Servicer such fee as shall be negotiated between such successor Servicer and the Purchaser or the Administrative Agent, as the case may be.

**Section 3.11 Withholding Rights.** The Servicer hereby, unconditionally and irrevocably, waives any withholding rights (*derecho de retención*) it may have as a consequence of the non-payment of the fees referred to in Section 3.10.

**Section 3.12 Servicer Termination and Replacement.**

(a) (i) The Purchaser may at any time terminate with the written consent of the Administrative Agent (acting at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement), and (ii) the Administrative Agent (acting at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement) may at any time terminate, the appointment of the Servicer by giving at least thirty (30) days' written notice to that effect.

(b) The Servicer's appointment shall automatically terminate upon the occurrence of any Trigger Event with respect to the Servicer.

(c) No termination of the appointment of the Servicer shall, however, take effect until a new Servicer has been appointed.

(d) The Purchaser (with the consent of the Administrative Agent (acting at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement)) shall be entitled to appoint a successor Servicer. If the Purchaser is unable to name a successor Servicer within sixty (60) days after notice is delivered in connection with Section 3.12(a) or automatic termination of the Servicer under Section 3.12(b), the Administrative Agent (acting at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement) may, at Seller's sole expense, either appoint an internationally reputable financial institution as successor Servicer or apply to a court of competent jurisdiction for the appointment of a successor Servicer or other appropriate relief. Any such appointment shall be binding upon all the parties hereto.

(e) If the Servicer's appointment is terminated, it shall on the date of the termination deliver to the new Servicer the records kept by it pursuant to this Agreement.

**ARTICLE IV  
MISCELLANEOUS**

**Section 4.01 Rights Confined to Parties.** Except as set forth in Section 4.15, nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any Person, other than the Parties and their successors and assigns, any right, remedy or claim under or by reason of this Agreement, and the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the Parties and their respective successors and permitted assigns. Notwithstanding anything in the foregoing to the contrary, the Parties hereto acknowledge and agree that (a) the Seller may not assign its rights or obligations hereunder, (b) pursuant hereto, the Purchaser may assign all its rights hereunder in accordance with the terms of the Purchaser Finance Documents and the transactions in connection therewith, and (c) as a result of such assignment by the Purchaser, the rights of



the Purchaser under this Agreement may be enforced by the Collateral Agent on behalf of the Purchaser Finance Parties.

**Section 4.02 Amendment or Waiver.** Any provision of this Agreement may be amended or waived only with the written consent of each of the Seller, the Purchaser and the Administrative Agent (acting at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement); provided that any amendment that affects the rights or obligations of the Servicer hereunder shall require also the written consent of the Servicer.

**Section 4.03 Binding Upon Assigns.** Except as otherwise provided herein, the provisions of this Agreement (including any amendments, modifications and waivers hereof properly adopted) shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. Neither the Purchaser nor the Seller nor the Servicer may assign or otherwise transfer any of its respective rights or obligations hereunder without the prior written consent of the Administrative Agent (acting at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement).

**Section 4.04 Waiver of Immunity.** This Agreement and any other documents delivered pursuant hereto, and any actions taken hereunder, constitute commercial acts by the Seller and the Purchaser. To the extent that the Seller or the Purchaser, or any of their respective assets, may have, or may hereafter become entitled to or have attributed to it, any right of immunity, on the grounds of sovereignty or otherwise, from any legal action, suit or proceeding, from set-off or counterclaim, from the jurisdiction of any competent court, from service of process upon it or any agent, from attachment prior to judgment, from attachment upon or in aid or execution of judgment, or from execution of judgment or other legal process or proceeding for the giving of any relief or for the enforcement of judgments, in any jurisdiction, each of the Seller and the Purchaser hereby irrevocably and unconditionally and to the fullest extent permitted by law waives, and agrees not to plead or claim, any such immunity for itself or any of its property, assets or revenues wherever located with respect to its obligations, liabilities or any other matter under or arising out of or in connection with this Agreement, any of the other Transaction Documents or any document delivered pursuant hereto or thereto; it being intended that the foregoing waiver and agreement shall be effective, irrevocable and not subject to withdrawal in any and all jurisdictions.

**Section 4.05 Arbitration.** All disputes arising out of or in connection with this Agreement shall be finally settled by arbitration under the Rules of Arbitration of the International Chamber of Commerce. There shall be three arbitrators. The language of arbitration shall be English. The seat of arbitration shall be Miami, Florida.

**Section 4.06 Notices.** All notices and other communications hereunder shall be made in writing and in English (by letter, electronic mail (provided that in such case of the Administrative Agent, such electronic notice shall be delivered in a “.pdf” attachment)) and shall be sent as follows::

(a) if to the Purchaser, to it at c/o P.O. Box 1093, Boundary Hall, Cricket Square, Grand Cayman KY1-1102, Cayman Islands; Attention: The Directors; Facsimile No.: (345) 945-7100; Telephone No.: (345) 945-7099; email: [info@maplesfs.com](mailto:info@maplesfs.com);

with copies to:

Citibank, N.A.  
388 Greenwich Street  
New York, NY 10013 Attn: Miriam Y. Molina  
Tel.: (212) 816-5576  
Email: [miriam.molina@citi.com](mailto:miriam.molina@citi.com);

with a copy to:

Citibank, N.A  
1615 Brett Rd  
Building #3  
New Castle, DE 19720  
Attn: Bank Loans, Syndication Department  
Facsimile: +1(646) 274-5080

and with a copy to the Collateral Agent to it as set forth below

and

(b) if to the Seller, to it at Aerovías del Continente Americano S.A. Avianca, Centro Administrativo, Avenida Calle 26 No. 59-15 Piso 10, Bogotá, D.C., Colombia; Attention: Vicepresidente Financiero; Facsimile No.: 571-413-9809; Telephone No.: 571-295-6765; email: [Lucia.avila@Avianca.com](mailto:Lucia.avila@Avianca.com);

and

(c) if to the Servicer, to it at Aerovías del Continente Americano S.A. Avianca, Centro Administrativo, Avenida Calle 26 No. 59-15 Piso 10, Bogotá, D.C., Colombia; Attention: Vicepresidente Financiero; Facsimile No.: 571-413-9809; Telephone No.: 571-295-6765; email: [Lucia.avila@Avianca.com](mailto:Lucia.avila@Avianca.com);

and

(d) if to the Administrative Agent, to it at Citibank, N.A., 388 Greenwich Street, New York, NY 10013, USA, Attn: Miriam Y. Molina, Telephone No.: (212) 816-5576, email: [miriam.molina@citi.com](mailto:miriam.molina@citi.com);

and

(e) if to the Collateral Agent, to it at Citibank, N.A., 388 Greenwich Street, New York, NY 10013, USA, Attn: Karen Abarca, Telephone No.: (212) 816-7759, email: [karen.abarca@citi.com](mailto:karen.abarca@citi.com);

Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when personally delivered or, in the case of a facsimile, or mailed notice, upon receipt, and in the case of email, upon confirmation of receipt, in each case given or addressed as aforesaid. Any Party may change its address or facsimile number for notices and other communications hereunder by notice to the other Parties (including notice to the Administrative Agent). Any notice given by email shall be accompanied by an electronic request for a return receipt, and a copy of the notice (including on diskette or compact disc) shall, within two (2) Business Days thereafter, be mailed to the addressee.

**Section 4.07 Construction.** The Table of Contents hereto and the Article and Section headings herein are for convenience only and shall not affect the construction hereof.

**Section 4.08 Severability.** To the extent permitted by law, any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.



**Section 4.09 GOVERNING LAW.** THE PROVISIONS OF THIS AGREEMENT, AND ALL THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF COLOMBIA, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

**Section 4.10 Use of English Language.** All certificates, reports, notices, and other documents and communications given or delivered pursuant to this Agreement shall be in the English language or accompanied by a certified English translation thereof.

**Section 4.11 Currency.** All amounts payable by the Purchaser, the Seller or any other Person under this Agreement shall be made in United States Dollars.

**Section 4.12 Counterparts.** This Agreement may be executed in two or more counterparts (including via facsimile), each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

**Section 4.13 Limited Recourse.** Notwithstanding any other provision of this Agreement, each party hereto hereby agrees that the Purchaser's obligations under this Agreement shall be limited recourse obligations of the Purchaser, with recourse being limited to the assets (other than the ordinary share capital and any transaction fee charged by the Purchaser pursuant to the Administration Agreement) of the Purchaser at such time available for application by or on behalf of the Purchaser in making payments in accordance with this Agreement. The parties hereby acknowledge and agree that the Purchaser's obligations under this Agreement are solely the corporate obligations of the Purchaser, and that none of the officers, directors, shareholders or agents of the Purchaser, any of its Affiliates or any other Person shall be personally liable to make any payments of principal, interest or any other sum now or hereafter owing by the Purchaser hereunder. After the Purchaser's assets (other than the ordinary share capital and any transaction fee charged by the Purchaser pursuant to the Administration Agreement) are realized and exhausted, all sums due but still unpaid in respect of the Purchaser's obligations hereunder shall be extinguished and shall not thereafter revive with respect to the Purchaser and its liability hereunder, and the parties hereto shall not have the right to proceed against the Purchaser or any of its Affiliates or any of its officers, directors, shareholders or agents for the satisfaction of any monetary claim or for any deficiency judgment remaining after foreclosure of any of its assets.

No party hereto shall take any steps for the purpose of procuring the appointment of any examiner, administrator, receiver, liquidator, provisional liquidator, bankruptcy trustee or administrative receiver or the making of any administrative order or court order or application or for instituting any bankruptcy, examinership, reorganization, arrangement, insolvency, winding up, liquidation, composition or any like proceedings under Applicable Law in respect of the Purchaser or its Affiliates or in respect of any of their liabilities, including, without limitation, as a result of any claim or interest of such parties.

The provisions of this Section 4.13 shall survive termination of this Agreement.

**Section 4.14 Indemnities.**

(a) The Seller undertakes to each of the Purchaser and the Administrative Agent for the benefit of the Purchaser Finance Parties that the Seller will indemnify and hold harmless the Purchaser, the Administrative Agent, such Purchaser Finance Parties and their Related Parties (each an "Indemnified Person") from and against any and all Loss that any of them may incur or that may be made against any of them, and will reimburse each Indemnified Person for all costs, charges and expenses that any Indemnified Person may pay or incur in connection with investigating, disputing or defending any action or claim in respect of any such Loss; provided that such Loss does not result from such Indemnified Person's gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final and nonappealable judgment. This indemnity will be in addition to any liability that

the Seller may otherwise have. The Purchaser Finance Parties shall not have any duty or other obligation, whether as fiduciary or trustee for any of its Related Parties or otherwise, to recover any such payment or to account to any other Person for any amounts paid to it under this Section 4.14.

(b) Dollars are the sole currency of account and payment for all sums payable by the Seller in respect of this Agreement, including damages. Any amount received or recovered in a currency other than Dollars (whether as a result of, or of the enforcement of, a judgment, order of a court of any jurisdiction or otherwise) by the Purchaser or any other Indemnified Person in respect of any sum expressed to be due to them from the Seller under this Agreement shall only constitute a discharge to the extent of the amount in Dollars that the Purchaser or such other Indemnified Persons are able to purchase in accordance with normal banking procedures with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so). If that amount is less than the amount in Dollars expressed to be due to the Purchaser or such other Indemnified Person in respect of this Agreement, the Seller shall indemnify the Purchaser or such other Indemnified Person against any loss sustained by the Purchaser or such other Indemnified Person as a result. In any event, the Seller shall indemnify the Purchaser or such other Indemnified Person against any cost of making such purchase. These indemnities constitute a separate and independent obligation from the Seller's other obligations, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Purchaser or any other Indemnified Person and shall continue in full force and effect despite any other judgment, order, claim or proof for a liquidated amount in respect of any sum due in respect of this Agreement or any other judgment or order. Any such loss aforesaid shall be deemed to constitute a loss suffered by the Purchaser or any such other Indemnified Person and no proof or evidence of any actual loss will be required by the Seller.

(c) To the extent permitted by Applicable Law, no party hereto shall assert, and hereby waives, any claim against any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby.

(d) All amounts due under this Section 4.14 shall be payable not later than 3 Business Days after written demand therefor.

(e) The provisions of this Section 4.14 shall survive the termination of this Agreement.

#### **Section 4.15 Third-Party Beneficiaries.**

(a) Except as set forth in Section 4.15(b) below, the Parties do not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

(b) The parties hereby designate the Administrative Agent as a third-party beneficiary of this Agreement, having the right to enforce this Agreement.

**Section 4.16 The Agents.** It is acknowledged and agreed to by all Parties that the Agents are not a party to this Agreement and shall have no duties or obligations under or in connection with this Agreement. In relation to the giving of any consent, approval or notice by any Agent, or the taking of any other action by any Agent, it is acknowledged and accepted by the Parties that in all cases that such Agent shall be acting, giving, withholding or otherwise undertaking and exercising such action solely on behalf of the Lenders and as directed by the Lenders in accordance with the terms of the Purchaser Finance Documents. The Parties acknowledge and agree that they will not have any rights against the Agents hereunder, and hereby release, waive, discharge, exculpate and covenant not to sue any Agent for any

action taken or omitted by such Administrative Agent under this Agreement, and from any costs, claim, loss, expense or liability resulting therefrom.

[signature page follows]

**IN WITNESS WHEREOF**, the Parties have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the day and year first above written.

**USAVflow Limited, as the Purchaser**



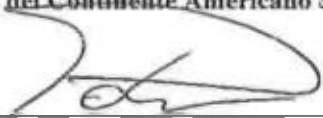
By:

Name: Peter Lundin

Title: Director

*Signature page to Undertaking Agreement*

Aerovías del Continente Americano S.A. Avianca, as the Seller



By:

Name: ROBERTO HELD

Title:

*Signature page to Undertaking Agreement*

Aerovías del Continente Americano S.A. Avianca, as the Servicer

By:

Name: ROBERTO HELO

Title:

*Signature page to Undertaking Agreement*



**Exhibit A**  
**Compliance Certificate**

**HOLDINGS COMPLIANCE CERTIFICATE**

The undersigned, [OFFICER'S NAME], [TITLE] of AVIANCA HOLDINGS S.A., a company organized under the laws of Panama (the "Company") hereby certifies on behalf of the Company, pursuant to Section 2.01(f)(iv) of the Receivables Maintenance Agreement, dated as of December 12, 2017 (the "Undertaking Agreement"), by and among USAVFLOW LIMITED, as Purchaser, AEROVÍAS DEL CONTINENTE AMERICANO S.A. AVIANCA, as the Seller and Avianca, Inc. as the Servicer thereto, that:

1. Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Undertaking Agreement.

2. Attached hereto and set forth in reasonable detail are computations evidencing compliance with the covenants contained in Section 2 of the Undertaking Agreement as of the date of the financial statements delivered herewith or for the relevant period provided in the Undertaking Agreement, as applicable. The information furnished in the calculations attached hereto was true, accurate, correct and complete as of the last day of such period and for such period, as the case may be.

3. I reviewed the RSPA, the Undertaking Agreement and the other Transaction Documents and have made or caused to be made such investigations as are necessary or appropriate for the purposes of this certificate and hereby certify that:

(a) each of the Seller and the Servicer during such period has observed and performed all of the covenants and other agreements, and satisfied every condition contained in the RSPA, the Undertaking Agreement and the other Transaction Documents to which it is a party to be observed, performed or satisfied by it [except as has heretofore been notified to the Purchaser and the Administrative Agent by the Seller in writing or except as described in Schedule [X] hereto];

(b) the [quarterly] [annual] financial statements delivered to the Purchaser and the Administrative Agent herewith were prepared in accordance with IFRS and fairly represent the financial position of the Company and its Subsidiaries as of the date hereof;

(c) no event has occurred and is continuing that constitutes a Retention Event, Adjustment Event, Potential Event or Trigger Event [except as has heretofore been notified to the Administrative Agent by the Seller in writing or except as described in Schedule [X] hereto];

(d) the representations and warranties of the Seller and the Servicer contained in the RSPA or in any other Transaction Document to which it is a party are true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

[Signature Pages follow]

IN WITNESS WHEREOF, the undersigned has executed this Compliance Certificate on behalf of the Company as of this [DAY OF MONTH] day of [MONTH], [YEAR].

AVIANCA HOLDINGS S.A.

By \_\_\_\_\_

Name: [NAME]

Title: [TITLE]

**Exhibit B**

**Monthly Servicer's Statement**



**MONTHLY SERVICER'S STATEMENT**

Bogotá, \_\_\_\_\_, 20[ ]  
For the Interest Period ending \_\_\_\_\_, 20[ ]

USAVflow Limited  
Queensgate House  
Grand Cayman, Cayman Islands  
Attn:

Citibank N.A., as Administrative Agent  
388 Greenwich Street  
New York, NY 10013  
USA  
Attn:

Ladies and Gentlemen:

Reference is made to the Receivables Maintenance Agreement dated December 12, 2017 (the "Undertaking Agreement"), between AEROVÍAS DEL CONTINENTE AMERICANO S.A. AVIANCA, as the Seller and Servicer (the "Seller"), and USAVflow Limited, as the Purchaser (the "Purchaser"). Capitalized terms used but not defined herein have the meanings given them in the Maintenance Agreement or the RSPA or the Cash Management Agreement (as such terms are defined in the Undertaking Agreement).

In accordance with Section 3.02(k) of the Undertaking Agreement, Collections in respect of Contract Rights for the Interest Period indicated above were as follows:

<b>Card Processor</b>	<b>Merchant IDs</b>	<b>Collections (USD)</b>
Credomatic		
AMEX		
Total		

Best regards,

XXXXXXX  
Avianca

OFFICER'S CERTIFICATE

The undersigned, \_\_\_\_\_, hereby certifies that he/she is the \_\_\_\_\_ of AEROVIAS DEL CONTINENTE AMERICANO S.A. AVIANCA, the Seller and Servicer under the Undertaking Agreement (as defined in the foregoing Monthly Servicer's Statement), and further certifies that the foregoing Monthly Servicer's Statement has been accurately and truthfully prepared, to the best of the undersigned's knowledge, information, and belief.

In witness whereof, the undersigned has signed this Certificate this \_\_\_\_\_, 20[\_\_\_].

\_\_\_\_\_  
Name:

Title:

**Schedule 2.01(I)**

**Permitted Liens**

Mortgagor	Property	Mortgagee
Taca Intl. Airlines	Corporate Office Building located at Av. El Espino entre Blvd. Sur y Calle El Almendro, Urbanizacion Madreselva, Antiguo Cuscatlan, El Salvador	BCIE
Avianca SA	Corporate Office Building located at Av. Calle 26 # 59-15 Bogota, Colombia	BANCO DE BOGOTA

**EXHIBIT 7**



**Dated 12/12/2017**

# **Cash Management Agreement**

among

**Aerovías del Continente Americano S.A. Avianca**  
as the Seller and the Servicer

**USAVflow Limited**  
as the Purchaser

and

**Citibank, N.A.**  
as the Administrative Agent

and

**Citibank, N.A.,**  
as Collateral Agent

White & Case LLP  
1221 Avenue of the Americas  
New York, New York 10020

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Exhibit A Form of Notice

## CASH MANAGEMENT AGREEMENT

**THIS CASH MANAGEMENT AGREEMENT**, dated December 12, 2017 (this “Agreement”), is made by and among **AEROVÍAS DEL CONTINENTE AMERICANO S.A. AVIANCA**, a Colombian *sociedad anónima*, as the Seller (the “Seller”), **USAVflow LIMITED**, an exempted company incorporated in the Cayman Islands with limited liability (the “Purchaser”), **AEROVÍAS DEL CONTINENTE AMERICANO S.A. AVIANCA**, a Colombian *sociedad anónima*, as the Servicer, and **CITIBANK, N.A.**, as the Administrative Agent (together with its successors in such capacity, the “Administrative Agent”) and **CITIBANK, N.A.**, as the Collateral Agent (together with its successors in such capacity, the “Collateral Agent” and, together with the Seller, the Purchaser, the Servicer and the Administrative Agent, the “Parties” and each, individually, a “Party”).

### RECITALS:

The Seller is engaged in the business of air transportation of passengers and cargo and related services and provides its customers with the means of purchasing its goods and services through the use of Cards by having in place Card Processing Agreements with Card Processors. Such agreements provide for the processing of payments on behalf of the Seller of the goods and services that are purchased through the use of Cards;

The Seller, the Purchaser and the Servicer have entered into that certain Contract Rights and Receivables Sale, Purchase and Servicing Agreement, dated as of the date hereof (the “RSPA”) pursuant to which the Seller sold and transferred certain Contract Rights and Receivables (each as defined therein) under the Card Processing Agreements to the Purchaser; and

Pursuant to the terms of the RSPA, the Seller, the Purchaser and the Servicer have agreed to enter into this Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants and premises herein contained, the Parties hereby agree as follows:

## ARTICLE I DEFINITIONS AND INTERPRETATION

**Section 1.01 Definitions.** Except as otherwise provided herein, capitalized terms used herein (including in the foregoing Recitals) and not otherwise defined herein shall have the following meanings:

“Account Control Agreement” means that certain Deposit Account Control Agreement, to be dated on or about the date hereof, among the Purchaser, the U.S. Account Bank and the Collateral Agent.

“Additional Card Processing Agreement” means a Card Processing Agreement that is the subject of any Contract Rights and Receivables Addition.

“Additional Card Processor” means each Person who enters into a Notice and Consent with the Seller in connection with a Contract Rights and Receivables Addition.

“Additional Purchase Price” means, with respect to each Interest Period, the amount, if any, by which the Monthly Net Activity Amount for such Interest Period exceeds the amount that will be required to be retained in the Collections Account or the Debt Service Reserve Account or disbursed from the Collections Account to Persons other than the Seller pursuant to Sections 2.01, 2.02, 2.03 and 2.04 with respect to such Interest Period.

“Adjustment Event” means:

(a) a Retention Event that has continued for three consecutive months;

(b) any default, early amortization event or similar event shall occur with respect to any Indebtedness of the Seller or the Servicer, Holdings or any Specified Subsidiary that exceeds in aggregate U.S. \$20,000,000 (including the Dollar equivalent of Indebtedness in any other currency) if the effect thereof is to accelerate the maturity thereof, or to permit the holder(s) of such Indebtedness, or an agent or trustee on its or their behalf, to accelerate the maturity thereof or to require the mandatory prepayment, defeasance or redemption thereof; or

(c) any final judgment or decree by a court or other adjudicatory authority of competent jurisdiction (not subject to appeal) for the payment of money in excess of U.S. \$20,000,000 (including the Dollar equivalent of Indebtedness in any other currency) is entered against the Seller or the Servicer, Holdings or any Specified Subsidiary and remains outstanding for a period of 30 days following such final judgment and is not discharged, waived or stayed.

“Adjustment Event Payment Date” has the meaning specified in Section 2.03 hereof.

“Adjustment Event Priority of Payments” means the priority of payments set forth in Section 2.03.

“Administration Agreement” means the administration agreement dated the date hereof entered into between the Borrower and the Administrator.

“Administrator” means MaplesFS Limited.

“Administrative Agent” has the meaning specified in the introductory paragraph hereof.

“Administrative Agent’s Account” means the account maintained at Citibank, N.A., New York, New York USA, ABA No. 02100089, SWIFT: CITIUS33, Account No. 36852248, Account Name: Medium Term Finance, Ref: Avianca, or such other account as from time to time may be designated by the Administrative Agent to the Borrower in writing.

“Advance Payment” means the amount of U.S. \$150,000,000, which is due and payable by the Purchaser to the Seller on the Effective Date, as provided in Section 3.01(a)(i) of the RSPA, on account of the Transfer and Sale of the Contract Rights and the Receivables.

“Affiliate” means (i) with respect to the Seller and Holdings means any Subsidiary of Holdings, and (ii) with respect to any other Person another Person that, directly or indirectly, controls or is controlled by, or is under common control with, such Person. For purposes of this definition, the term “control” (including the terms “controlling,” “controlled by,” and “under common control with”) as used with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“Agent Amounts Due” means all unpaid Agent Fees Due and all other fees, expenses and indemnities incurred by or claimed by the Agents, the Collateral Trustee, any Receiver and any Delegate and subject to reimbursement to, or required to be paid to, the Agents, the Collateral Trustee, any Receiver and any Delegate under, or in connection with, any Credit Document as have been notified in writing to the Administrative Agent at least two Business Days prior to the applicable date of payment.

“Agent Fees Due” has the meaning assigned to such term in the Purchaser Credit Agreement.

“Agents” means the Administrative Agent and the Collateral Agent.

“AMEX” means American Express Travel Related Services Company, Inc. and American Express Payment Services Limited.

“AMEX Contract” has the meaning assigned to such term in the RSPA.

“AMEX Notice and Consent” means the written agreement, dated as of, or on or about, the date hereof, among the Seller, AMEX, the Purchaser, the Collateral Agent and the other parties thereto, substantially in the form of Exhibit A to the Purchaser Credit Agreement, pursuant to which (i) the transfer of the Contract Rights from the Seller to Purchaser will be perfected as provided under Article 887 et. seq. of the Colombian Code of Commerce; and (ii) pursuant to New York law notice of such transfer will be given to, and such transfer will be consented to by, AMEX.

“Applicable Law” means any applicable statute, law, regulation, ordinance, rule, judgment, rule of common law, order, decree, approval, concession, grant, franchise, license, agreement, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of, or determination by (or any interpretation or administration of any of the foregoing by), any Governmental Authority, whether in effect as of the date hereof or hereafter.

“ARC” means Airlines Reporting Corporation or any successor or replacement thereof.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Break Costs” means the amount (if any), of break funding payments as notified to the Administrative Agent with a copy to the Collateral Agent by any Lenders pursuant to Section 2.10 of the Purchaser Credit Agreement.

“Business Day” means a day (other than Saturday or Sunday) on which commercial banks are not authorized or required to close in (i) London, United Kingdom, (ii) New York City, New York, or (iii) Bogotá, D.C., Colombia.

“Capital Lease Obligations” means an obligation that is required to be classified and accounted for as a capital lease for financial reporting purposes in accordance with IFRS, and the amount of Indebtedness represented by such obligation shall be the capitalized amount of such obligation determined in accordance with IFRS; and the stated maturity thereof shall be the date of the last payment of rent or other amount due under such lease prior to the first date upon which lease may be terminated by the lessee without payment of penalty.

“Card Processing Agreements” means the Credomatic Contract, the AMEX Contract, and each Additional Card Processing Agreement.

“Card Processors” means Credomatic, AMEX, and each Additional Card Processor.

“Cards” means credit, debit, charge and ATM cards under which cardholders purchase goods and services of the Seller and its Affiliates.

“Collateral Agent” has the meaning specified in the introductory paragraph hereof.

“Collateral Trustee” means Citibank, N.A. London Branch, or any successor, as collateral trustee for the Lenders.

“Collections” means all cash collections and other cash proceeds derived from the Contract Rights or the Receivables, whether received by the Seller, the Purchaser, or any other Person.

“Collections Account” means the Dollar deposit account with account number GB91CITI18500818821135 established and maintained by the Purchaser at the U.K. Account Bank in London, England, or any successor or replacement account, which account will be under the control of the Collateral Trustee pursuant to the U.K. Account Charge.

“Collections Coverage Ratio” means the ratio, as calculated by the Administrative Agent on the second Business Day after each Payment Date, of (a) the amount of Collections deposited in the Collections Account during the immediately preceding Interest Period ending on such Payment Date to (b) the sum of the Interest Amount plus the Principal Payment Amount payable on the next succeeding Payment Date.

“Colombian Back-Up Security Agreement” means that certain Pledge over Contract Rights and Future Revenues (*Contrato de Prenda sobre Derechos Contractuales e Ingresos Futuros*), to be dated on or about the date hereof (as amended, amended and restated, supplemented or otherwise modified from time to time) between the Seller and the Purchaser.

“Contract Rights” means the contract rights of the Seller under the Card Processing Agreements to (i) receive any kind of payments, indemnities or economic compensations derived therefrom on account of Specified Sales, including the right, among other things, to receive all future Collections derived therefrom; and (ii) to enforce the rights referred to in (i) against the respective Card Processors thereunder. For the avoidance of doubt, the Contract Rights shall not include (a) any obligation or liability of the Seller under the Card Processing Agreements or arising in any manner therefrom; or (b) the rights of the Seller:

- (a) to honor Cards or conduct any Card sale as payment for travel costs or otherwise, or to request authorization to honor Cards;
- (b) to submit Sales Slips for billing or issue credit slips in any manner provided by the applicable Card Processing Agreement;
- (c) to request, to treat or to have access to confidential information pertaining to cardholder account information;
- (d) to request or receive a restricted card list pursuant to the relevant Card Processing Agreement;
- (e) to grant consent to a Card Processor to display or show the trademarks, logos or company names of the Seller in promotion, advertising, press releases or otherwise pursuant to the applicable Card Processing Agreement;
- (f) to use trademarks and service marks of a card association in its advertising, press releases or otherwise pursuant to the applicable Card Processing Agreement;
- (g) to handle all claims or complaints by a cardholder with respect to Card transactions;
- (h) to receive documentation from a Card Processor that is required in connection with the defense of any claim of a cardholder asserted in connection with the applicable Card Processing Agreement; or
- (i) to receive any Collections derived from sales which are not Specified Sales.



“Contract Rights and Receivables Addition” has the meaning specified in Section 2.03(b) of the RSPA.

“Contract Rights and Receivables Addition Date” means the date on which any Contract Rights and Receivables Addition is completed pursuant to Section 2.03 of the RSPA.

“Costa Rican Assignment Agreement” means that certain Costa Rican law governed RSPA Assignment Agreement, dated as of the date hereof, between the Seller and the Purchaser, substantially in the form of Exhibit E to the RSPA.

“Costa Rican Back-Up Security Agreement” means that certain Costa Rican Back-Up Security Agreement, to be dated on or about the date hereof (as amended, amended and restated, supplemented or otherwise modified from time to time) between the Seller and the Purchaser.

“Credit Documents” has the meaning assigned to such term in the Purchaser Credit Agreement.

“Credomatic” means BAC International Bank, Inc. and its Subsidiaries.

“Credomatic Contract” has the meaning assigned to such term in the RSPA.

“Credomatic Notice and Consent” means, collectively, one or more written agreements, instruments, or other documents dated as of, or on or about, the date hereof among the Seller, Credomatic, the Purchaser, the Collateral Agent and the other parties thereto, substantially in the form of Exhibit B to the Purchaser Credit Agreement, pursuant to which (i) the transfer of the Contract Rights under the Credomatic Contract from the Seller to Purchaser will be perfected as provided under Article 887 et. seq. of the Colombian Code of Commerce; and (ii) pursuant to Costa Rican and Florida law notice of such transfer will be given to, and consented to by, Credomatic.

“Daily Payment Date” has the meaning specified in Section 2.01 hereof.

“Debt Service Reserve Account” means the Dollar deposit account with account number GB69CITI18500818821143 established and maintained by the Purchaser at the U.K. Account Bank in London, England, or any successor or replacement account, which account will be under the control of the Collateral Trustee pursuant to the U.K. Account Charge.

“Debt Service Required Amount” has the meaning assigned to such term in the Purchaser Credit Agreement.

“Delegate” has the meaning assigned to such term in the Security Trust Deed.

“Dollars” and “\$” mean lawful money of the United States.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” means the date first set forth above.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Expenses Agreement” means the Expenses Agreement dated December 12, 2017, between the Purchaser and the Seller, providing for the Seller to pay certain fees to the Purchaser and to pay various fees and expenses incurred by or payable to the Purchaser, Maples and Calder, and MaplesFS Limited, including all costs, fees and expenses incurred by the Purchaser and any other person contracted to provide services in relation to the Contract Rights and the Receivables, and other fees and expenses in connection with the organization, maintenance, and business of the Purchaser.

“Governmental Authority” means any national, state or local government or any agency, department, ministry, authority, regulatory authority, statutory corporation or other statutory body or juridical entity of any government or any political subdivision thereof or therein, now existing or hereafter created.

“Guarantee” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such other Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness (whether arising by virtue of partnership arrangements or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise), or (b) entered into for the purpose of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); provided, however, that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a corresponding meaning.

“Hedging Obligations” of any Person means the obligations of such Person pursuant to any interest rate swap, currency swap, credit default swap or other derivative transaction (where the primary purpose is to hedge or minimize some business, interest, currency or credit risk).

“Holdings” means Avianca Holdings S.A., a Panamanian company.

“Indebtedness” means with respect to any Person on any date of determination (without duplication):

(a) the principal in respect of (i) indebtedness of such Person for money borrowed and (ii) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable, including, in each case, any premium on such indebtedness to the extent such premium has become due and payable;

(b) all Capital Lease Obligations of such Person;

(c) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business and other monetary obligations to trade creditors existing on the Effective Date);

(d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in clauses (a) through (c) above) entered into in the ordinary course of business of such Person to the extent such letters of

credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the 20th Business Day following payment on the letter of credit);

(e) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any capital stock or, with respect to any Subsidiary of such Person, the liquidation preference with respect to any capital stock (but excluding, in each case, any accrued dividends);

(f) all obligations of the type referred to in clauses (a) through (e) of other Persons and all dividends of other Persons for the payment of which, in either case, such Person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including by means of any Guarantee;

(g) all obligations of the type referred to in clauses (a) through (f) of other Persons secured by any Lien on any property or asset of such Person (solely if such obligation is not assumed by such Person), the amount of such obligation being deemed to be the lesser of the value of such property or assets or the amount of the obligation so secured; and

(h) to the extent not otherwise included in this definition, Hedging Obligations of such Person.

The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations at such date; provided, however, that (i) the amount outstanding at any time of any Indebtedness issued with original issue discount is the amount of the liability in respect thereof determined in accordance with IFRS and (ii) Indebtedness shall not include any liability for foreign, federal, state, local or other taxes.

“Indemnified Person” has the meaning specified in Section 3.13(a).

“Interest Accrued” means accrued and unpaid interest on the principal amount of the Loan being repaid, which amount is calculated by the Administrative Agent pursuant to Section 2.5 of the Purchaser Credit Agreement.

“Interest Amount” has the meaning set forth in Section 2.5.1 of the Purchaser Credit Agreement.

“Interest Period” has the meaning set forth in Section 2.5.2 of the Purchaser Credit Agreement.

“Lender” has the meaning set forth in the Purchaser Credit Agreement.

“LIBOR” has the meaning set forth in Section 2.5.3 of the Purchaser Credit Agreement.

“Lien” means any *caución* (as defined in the Colombian Civil Code), *garantía mobiliaria*, lien, security interest, hypothecation, assignment, pledge, mortgage, deed of trust, or other charge, encumbrance, or claim of any kind, including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease or other conveyance in the nature thereof, having substantially the same economic effect as any of the foregoing and any filing of or agreement to give any public notice under any Applicable Law of any jurisdiction to evidence any of the foregoing.

“Liquidated Damages” has the meaning specified in Section 6.02 of the RSPA.

“Loan” has the meaning set forth in the Purchaser Credit Agreement.

“Loss” means any liability, damages, cost, loss or expense (including legal fees, costs and expenses and any value-added tax thereon) related to, or arising from, the inaccuracy or alleged

inaccuracy of any representation and warranty made by the Seller or Servicer under the RSPA or under the other Transaction Documents or any breach, or alleged breach, by the Seller or Servicer of any of its undertakings in the RSPA or any of the Transaction Documents or the occurrence of any Trigger Event or Adjustment Event, or otherwise as a result of the transactions contemplated hereby, including in pursuant to the Purchaser Finance Documents.

“Monthly Amortization” means, with respect to each Interest Period, the sum of the amounts that will be required to be disbursed pursuant to Section 2.02(a)(i), (b), and (c) for such Interest Period.

“Monthly Net Activity Amount” means, with respect to any Interest Period, the sum of all Collections paid to the Collections Account in such Interest Period on account of Net Activity with respect to the Receivables or Contract Rights.

“Net Activity” means with respect to any Card Processor and the applicable Contract Rights in respect of any Card Processing Agreement, on any day or during any period, the total net amount that is payable to the Purchaser, which amount shall be equal to the sum of the total face value of all charges made by holders of Cards processed under such Card Processing Agreement relating to the Contract Rights in such period, minus all discounts, credits, and other amounts deducted by such Card Processor from the amounts due to the Purchaser on such day or during such period under such Card Processing Agreement pursuant to such Card Processing Agreement.

“New York Pass-Through Account” means the Dollar deposit account with account number 11925000 established and maintained by the Purchaser at the U.S. Account Bank in New York, New York, or any successor or replacement account, which account will be under the control of the Collateral Agent pursuant to the Account Control Agreement.

“Notice and Consents” means, collectively, the Credomatic Notice and Consent, the AMEX Notice and Consent and each Supplemental Notice and Consent.

“Notice Party” means the Administrative Agent (in accordance with Section 2.09(b) hereof or acting at the direction of any Lender), the Purchaser, the Seller, the Servicer or any Lender.

“Party” has the meaning specified in the introduction to this Agreement.

“Payment Date” has the meaning assigned to such term in Section 2.5.1 of the Purchaser Credit Agreement.

“Person” means any legal person or entity, including any individual, partnership, joint venture, corporation, association, joint-stock company, trust, limited liability company, limited liability partnership, unincorporated organization, governmental entity or other entity of similar nature.

“Principal Payment Amount” has the meaning set forth in the Purchaser Credit Agreement.

“Priority of Payments” means the Standard Daily Priority of Payments, the Standard Payment Date Priority of Payments, the Adjustment Event Priority of Payments or the Trigger Event Priority of Payments, as the context may require.

“Process Agent” means National Registered Agents, Inc., 111 Eighth Avenue, New York, NY 10011.

“Purchaser” has the meaning specified in the introductory paragraph hereof.

“Purchaser Credit Agreement” means that certain Loan Agreement, dated as of the date hereof, among the Purchaser, as borrower, the guarantors party thereto, the Administrative Agent, the Collateral Agent and the lenders party thereto from time to time.



“Purchaser Finance Documents” means the Purchaser Credit Agreement, all Credit Documents (as defined in the Purchaser Credit Agreement) and all other documents and instruments executed and/or delivered in connection therewith.

“Purchaser Finance Parties” means the Person(s), including, but not limited to, the Administrative Agent, the Collateral Agent, the Collateral Trustee, any Receiver, any Delegate and any Lender, from time to time (i) providing Purchaser Financing, (ii) arranging Purchaser Financing, or (iii) acting as an agent with respect to Purchaser Financing.

“Purchaser Financing” means the financing arrangements, including the Purchaser Credit Agreement, which may be in the form of a loan, note or bond, pursuant to which the Purchaser funds or refinances from time to time the Advance Payment paid to the Seller under the RSPA.

“Receivables” means any and all Collections accrued under the Card Processing Agreements that are due on account of Specified Sales from (a) AMEX or Credomatic to the Seller immediately prior to giving effect to the RSPA on the Effective Date (and due to the Purchaser immediately upon giving effect to the RSPA on the Effective Date) and (b) each Additional Card Processor to the Seller immediately prior to giving effect to the RSPA and the applicable Notice and Consent on the applicable Contract Rights and Receivables Addition Date (and due to the Purchaser immediately upon giving effect to the RSPA and the applicable Notice and Consent on the applicable Contract Rights and Receivables Addition Date).

“Receiver” has the meaning assigned to such term in the U.K. Account Charge.

“Related Party” means, in respect of any Person, any Affiliate of that Person or any officer, director, employee, advisors or agent of that Person or any such Affiliate or any Person by whom any of them is controlled.

“Required Lenders” has the meaning specified in the Purchaser Credit Agreement.

“Retention Event” means the Collections Coverage Ratio is less than 2.5:1.0 on any date of determination.

“RSPA” has the meaning specified in the introductory paragraph hereof.

“RSPA Security Documents” means the Colombian Back-Up Security Agreement, the Costa Rican Back-Up Security Agreement, all additional security documents as might be required for any necessary Contract Rights and Receivables Addition and all other documents, instruments and filings to be executed and delivered by the Seller and/or the Purchaser, in connection with such agreements and the transactions contemplated thereby.

“Sale” means the transaction occurring on account of the Seller’s selling, assigning, and transferring to the Purchaser the Receivables under the RSPA.

“Sales Slip” means a sales slip under a Card evidencing a payment obligation of the holder of the Card in respect of goods or services purchased by such holder using such Card.

“Security Trust Deed” means the Security Trust Deed to be entered into on or about the date hereof among the Lenders, the Collateral Trustee and the Borrower.

“Seller” has the meaning specified in the introductory paragraph hereof.

“Seller’s Account” means account of the Seller no. 964258057 maintained at JPMORGAN CHASE BANK, N.A., ABA No. 021000021; Reference: Aerovías del Continente Americano S.A. Avianca.

“Servicer” means, initially, the Seller, in its capacity as the Servicer under the Undertaking Agreement, and, thereafter, its successors and permitted assigns and designees appointed in accordance with the terms of the Undertaking Agreement to carry out the duties and responsibilities provided in Article III of the Undertaking Agreement.

“Specified Sales” means the sales, including future sales, made by travel agencies in the United States and cleared through ARC of airline tickets or related services provided by the Seller where payment in the case of any such sale is made by a MasterCard® Card, Visa® Card, or American Express® Card, however branded, or any one or more of such Cards, including all such sales identified by those certain merchant codes set forth in any Notice and Consent or any notice given by a Card Processor to the Purchaser and the Collateral Agent from time to time as provided in the Notice and Consent by and among, inter alia, the Purchaser, the Seller, the Collateral Agent, and such Card Processor; provided that with respect to each Card Processing Agreement, “Specified Sales” shall include only “Specified Sales” as defined in the Notice and Consent relating to such Card Processing Agreement.

“Specified Subsidiary” means each of TACA International Airlines, S.A., a company organized under the laws of El Salvador, Avianca Costa Rica S.A. (f/k/a Lines Aéreas Costarricenses S.A.), a company organized under the laws of Costa Rica, and Trans American Airlines, S.A., a company organized under the laws of Peru, and any successors or assigns of each of the foregoing.

“Standard Daily Priority of Payments” means the priority of payments set forth in Section 2.01.

“Standard Payment Date Priority of Payments” means the priority of payments set forth in Section 2.02.

“Subsidiary” means, in respect of any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of capital stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by (a) such Person, (b) such Person and one or more Subsidiaries of such Person, or (c) one or more Subsidiaries of such Person.

“Supplemental Notice and Consent” means a Notice and Consent among the Card Processor and its applicable Affiliates, the Seller and its applicable Affiliates, the Purchaser and the Collateral Agent, with respect to any Card Processor in connection with any Contract Rights and Receivables Addition.

“Transaction Documents” means, collectively, the RSPA, the Costa Rican Assignment Agreement, the Expenses Agreement, the Administration Agreement, the Undertaking Agreement, the RSPA Security Documents, this Agreement, the Card Processing Agreements, each Notice and Consent, and each other transfer, assignment or other document executed and delivered by the Seller and/or the Servicer in connection with the foregoing.

“Transfer” means (i) in respect of the Contract Rights, the “*cesión de contrato*” set forth in article 887 of the Colombian Code of Commerce; and (ii) in respect of the Receivables, the “*cesión*” set forth in article 1959 of the Colombian Civil Code, all of which, pursuant to the term of the RSPA.

“Trigger Event” means each of the events specified in Section 6.01 of the RSPA.

“Trigger Event Priority of Payments” means the priority of payments set forth in Section 2.04.

“U.K. Account Bank” means the Collateral Agent, in its capacity as account bank under the U.K. Account Charge, or any other financial institution satisfactory to the Required Lenders (as defined in the Purchaser Credit Agreement).



“U.K. Account Charge” means the English law security agreement dated as of the date hereof and entered into between the Purchaser as chargor, the Collateral Trustee and the U.K. Account Bank.

“U.S. Account Bank” means the Collateral Agent, in its capacity as account bank under the Account Control Agreement, or any other financial institution satisfactory to the Required Lenders.

“Undertaking Agreement” means the Receivables Maintenance Agreement, dated the date hereof, by and among the Seller, the Servicer and the Purchaser.

“United States” and “U.S.” means the United States of America and the territories and possessions thereof.

“Unsettled Balance” means, at any date of determination, the difference equal to (a) the aggregate principal amount of the Loan on the funding date thereof minus (b) the aggregate Principal Payment Amounts remitted to the Administrative Agent for the benefit of the Lenders in accordance with the applicable Priority of Payments and by the Administrative Agent to the Lenders in accordance with the Purchaser Credit Agreement.

“Unwind Amount” means an amount equal to, at any date of determination, the sum, without duplication, of (a) the Unsettled Balance, plus (b) the accrued and unpaid Interest Accrued on the Unsettled Balance through the date of payment of the Unsettled Balance in full, plus (c) all other amounts (including enforcement costs and expenses) due and payable to the Agents and the Collateral Trustee (for their own accounts or for the account or benefit of any other Person), including the Indemnified Persons (other than the Purchaser), plus (d) any Break Costs.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

## **Section 1.02 Other Interpretive Provisions.**

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words “hereof,” “herein,” “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement, and any subsection, Section, Article, Schedule, and Exhibit references are to this Agreement unless otherwise specified.

(c) The term “documents” includes any and all documents, instruments, written agreements, certificates, indentures, notices, and other writings, however evidenced (including electronically).

(d) The term “including” is not limiting and (except to the extent specifically provided otherwise) shall mean “including without limitation.”

(e) Unless otherwise specified, in the computation of periods of time from a specified date to a later specified date, the word “from” shall mean “from and including,” the words “to” and “until” each shall mean “to but excluding,” and the word “through” shall mean “to and including.”

(f) The terms “may” and “might” and similar terms used with respect to the taking of an action by any Person shall reflect that such action is optional and not required to be taken by such Person.

(g) Unless otherwise expressly provided herein: (i) references to agreements (including this Agreement) and other documents shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent that such amendments and other modifications are not prohibited by any Transaction Document, and (ii) references to any Applicable Law are to be construed as including all statutory and regulatory provisions or rules consolidating, amending, replacing, supplementing, interpreting or implementing such Applicable Law.

(h) The Transaction Documents are the result of negotiations among the parties thereto and have been reviewed by counsel to them and are the products of all of such parties. Accordingly, they shall not be construed against any party thereto merely because of any such party's involvement in their preparation.

(i) The specification of dollar amounts hereunder in U.S. Dollars shall be deemed to include U.S. Dollars and the equivalent thereof in other currencies.

## ARTICLE II PRIORITY OF PAYMENTS, CALCULATIONS AND NOTICES

**Section 2.01 Standard Daily Priority of Payments.** Unless the Collateral Agent has prior to 10:00 a.m. (New York time) on any Business Day of an Interest Period that is not the Payment Date with respect to such Interest Period (each such day, a "Daily Payment Date") received written notice from any Notice Party that (1) a Trigger Event has occurred and is continuing and notice of such Trigger Event has been given by the Purchaser pursuant to Section 6.02 of the RSPA or by the Administrative Agent (at the direction of the Required Lenders in accordance with the Purchaser Credit Agreement), (2) the Liquidated Damages is automatically payable pursuant to Section 6.03 of the RSPA, or (3) an Adjustment Event has occurred and is continuing and notice has been given by the Purchaser pursuant to Section 6.04 of the RSPA or by the Administrative Agent (in accordance with Section 2.09(b) hereof or at the direction of the Required Lenders in accordance with the Purchaser Credit Agreement), and has not received written notice from the Administrative Agent (acting at the direction of the Required Lenders) prior to 10:00 a.m. (New York time) on such Daily Payment Date that such written notice has been revoked or is otherwise no longer of further force or effect, on such Daily Payment Date the Collateral Agent shall disburse (or leave undisbursed) the cash standing to the credit of the Collections Account as follows:

(a) First, disburse the cash to the Debt Service Reserve Account, until the amount standing to the credit of the Debt Service Reserve Account is equal to the Debt Service Required Amount;

(b) Second, leave undisbursed and remaining in the Collections Account the remaining cash until the Business Day in the Interest Period when the amount of such remaining cash first exceeds the Monthly Amortization with respect to the Interest Period;

(c) Third, on the Business Day of the Interest Period when the amount of such remaining cash first exceeds the Monthly Amortization with respect to such Interest Period, and each subsequent Business Day in the Interest Period to, but excluding, the Payment Date of such Interest Period, leave undisbursed and remaining in the Collections Account such remaining cash in an amount equal to the Monthly Amortization with respect to the Interest Period and, unless the Collateral Agent has prior to 10:00 a.m. (New York time) on such Daily Payment Date received notice from a Notice Party that a Retention Event has occurred and is continuing, and has not received written notice from the Administrative Agent (acting at the direction of the Required Lenders) prior to 10:00 a.m. (New York time) on such Daily Payment Date that such written notice has been revoked or is otherwise no longer of further force or effect, disburse to the Seller's Account such remaining cash in excess of such Monthly Amortization as a payment of the Additional Purchase Price; and

(d) Fourth, if the Collateral Agent has prior to 10:00 a.m. (New York time) on such Daily Payment Date received notice from a Notice Party that a Retention Event has occurred and is continuing, and has not received written notice from the Administrative Agent (acting at the direction of the Required Lenders) prior to 10:00 a.m. (New York time) on such Daily Payment Date that such written notice has been revoked or is otherwise no longer of further force or effect, leave undisbursed and remaining in the Collections Account all such remaining cash.

**Section 2.02 Standard Payment Date Priority of Payments.** Unless the Collateral Agent has prior to 10:00 a.m. (New York time) on the Payment Date with respect to any Interest Period received written notice from any Notice Party that (1) a Trigger Event has occurred and is continuing and notice has been given by the Purchaser pursuant to Section 6.02 of the RSPA or by the Administrative Agent (at the direction of the Required Lenders in accordance with the Purchaser Credit Agreement), (2) the Liquidated Damages is automatically payable pursuant to Section 6.03 of the RSPA, or (3) an Adjustment Event has occurred and is continuing and notice has been given by the Purchaser pursuant to Section 6.04 of the RSPA or by the Administrative Agent (in accordance with Section 2.09(b) hereof or at the direction of the Required Lenders in accordance with the Purchaser Credit Agreement), and has not received written notice from the Administrative Agent (acting at the direction of the Required Lenders) prior to 10:00 a.m. (New York time) on such Payment Date that such written notice has been revoked or is otherwise no longer of further force or effect, on such Payment Date the Collateral Agent shall disburse (or leave undisbursed) the cash standing to the credit of the Collections Account (and for purposes of clauses (a), (b) and (c) below, if cash standing to the credit of the Collections Account is insufficient to make such payments, cash standing to the credit of the Debt Service Reserve Account) as follows:

(a) First, (i) first, disburse to the Agents, the Collateral Trustee, any Receiver and any Delegate the cash required to pay, pro rata and *pari passu*, to the Agents, the Collateral Trustee, any Receiver and any Delegate all Agent Amounts Due for such period, and then, after full and final discharge of the former, (ii) second, disburse to the Administrator (A) all amounts owing to the Administrator pursuant to the Administration Agreement and (B) all amounts owing to the Purchaser pursuant to the Expenses Agreement, in each case as notified by the Administrator to the Administrative Agent and the Collateral Agent in writing two Business Days prior to such Payment Date;

(b) Second, disburse to the Administrative Agent's Account an amount of the cash equal to the Interest Amount with respect to such Payment Date, together with the Interest Amount with respect to each prior Payment Date, if any, for which there was insufficient cash standing to the credit of the Collections Account or the Debt Service Reserve Account for the Collateral Agent to make the disbursement to the Administrative Agent's Account of the Interest Amount with respect to such Payment Date as provided in this clause (b);

(c) Third, disburse to the Administrative Agent's Account an amount of the cash equal to the Principal Payment Amount with respect to such Payment Date, together with the Principal Payment Amount with respect to each prior Payment Date, if any, for which there was insufficient cash standing to the credit of the Collections Account or the Debt Service Reserve Account for the Collateral Agent to make the disbursement to the Administrative Agent's Account of the Principal Payment Amount with respect to such Payment Date as provided in this clause (c);

(d) Fourth, disburse to the Persons entitled thereto, as applicable, the cash required to pay, pro rata and *pari passu*, to the Persons entitled thereto all unpaid fees, expenses and indemnities incurred by or claimed through such Person and subject to reimbursement to, or required to be paid to, such Person under or in connection with any Transaction Document, to the extent such amount has been notified to the Administrative Agent and the Collateral Agent two Business Days prior to such Payment Date;

(e) Fifth, disburse to the Debt Service Reserve Account such cash, until the amount of cash standing to the credit of the Debt Service Reserve Account is equal to the Debt Service Required Amount;

(f) Sixth, unless the Collateral Agent has prior to 10:00 a.m. (New York time) on such Payment Date received notice from a Notice Party that a Retention Event has occurred and is continuing, and has not received written notice from the Administrative Agent (acting at the direction of the Required Lenders) prior to 10:00 a.m. (New York time) on such Payment Date that such written notice has been revoked or is otherwise no longer of further force or effect, disburse all remaining cash to the Seller's Account as a payment of the Additional Purchase Price; and

(g) Seventh, if the Collateral Agent has prior to 10:00 a.m. (New York time) on such Payment Date received notice from a Notice Party that a Retention Event has occurred and is continuing, and has not received written notice from the Administrative Agent (acting at the direction of the Required Lenders) prior to 10:00 a.m. (New York time) on such Payment Date that such written notice has been revoked or is otherwise no longer of further force or effect, leave undisbursed and remaining in the Collections Account all such remaining cash.

**Section 2.03 Adjustment Event Priority of Payments.** Unless the Collateral Agent has prior to 10:00 a.m. (New York time) on any Business Day of an Interest Period received written notice from any Notice Party that (1) a Trigger Event has occurred and is continuing, and notice has been given by the Purchaser pursuant to Section 6.02 of the RSPA or by the Administrative Agent (at the direction of the Required Lenders in accordance with the Purchaser Credit Agreement), and has not received written notice from the Administrative Agent (acting at the direction of the Required Lenders) prior to 10:00 a.m. (New York time) on the Adjustment Event Payment Date (as defined below) that such written notice has been revoked or is otherwise no longer of further force or effect, or (2) the Liquidated Damages is automatically payable pursuant to Section 6.03 of the RSPA, if the Collateral Agent has prior to 10:00 a.m. (New York time) on such Business Day received written notice from a Notice Party that an Adjustment Event has occurred and is continuing (any such Business Day, an "Adjustment Event Payment Date"), and has not received written notice from the Administrative Agent (acting at the direction of the Required Lenders) prior to 10:00 a.m. (New York time) on such Adjustment Event Payment Date that such written notice has been revoked or is otherwise no longer of further force or effect, the Collateral Agent shall disburse the cash standing to the credit of the Collections Account as follows on such Adjustment Event Payment Date:

(a) First, (i) first, disburse to the Agents, the Collateral Trustee, any Receiver and any Delegate the cash required to pay, pro rata and pari passu, to the Agents, the Collateral Trustee, any Receiver and any Delegate all Agent Amounts Due, and then, after full and final discharge of the former, (ii) second, disburse to the Administrator (A) all amounts owing to the Administrator pursuant to the Administration Agreement and (B) all amounts owing to the Purchaser pursuant to the Expenses Agreement, in each case as notified by the Administrator to the Administrative Agent and the Collateral Agent in writing two Business Days prior to such Payment Date;

(b) Second, disburse to the Debt Service Reserve Account such cash, until the amount of cash standing to the credit of the Debt Service Reserve Account is equal to the Debt Service Required Amount;

(c) Third, to the Administrative Agent's Account the cash for application to the Principal Payment Amount with respect to each Payment Date occurring on or after such Business Day, in inverse order of maturity, until the amount of all such Principal Payment Amounts has been disbursed to the Administrative Agent's Account, together with an amount of cash equal to the Interest Accrued and unpaid with respect to and any Break Costs relating to each such payment of any Principal Payment



Amount, and all other amounts payable in connection with such payments, in each case as calculated by or notified to (as applicable) the Administrative Agent pursuant to the Purchaser Credit Agreement;

(d) Fourth, disburse to any Person entitled thereto, as applicable, the cash required to pay, pro rata and pari passu, to such Person all unpaid fees, expenses and indemnities incurred by, or claimed through, such Person and subject to reimbursement to, or required to be paid to, such Person under, or in connection with, any Transaction Document until receipt from the Administrative Agent of notice confirming that the Administrative Agent has received confirmation from the Agents, the Collateral Trustee, any Receivers, any Delegates and each Lender of the payment in full of all such obligations to the Person; and

(e) Fifth, upon payment in full of all obligations owed by to the Purchaser Finance Parties pursuant to clause (d) above, leave any amounts remaining in the Collections Account, until instructed by the Purchaser to disburse such amounts, to be applied by the Purchaser to make payments to the Seller in accordance with the RSPA.

**Section 2.04 Trigger Event Priority of Payments.** If the Collateral Agent and the Collateral Trustee have prior to 10:00 a.m. (New York time) on any Business Day received written notice from the Administrative Agent that (1) a Trigger Event has occurred and notice has been given by the Purchaser pursuant to Section 6.02 of the RSPA or by the Administrative Agent (at the direction of the Required Lenders in accordance with the Purchaser Credit Agreement), or (2) the Liquidated Damages is automatically payable pursuant to Section 6.03 of the RSPA, and have not received written notice from the Administrative Agent (acting at the direction of the Required Lenders) by 10:00 a.m. on such Business Day that such notice has been revoked or is otherwise of no further force or effect, (i) the Collateral Agent shall, pursuant to Section 2.3.2 of the Loan Agreement, disburse the cash standing to the credit of the New York Pass-Through Account to the Collections Account and provide notice to the Collateral Trustee of such disbursement, and (ii) following the disbursement set forth in clause (i) above, the cash standing to the credit of the Collections Account and the Debt Service Reserve Account shall be disbursed by the Collateral Trustee (or by the U.K. Account Bank as instructed by the Collateral Trustee) pursuant to Section 3.1 of the Security Trust Deed.

**Section 2.05 Payments to the Purchaser.** Notwithstanding anything to the contrary herein, the parties hereto hereby agree that any payments made to or to be disbursed in accordance with any Priority of Payments in respect of any Interest Amount, Principal Payment Amount or other principal or interest payments or Break Costs, and any portion of the Unwind Amount relating to the foregoing amounts, shall be made to the Administrative Agent's Account; *provided* that any amounts to be paid in connection with any fees, expenses or indemnities or other amounts shall be paid as directed by the intended final recipient of such amount (solely to the extent that the Collateral Agent has received written notice of any such amounts to be paid in accordance with Section 2.07(b)).

**Section 2.06 LIBOR, Debt Service Collections and Other Reports.**

(a) The Administrative Agent shall provide a copy to Seller, the Servicer and the Purchaser by email of each notice provided by its pursuant to Section 2.5.5 of the Purchaser Credit Agreement setting forth the LIBOR rate, the Debt Service Required Amount, and the applicable Agent Amounts Due, Interest Amount and Principal Payment Amount due on then succeeding Payment Date.

(b) Within one Business Day after each Payment Date, the Collateral Agent shall deliver by email to the Administrative Agent, the Purchaser, the Seller and the Servicer, a monthly statement setting forth the Collections received from the Card Processors in the Collections Account during the Interest Period ending on such Payment Date and describing the application of funds from the Collections Account during such Interest Period, including the amount transferred to the Seller's Account during such Interest Period.

(c) The Administrative Agent shall deliver by email to the Collateral Agent, the Purchaser, the Seller and the Servicer the Collections Coverage Ratio on the date of any such determination.

(d) In the event that the Collateral Agent receives written notice as provided in Section 2.01, Section 2.02, Section 2.03, or Section 2.04 that (i) a Trigger Event has occurred and is continuing, and notice has been given by the Purchaser pursuant to Section 6.02 of the RSPA or by the Administrative Agent (at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement), or (ii) the Liquidated Damages is automatically payable pursuant to Section 6.03 of the RSPA, or (iii) an Adjustment Event has occurred and is continuing and notice has been given by the Purchaser pursuant to Section 6.04 of the RSPA or by the Administrative Agent (in accordance with Section 2.09(b) hereof or at the direction of the Required Lenders in accordance with the Purchaser Credit Agreement), or (iv) a Retention Event has occurred and is continuing, and the Administrative Agent receives written notice from the Required Lenders that such Trigger Event has been waived or rescinded or is otherwise no longer of force or effect, such Liquidated Damages is no longer payable, such Adjustment Event is no longer continuing or is no longer of force or effect, or such Retention Event is no longer continuing, as the case may be, the Administrative Agent will promptly (and in any event within five (5) Business Days after its receipt of actual notice thereof), give written notice to the Collateral Agent of such fact or circumstance for the purpose of restoring the application of the Standard Daily Priority of Payments and the Standard Payment Date Priority of Payments or eliminating the retention of cash in the Collection Account as provided in Section 2.01(d) or Section 2.02(g).

(e) In the event that the Administrative Agent (at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement) provides notice of a Trigger Event to any Notice Party, (i) the Administrative Agent shall concurrently provide a copy of such notice to the Collateral Trustee and (ii) the Administrative Agent shall promptly send a notice to the Collateral Trustee and the Notice Parties stating the amount of (x) the Agent Amounts Due, (y) the Unwind Amount (including account details to which each portion of the Unwind Amount is requested to be paid) and (z) all unpaid fees, expenses and indemnities incurred by, or claimed through, a Purchaser Finance Party and subject to reimbursement to, or required to be paid to, such Purchaser Finance Party under, or in connection with, any Transaction Document, in each case to the extent the Administrative Agent has received notice in writing at least two Business Days prior of such unpaid fees, expenses or indemnities.

#### **Section 2.07 Determination of Amounts Due the Parties.**

(a) The Administrative Agent shall notify the Parties hereto by 10:00 a.m. (New York time) within one Business Day after receiving notice under the Purchaser Credit Agreement of any unpaid fees, expenses, and indemnities incurred by or claimed through or disburseable to the Purchaser or the Administrative Agent or any other Person, including any Agent Amounts Due, and subject to reimbursement by, or required to be paid by, the Seller to such Person under or in connection with any Transaction Document.

(b) In connection with any application of cash standing to the credit of the Collections Account or the Debt Service Reserve Account pursuant to Section 2.02, Section 2.03, Section 2.04, or retention of amounts in the Collections Account pursuant to Section 2.01, for unpaid fees, expenses and indemnities incurred by or claimed through any Person and subject to reimbursement to, or required to be paid to, such Person under or in connection with any Transaction Document, the Collateral Agent shall only be required to make such payments, or retain such amounts, if it has received notice of such unpaid fees, expenses and indemnities by 10:00 a.m. (New York time) one Business Day prior to the applicable date of payment or retention, as applicable; if the Collateral Agent receives notice of such amount after such time, such amounts shall be payable on the next succeeding Payment Date or Business Day on which such Person is entitled to payment under Section 2.02, Section 2.03 or Section 2.04, as



applicable, or such amounts shall be retained on the next succeeding Business Day on which such amount is permitted to be retained under Section 2.01.

**Section 2.08 Notice of Break Costs.** If the Administrative Agent shall receive written notice from any Lender of the amount of any Break Costs, the Administrative Agent shall promptly send a notice to the Seller, the Purchaser, the Servicer and the Collateral Agent by email containing the amount of such Break Costs.

**Section 2.09 Notice of Retention Events, Adjustment Events and Trigger Events.**

(a) Upon the occurrence of an Adjustment Event pursuant to clause (b) and (c) of the definition thereof or a Trigger Event, the Seller and the Purchaser shall promptly, and in any event within one Business Day, notify the Collateral Agent and the Administrative Agent that an Adjustment Event or a Trigger Event (as applicable) has occurred and, provided, the Collateral Agent has received such notice as provided in this Section 2.09, or received notice from any other Notice Party, on or before 10:00 a.m. (New York time) of the date of any payment pursuant to the Priority of Payments, as applicable, the Collateral Agent shall adjust the payments made to conform to the applicable Priority of Payments in accordance herewith.

(b) Upon the occurrence of a Retention Event or an Adjustment Event pursuant to clause (a) of the definition thereof, the Administrative Agent shall promptly, and in any event within one Business Day, deliver a notice, substantially in the form of Exhibit A hereto, to the Collateral Agent, the Seller, the Servicer and the Purchaser that a Retention Event or an Adjustment Event (as applicable) has occurred and, provided that the Collateral Agent has received such notice as provided in this Section 2.09, or received notice from any other Notice Party, on or before 10:00 a.m. (New York time) of the date of any payment pursuant to the Priority of Payments, as applicable, the Collateral Agent shall adjust the payments made to conform to the applicable Priority of Payments in accordance herewith.

(c) Upon receipt of notice from any Notice Party of a Trigger Event, the Administrative Agent shall (at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement) promptly, and in any event within one Business Day, deliver a notice, substantially in the form of Exhibit A hereto, to the Collateral Agent, the Collateral Trustee, the Seller, the Servicer and the Purchaser that a Trigger Event has occurred and, provided that the Collateral Agent and the Collateral Trustee have received such notice as provided in this Section 2.09, or received notice from any other Notice Party, on or before 10:00 a.m. (New York time) of the date of any payment pursuant to the Priority of Payments, as applicable, the Collateral Agent shall adjust the payments made to conform to the applicable Priority of Payments in accordance herewith and the cash standing to the credit of the Collections Account and the Debt Service Reserve Account shall be disbursed by the Collateral Trustee (or by the U.K. Account Bank as instructed by the Collateral Trustee) pursuant to Section 3.1 of the Security Trust Deed.

**Section 2.10 Disbursements from Debt Service Reserve Account.**

(a) If the amount in the Collections Account is insufficient to make the disbursements required pursuant to Section 2.02(a), (b) and (c) then the Collateral Agent shall transfer any additional required amount from the Debt Service Reserve Account, to the extent of available funds in such account, in order to make such disbursements.

(b) Unless the Collateral Agent has prior to 10:00 a.m. (New York time) on a Payment Date received written notice from any Notice Party that (1) a Trigger Event has occurred and is continuing and notice has been given by the Purchaser pursuant to Section 6.02 of the RSPA or by the Administrative Agent (at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement) pursuant to Section 2.09(c), (2) the Liquidated Damages is automatically payable pursuant to

Section 6.03 of the RSPA, or (3) an Adjustment Event has occurred and is continuing and notice has been given by the Purchaser pursuant to Section 6.04 of the RSPA or by the Administrative Agent (in accordance with Section 2.09(b) hereof or at the direction of the Required Lenders in accordance with the Purchaser Credit Agreement), on such Payment Date, the Collateral Agent shall disburse to the Collections Account from the Debt Service Reserve Account the excess of any amount held in the Debt Service Reserve Account over the Debt Service Required Amount.

**Section 2.11 Payments upon Discharge of Purchaser Financing.** Upon payment in full of all obligations owed to the Purchaser Finance Parties pursuant to Section 2.04(ii) hereof, the Purchaser shall instruct the Collateral Trustee to disburse any amounts remaining in the Collections Account and the Debt Service Reserve Account to the New York Pass-Through Account, to be applied by the U.S. Account Bank (as instructed by the Purchaser) to make payments to the Seller in accordance with the RSPA.

### ARTICLE III MISCELLANEOUS

**Section 3.01 Rights Confined to Parties.** Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any Person, other than the Parties and their successors and assigns, any right, remedy or claim under or by reason of this Agreement, and the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the Parties and their respective successors and permitted assigns. Notwithstanding anything in the foregoing to the contrary, the Parties hereto acknowledge and agree that (a) the Seller may not assign its rights or obligations hereunder, (b) pursuant hereto the Purchaser may assign all its rights hereunder in accordance with the terms of the Purchaser Finance Documents and the transactions in connection therewith, and (c) as a result of such assignment by the Purchaser, the rights of the Purchaser under this Agreement may be enforced by the Collateral Agent on behalf of the Purchaser Finance Parties.

**Section 3.02 Amendment or Waiver.** Any provision of this Agreement may be amended or waived only with the written consent of each of the Seller, the Purchaser, the Administrative Agent and the Collateral Agent; *provided* that any amendment that affects the rights or obligations of the Servicer hereunder shall require also the written consent of the Servicer; *provided further* that any amendment that affects the rights or obligations of the Collateral Trustee hereunder or under the Security Trust Deed shall require also the written consent of the Collateral Trustee; *provided, further*, upon receipt by the Seller, the Servicer and the Purchaser from the Administrative Agent, acting at the direction of the Required Lenders, of a written notice that all obligations under Purchaser Finance Documents are paid in full, the Administrative Agent and the Collateral Agent shall no longer be parties to this Agreement (without limiting any indemnity or expense obligations, which shall survive the removal of the Administrative Agent and the Collateral Agent), and that after delivery of such the remaining Parties hereto may amend this Agreement among themselves to account for the removal of the Administrative Agent and the Collateral Agent.

**Section 3.03 Binding Upon Assigns.** Except as otherwise provided herein, the provisions of this Agreement (including any amendments, modifications and waivers hereof properly adopted) shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. Neither the Purchaser nor the Seller nor the Servicer may assign or otherwise transfer any of its respective rights or obligations hereunder without the prior written consent of the Administrative Agent (at the direction of the Required Lenders).

**Section 3.04 Waiver of Immunity.** This Agreement and any other documents delivered pursuant hereto, and any actions taken hereunder, constitute commercial acts by the Seller and the Purchaser. To the extent that the Seller or the Purchaser, or any of their respective assets, may have, or

may hereafter become entitled to or have attributed to it, any right of immunity, on the grounds of sovereignty or otherwise, from any legal action, suit or proceeding, from set-off or counterclaim, from the jurisdiction of any competent court, from service of process upon it or any agent, from attachment prior to judgment, from attachment upon or in aid of execution of judgment, or from execution of judgment or other legal process or proceeding for the giving of any relief or for the enforcement of judgments, in any jurisdiction, each of the Seller and the Purchaser hereby irrevocably and unconditionally and to the fullest extent permitted by law waives, and agrees not to plead or claim, any such immunity for itself or any of its property, assets or revenues wherever located with respect to its obligations, liabilities or any other matter under or arising out of or in connection with this Agreement, any of the other Transaction Documents, or any document delivered pursuant hereto or thereto; it being intended that the foregoing waiver and agreement shall be effective, irrevocable and not subject to withdrawal in any and all jurisdictions.

**Section 3.05 Notices.** All notices, requests, instructions, directions and other communications provided for herein (including any modifications of, or waivers, requests or consents under, this Agreement) shall be given or made in writing (including by electronic mail) delivered to the intended recipient as follows:

(a) if to the Purchaser, to it at c/o P.O. Box 1093, Boundary Hall, Cricket Square, Grand Cayman KY1-1102, Cayman Islands; Attention: The Directors; Facsimile No.: (345) 945-7100; Tel.: (345) 945-7099; email: [info@maplesf.com](mailto:info@maplesf.com);

with copies to:

Citibank, N.A.  
388 Greenwich Street  
New York, NY 10013 Attn: Miriam Y. Molina  
Tel.: (212) 816-5576  
email: [miriam.molina@citi.com](mailto:miriam.molina@citi.com);

and

(b) if to the Seller, to it at Aerovías del Continente Americano S.A. Avianca, Centro Administrativo, Avenida Calle 26 No. 59-15 Piso 10, Bogotá, D.C., Colombia; Attention: Vicepresidente Financiero; Facsimile No.: (571) 413-9809; Tel.: (571) 295-6765; email: [Lucia.avila@Avianca.com](mailto:Lucia.avila@Avianca.com);

and

(c) if to the Servicer, to it at Aerovías del Continente Americano S.A. Avianca, Centro Administrativo, Avenida Calle 26 No. 59-15 Piso 10, Bogotá, D.C., Colombia; Attention: Vicepresidente Financiero; Facsimile No.: (571) 413-9809; Tel.: (571) 295-6765; email: [Lucia.avila@Avianca.com](mailto:Lucia.avila@Avianca.com);

and

(d) if to the Administrative Agent, to it at Citibank, N.A., 388 Greenwich Street, New York, NY 10013, USA, Attn: Miriam Y. Molina, Tel.: (212) 816-5576, email: [miriam.molina@citi.com](mailto:miriam.molina@citi.com);

and

(e) if to the Collateral Agent, to it at 388 Greenwich Street, New York, NY 10013, USA, Attn: Karen Abarca, Tel.: (212) 816-7759, email: [karen.abarca@citi.com](mailto:karen.abarca@citi.com) / [cts.spag@citi.com](mailto:cts.spag@citi.com);

and

(f) if to the Collateral Trustee, to it at Citibank, N.A., London Branch, 6th floor, CGC-1, Citigroup Centre, Canada Square, Canary Wharf, London E14 5LB, United Kingdom, E-mail: [issuerpfla@Citi.com](mailto:issuerpfla@Citi.com), Fax: +44 207 500 5877

Except as otherwise provided in this Agreement, all such communications shall be effective upon receipt at the address or email specified herein.

**Section 3.06 Construction.** The Table of Contents hereto and the Article and Section headings herein are for convenience only and shall not affect the construction hereof.

**Section 3.07 Severability.** To the extent permitted by law, any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 3.08 Law and Jurisdiction.**

(a) **GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (NOT INCLUDING SUCH STATE'S CONFLICT OF LAWS PROVISIONS OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

(b) **Jurisdiction.** Each of the parties hereto hereby irrevocably consents to the exclusive jurisdiction of any court of the State of New York or any United States federal court sitting in the Borough of Manhattan, New York City, New York, United States, and any appellate court from any thereof in respect of any actions or proceedings brought against it hereunder, and hereby waives its rights to any other jurisdiction that may apply by virtue of its present or any other future domicile or for any other reason. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, any objection to any suit, action, or proceeding that may be brought in connection with the Transaction Documents in such courts whether on the grounds of venue, residence or domicile or on the ground that any such suit, action or proceeding has been brought in an inconvenient forum. Additionally, each of the parties hereto hereby waives the right to assert counterclaims in any such proceedings and agrees that final judgment in any such suit, action or proceeding brought in such court shall be conclusive and binding upon such party and may be enforced in any court of the jurisdiction to which such party is subject by a suit upon such judgment.

(c) **WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION OR LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO ANY TRANSACTION DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH OF THE PARTIES HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED



TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**Section 3.09 Use of English Language.** All certificates, reports, notices, and other documents and communications given or delivered pursuant to this Agreement shall be in the English language or accompanied by a certified English translation thereof.

**Section 3.10 Currency.** All amounts payable by the Purchaser, the Seller or any other Person under this Agreement shall be made in United States Dollars.

**Section 3.11 Counterparts.** This Agreement may be executed in two or more counterparts (including via facsimile), each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

**Section 3.12 Limited Recourse.** Notwithstanding any other provision of this Agreement, each party hereto hereby agrees that the Purchaser's obligations under this Agreement shall be limited recourse obligations of the Purchaser, with recourse being limited to the assets (other than the ordinary share capital and any transaction fee charged by the Purchaser pursuant to the Administration Agreement) of the Purchaser at such time available for application by or on behalf of the Purchaser in making payments in accordance with this Agreement. The parties hereby acknowledge and agree that the Purchaser's obligations under this Agreement are solely the corporate obligations of the Purchaser, and that none of the officers, directors, shareholders or agents of the Purchaser, any of its Affiliates or any other Person shall be personally liable to make any payments of principal, interest or any other sum now or hereafter owing by the Purchaser hereunder. After the Purchaser's assets (other than the ordinary share capital and any transaction fee charged by the Purchaser pursuant to the Administration Agreement) are realized and exhausted, all sums due but still unpaid in respect of the Purchaser's obligations hereunder shall be extinguished and shall not thereafter revive with respect to the Purchaser and its liability hereunder, and the parties hereto shall not have the right to proceed against the Purchaser or any of its Affiliates or any of its officers, directors, shareholders or agents for the satisfaction of any monetary claim or for any deficiency judgment remaining after foreclosure of any of its assets.

No party hereto shall take any steps for the purpose of procuring the appointment of any examiner, administrator, receiver, liquidator, provisional liquidator, bankruptcy trustee or administrative receiver or the making of any administrative order or court order or application or for instituting any bankruptcy, examinership, reorganization, arrangement, insolvency, winding up, liquidation, composition or any like proceedings under Applicable Law in respect of the Purchaser or its Affiliates or in respect of any of their liabilities, including, without limitation, as a result of any claim or interest of such parties.

The provisions of this Section 3.12 shall survive termination of this Agreement.

**Section 3.13 Indemnities.**

(a) The Seller undertakes to each of the Purchaser and the Administrative Agent, for the benefit of the Purchaser Finance Parties, that the Seller will indemnify and hold harmless the Purchaser, the Administrative Agent, the Collateral Agent, the Purchaser Finance Parties and their Related Parties (each an "Indemnified Person") from and against any and all Loss that any of them may incur or that may be made against any of them, and will reimburse each Indemnified Person for all costs, charges and expenses that any Indemnified Person may pay or incur in connection with investigating, disputing or defending any action or claim in respect of any such Loss; provided that such Loss does not result from such Indemnified Person's gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final and nonappealable judgment. This indemnity will be in addition to any liability that the Seller may otherwise have, and is in addition to (and shall not limit) any liability that the Purchaser may have to the Purchaser Finance Parties under the terms of the Credit Documents. The

Purchaser Finance Parties shall not have any duty or other obligation, whether as fiduciary or trustee for any of its Related Parties or otherwise, to recover any such payment or to account to any other Person for any amounts paid to it under this Section 3.13.

(b) Dollars are the sole currency of account and payment for all sums payable by the Seller in respect of this Agreement, including damages. Any amount received or recovered in a currency other than Dollars (whether as a result of, or of the enforcement of, a judgment, order of a court of any jurisdiction or otherwise) by the Purchaser or any other Indemnified Person in respect of any sum expressed to be due to them from the Seller under this Agreement shall only constitute a discharge to the extent of the amount in Dollars that the Purchaser or such other Indemnified Persons are able to purchase in accordance with normal banking procedures with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so). If that amount is less than the amount in Dollars expressed to be due to the Purchaser or such other Indemnified Person in respect of this Agreement, the Seller shall indemnify the Purchaser or such other Indemnified Person against any loss sustained by the Purchaser or such other Indemnified Person as a result. In any event, the Seller shall indemnify the Purchaser or such other Indemnified Person against any cost of making such purchase. These indemnities constitute a separate and independent obligation from the Seller's other obligations, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Purchaser or any other Indemnified Person and shall continue in full force and effect despite any other judgment, order, claim or proof for a liquidated amount in respect of any sum due in respect of this Agreement or any other judgment or order. Any such loss aforesaid shall be deemed to constitute a loss suffered by the Purchaser or any such other Indemnified Person and no proof or evidence of any actual loss will be required by the Seller.

(c) To the extent permitted by Applicable Law, no party hereto shall assert, and hereby waives, any claim against any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby; provided, however, that the foregoing shall not apply to any damages in respect of any indemnity under this Section 3.13 or to any other indemnification or amounts payable to the Purchaser Finance Parties hereunder or under any other Transaction Document or Purchaser Finance Document.

(d) All amounts due under this Section 3.13 shall be payable not later than three Business Days after written demand therefor.

(e) The provisions of this Section 3.13 shall survive the termination of this Agreement and the resignation or removal of any Agents or the Collateral Trustee.

**Section 3.14 Patriot Act.** In order to comply with the laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including, without limitation, those relating to the funding of terrorist activities and money laundering, including Section 326 of the USA PATRIOT Act of the United States, the Administrative Agent is required to obtain, verify, record and update certain information relating to the individuals and entities which maintain a business relationship with the Administrative Agent. Accordingly, each of the Parties agree to provide to the Administrative Agent, upon request and from time to time such identifying information and documentation as may be available for such party in order to enable the Administrative Agent to comply with such law.

**Section 3.15 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.** Notwithstanding anything to the contrary in any Transaction Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Transaction Document, to the extent such liability is



unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Transaction Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

**Section 3.16 Rights of the Agents.** Each of the Agents shall be entitled to the rights, protections, immunities and indemnities set forth in the Purchaser Credit Agreement, as if specifically set forth herein.

**Section 3.17 Service of Process.** Each of the Seller and the Servicer agrees that service of all writs, processes and summonses in any suit, action or proceeding brought in connection with the Transaction Documents or the Purchaser Finance Documents against the Seller or the Servicer in any court of the State of New York or any United States federal court sitting in the Borough of Manhattan, New York City, New York, United States, may be made upon the Process Agent, whom each of the Seller and the Servicer irrevocably appoints as its authorized agent for service of process. Each of the Seller and the Servicer represents and warrants that the Process Agent has agreed to act as the agent for service of process for the Seller and the Servicer. Each of the Seller and the Servicer agrees that such appointment shall be irrevocable until one year after the Maturity Date (as defined in the Loan Agreement, dated December 12, 2017 among the Purchaser, the guarantors party thereto, the lenders party thereto from time to time, the Administrative Agent and the Collateral Agent) or until the irrevocable appointment by the Seller and the Servicer of a successor in the City of New York as their authorized agent for such purpose and the acceptance of such appointment by such successor. Each of the Seller and the Servicer further agrees to take any and all action, including the filing of any and all documents and instruments, that may be necessary to continue such appointment in full force and effect as aforesaid. If the Process Agent shall cease to act as the agent for service of process for Seller or Servicer, Seller or Servicer (as applicable) shall appoint without delay another such agent and provide prompt written notice to the Administrative Agent and the Purchaser of such appointment. With respect to any such action in any court of the State of New York or any United States federal court in the Borough of Manhattan, New York City, New York, United States, service of process upon the Process Agent, as the authorized agent of the Seller and the Servicer for service of process, and written notice of such service to the Seller or the Servicer, as applicable, shall be deemed, in every respect, effective service of process upon the Seller or the Servicer, as applicable. Nothing in this Section 3.17 shall affect the right of any party to serve legal process in any other manner permitted by law.

[signature page follows]

**IN WITNESS WHEREOF**, the Parties have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the day and year first above written.

**USAVflow Limited, as the Purchaser**



By:

Name: Peter Lundin

Title: Director

*Signature page to Cash Management Agreement*

~~Aerovías del Continente Americano S.A. Avianca~~, as the Seller

By:

Name: ROBERTO KELD

Title:

*Signature page to Cash Management Agreement*

Aerovias del Continente Americano S.A. Avianca, as the Servicer

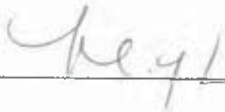
By:


Name: ROBERTO HEU

Title:

*Signature page to Cash Management Agreement*


**Citibank N.A.,**  
as the Administrative Agent

  
\_\_\_\_\_  
By:  
Name: Miriam Molina  
Title: Vice President

  
\_\_\_\_\_  
By:  
Name: Karen Abarca  
Title: Vice President

*Signature page to Cash Management Agreement*

**Citibank, N.A.,**  
as the Collateral Agent

  
\_\_\_\_\_  
By: Karen Abarca  
Name: Vice President  
Title:

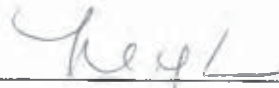
  
\_\_\_\_\_  
By: Miriam Molina  
Name: Vice President  
Title:



Exhibit A  
Form of Notice

**CITIBANK, N.A., as Collateral Agent (the “Collateral Agent”)**

388 Greenwich Street  
New York, NY 10013  
USA

Attn: Karen Abarca

Tel.: (212) 816-7759

email: karen.abarca@citi.com / [cts.spag@citi.com](mailto:cts.spag@citi.com)

**CITIBANK, N.A., LONDON BRANCH, as Collateral Trustee (the “Collateral Trustee”)**

6<sup>th</sup> Floor, CGC-1

Citigroup Centre

Canada Square

London E14 5LB

United Kingdom

E-mail: [issuexpfla@Citi.com](mailto:issuexpfla@Citi.com),

Fax: +44 207 500 5877

**USAVflow LIMITED, as Purchaser (the “Purchaser”)**

c/o P.O. Box 1093GT, Queensgate House,

South Church Street,

Georgetown, Grand Cayman,

Cayman Islands;

Attention: The Directors;

Facsimile No.: (345) 945-7100;

Tel.: (345) 945-7099;

email: [info@maplesfinance.com](mailto:info@maplesfinance.com)

**AEROVIAS DEL CONTINENTE AMERICANO S.A. AVIANCA, as Seller (the “Seller”)**

Centro Administrativo

Avenida Calle 26 No. 59-15 Piso 10

Bogotá, D.C.

Colombia

Attention: Vicepresidente Financiero

Facsimile No.: (571) 413-9809

Tel.: (571) 295-6765

email: [Lucia.avila@Avianca.com](mailto:Lucia.avila@Avianca.com)

**AEROVIAS DEL CONTINENTE AMERICANO S.A. AVIANCA, as Servicer (the “Servicer”)**

Centro Administrativo

Avenida Calle 26 No. 59-15 Piso 10

Bogotá, D.C.

Colombia

Attention: Vicepresidente Financiero

Facsimile No.: (571) 413-9809

Tel.: (571) 295-6765

email: [Lucia.avila@Avianca.com](mailto:Lucia.avila@Avianca.com)

[•], 20[•]

NOTICE OF [RETENTION EVENT/ADJUSTMENT EVENT/TRIGGER EVENT]

[DATE]

Ladies and Gentlemen,

Reference is made to (a) the Contract Rights and Receivables Sale, Purchase and Servicing Agreement, dated December 12, 2017 (as amended, amended and restated, supplemented, or otherwise modified from time to time, the “RSPA”), among the Seller, the Purchaser and the Servicer, (b) the Receivables Maintenance Agreement, dated December 12, 2017 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Undertaking Agreement”), among the Seller, the Purchaser and the Servicer, (c) the Cash Management Agreement, dated December 12, 2017 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Cash Management Agreement”), among the Seller, the Purchaser, the Servicer, the Collateral Agent and Citibank, N.A. as Administrative Agent (the “Administrative Agent”), (d) the Loan Agreement, dated December 12, 2017 (as amended, amended and restated, supplemented, or otherwise modified from time to time, the “Loan Agreement”) among the Purchaser, the guarantors party thereto, the lenders party thereto from time to time, the Administrative Agent and the Collateral Agent and (e) the Security Trust Deed, dated December 12, 2017, among the Lenders, the Collateral Trustee and the Borrower. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Cash Management Agreement.

The Administrative Agent, [at the direction of the Required Lenders/pursuant to Section 2.09(b) of the Cash Management Agreement], hereby notifies the Seller, the Purchaser, the Servicer, the Collateral Agent [and the Collateral Trustee] that a [Retention Event/Adjustment Event/Trigger Event] has occurred and is continuing.

Yours sincerely,

**Citibank N.A.,**  
as the Administrative Agent

\_\_\_\_\_  
By:  
Name:  
Title:

\_\_\_\_\_  
By:  
Name:  
Title:

**EXHIBIT 8**



## **1. Notice of Transfer of Receivables**

- (i) pursuant to, and subject to the terms and conditions of, the RSPA and the Costa Rican Assignment Agreement, Avianca S.A. will sell to the Company, and the Company will buy from Avianca S.A., finally, definitively, and irrevocably, the Assigned Contract Rights and the Assigned Receivables;
- (ii) pursuant to the Colombian Back-Up Security Agreement, Avianca S.A. will grant to the Company a security interest (*garantía mobiliaria*) in certain contingent future receivables associated with, and assign to the Company, as collateral, all of Avianca S.A.'s right, title, and interest in and to the Assigned Contract Rights and Assigned Receivables;

- (iii) pursuant to the Costa Rican Back-Up Security Agreement, Avianca S.A. will grant to the Company a security interest (*garantía mobiliaria*) in all of Avianca S.A.'s right, title, and interest in and to the Assigned Contract Rights and Assigned Receivables;
- (iv) pursuant to the New York Security Agreement, the Company will grant to the Collateral Agent a first priority security interest in, and lien on, all of the Company's right, title, and interest in and to the Assigned Contract Rights and Assigned Receivables; and
- (v) Avianca USA is authorized to act, and is acting, on behalf of Avianca S.A. as its agent and attorney-in-fact for all purposes of the Credomatic Contracts.

## **2. Consent and Agreement**

(i) The Client, Avianca USA and the Company hereby unconditionally and irrevocably authorize and request Credomatic to execute and deliver to the Collateral Agent the enclosed Credomatic Consent and Agreement (the "**Credomatic Consent and Agreement**"), and each of the Client, Avianca USA and the Company (each, together with their respective successors and permitted assigns, individually, a "**Notice Party**" and all, collectively, the "**Notice Parties**") and the Collateral Agent (as agent for and on behalf of and as instructed by each of the Lenders) hereby agree to the terms and conditions thereof.

(ii) The Credomatic Consent and Agreement, when executed and delivered by Credomatic (or any Credomatic company, as applicable), will be effective only (A) in connection with the sale and transfer of the Assigned Receivables and Assigned Contract Rights under the Agreements and (B) to the extent necessary to satisfy the payment obligations referred to in Section 3(a) hereof. The provisions of the Credomatic Consent and Agreement do not extend to any (x) future sale, assignment, transfer or other disposition of receivables or contract rights (other than as specified in section 1), or (y) any creation and issuance of securities or obligations or any additional or subsequent indebtedness secured by the Assigned Receivables or Assigned Contract Rights other than as created under the Agreements as in effect as of the date hereof (any such transaction described in this clause (c), a "**Future Transaction**").

(iii) Neither of the Credomatic companies shall have any obligation to consent or otherwise agree to any Future Transaction.

(iv) Avianca S.A. and Avianca USA agree to notify Credomatic at least 20 Business Days in advance of any Future Transaction (other than as notified in Section 1).

## **3. Payment Instructions.**

(a) Each Notice Party hereby unconditionally and irrevocably authorizes and directs Credomatic (and, specifically, its subsidiary Credomatic of Florida Inc.), from and after the



date specified as its effective date in the Consent and Agreement until the termination of this Notice of Transfer under Section 5 hereof, (i) to remit all amounts payable by Credomatic to Avianca S.A., Avianca USA and the Company in respect of the Assigned Contract Rights and Assigned Receivables (net of Incidental Charges but without any set-off, counterclaim, deduction or withholding, other than those derived from the Credomatic Agreement or otherwise related to Incidental Charges) in U.S. dollars through the Federal Reserve Bank's Automated Clearing House Network ("FedACH") to the Company's account specified below (the "**Directed Amounts**"):

ACH to:	Citibank, N.A.
ABA:	021000089
SWIFT:	CITIUS33
Cr:	A & T Account Administration
A/C #:	36114317
Reference#	11925000
Beneficiary Name:	USAVflow Ltd

or to such other account as may from time to time be designated in writing by the Collateral Agent to Credomatic and the Company (any such account the "**Collection Account**"), without further instruction from the Avianca S.A., Avianca USA or the Company and (ii) to cease making any such payments to any other account(s).

(b) (i) Credomatic will be required to make payments of Directed Amounts pursuant to subsection 3.(a) to the extent that amounts are available and due and owing to Avianca S.A. or Avianca USA, respectively, under the Credomatic Contracts, (ii) subsection 3.(a) shall in no way be construed to increase the amounts owed by, create any additional payment obligation and/or waive any rights of any of the Credomatic companies under the Credomatic Contracts or the Credomatic Card Program except as expressly set out in section 3.(a), and (iii) subsection 3(a) shall in no way be construed to limit, impair, or otherwise affect any rights of the Credomatic companies from time to time to create a reserve account or otherwise reserve from amounts otherwise owing to Avianca S.A., Avianca USA or the Company, respectively, in accordance with the provisions of Section 9 of the Credomatic Master Agreement or the terms of the Credomatic Card Program to provide for chargebacks or other set-offs, counterclaims, deductions or withholdings derived from the Credomatic Agreement or otherwise related to Incidental Charges.

(c) Nothing contained in this Notice of Transfer, the Agreements or any other agreement or document delivered in connection herewith or therewith shall interfere with Credomatic's (or any of the Credomatic companies') right to enforce its rights and remedies *vis-a-vis* the Client or the Client Affiliates or any other party under any Credomatic Contracts or the Credomatic Card Program, including, without limitation, (i) termination of Avianca S.A., TACA International Airlines, S.A. or any Client Affiliate's participation in any Credomatic Contracts for breaches thereof or pursuant to any other terms of such Credomatic Contracts or the Credomatic Card Program, or (ii) Credomatic's right to amend or

alter the terms of any such Credomatic Contracts in order to comply with changes or requirements of the Card Programs. Furthermore, in case of amendments or alterations to the Credomatic Card Program, Credomatic's obligations pursuant to the Consent and Agreement are to be performed in accordance with the Card Programs as so altered or amended.

(d) Nothing contained in this Notice of Transfer, the Agreements or any other agreement or document delivered in connection herewith or therewith shall interfere with any of the BdB Lenders' rights pursuant to the BdB Loan Agreement.

(e) This Notice of Transfer and the authorization and directions given herein supersede any other payment instructions from the Client, any Client Affiliate or the Company.

#### **4. Representations, Warranties and Covenants.**

(a) Avianca S.A. and Avianca USA each represents and warrants that, in spite of the fact that the Credomatic USA Supplement was executed solely by Avianca USA, Avianca USA has been acting at all times as an agent on behalf of Avianca S.A. and that, therefore, immediately before giving effect to the transactions described herein, Avianca S.A. should be construed as the sole owner of the Assigned Contract Rights and Assigned Receivables. Avianca S.A. and Avianca USA each further represent and warrant that such agency relationship with regard to the contract rights and receivables arising from or related to such Credomatic USA Supplement has been duly documented and that no third parties (including creditors of Avianca USA) have any right or claim over any contract rights or receivables arising from or related to the Credomatic USA Supplement.

(b) Each Notice Party represents and warrants that this Notice of Transfer constitutes its legal, valid and binding obligations enforceable against it in accordance with its respective terms, except as such enforcement may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(c) The Client and Avianca USA each represents and warrants that each Credomatic Security Document to which it is a party constitutes its legal, valid and binding obligations enforceable against it in accordance with its respective terms, except as such enforcement may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles, and that the execution, delivery and performance of the Notice of Transfer and each such Credomatic Security Document by each such party that is a party thereto, does not and will not contravene the Agreements or the laws or regulations of any applicable jurisdiction.

(d) The Client, the Company and Avianca USA each further represents and warrants that (i) each of this Notice of Transfer and each such Credomatic Security Document does not violate or conflict with any agreement, document or other restriction of any kind or character to which it or any of its respective properties is bound or subject, (ii) its instructions contained in this Notice of Transfer are binding on it, (iii) this Notice of Transfer constitutes the only



to or binding upon such party or any of its property or to which such party or any of its property is subject, prohibiting or otherwise relating to money laundering, such as, by way of example, the U.S.A. Patriot Act (2001), the U.S. Bank Secrecy Act, Federal Corrupt Practices Act, any interim or final regulation thereunder, or any statute, interim or final regulation or executive order enforced by the United States Department of Treasury Office of Foreign Assets Control (“OFAC”) (such laws, rules or regulations hereinafter jointly referred to as “**Money Laundering Laws**”). Furthermore, each Notice Party agrees to maintain appropriate compliance and internal anti-money laundering policies and procedures designed to ensure its compliance with such Money Laundering Laws.

(j) The Client, Avianca USA, and the Company each agrees, subject to laws specifically applicable to such party, to comply with any reasonable requests for information made by Credomatic, concerning any such party and arising in connection with any Money Laundering Laws; *provided* that no such party shall be required to disclose to Credomatic any confidential information which such party is specifically prohibited from disclosing pursuant to a contractual obligation binding on it or any such laws to which it is subject. Without limiting the generality of the foregoing, each Notice Party agrees to notify Credomatic as soon as it knows (or, exercising reasonable diligence in its administration of the Agreements which it is a party, should know) that payments by Credomatic or any Credomatic company are being made, directly or indirectly, to a Person who is or an entity that is (or a Person or entity controlled by a Person who is or an entity that is) (i) listed on the list of specially designated nationals and blocked persons promulgated by OFAC (the “**OFAC List**”) or any list of known or suspected terrorists, terrorist funding organizations or money-launderers administered by OFAC or promulgated by the President of the United States of America or any agency of the federal government of the United States of America, (ii) a government body, including any political subdivision, agency, or instrumentality thereof, of any country subject to, or is a political faction or party or an official or employee of any government subject to, sanctions enforceable by OFAC or another agency, (iii) a national of, or located in, or affiliated with the government of Cuba, Iran or Syria (until such time as the general counsel or any counsel to Credomatic determines otherwise), (iv) any other entity or Person with whom U.S. persons are prohibited from doing or facilitating business under any statute, interim or final regulation or executive order enforced by OFAC or another agency or (v) is acting for the benefit of, or on behalf of, any Person or entity described in clause (i)- (iv) in connection with any transaction under or contemplated by this Notice of Transfer, the Credomatic Consent and Agreement or the Agreements (a “Prohibited Person”). For the purpose of the foregoing definition of Prohibited Person, the term “controlled by”, includes the ownership of five percent or more of any class of voting securities of an entity, the equity securities of which are not publicly traded.

(k) Avianca S.A. hereby agrees that it shall promptly notify Credomatic and the Collateral Agent of any changes, modifications or supplements to the merchant numbers that fairly identify the Specified Sales by delivering a Merchant ID Supplement.



## **5. Termination.**

(a) This Notice of Transfer, as it relates to the Credomatic Consent and Agreement, and the Credomatic Consent and Agreement shall automatically terminate upon the earlier to occur of (A) the Scheduled Termination Date or (B) delivery by the Collateral Agent to Credomatic of an executed notice of termination in the form attached as Annex A to the Credomatic Consent and Agreement (a “**Termination Notice**”). Each of the Notice Parties agrees to notify Credomatic in accordance herewith promptly upon the payment in full of obligations under the Loan Agreement, and following such notification, upon written request by Credomatic to the Collateral Agent, the Collateral Agent shall (at the direction of the Required Lenders (as defined in the Loan Agreement)) deliver a Termination Notice, without limitation of the right of the Collateral Agent (at the direction of the Required Lenders (as defined in the Loan Agreement)) to deliver a Termination Notice at any time.

(b) The Notice Parties hereby unconditionally and irrevocably authorize and direct Credomatic, upon termination of this Notice of Transfer and the Credomatic Consent and Agreement as provided in Section 5(a) above to redirect the Directed Amounts to (i) if Avianca S.A. and the Company have not at least 15 days before such termination given a joint written notice to Credomatic of details sufficient to identify the account to which the Directed Amounts should be redirected, the account specified in Schedule 2 hereto, and (ii) if Avianca S.A. and the Company have at least 15 days before such termination given joint written notice to Credomatic of details sufficient to specify a different account in a bank within the United States of America to which the Directed Amounts should be redirected, to the account so identified in such notice, and to pay the beneficiary of the bank account specified as provided in the foregoing clause (i) or clause (ii), as applicable, all amounts due from Credomatic to or for the account of such Client Affiliate with respect to settlements for Assigned Receivables and Assigned Contract Rights pursuant to the Credomatic Contracts.

(c) Each Client Affiliate will submit to Credomatic (or each applicable Credomatic company) any additional forms or agreement required by Credomatic (or such Credomatic company), confirming the foregoing instructions, no later than 21 days following the delivery of such notice of termination.

## **6. Other Limitations on Scope of Obligations.**

(a) Notwithstanding the provisions of any Agreements, except as set forth in Section 3(a), Credomatic’s duties and obligations in connection with the Agreements and this Notice of Transfer shall be determined solely by the express provisions of the Credomatic Consent and Agreement and this Notice of Transfer, and neither of the Credomatic companies shall be liable except for the performance of such duties and obligations as are specifically set forth in the Credomatic Consent and Agreement and in Section 3(a). No implied covenants or obligations shall be read into any Agreements against either of the Credomatic companies nor shall any Agreements be construed to modify, create or impose any obligation or duty upon either of the Credomatic companies in connection with the Credomatic Contracts, the Credomatic Card Program or such Agreements.

(b) In furtherance but without limitation of the generality of the provisions of this subsection:

(i) Except as expressly set forth Section 3(a) herein or in paragraph (a) of the Credomatic Consent and Agreement, nothing contained in any Agreements or any other agreement or document delivered in connection therewith shall limit or otherwise impair the rights or remedies of Credomatic (or any Credomatic company) under the Credomatic Contracts or the Credomatic Card Program, all of which are hereby reserved, or interfere with the right of either Credomatic company to enforce its rights and remedies vis-a-vis the Client, Avianca USA, the Company or any of the Client Affiliates or any other party under any of the Credomatic Security Documents, the Credomatic Contracts or Credomatic Card Program, including, without limitation termination of such Credomatic Contracts for breaches thereof, or upon the occurrence of a Fundamental Change with respect to Client, Avianca USA, the Company or any of the Client Affiliates or otherwise in accordance with the Credomatic Contracts or the Credomatic Card Program.

(ii) Neither of the Credomatic companies shall be liable or deemed to be in breach of the Credomatic Consent and Agreement for any actions by it taken in good faith which impair or could impair the Assigned Receivables or Assigned Contract Rights in circumstances where such actions by it were taken (x) in the exercise of its rights or the fulfillment of its obligations with respect to the Assigned Receivables or Assigned Contract Rights in accordance with this Notice of Transfer and the Credomatic Consent and Agreement, (y) in accordance with the Credomatic Contracts or the Credomatic Card Program, or (z) because of actions or inactions in breach of the Credomatic Contracts on the part of the Client, Avianca USA, the Company or any of the Client Affiliates, such as its obligation to pay the Credomatic companies. Without limiting the generality of the foregoing, such actions by a Credomatic company could include but would not be limited to termination of the Client, Avianca USA, the Company or any of the Client Affiliates' contractual relationship with Credomatic, upon the occurrence of a Fundamental Change or any event described in Section 6(b)(iii).

(iii) A good faith determination by any counsel to either of the Credomatic companies that: (x) its performance under this Notice of Transfer or the Credomatic Consent and Agreement will cause it to violate any Money Laundering Law, or (y) the Client, Avianca USA, the Company or any of the Client Affiliates has violated any Money Laundering Law, then, and in any such event, each Credomatic company shall have the right to take measures available to it under applicable law or under the Credomatic Contracts, the Credomatic Card Program and the Credomatic Consent and Agreement.

(iv) Neither of the Credomatic companies shall be liable (x) to any Person for the due execution, legality, validity, enforceability, genuineness or sufficiency of any Agreements (other than for its obligations under the Credomatic Consent and Agreement) or (y) for any obligation or duty of any Notice Party or any other Person under the Agreements, including without limitation the obligation of Avianca S.A. to authorize travel agencies in the United States to accept payment for airline tickets or related services provided by Avianca S.A. by a Master Card® Card or Visa® Card, however branded, or any one or more of said Cards, only



Without limiting the rights and obligations of the Client, Avianca USA, the Company or any of the Client Affiliates under the Credomatic Contracts or the Credomatic Card Program, each of the Notice Parties covenants and agrees, to the extent permitted by law, not to initiate or voluntarily participate in any suit or other legal action against a Credomatic company arising out of or based upon any action (or failure to act) of either of the Credomatic companies, taken (or, in the case of a failure to act, not taken) in good faith that could impair the Assigned Receivables, in each case, in the circumstances described in this Section 6. For the avoidance of doubt, each of the Notice Parties acknowledges and agrees that any actions (and any failure to act) on the part of a Credomatic company, as applicable, taken or not taken in accordance with Section 6(b), which shall not constitute a breach of the terms of, or a failure to perform under, this Notice of Transfer or the Credomatic Consent and Agreement.

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(vi) This Notice of Transfer supersedes all prior payment instructions from the Client or Avianca USA to Credomatic with respect to amounts payable to Avianca USA, Avianca S.A. or the Company in respect of the Contract Rights and Receivables. All notices related to this Notice of Transfer and the Credomatic Acknowledgment and Consent to the Client and Credomatic the Company and the Collateral Agent to the addresses set forth herein or on the signature pages below.

#### **7. Governing Law; Consent to Jurisdiction.**

(a) This Notice of Transfer and the Credomatic Consent and Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflict of laws other than Sections 5-1401 and 5-1402 of the New York General Obligations Law.

(b) This Notice of Transfer, the Credomatic Consent and Agreement, the Credomatic Security Documents and any other documents delivered pursuant hereto or thereto, and any actions taken hereunder, constitute commercial acts by the Notice Parties that are party to such documents or agreements. To the extent that the Client, Avianca USA, the Company or any of the Client Affiliates, or any of their respective assets, may have, or may hereafter become entitled to or have attributed to it, any right of immunity, on the grounds of sovereignty or otherwise, from any legal action, suit or proceeding, from setoff or counterclaim, from the jurisdiction of any competent court, from service of process upon it or any agent, from attachment prior to judgment, from attachment upon or in aid or execution of judgment, or from execution of judgment or other legal process or proceeding for the giving of any relief or for the enforcement of judgments, in any jurisdiction, each of the Client, Avianca USA, the Company or any of the Client Affiliates hereby irrevocably and unconditionally and to the fullest extent permitted by law waives, and agrees not to plead or claim, any such immunity for itself or any of its property, assets or revenues, wherever located, with respect to its obligations, liabilities or any other matter under or arising out of or in connection with this Notice of Transfer, the Credomatic Consent and Agreement, any Credomatic Security Document or any document delivered pursuant hereto or thereto (collectively, the “**Credomatic Documents**”), in each case for the benefit of each Credomatic company and its successors and assigns, it being intended that the foregoing waiver and agreement shall be effective, irrevocable and not subject to withdrawal in any and all jurisdictions.

(c) Each Notice Party hereby irrevocably agrees that any legal action, suit or proceeding brought by or against any of them with respect to any matter under or arising out of or in any way connected with any of the Credomatic Documents or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding may be brought in the courts of the State of New York in the Borough of Manhattan, New York, or of the United States of America in the Borough of Manhattan, New York, and by execution and delivery of this agreement, each Notice Party and the Collateral Agent (acting for and on behalf of the Lenders) hereby irrevocably accepts and submits to the non-exclusive jurisdiction of the aforesaid courts in person, generally and unconditionally, with respect to any such action, suit or proceeding for itself and in respect of its property, assets and revenues.

(d) Each of the Client and the Company hereby irrevocably designates, appoints and empowers National Registered Agents, Inc., with offices on the date hereof at 111 Eighth Avenue, New York, New York 10011, and its successors, as its Process Agent to receive, accept and acknowledge for and on its behalf and on behalf of its property, service of any and all legal process, summons, notices and documents which may be served in any such action, suit or proceeding in the courts of the State of New York or of the United States of America in the State of New York, which service may be made on such designee, appointee and agent in accordance with legal procedures prescribed for such courts. The Client, Avianca USA and the Company will take any and all action necessary to continue such designation by it in full force and effect and to advise Credomatic and the Collateral Agent of any change of address of such Process Agent; and should such Process Agent become unavailable for this purpose for any reason, the Client, Avianca USA and the Company will forthwith irrevocably designate a new Process Agent within New York, New York, which shall agree to act as such, with the powers and for the purposes specified in this subsection. Each of the Client, Avianca USA and the Company further irrevocably consents and agrees to the service upon it of any and all legal process, summons, notices and documents out of any of the aforesaid courts in any such action, suit or proceeding by hand delivery, to it at its address set forth in Section 9 hereof or to any other address of which it shall have given notice pursuant to Section 9 hereof or to its then Process Agent. Each of the Client, Avianca USA and the Company agrees that service upon it or any such Process Agent for it as provided for herein shall, to the fullest extent permitted by law, constitute valid and effective personal service upon it and that the failure of any such Process Agent to give any notice of such service to the Client, Avianca USA and the Company, as the case may be, shall not impair or affect in any way the validity of such service or any judgment rendered in any action or proceeding based thereon.

(e) In addition, each Notice Party hereby irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings brought in any such court arising out of or in connection with any of the Credomatic Documents brought in any of the aforesaid courts, and hereby further irrevocably and unconditionally waives and agrees, to the fullest extent permitted by law, not to plead or claim that any such action, suit or proceeding brought in any such court has been brought in an inconvenient or inappropriate forum.

**(f) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE EXTENT PERMITTED BY LAW, TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS NOTICE OF TRANSFER OR THE CONSENT AND AGREEMENT OR ANY COUNTERCLAIM RELATING THERETO.**

(g) Notwithstanding the fact that this Notice of Transfer is governed by the law of the State of New York, it perfects the transfer (*tradición*) of the Assigned Contract Rights and Assigned Receivables to be sold by Avianca S.A. to the Company under the RSPA, pursuant to (i) articles 887 et seq of the Colombian Commercial Code and (ii) the transfer of contract rights for Cesión under Costa Rican Law and articles 1104 of the Costa Rican Civil

The Credomatic Consent and Agreement shall not be delivered, and neither Credomatic nor any Credomatic company shall have any obligations hereunder, unless, on or prior to the Closing Date, the following conditions are fulfilled:

Credomatic's delivery to the Notice Parties and the Collateral Agent of an executed copy of the executed Credomatic Consent and Agreement shall be deemed to be evidence of satisfaction of the foregoing conditions precedent.

All notices, requests, demands or other communications to or upon the Credomatic companies or any Notice Party or the Collateral Agent shall be in writing and shall become effective when received. Any written notice shall either be mailed, certified or registered mail, return receipt requested with proper postage for airmail prepaid, or confirmed facsimile, or by overnight delivery service (providing for delivery receipts) or delivered by









agreement dated the date hereof entered into between the Company and MaplesFS Limited) of the Company at such time available for application by or on behalf of the Company in making payments in accordance with this Notice of Transfer. The parties hereby acknowledge and agree that the Company's obligations under this Notice of Transfer are solely the corporate obligations of the Company, and that none of the officers, directors, shareholders or agents of the Company, any of its affiliates or any other Person shall be personally liable to make any payments of principal, interest or any other sum now or hereafter owing by the Company hereunder. After the Company's assets (other than the ordinary share capital and any transaction fee charged by the Company pursuant to the administration agreement dated the date hereof entered into between the Company and MaplesFS Limited) are realized and exhausted, all sums due but still unpaid in respect of the Company's obligations hereunder shall be extinguished and shall not thereafter revive with respect to the Company and its liability hereunder, and the parties hereto shall not have the right to proceed against the Company or any of its affiliates or any of its officers, directors, shareholders or agents for the satisfaction of any monetary claim or for any deficiency judgment remaining after foreclosure of any of its assets.

No party hereto shall take any steps for the purpose of procuring the appointment of any examiner, administrator, receiver, liquidator, provisional liquidator, bankruptcy trustee or administrative receiver or the making of any administrative order or court order or application or for instituting any bankruptcy, examinership, reorganization, arrangement, insolvency, winding up, liquidation, composition or any like proceedings under applicable law in respect of the Company or its affiliates or in respect of any of their liabilities, including, without limitation, as a result of any claim or interest of such parties.

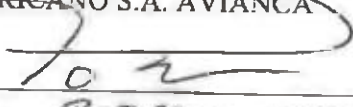
The provisions of this Section 14 shall survive termination of this Notice of Transfer.

[Remainder of page intentionally left blank]

Please acknowledge your receipt of this Notice of Transfer and execute the attached Credomatic Consent and Agreement and return it in pdf format by electronic mail to the Company and the Collateral Agent. Thank you for your cooperation in this matter.

Very truly yours,

~~AEROVIAS DEL CONTINENTE~~  
~~AMERICANO S.A. AVIANCA~~

By:   
Name: ROBERTO HELD  
Title: \_\_\_\_\_

Address for Notices:

Aerovías del Continente Americano S.A.  
Avianca,  
Centro Administrativo,  
Avenida Calle 26 No. 59-15 Piso 10  
Bogotá, D.C., Colombia  
Attention: Vicepresidente Financiero  
Facsimile No.: 571-413-9809  
Telephone No.: 571-295-6765  
E-mail: Lucia.avila@Avianca.com

[Credomatic Notice of Transfer - Signature Page]

TACA INTERNATIONAL AIRLINES, S.A.

By:  \_\_\_\_\_

Name: DANILO CORREA SEPULVEDA

Title: PRESIDENT

AVIANCA, INC.

By: 

Name:

Gerardo Gonzalez

Title:

Director

[Credomatic Notice of Transfer - Signature Page]

USAVFLOW  
LIMITED

By: PL KA

Name: Peter Lundin

Title: Director

Address for Notices:

USAVflow Limited

c/o P.O. Box 1093

Boundary Hall

Cricket Square

Grand Cayman

KY1-1102

Cayman Islands

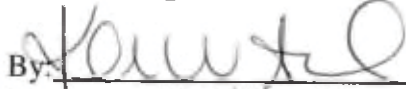
Facsimile No.: (345) 945-7100;

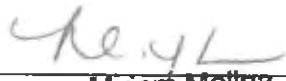
Telephone No.: (345) 945-7099;

E-mail: [info@maplesfs.com](mailto:info@maplesfs.com)

ACCEPTED AND AGREED AS OF THE DATE  
FIRST WRITTEN ABOVE

CITIBANK, N.A., as  
Collateral Agent

By:   
Name: Karen Abarca  
Title: Vice President

By:   
Name: Miriam Molina  
Title: Vice President

Address for Notices:  
Citibank, N.A.  
388 Greenwich Street  
New York, NY 10013  
Attn: Karen Abarca  
Tel.: (212) 816-7759  
E-mail: karen.abarca@citi.com / cts.spag@citi.com



## SCHEDULE 1

### DEFINED TERMS

“**ARC**” means Airlines Reporting Corporation, a company which provides ticket transaction settlement services between airlines and travel agencies (both traditional and online) and the travel management companies that sell their products in the United States, or any successor or replacement thereof.

“**Assigned Contract Rights**” means the contract rights of Avianca S.A. under the Credomatic Contracts (including, specifically, the Credomatic USA Supplement) to (a) receive any kind of payments, indemnities or economic compensations derived therefrom on account of Specified Sales, including the right, among other things, to receive all future Collections derived therefrom; and (b) to enforce the rights referred to in (a) against Credomatic. For the avoidance of doubt, the Assigned Contract Rights shall not include (x) any obligation or liability of Avianca S.A. under the Credomatic Contracts or arising in any manner therefrom; (y) any rights of TACA International Airlines, S.A. or its subsidiaries under the Credomatic Contracts or (z) the rights of Avianca S.A.:

- (i) to honor Cards or conduct any Card sale as payment for travel costs or otherwise, or to request authorization to honor Cards;
- (ii) to submit Sales Slips for billing or issue credit slips in any manner provided by Credomatic Contracts;
- (iii) to request, to treat or to have access to confidential information pertaining to cardholder account information;
- (iv) to request or receive a restricted card list pursuant to the Credomatic Contracts;
- (v) to grant consent to Credomatic to display or show the trademarks, logos or company names of Avianca S.A. in promotion, advertising, press releases or otherwise pursuant to the Credomatic Contracts;
- (vi) to use trademarks and service marks of a card association in its advertising, press releases or otherwise pursuant to the Credomatic Contracts;
- (vii) to handle all claims or complaints by a cardholder with respect to Card transactions;
- (viii) to receive documentation from Credomatic that is required in connection with the defense of any claim of a cardholder asserted in connection with the Credomatic Contracts; or

- (ix) to receive any Collections derived from sales which are not Specified Sales.

**“Assigned Receivables”** means any and all Collections accrued under the Credomatic Contracts that are due on account of Specified Sales from Credomatic to Avianca S.A. immediately prior to giving effect to the RSPA on the date of the RSPA. For the avoidance of doubt, the Receivables shall not include any and all Collections accrued under the Credomatic Contracts that are due by Credomatic to TACA International Airlines, S.A. or its subsidiaries.

**“BdB Lenders”** means Banco de Bogotá S.A., New York Agency and any other Person that shall have become a party to the BdB Loan Agreement pursuant to an assignment, other than any such Person that ceases to be a party thereto pursuant to an assignment.

**“BdB Loan Agreement”** means the Credit and Guaranty Agreement, (dated as of June 16, 2015) among Taca International Airlines S.A. (as Borrower), Avianca Holdings S.A. (as Guarantor), Fiduciaria Bogotá S.A. (as Administrative Agent), and the BdB Lenders.

**“Card Programs”** means the Credomatic Card Program and all current or future credit and debit card programs administered (pursuant to each of their respective regulations, by-laws, operating regulations, agreements or arrangements) by Visa, MasterCard, American Express, Discover, Diners Club, JCP and/or any other card networks included in the Credomatic Contracts, as applicable.

**“Cards”** means credit, debit, charge and ATM cards under which cardholders purchase goods and services of Avianca S.A.

**“Closing Date”** means the date on which the Agreements are executed and become effective.

**“Collections”** means all cash collections and other cash proceeds derived from the Assigned Contract Rights or the Assigned Receivables, whether received by the Seller, the Purchaser, or any other Person.

**“Credomatic Card Program”** means (i) the Visa and MasterCard credit and debit card programs administered by Credomatic or its affiliates pursuant to (a) the Visa agreements, Visa by-laws, Visa operating regulations, Visa Base II clearing and settlement system regulations, and any other agreements or arrangements governing the rights, duties and obligations of the Visa companies and their respective clients with respect to the procedures administered by the Visa companies for the clearing and settlement of paper (collectively the **“Visa Regulations”**), in each case as such Visa Regulations, and other agreements and arrangements may be amended, restated, superseded or replaced from time to time; (b) the MasterCard by-laws, MasterCard rules, MasterCard operating regulations and MasterCard agreement and any other agreements or arrangements regulating the rights, duties and obligations of MasterCard and its members with respect to the procedures administered by MasterCard for the clearing and settlement of paper (collectively the **“MasterCard Regulations”**), in each case as such MasterCard Regulations and other agreements or arrangements may be amended, restated, superseded or replaced from time to time; (ii) any agreements, by-laws, rules, operating regulations or arrangements similar to the ones described



relief with respect to it or its debts under applicable bankruptcy, insolvency or similar law, (2) which seeks controlled administration or preliminary concordat, or (3) which seeks the appointment of a trustee, receiver, liquidator, custodian, examiner, intervenor or other similar official of the Client, Avianca USA, the Company or any of the Client Affiliates for all or any substantial part of its property, (C) a general moratorium shall be imposed on the payment or performance of debts or contractual obligations of the Client, Avianca USA, the Company or any of the Client Affiliates, (D) all or a substantial part of the properties of the Client, Avianca USA, the Company or any of the Client Affiliates shall be condemned, seized or otherwise appropriated or custody of such properties shall be assumed by any governmental authority or court or other Person or entity purporting to act under the authority of the government of any jurisdiction, or the Client, Avianca USA, the Company or any of the Client Affiliates shall be prevented from exercising normal control over all or a substantial part of its property, (E) any authorization of any governmental authority (including, without limitation, any foreign exchange authorization), which is necessary for the fulfillment by the Client, Avianca USA, the Company or any of the Client Affiliates of any obligation to Credomatic, shall be suspended, revoked, withdrawn, modified or withheld or shall otherwise fail to remain valid or cease to exist, and (F) Client, Avianca USA, the Company or any of the Client Affiliates shall have failed to fulfill any material obligation to Credomatic under the Credomatic Contracts or the Credomatic Card Program as a result of either (i) a determination by any court of competent jurisdiction or governmental authority that the performance of its obligations under the Credomatic Contracts or the Credomatic Card Program violates law or regulation of any governmental authority, including without limitation the U.S. USA Patriot Act (2001), or (ii) any publicly known action or inaction by a third party or third parties, including, without limitation, terrorist acts, armed hostilities or labor strikes, and it shall have failed to cure such nonperformance within a reasonable period of time following notice from Credomatic of such failure.

“**Lenders**” means each Person who is or from time to time becomes a party as a lender to the Purchaser Credit Agreement (as defined in the RSPA).

“**Merchant ID Supplement**” means a notice, substantially in the form of Exhibit B hereto.

“**Person**” shall mean any legal person, including any individual, partnership, corporation (including a business trust), joint stock company, trust, joint venture, unincorporated association, limited liability company or other entity, or a government or any political subdivision or agency thereof.

“**Sales Slip**” means a sales slip under a Card evidencing a payment obligation of the holder of the Card in respect of goods or services purchased by such holder using such Card.

“**Scheduled Termination Date**” means June 12, 2023 as such date may be extended to a new date (the “**New Termination Date**”), which is not more than six months following the later of the Scheduled Termination Date and the latest occurring New Termination Date, by written notice from the Collateral Agent to Credomatic prior to such date.

“**Specified Sales**” means the sales, including future sales, made by travel agencies in the United States and cleared through ARC of airline tickets or related services provided by

Avianca S.A. where payment in the case of any such sale is made by a Master Card® Card or Visa® Card, however branded, or any one or more of said Cards, including all such sales identified by those certain merchant codes set forth on Exhibit A hereto, with such changes, if any, as shall have been made from time to time after delivery and acceptance of a Merchant ID Supplement.

SCHEDULE 2  
ACCOUNT INFORMATION

ACH to:	Citibank, N.A.
ABA:	021000089
SWIFT:	CITIUS33
Cr:	A & T Account Administration
A/C #:	36114317
Reference:	11925000
Beneficiary Name:	USAVflow Ltd



EXHIBIT A  
MERCHANT CODES

Credomatic FL (VI/MC): 5610-014001084970

EXHIBIT B  
MERCHANT ID SUPPLEMENT

This Merchant ID Supplement, dated as of [●], is delivered pursuant to the Notice of Transfer, dated as of December 12, 2017 (as it may from time to time be amended, modified or supplemented in accordance with its terms, the “**Notice**”), among Aerovías del Continente Americano S.A. Avianca (“**Avianca S.A.**”), Taca International Airlines S.A., BAC International Bank, Inc., on behalf of itself and its subsidiaries (collectively, “**Credomatic**”) and Citibank, N.A. Capitalized terms used herein but not defined herein are used with the meanings given them in the Notice.

Avianca S.A. represents and warrants that the attached replacement Exhibit A accurately and completely lists all merchant numbers that fairly identify the Specified Sales and hereby agrees that such replacement Exhibit A will replace Exhibit A to the Notice from and after the date of this Merchant ID Supplement.

IN WITNESS WHEREOF, Avianca S.A. has caused this Merchant ID Supplement to be duly executed and delivered by its duly authorized officer or representative as of the date first written above.

AEROVIAS DEL CONTINENTE AMERICANO  
S.A. AVIANCA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACCEPTED AND AGREED AS OF THE DATE  
FIRST WRITTEN ABOVE

BAC INTERNATIONAL BANK, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACCEPTED AND AGREED AS OF THE DATE  
FIRST WRITTEN ABOVE

CITIBANK, N.A., as Collateral Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

REPLACEMENT EXHIBIT A

EXHIBIT C  
REQUIRED FORMS AND DOCUMENTATION



**Exhibit C**  
**to Credomatic Notice of Transfer**

See the following attached documents:

1. ABA/DDA Change Request Form
2. Bank Letter together with the completed form above confirming the designated Account legal name, Account number, and the ABA routing number referred to in the form above



**CREDOMATIC**

Member BAC | CREDOMATIC Network



BAC | Florida

Credomatic of Florida, Inc  
9150 S. Dadeland Blvd.  
Suite 800  
Miami, Florida 33156

Tel: 305-372-3012  
Fax: 305-670-5251  
www.credomaticusa.com

## ABA/DDA Change Request

Merchant Account #:		
Merchant Name (DBA):		
Requested By:		
Phone #:		
	Current	New
Bank Name		
ABA/Routing Number		
DDA/Account Number		

Merchant Signature: \_\_\_\_\_ Date \_\_\_\_\_

Merchant Owner/Principal Name: \_\_\_\_\_  
(Printed)

**NOTE: CHANGES TO BANKING INFORMATION WILL NOT BE PROCESSED WITHOUT A VOIDED CHECK OR BANK LETTER.**

\*Please note: A Support Representative will contact you to verify the above information\*



Global Transaction Services  
388 Greenwich Street  
New York, NY 10013

Karen Abarca, Vice President  
Direct: 212-816-2977  
Facsimile: 212-816-5530  
Karen.Abarca@citi.com

Avianca S.A.  
Att: Lucia Avila  
Avenida Calle 26 # 59 – 15  
Bogota, Colombia

December 11, 2017

**AEROVIAS DEL CONTINENTE AMERICANO S.A. – “AVIANCA”**

To Whom It May Concern,

Based on the request received, for the purpose of the above mentioned transaction currently being negotiated, we have reserved the account number listed below along with the wire instructions in connection to such account. Once the agreements have been finalized, the account will be available for use:

<i>Account No</i>	<i>Account Name</i>
11925000	USAVflow Ltd Pass thru Account

Payments shall be sent by wire transfer pursuant to the following instructions:

CITIBANK, N.A.  
ABA: 0210-0008-9  
SWIFT: CITIUS33  
CR: A & T Account Administration  
A/C#: 36114317  
Ref:11925000

Thank you,

Miriam Molina  
Vice President

Citibank, N.A.



**CREDOMATIC**  
Merchant Services

**Merchant Services Department**  
**T: 1-877-372-3012**  
**F: 305-670-5251**  
**cof-merchant\_dept@credomaticusa.com**

## ABA/DDA Change Request \*

Merchant Account #: 5610014001084970		
Merchant Name (DBA): AVIANCA TRAVEL AGENCIES		
Requested By: Henry Ernesto Zavaleta		
Phone #: (503) 2247-2399		
	Current	New
Bank Name	JP Morgan Chase NA	Citibank, N.A
ABA/Routing Number	021000021	021000089
DDA/Account Number	581936155	11925000

Date: December, 2017

Merchant Signature:

Merchant Owner/Principal Name (Printed):

Henry Ernesto Zavaleta / Sales to cash Manager

**\*Attach a voided check or bank letter to process changes to banking information**

Merchant Services Department will contact you to verify the above information

**EXHIBIT 9**

## CREDOMATIC CONSENT AND AGREEMENT

December 12, 2017

BAC International Bank, Inc., on behalf itself and its subsidiaries (collectively, “**Credomatic**” and each a “**Credomatic Company**”), hereby acknowledges receipt of and consents to all the terms of the Notice of Transfer, dated December 12, 2017 (the “**Notice**”), delivered by Aerovias del Continente Americano S.A. Avianca, a company organized under the laws of Colombia (“**Avianca S.A.**”), USAVflow Limited, a company organized under the laws of the Cayman Islands (the “**Company**”), Avianca, Inc., a corporation organized under the laws of the State of New York (“**Avianca USA**”), and Citibank, N.A., as Collateral Agent for the Lenders as defined therein (in such capacity, together with its successors and assigns in such capacity, the “**Collateral Agent**”). Capitalized terms used but not defined herein shall have the meanings given in the Notice.

(a) For good and valuable consideration given by Avianca S.A., its subsidiaries and the Company, and subject to the terms of the Notice, Credomatic unconditionally and irrevocably:

- (i) acknowledges, and consents to, the transactions described in Section 1 (“**Notice and Transfer of Receivables**”) of the Notice;
- (ii) represents that, to the best of its understanding pursuant to the representations made by the Notice Parties, immediately before giving effect to the transactions described in Section 1 of the Notice, Avianca S.A. is the owner of the Assigned Contract Rights and Assigned Receivables and agrees that after giving effect to the transactions described in Section 1 of the Notice, the Company is the owner of the Assigned Contract Rights and Assigned Receivables and agrees to make all applicable payments under the Credomatic Contracts, in respect of Specified Sales in accordance with the instructions set forth in Section 3 (a) of the Notice unless and until such Notice is terminated in accordance with Section 5(a) of the Notice; *provided that* all such payments shall be made in United States dollars in immediately available and freely transferable funds and *provided further that*, except for payment of the Directed Amounts to the account specified in the Notice, neither Credomatic nor any Credomatic Company shall have any further obligation with respect to receipt by any party of any amounts to be paid pursuant to this clause (ii), including but not limited to amounts that may be withheld from such payments on account of taxes.
- (iii) waives any right to set off, deduct or apply any deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held by Credomatic on behalf of Avianca S.A. or the Company (in each case, other than those deposits held in relation to the Credomatic Contracts) or other obligations at any time owing by Credomatic to



Avianca S.A. or the Company under any agreement other than the Credomatic Contracts against the obligations of the Client under the Credomatic Contracts and amounts payable under clause (ii) above; *provided, however*, that Credomatic and the Credomatic companies shall at all times have the right to set off any and all Incidental Charges owed to or for the account of Credomatic (or the Credomatic companies) (y) against any and all amounts due from Credomatic (or the Credomatic companies) to or for the account of Client or each of the Client Affiliates; and/or, (z) against any and all amounts due from Credomatic (or the Credomatic companies) to or for the account of (or deposited in accounts held by Credomatic, or the Credomatic companies on behalf of) the Company or the Collateral Agent under clause (ii) above, whether such amounts are due by reason of Receivables, Contract Rights or otherwise;

- (iv) represents that Exhibit A hereto is a true and correct and complete copy of the Credomatic Contracts that are relevant to Specified Sales as of the date hereof and agrees that it will promptly acknowledge and accept any Merchant ID Supplement properly delivered to it by Avianca S.A. and reflecting all merchant numbers associated at such time with all Specified Sales;
- (v) represents that, based on its understanding of the representations made by the Notice Parties in the Notice , Exhibit B to the Notice sets forth the merchant codes that fairly identify the sales and services associated with the Assigned Contract Rights and Assigned Receivables as of the date hereof.
- (vi) agrees that the Collateral Agent (for and on behalf of the Lenders) shall be an express and intended third party beneficiary of the agreements contained herein;
- (vii) agrees that it shall simultaneously copy all notices made by Credomatic to the Client under the Credomatic Contracts, to Avianca S.A., Avianca USA, the Company and the Collateral Agent in accordance with Section 9 of the Notice.
- (viii) represents that Client is not in breach of any material obligation under the Credomatic Contracts;
- (ix) represents it has not received notice of any currently effective assignment of, or pledge of any security interest with regard to any of the Assigned Contract Rights or Assigned Receivables;
- (x) agrees that, as long as this Credomatic Consent and Agreement remains in effect, it will not consent to any assignment of, or pledge of any security interest in any of the Assigned Contract Rights or Assigned Receivables to any Person other than pursuant to the Notice;

- (xi) agrees not to enter into any other contract or replacement contract with the Client or any of its affiliates with respect to the Specified Sales without the previous written consent of the Collateral Agent, and to transact all business in respect of the Specified Sales under the current Credomatic Contracts as extended; *provided, however, that*, such limitation shall not limit or otherwise impair Credomatic's rights or remedies under the Credomatic Contracts, including, without limitation, its rights under clause 3 of the Credomatic Master Agreement or its rights to modify, amend, replace or update the Credomatic Contracts in a way that does not materially affect the Specified Sales, the Assigned Receivables or the Assigned Contract Rights; and *provided further, that* such limitation shall not limit or otherwise impair Credomatic's rights to enter into new contractual relationships with other Client Affiliates that are not being processed, acquired or otherwise serviced by Credomatic as of the date hereof.
- (xii) this Consent and Agreement shall remain in full force and effect until terminated in accordance with Section 5(a) of the Notice; and
- (xiii) all notices, requests, demands or other communications to or upon Credomatic or any Notice Party shall be made in accordance with Section 9 of the Notice;

(b) Credomatic is executing this Credomatic Consent and Agreement in reliance upon the agreements, representations and warranties on the part of each of the Notice Parties contained in the Notice, particularly those contained in Sections 4 and 6 thereof. Except as expressly set forth in Section 3(a) to the Notice and in paragraph (a) above, nothing contained herein, in the Notice or in any Agreements shall limit or otherwise impair either Credomatic's or the Credomatic companies' rights or remedies under the Credomatic Contracts or the Credomatic Card Program, all of which are hereby reserved, and neither Credomatic nor any of the Credomatic companies shall be liable or deemed to be in breach of this Credomatic Consent and Agreement for any actions by either Credomatic or the Credomatic companies taken in good faith which impair or could impair the Receivables in circumstances where such actions by such Credomatic company were taken (i) in the exercise of its rights or the fulfillment of its obligations with respect to the Receivables in accordance with the Notice and this Credomatic Consent and Agreement, (ii) in accordance with the Credomatic Contracts and/or the Credomatic Card Program, or (iii) because of actions or inactions in breach of the Credomatic Contracts or the Credomatic Card Program on the part of the Client and/or any of the Client's affiliates, such as their respective obligations to pay Credomatic or fulfill their obligations to their respective clients. Without limitation of the generality of the foregoing, such actions by a Credomatic company could include but would not be limited to termination of any of the Client's or the Client Affiliate's corresponding Credomatic Contract upon the occurrence of a Fundamental Change or otherwise in accordance with the Credomatic Contracts or any event described in Section 6 of the Notice. Except as expressly set forth in Section 3(a) to the Notice and in paragraph (a) above, nothing contained herein, in the Notice or in any Agreement shall modify, create or impose any obligations or duties upon either of the Credomatic companies in connection with the Credomatic Card Program.

(c) Credomatic is executing this Credomatic Consent and Agreement only in connection with the Agreements to the extent described in the Notice. This Credomatic Consent and Agreement shall be effective as of the date hereof, subject to the conditions, in the Notice. Credomatic's consent, representations and agreements hereunder expressly do not extend to any Future Transaction.

*[next page is signature page]*

This Consent and Agreement shall be binding upon Credomatic and its respective successors and assigns and shall inure to the benefit of Client, the Company and the Collateral Agent, with respect to their interests in the Receivables, and their respective successors and assigns.

BAC International Bank, Inc.,  
as Credomatic

By: 

Name: RODOLFO TABASH ESPINACH

Title: President and Attorney-in-Fact

Address for Notices:

DIRECCIÓN REGIONAL DE TARJETAS

Attn: Juan Carlos Páez Mena

COO Card Business

BAC | Credomatic

COSTA RICA, San José, Escazú, Guachipelín

Oficentro Plaza Roble, Edificio Terrazas B

Cuarto Piso

*[Signature Page to Credomatic Consent and Agreement]*



**A380**

NOTICE OF TERMINATION

BAC INTERNATIONAL BANK, INC.  
DIRECCIÓN REGIONAL DE TARJETAS  
Attn: Juan Carlos Páez Mena  
COO Card Business  
BAC | Credomatic  
COSTA RICA, San José, Escazú, Guachipelín  
Oficentro Plaza Roble, Edificio Terrazas B  
Cuarto Piso

[Date]

Ladies and Gentlemen:

Reference is made to the Consent and Agreement, dated December 12, 2017 (the “**Credomatic Consent**”), given by Credomatic to Citibank, N.A., as Collateral Agent for the Lenders as defined therein (in such capacity, together with its successors and assigns in such capacity, the “**Collateral Agent**”). Capitalized terms used but not defined herein shall have the meanings given in the Credomatic Consent.

In accordance with paragraph (a), clause (xii) of the Credomatic Consent, the undersigned hereby notifies Credomatic that the Credomatic Consent is hereby terminated.

Accordingly, you are authorized to redirect all amounts payable by Credomatic to Avianca S.A., Avianca USA, and the Company in respect of the Assigned Contract Rights and Assigned Receivables to the bank account specified in Schedule 2 to the Notice, so that Credomatic shall no longer have obligations to follow the instructions of the Collateral Agent pursuant to the Notice and the Credomatic Consent.

CITIBANK, N.A., as  
Collateral Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT 10**



## AMEX NOTICE AND CONSENT

American Express Travel Related Services Company, Inc.  
3 World Financial Center  
200 Vesey Street, 40th Floor  
New York, NY 10285  
Attention: President, Global Merchant Services / General Counsel's Office / Merchant Services  
Practice Group

and

American Express Payment Services Limited  
Merchant Services  
P.O. Box 72  
Brighton BN88 IAH

With copy to:

American Express Company (Mexico), S.A. de C.V.  
Complejo Tecnoparque  
Eje 5 Norte No. 990 Edificio C  
Colonia Santa Bárbara  
Azcapotzalco  
Mexico, D.F.  
Attention: Vice President and General Manager, Merchant Services Americas, LAC

December 12, 2017

### NOTICE AND CONSENT

Ladies and Gentlemen:

Reference is made to (a) Contract Rights and Recievables Sale, Purchase and Servicing Agreement, to be dated on or about the date hereof (as amended, amended and restated, supplemented, or otherwise modified from time to time, the "**RSPA**"), between Aerovias del Continente Americano S.A. Avianca, a company organized under the laws of Colombia ("**Avianca S.A.**"), as the Seller and as the Servicer and USAVflow Limited, a company organized under the laws of the Cayman Islands (the "**Company**"), as the Purchaser, (b) the Receivables Maintenance Agreement, to be dated on or about the date hereof (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Undertaking Agreement**"), between Avianca S.A. and the Company, (c) the Cash Management Agreement to be dated on or about the date hereof (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Cash Management Agreement**"), among Avianca S.A., the Company, Avianca USA and Citibank, N.A. as Administrative Agent (in such capacity,

the “**Administrative Agent**”) and as Collateral Agent (in such capacity, the “**Collateral Agent**”), (d) the Pledge over Contract Rights and Future Revenues (*Contrato de Prenda sobre Derechos Contractuales e Ingresos Futuros*), to be dated on or about the date hereof (as amended, amended and restated, supplemented, or otherwise modified from time to time, the “**Colombian Security Agreement**”), between Avianca S.A. and the Company, (e) the Security Agreement, to be dated on or about the date hereof (as amended, amended and restated, supplemented, or otherwise modified from time to time, the “**New York Security Agreement**” and collectively with the RSPA, the Undertaking Agreement, the Cash Management Agreement and the Colombian Security Agreement, the “**Agreements**”), by and between the Company, as grantor, and the Collateral Agent, and (f) that certain Airline Card Service Agreement, dated as of October 8, 2013 (as modified pursuant to this Notice and Consent, and all extensions, amendments, supplements, or replacements of such agreements among AMEX (as defined below) and its affiliates and Avianca S.A. or any of its affiliates, collectively, the “**AMEX Contract**”), among American Express Travel Related Services Company, Inc. (together with its successors or assigns, “**AMEX Inc.**”), American Express Payment Services Limited (together with its successors or assigns, “**AMEX Limited**”; and, collectively with AMEX Inc., “**AMEX**”), Avianca S.A., Taca International Airlines S.A., Líneas Aéreas Costarricenses S.A., Trans American Airlines S.A. dba Taca Peru, Aviateca S.A., America Central Corporation and Lifemiles Corp. (collectively, the “**Carriers**”), pursuant to which AMEX agrees to pay the Seller for goods and services of the Seller purchased with the American Express Card in the United States;

Capitalized terms used but not defined herein shall have the meanings given on Schedule 1 hereto.

#### 1. Notice

The Carriers, Avianca, Inc. (“**Avianca USA**”) and the Company hereby give AMEX written notice that,

- (i) pursuant to, and subject to the terms and conditions of, the RSPA, Avianca S.A. will sell to the Company, and the Company will buy from Avianca S.A., finally, definitively, and irrevocably, the Assigned Contract Rights and the Assigned Receivables;
- (ii) pursuant to the Colombian Security Agreement, Avianca S.A. will grant to the Company a security interest (garantía mobiliaria) in certain contingent future receivables associated with, and assign to the Company, as collateral, all of Avianca S.A.’s right, title, and interest in and to the Assigned Contract Rights and the Assigned Receivables; and
- (iii) pursuant to the New York Security Agreement, the Company will grant to the Collateral Agent a first priority security interest in, and lien on, all of

the Company's right, title, and interest in and to the Assigned Contract Rights and the Assigned Receivables.

2. Carriers and Avianca USA Acknowledgment and Agreement and Avianca S.A. Agreement

Pursuant to and in connection with the AMEX Contract, the Carriers and Avianca USA acknowledge and agree (i) that Avianca S.A. is the sole owner of the Assigned Contract Rights and the Assigned Receivables and therefore entitled to all amounts payable in respect of the Assigned Contract Rights and the Assigned Receivables and (ii) that after giving effect to the transactions described in 1 above, the Company is the sole owner of the Assigned Contract Rights and the Assigned Receivables and therefore entitled to all amounts payable in respect to the Assigned Contract Rights and the Assigned Receivables.

The Carriers and Avianca USA hereby confirm that any and all payments that have been received by Avianca USA under the AMEX Contract have been received solely in Avianca USA's capacity as agent, and Avianca USA disclaims any entitlement to or ownership of those payments.

Avianca S.A. hereby agrees that it shall promptly notify AMEX and the Collateral Agent of any changes, modifications or supplements to the merchant numbers that fairly identify the Specified Sales by delivering a Merchant ID Supplement.

### 3. AMEX Representations and Agreements

Pursuant to and in connection with section 10.(g) of the AMEX Contract, which requires AMEX's prior written consent for the assignment of rights under the AMEX Contract, by AMEX's signature below, AMEX unconditionally and irrevocably:

- (i) acknowledges, and consents to, the transactions described in section 1 set forth above;
- (ii) (a) represents that, to its knowledge, immediately before giving effect to the transactions described in 1 above, Avianca S.A. is entitled under the AMEX Contract to the Assigned Contract Rights and Assigned Receivables and (b) agrees that after giving effect to the transactions described in 1 above, (x) the Company is entitled under the AMEX Contract to the Assigned Contract Rights and Assigned Receivables and (y) AMEX will make all applicable payments with respect to the Assigned Contract Rights and the Assigned Receivables, including, without limitation, in respect of any airline ticket sales and related services identified by those certain merchant numbers, geographic jurisdictions

and/or other distinguishing characteristics specified on Exhibit A hereto, in accordance with the instructions set forth below;

- (iii) represents that Exhibit A hereto sets forth as of the date hereof the merchant numbers that fairly identify the Specified Sales and agrees that it will (x) use commercially reasonable efforts to notify the Collateral Agent of any changes to such merchant numbers and (y) promptly acknowledge and accept any Merchant ID Supplement properly delivered to it by Avianca S.A. and reflecting all merchant numbers associated at such time with all Specified Sales;
- (iv) represents that, to its knowledge, the Carriers are not in breach of any obligation under the AMEX Contract;
- (v) represents that, to its knowledge, it has not received notice of any currently effective assignment of, or pledge of any security interest in, any of the Assigned Contract Rights or the Assigned Receivables; and
- (vi) agrees that if it enters into any other contract or replacement contract with the Carriers or any of their affiliates with respect to the Specified Sales, such contract will be automatically subject to this Notice and Consent and the defined term "AMEX Contract" shall be deemed to include any such contract for all purposes hereunder.

#### 4. Directions Regarding Payments

In connection with the Agreements, notwithstanding anything to the contrary set forth in the AMEX Contract, the Carriers, Avianca USA and the Company hereby irrevocably authorize and instruct AMEX to pay all amounts payable by AMEX in respect of the Assigned Contract Rights and the Assigned Receivables in U.S. dollars to the Company's account specified below:

ACH to:	Citibank, N.A.
ABA:	021000089
SWIFT:	CITIUS33
Cr:	A & T Account Administration
A/C #:	36114317
Reference:	11925000
Beneficiary Name:	USAVflow Ltd

or to such other account as may from time to time be designated in writing by the Collateral Agent to AMEX by sending a written request (together with a copy of this Notice and Consent) via first class mail or overnight delivery to:

American Express Travel Related Services Company, Inc.

20022 N. 31st Avenue  
Mail Code: 08-03-17  
Phoenix, AZ 85027  
Attn: Banking Team

and otherwise to act in accordance with the payment instructions of the Collateral Agent in connection therewith, in each case, without further instruction from the Carriers, Avianca USA or the Company and (ii) cease making any such payments to any other account(s).

Notwithstanding anything to the contrary herein, each of the Carriers, Avianca USA and the Company acknowledge and agree that AMEX is not required to alter its regular course of business with respect to acceptance of payment instructions from merchants and that American Express will have no liability if it acts in accordance with payment instructions received from an employee or agent of Carriers acting with apparent authority.

#### 5. Limited Recourse

Notwithstanding any other provision of this Notice and Consent, each party hereto hereby agrees that the Company's obligations under this Notice and Consent shall be limited recourse obligations of the Company, with recourse being limited to the assets (other than the ordinary share capital and any transaction fee charged by the Company pursuant to the administration agreement dated the date hereof entered into between the Company and MaplesFS Limited) of the Company at such time available for application by or on behalf of the Company in making payments in accordance with this Notice and Consent. The parties hereby acknowledge and agree that the Company's obligations under this Notice and Consent are solely the corporate obligations of the Company, and that none of the officers, directors, shareholders or agents of the Company, any of its affiliates or any other person shall be personally liable to make any payments of principal, interest or any other sum now or hereafter owing by the Company hereunder. After the Company's assets (other than the ordinary share capital and any transaction fee charged by the Company pursuant to the administration agreement dated the date hereof entered into between the Company and MaplesFS Limited) are realized and exhausted, all sums due but still unpaid in respect of the Company's obligations hereunder shall be extinguished and shall not thereafter revive with respect to the Company and its liability hereunder, and the parties hereto shall not have the right to proceed against the Company or any of its affiliates or any of its officers, directors, shareholders or agents for the satisfaction of any monetary claim or for any deficiency judgment remaining after foreclosure of any of its assets.

No party hereto shall take any steps for the purpose of procuring the appointment of any examiner, administrator, receiver, liquidator, provisional liquidator, bankruptcy trustee or administrative receiver or the making of any administrative order or court order or application or for instituting any bankruptcy, examinership, reorganization, arrangement, insolvency, winding up, liquidation, composition or any like proceedings under applicable law in respect of the Company or its affiliates or in respect of any of their liabilities, including, without limitation, as a result of any claim or interest of such parties.

The provisions of this Section 5 shall survive termination of this Notice and Consent.

#### 6. Other Provisions

This Notice and Consent supersedes all prior payment instructions from the Carriers or Avianca USA to AMEX with respect to amounts payable to Avianca S.A., the other Carriers, Avianca USA or the Company in respect of the Assigned Contract Rights and the Assigned Receivables.

All notices related to this Notice and Consent (i) to AMEX should be made to the address set forth above, (ii) to Collateral Agent should be made to the address set forth on its signature page below and (iii) to Avianca S.A., the Company or any Carrier should be made to the address set forth below:

Aerovías del Continente Americano S.A. Avianca  
Centro Administrativo  
Avenida Calle 26 No. 59-15 Piso 10  
Bogotá, D.C.  
Colombia  
Attention: Vicepresidente Financiero;  
E-mail: lucia.avila@avianca.com;

Company, Avianca USA and the Carriers agree that such payment instructions may not be revoked or changed and this Notice and Consent may not be amended without the prior written consent of the Collateral Agent, except that Company, Avianca USA and the Carriers hereto hereby agree that Exhibit A may be amended by the delivery of a Merchant ID Supplement from Avianca S.A. to AMEX and the Collateral Agent, and such amendment shall be effective upon the acceptance and acknowledgment thereof by AMEX and the Collateral Agent

Nothing in this Notice and Consent shall be construed as creating or implying any additional obligation of AMEX under the AMEX Contract, except as expressly provided herein, and nothing contained herein shall otherwise amend or modify the terms and conditions of the AMEX Contract. For the avoidance of doubt, Company, Avianca USA, and the Carriers each acknowledge that AMEX retains all of its rights under the AMEX Contract, including, but not limited to, AMEX's right to Chargeback and exercise Protective Actions under Section 3 of the AMEX Contract.

THIS NOTICE AND CONSENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (NOT INCLUDING SUCH STATE'S CONFLICT OF LAWS PROVISIONS OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).



The Company, Avianca USA, and Carriers will indemnify and hold harmless AMEX from any and all liabilities, claims, demands, actions or judgments, including but not limited to attorneys' fees, arising out of or resulting from their respective acts or omissions, or those of their respective employees, officers or agents in connection arising or resulting from AMEX's compliance with the terms of this Notice and Consent.

Notwithstanding the fact that this Notice and Consent is governed by the law of the State of New York, it perfects the transfer (*tradición*) of the Assigned Contract Rights and the Assigned Receivables to be sold by Avianca S.A. to the Company under the RSPA, pursuant to articles 887 *et seq* of the Colombian Commercial Code and article 1959 of the Colombian Civil Code, respectively, and the transfer of a security interest in and lien on the Assigned Contract Rights and the Assigned Receivables to be created by Avianca S.A. in favor of the Company under the Colombian Security Agreement pursuant to Secured Transaction Law 1676 of 2013.

This Notice and Consent may be executed in any number of counterparts and by different parties on separate counterparts. Each of such counterparts shall be deemed to be an original, and all of such counterparts, taken together, shall constitute but one and the same agreement. Delivery of an executed counterpart of this Notice and Consent by electronic mail shall be equally as effective as delivery of a manually executed counterpart.

Any reference to the Collateral Agent in this Notice and Consent shall be construed as a reference to the Collateral Agent acting as agent for and on behalf of the Lenders and in accordance with the Purchaser Credit Agreement (as defined in the RSPA). In relation to the giving of any consent, approval or direction by the Collateral Agent hereunder, it is acknowledged and accepted by the parties hereto that in all cases the Collateral Agent shall be acting, giving, withholding or otherwise undertaking and exercising such action solely on behalf of the Lenders and as directed in accordance with the terms of the Purchaser Credit Agreement. Under no circumstances shall the Collateral Agent be under any obligation to any party hereto to give any consent, approval or direction, or take any other action in connection with this Notice and Consent. The Collateral Agent shall have no liability to AMEX, the Carriers or to any other party hereto in connection with this Notice and Consent or for or in connection with any action or inaction on its part under or in connection with this Notice and Consent, and such parties agree that any such liability shall be excluded to the fullest extent permitted by applicable law. Nothing herein shall be construed to be an agreement by the Collateral Agent to any of the provisions contained herein, it being understood and agreed by all parties hereto that the Lenders have agreed to the terms of this Notice and Consent and pursuant to the Purchaser Credit Agreement have instructed the Collateral Agent to enter into this Notice and Consent, as agent for and on behalf of the Lenders. The Collateral Agent shall be entitled to all of the rights, benefits, privileges, protections and indemnities provided to it in the Purchaser Credit Agreement as if specifically set forth herein.

*[Remainder of page intentionally left blank]*

Please acknowledge your receipt of this Notice and Consent and your agreement to the payment terms specified above by executing this Notice and Consent where indicated below and returning it in pdf format by electronic mail to the Company and the Collateral Agent. Thank you for your cooperation in this matter.

Very truly yours,

AEROVÍAS DEL CONTINENTE AMERICANO  
S.A. AVIANCA

By: [Signature]

Name: ROBERTO HEID

Title: \_\_\_\_\_

[American Express Notice and Consent – Signature Page]

TACA INTERNATIONAL AIRLINES, S.A.

By:   
Name: DANILO CORREA SEPULVEDA  
Title: PRESIDENT

AVIANCA COSTA RICA S.A.

By: Viviana Martin  
Name: Viviana Martin  
Title: President

[American Express Notice and Consent – Signature Page]



AVIATECA S.A. 

By: \_\_\_\_\_

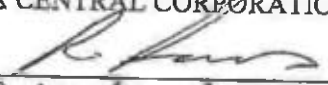
Name: OCTAVIO BRAVO

Title: Local Representative

[American Express Notice and Consent – Signature Page]



AMERICA CENTRAL CORPORATION

By:   
Name: Rolando Namas  
Title: DIRECTOR GENERAL NAM

[American Express Notice and Consent – Signature Page]

LIFEMILES CORP

By: \_\_\_\_\_

Name: Matthew Paul Vincett \_\_\_\_\_

Title: CEO \_\_\_\_\_

USAVFLOW LIMITED

By:   
Name: Peter Lundin  
Title: Director

AVIANCA, INC

By: 

Name: Gerardo Gerayalen

Title: Director

[American Express Notice and Consent – Signature Page]

ACCEPTED AND AGREED AS OF THE DATE  
FIRST WRITTEN ABOVE

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

By: \_\_\_\_\_

Name: AMANDA L. HOPKINS

Title: VP, GMS Risk Management



*Signature page to AMEX Notice and Consent*

AMERICAN EXPRESS PAYMENT SERVICES LIMITED

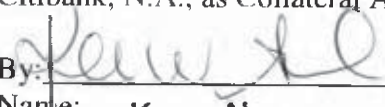
By:   
Name: LIXIA WANG  
Title: VP GM EUROPE

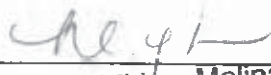
*Signature page to AMEX Notice and Consent*



ACCEPTED AND AGREED AS OF THE DATE  
FIRST WRITTEN ABOVE

Citibank, N.A., as Collateral Agent

By:   
Name: Karen Abarca  
Title: Vice President

By:   
Name: Miriam Molina  
Title: Vice President

Address for Notices:

Citibank, N.A.  
388 Greenwich Street  
New York, NY 10013  
Attn: Karen Abarca  
Tel.: (212) 816-7759  
E-mail: karen.abarca@citi.com / cts.spag@citi.com

## SCHEDULE 1

### DEFINED TERMS

“**ARC**” means Airlines Reporting Corporation, or any successor or replacement thereof.

“**Assigned Contract Rights**” means the contract rights of Avianca S.A. under the AMEX Contract to (a) receive any kind of payments, indemnities or economic compensations derived from Specified Sales, including the right, among other things, to receive all future Collections derived therefrom; and (b) to enforce the rights referred to in (a) against AMEX. For the avoidance of doubt, the Assigned Contract Rights shall not include (x) any obligation or liability of Avianca S.A. under the AMEX Contract or arising in any manner therefrom; or (y) the rights of Avianca S.A.:

- (i) to honor Cards or conduct any Card sale as payment for travel costs or otherwise, or to request authorization to honor Cards;
- (ii) to submit Sales Slips for billing or issue credit slips in any manner provided by AMEX Contract;
- (iii) to request, to treat or to have access to confidential information pertaining to cardholder account information;
- (iv) to request or receive a restricted card list pursuant to the AMEX Contract;
- (v) to grant consent to AMEX to display or show the trademarks, logos or company names of Avianca S.A. in promotion, advertising, press releases or otherwise pursuant to the AMEX Contract;
- (vi) to use trademarks and service marks of a card association in its advertising, press releases or otherwise pursuant to the AMEX Contract;
- (vii) to handle all claims or complaints by a cardholder with respect to Card transactions;
- (viii) to receive documentation from AMEX that is required in connection with the defense of any claim of a cardholder asserted in connection with the AMEX Contract; or
- (ix) to receive any Collections derived from sales which are not Specified Sales.

“**Assigned Receivables**” means any and all Collections accrued under the AMEX Contract in respect of Specified Sales that are due by AMEX to Avianca S.A. immediately prior to giving effect to the RSPA on the date of the RSPA.

“**Cards**” means credit, debit, charge and ATM cards under which cardholders purchase goods and services of Avianca S.A and its affiliates.

*Schedule 1*

**“Collections”** means all cash collections and other cash proceeds derived from the Assigned Contract Rights or the Assigned Receivables, whether received by Avianca S.A., the Company, or any other Person.

**“Merchant ID Supplement”** means a notice, substantially in the form of Exhibit B hereto.

**“Sales Slip”** means a sales slip under a Card evidencing a payment obligation of the holder of the Card in respect of goods or services purchased by such holder using such Card.

**“Specified Sales”** means the sales, including future sales, made by travel agencies in the United States and cleared through ARC of airline tickets or related services provided by the Receivables Seller where payment in the case of any such sale is made by an American Express® Card, however branded, or any one or more of such Cards, including all such sales identified by those certain merchant codes set forth on Exhibit A hereto, with such changes, if any, as shall have been made from time to time after delivery and acceptance of a Merchant ID Supplement.

*Schedule 1*

EXHIBIT A

MERCHANT NUMBERS

7992700286

Exhibit A

EXHIBIT B  
MERCHANT ID SUPPLEMENT

This Merchant ID Supplement, dated as of [●], is delivered pursuant to the Notice and Consent, dated as of December 12, 2017 (as it may from time to time be amended, modified or supplemented in accordance with its terms, the “**Notice and Consent**”), among Aerovías del Continente Americano S.A. Avianca (“**Avianca S.A.**”), Taca International Airlines S.A., Líneas Aéreas Costarricenses S.A., Trans American Airlines S.A. dba Taca Peru, Aviateca S.A., America Central Corporation, Lifemiles Corp., USAVflow Limited, American Express Travel Related Services Company, Inc. (together with its successors or assigns, “**AMEX Inc.**”), American Express Payment Services Limited (together with its successors or assigns, “**AMEX Limited**”; and, collectively with AMEX Inc., “**AMEX**”) and Citibank, N.A. Capitalized terms used herein but not defined herein are used with the meanings given them in the Notice and Consent.

Avianca S.A. represents and warrants that the attached replacement Exhibit A accurately and completely lists all merchant numbers that fairly identify the Specified Sales and hereby agrees that such replacement Exhibit A will replace Exhibit A to the Notice and Consent from and after the date of this Merchant ID Supplement.

IN WITNESS WHEREOF, Avianca S.A. has caused this Merchant ID Supplement to be duly executed and delivered by its duly authorized officer or representative as of the date first written above.

AEROVÍAS DEL CONTINENTE AMERICANO  
S.A. AVIANCA

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit B

ACCEPTED AND AGREED AS OF THE DATE  
FIRST WRITTEN ABOVE

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit B

AMERICAN EXPRESS PAYMENT SERVICES LIMITED

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit B



ACCEPTED AND AGREED AS OF THE DATE  
FIRST WRITTEN ABOVE

Citibank, N.A., as Collateral Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit B

REPLACEMENT EXHIBIT A

Exhibit B

**EXHIBIT 11**

LOAN AGREEMENT,

dated as of December 12, 2017

among

USAVFLOW LIMITED,  
as the Borrower,

THE LENDERS PARTY FROM TIME TO TIME TO THIS AGREEMENT,  
as Lenders,

AVIANCA HOLDINGS S.A.,  
TACA INTERNATIONAL AIRLINES, S.A.,  
AVIANCA COSTA RICA S.A. and  
TRANS AMERICAN AIRLINES, S.A.  
as Guarantors

Citibank, N.A.,  
as Administrative Agent

and

Citibank, N.A.,  
as Collateral Agent

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This LOAN AGREEMENT (this “**Agreement**”), dated as of December 12, 2017, is among USAVFLOW, an exempted company incorporated and registered under the laws of the Cayman Islands with registered number 324668 and having its registered office at the offices of MaplesFS Limited, PO Box 1093, Queensgate House, Grand Cayman, KY1-1102, as borrower (the “**Borrower**”), each Person party hereto as a lender from time to time (each, a “**Lender**,” and collectively, the “**Lenders**”), AVIANCA HOLDINGS S.A., a company organized under the laws of Panama, TACA INTERNATIONAL AIRLINES, S.A., a company organized under the laws of El Salvador, AVIANCA COSTA RICA S.A., f/k/a LINEAS AEREAS COSTARRICENSES S.A., a company organized under the laws of Costa Rica, and TRANS AMERICAN AIRLINES, S.A., a company organized under the laws of Peru, as guarantors (the “**Guarantors**”), Citibank, N.A., as administrative agent for the Lenders (in such capacity, or any successor appointed pursuant to Section 7.1.6, the “**Administrative Agent**”) and Citibank, N.A., as collateral agent for the Lenders (in such capacity, or any successor appointed pursuant to Section 7.1.6, the “**Collateral Agent**”).

**WHEREAS**, the Borrower has requested that the Lenders make the Loans to the Borrower in an aggregate principal amount not exceeding U.S.\$150,000,000; and

**WHEREAS**, each Lender is willing, on the terms and subject to the conditions hereinafter set forth, to make its Loan to the Borrower;

**NOW, THEREFORE**, the parties hereto agree as follows:

## **1. DEFINITIONS**

### **1.1 Defined Terms**

In this Agreement the following expressions have the following meanings:

“**Account Control Agreement**” means that certain Deposit Account Control Agreement, to be dated on or about the date hereof, among the Borrower, the U.S. Account Bank and the Collateral Agent.

“**Additional Amounts**” has the meaning specified in Section 2.7.2.

“**Adjusted EBITDA**” means, with respect to any period for any Person, such Person’s Consolidated EBITDA adjusted to exclude income or expenses resulting from foreign currency adjustments, derivative financial instruments, other financial income and transactions with Affiliates, in each case determined for such Person and its Subsidiaries on a consolidated basis and as set forth in the consolidated income statement of such Person in accordance with IFRS for such period.

“**Adjusted EBITDAR**” means, with respect to any period for any Person, such Person’s Adjusted EBITDA adjusted to exclude aircraft and other related rent expenses payable during such period, in each case determined for such Person and its Subsidiaries on a consolidated basis and as set forth in the consolidated income statement of such Person in accordance with IFRS for such period.

“**Adjusted EBITDAR Coverage Ratio**” means, at any date of determination, with respect to Holdings and its Subsidiaries on a consolidated basis, the ratio of (a) Adjusted EBITDAR for the Reference Period most recently ended on or before such date to (b) the sum of (i) aircraft and other related rent expenses plus (ii) interest expense, in each case for such Reference Period.

“**Administrative Agent’s Account**” means the account maintained at Citibank, N.A., New York, New York, USA, ABA No. 021000089, SWIFT: CITIUS33, Account No. 36852248, Account



Name: Medium Term Finance, Ref: Avianca, or such other account as from time to time may be designated by the Administrative Agent to the Borrower in writing.

**“Administration Agreement”** means the administration agreement dated the date hereof entered into between the Borrower and MaplesFS Limited.

**“Administrative Agent”** has the meaning specified in the first paragraph of this Agreement.

**“Administrative Questionnaire”** means an Administrative Questionnaire in a form supplied by the Administrative Agent.

**“Affiliate”** with respect to Holdings, the Guarantors and the Receivables Seller, means Holdings and any Subsidiary of Holdings and with respect to any other Person, means, another Person that, directly or indirectly, controls or is controlled by, or is under common control with, such Person. For purposes of this definition, the term “control” (including the terms “controlling”, “controlled by,” and “under common control with”) as used with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

**“Affiliate Transaction”** has the meaning specified in Section 5.10.

**“Agent Fees Due”** means fees due and payable to the Agents, the Collateral Trustee, any Delegate or any Receiver under the Credit Documents, including only such fees as have been notified to the Administrative Agent in writing at least 2 Business Days’ prior to any date of calculation.

**“Agent Fee Letter”** means the fee letter, dated September 11, 2017, among the Administrative Agent, the Collateral Agent, U.K. Account Bank and the Receivables Seller, as may be amended from time to time by the parties thereto.

**“Agent Indemnified Person”** has the meaning specified in Section 8.7.3.

**“Agents”** means the Administrative Agent and the Collateral Agent.

**“Air Travel Receivables”** of a Person means such Person’s rights to receive payment on account of its sale of any airline tickets or rendition of related services, including the right to receive all collections derived therefrom, whether paid for by Cards or otherwise.

**“AMEX”** means American Express Travel Related Services Company, Inc.

**“AMEX Contract”** means the Airline Card Service Agreement, dated as of October 8, 2013 (as modified by the AMEX Notice and Consent), among AMEX, American Express Payment Services Limited, the Receivables Seller, Taca International Airlines S.A., Líneas Aéreas Costarricenses S.A., Trans American Airlines S.A. dba Taca Peru, Aviateca S.A., America Central Corporation and Lifemiles Corp.

**“AMEX Notice and Consent”** means the Notice and Consent, dated on or about the date hereof, by and among AMEX, American Express Payment Services Limited, the Receivables Seller, Taca International Airlines S.A., Líneas Aéreas Costarricenses S.A., Trans American Airlines S.A. dba Taca Peru, Aviateca S.A., America Central Corporation, Lifemiles Corp, the Borrower, Avianca USA and the Collateral Agent.

**“Anti-Corruption Laws”** means (a) the United States Foreign Corrupt Practices Act of 1977, (b) the United Kingdom Bribery Act of 2010, and (c) any other similar applicable Law relating to bribery or corruption.

**“Anti-Money Laundering Laws”** means any applicable Law related to money laundering or terrorism financing, including (a) 18 U.S.C. §§ 1956 and 1957, and (b) the Bank Secrecy Act, 31 U.S.C. §§ 5311 *et seq.*, as amended by the Patriot Act, and its implementing regulations.

**“Approved Fund”** means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

**“ARC”** means Airlines Reporting Corporation or any successor or replacement thereof.

**“Arranger Fee Letter”** means the fee letter, dated as of the date hereof, between the Bookrunner, and the Borrower, as may be amended from time to time by the parties thereto.

**“Assignment and Assumption”** means an assignment and assumption entered into by a Lender and a Qualified Lender (with the consent of any party whose consent is required by Section 8.8.2), and acknowledged by the Administrative Agent, in substantially the form of Exhibit A.

**“Authorized Signatory”** means a person that has been duly authorized to execute or sign any Credit Document or any document, certificate or notice to be executed or signed under or in connection with any Credit Document.

**“Avianca USA”** means Avianca, Inc., a New York corporation.

**“Bail-In Action”** means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

**“Bail-In Legislation”** means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

**“Bankruptcy Law”** means Title 11, United States Code or any similar governmental, federal or state law of the United States or other applicable jurisdictions relating to bankruptcy, insolvency, receivership, winding-up, suspension of payments, liquidation, reorganization or relief of debtors or the law of any other jurisdiction relating to bankruptcy, insolvency, receivership, winding-up, suspension of payments, liquidation, reorganization or relief of debtors or any amendment to, succession to or change in any such law.

**“Bankruptcy Order”** means any court order, made in a proceeding pursuant to or within the meaning of any Bankruptcy Law, containing an adjudication of bankruptcy or insolvency, or a declaration of or providing for liquidation, receivership, winding-up, dissolution, **“concordate”** or reorganization, or appointing a Custodian of a debtor or of all or any substantial part of a debtor’s property, or providing for the staying, arrangement, adjustment or composition of indebtedness or other relief of a debtor.

**“Bookrunner”** means Deutsche Bank AG, London Branch, in its capacity as bookrunner and joint lead arranger.

**“Borrower”** has the meaning specified in the first paragraph of this Agreement.

**“Business Day”** means a day (other than Saturday or Sunday) on which commercial banks are not authorized or required to close in (i) London, United Kingdom, (ii) New York City, New York, or (iii) Bogotá, D.C., Colombia.

**“Capital Lease Obligations”** means an obligation that is required to be classified and accounted for as a capital lease for financial reporting purposes in accordance with IFRS, and the amount of Indebtedness represented by such obligation shall be the capitalized amount of such obligation determined in accordance with IFRS; and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty.

“**Capitalization Ratio**” means, at any date of determination, with respect to Holdings and its Subsidiaries on a consolidated basis, the ratio of:

- (a) the sum of (i) the aggregate amount of Holdings' Indebtedness *plus* (ii) scheduled annual rental payments under aircraft operating leases payable by Holdings or its Subsidiaries as of such date of determination, multiplied by seven, *less* (iii) the aggregate amount of cash of Holdings and its Subsidiaries;
- to
- (b) the sum of (i) the amount resulting from the calculation in clause (a) above *plus* (ii) the amount of shareholders' equity of Holdings as of such date;
- in each case without duplication.

“**Cards**” means credit, debit, charge and ATM cards under which cardholders purchase goods and services of the Receivables Seller and its Affiliates.

**“Card Processing Agreement”** means each of the AMEX Contract and the Credomatic Contract, and any other card processing agreement approved by the Required Lenders and subject to a Notice and Consent.

**“Card Processor”** means each of AMEX and Credomatic, and any other card processor approved by the Required Lenders and that has executed and delivered a Notice and Consent.

**“Cash Equivalents”** as to any Person, means (a) securities issued or directly and fully guaranteed or insured by the U.S. or any agency or instrumentality thereof (provided that the full faith and credit of the U.S. is pledged in support thereof) having maturities of not more than one year from the date of acquisition by such Person, (b) time deposits, demand deposits and certificates of deposit of any commercial bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the U.S., any State thereof or the District of Columbia having capital, surplus and undivided profits aggregating in excess of U.S.\$500,000,000, having maturities of not more than one year from the date of acquisition by such Person, (c) repurchase obligations with a term of not more than 90 days for underlying securities of the types described in subsection (a) above entered into with any bank meeting the qualifications specified in subsection (b) above, (d) commercial paper issued by any issuer rated at least A-1 by S&P or at least P-1 by Moody's or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and in each case maturing not more than one year after the date of acquisition by such Person or (e) investments in money market funds substantially all of whose assets comprise securities of the types described in subsections (a) through (d) above.

**“Cash Management Agreement”** means the Cash Management Agreement, to be dated on or about the date hereof, among the Receivables Seller, the Borrower, Avianca USA, the Collateral Agent and the Administrative Agent.

**“Change in Law”** means (a) the adoption of any Law, rule or regulation after the date of this Agreement, (b) any change in any Law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender (or, for purposes of Section 2.8.2, by any lending office of such Lender or by such Lender’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

**“Change of Control”** means:

(c) MaplesFS Limited, solely as trustee of the Trust created pursuant to the Declaration of Trust, made by MaplesFS Limited and dated on or about the date hereof, to hold the shares in the capital of the Borrower, ceases to directly own 100% of the issued shares in the capital of the Borrower;

(d) the direct or indirect sale or transfer (other than by way of merger or consolidation) of all or substantially all the assets of the Receivables Seller or the Borrower to another Person (in each case, unless such other Person is a Permitted Holder);

(e) the consummation of any transaction (including by merger, consolidation, acquisition, or any other means) as a result of which Permitted Holders cease to be the “beneficial owner” (as such term is used in Rule 13d-3 under the Exchange Act), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of Holdings (or its successors by merger, consolidation, or purchase of all or substantially all their assets) (on a fully diluted basis); or

(f) Holdings shall cease to (i) own directly or indirectly, beneficially and of record more than 50% of the Voting Stock of the Receivables Seller or any Guarantor (on a fully diluted basis) or (ii) have the power to direct or cause the direction of the management and policies of the Receivables Seller or the Servicer or any Guarantor.

**“Claims”** has the meaning specified in Section 8.7.3(a).

**“Clawback Amount”** has the meaning specified in Section 8.20.3.

**“Closing Date”** means the date on which funds are disbursed to the Borrower pursuant to Section 2.2.

**“Collateral”** means the property, rights and accounts that, in accordance with the Security Documents, from time to time, are subject to any Lien in favor of the Collateral Agent or the Collateral Trustee for the benefit of the Secured Parties.

**“Collateral Agent”** means Citibank, N.A., or any successor, as collateral agent for the Lenders under this Agreement, the Cash Management Agreement and the New York Security Agreement.

**“Collateral Trustee”** means Citibank, N.A. London Branch, or any successor, as collateral trustee for the Lenders under the English Security Documents.

**“Collateral Trustee Fee Letter”** means the fee letter, dated November 10, 2017, among the Collateral Trustee and the Receivables Seller, as may be amended from time to time by the parties thereto.

**“Collections”** means all cash collections and other cash proceeds derived from the Contract Rights or the Receivables, whether received by the Receivables Seller, the Borrower, or any other Person.

**“Collections Account”** means the Dollar deposit account with account number GB91CITI18500818821135 established and maintained by the Borrower at the U.K. Account Bank in London, England, or any successor or replacement account, which account will be under the control of the Collateral Trustee pursuant to the U.K. Account Charge.

**“Collections Coverage Ratio”** means the ratio, as calculated by the Administrative Agent on the second Business Day after each Payment Date of (a) the amount of Collections deposited in the Collections Account during the immediately preceding Interest Period ending on such Payment Date to (b) the sum of the Interest Amount plus the Principal Payment Amount payable on the next succeeding Payment Date. The Administrative Agent shall notify the Parties hereto of the Collections Coverage Ratio upon the determination thereof pursuant to the Cash Management Agreement.

**“Colombian Back-Up Security Agreement”** means the Pledge over Contract Rights and Future Revenues (*Contrato de Prenda sobre Derechos Contractuales e Ingresos Futuros*), to be dated on or about the date hereof, between the Receivables Seller and the Borrower.

**“Commitment”** means the obligation of any Lender to make a Loan to the Borrower hereunder on the Closing Date, in a principal amount equal to the amount set forth opposite such Lender’s name on Schedule 1.1.

**“Compliance Certificate”** means, with respect to any Obligor, a certificate substantially in the form of Exhibit G signed by the Chairman, Vice Chairman or other director of its board of directors, its President, Vice President, Secretary, Assistant Secretary, Chief Financial Officer, Comptroller, Treasurer, Assistant Treasurer, or other Authorized Signatory and delivered to the Administrative Agent.

**“Consolidated EBITDA”** for any Reference Period, with respect to Holdings and its Subsidiaries on a consolidated basis, means Consolidated Net Income for such period plus, without duplication and to the extent deducted in calculating Consolidated Net Income for such period, the sum of (a) Consolidated Interest Expense for such period, (b) the sum of federal, state, local and foreign income taxes accrued or paid in cash during such period, (c) the amount of depreciation and amortization expense deducted in determining Consolidated Net Income, (d) any extraordinary, unusual or non-recurring items reducing Consolidated Net Income for such period, and (e) any non-cash items reducing Consolidated Net Income for such period, minus (i) any extraordinary, unusual or non-recurring items increasing Consolidated Net Income for such period and (ii) any non-cash items increasing Consolidated Net Income for such period.

**“Consolidated Interest Expense”** for any Reference Period, with respect to Holdings and its Subsidiaries on a consolidated basis, means the total interest expense (including that portion attributable to capital leases in accordance with IFRS and capitalized interest) premium payments, debt discount, fees, charges and related expenses with respect to all outstanding Indebtedness of Holdings and its Subsidiaries, in each case whether or not paid in cash during such period.

**“Consolidated Net Income”** for any Reference Period, means the consolidated net income (or loss) of Holdings and its Subsidiaries, determined on a consolidated basis in accordance with IFRS.



**“Contract Rights”** means the contract rights of Receivables Seller under each Card Processing Agreement to (i) receive any kind of payments, indemnities or economic compensations derived therefrom on account of Specified Sales, including the right, among other things, to receive all future Collections derived therefrom; and (ii) to enforce the rights referred to in (i) against the respective Card Processor thereunder. For the avoidance of doubt, the Contract Rights shall not include (x) any obligation or liability of Receivables Seller under any Card Processing Agreement or arising in any manner therefrom; or (y) the rights of Receivables Seller:

(a) to honor Cards or conduct any Card sale as payment for travel costs or otherwise, or to request authorization to honor Cards;

(b) to submit Sales Slips for billing or issue credit slips in any manner provided by the applicable Card Processing Agreements;

(c) to request, to treat or to have access to confidential information pertaining to cardholder account information;

(d) to request or receive a restricted card list pursuant to the relevant Card Processing Agreements;

(e) to grant consent to a Card Processor to display or show the trademarks, logos or company names of Receivables Seller in promotion, advertising, press releases or otherwise pursuant to the applicable Card Processing Agreements;

(f) to use trademarks and service marks of a card association in its advertising, press releases or otherwise pursuant to the applicable Card Processing Agreements;

(g) to handle all claims or complaints by a cardholder with respect to Card transactions;

(h) to receive documentation from a Card Processor that is required in connection with the defense of any claim of a cardholder asserted in connection with the applicable Card Processing Agreements; or

(i) to receive any Collections derived from sales which are not Specified Sales.

**“Contract Rights and Receivables Addition”** means, in connection with a Permitted Termination of a Card Processing Agreement and so long as no Default or Event of Default has occurred and is continuing, a sale and transfer of additional Contract Rights and Receivables under a new Card Processing Agreement by the Receivables Seller to the Borrower in accordance with the RSPA, which additional Contract Rights and Receivables shall be subject to the Security Documents and payable to the New York Pass-Through Account.

**“Core Assets”** means assets used or useful in the business of providing air transportation for passengers and cargo, owning, servicing, and maintaining aircraft, aircraft engines, propellers, and spare parts for such property, owning, leasing, and maintaining facilities in order to conduct such business, or providing other services and selling merchandise related thereto, or any one of more of the foregoing activities.

**“Costa Rican Assignment Agreement”** means the Assignment Agreement, to be dated on or about the date hereof, between the Receivables Seller and the Borrower.

“**Costa Rican Back-Up Security Agreement**” means the Costa Rican Back-Up Security Agreement, to be dated on or about the date hereof, between the Receivables Seller and the Borrower.

“**Contractual Currency**” has the meaning specified in Section 8.7.2.

“**Credit Documents**” means this Agreement, the Receivables Transfer Documents, the Notes, the Security Documents, the Fee Letters and all other documents and instruments executed and/or delivered in connection with any of the foregoing.

“**Credomatic**” means BAC International Bank, Inc. and its subsidiaries.

“**Credomatic Contract**” means, collectively, (a) the *Convenio Regional de Avianca-Grupo BAC Credomatic para el Procesamiento de Transacciones de Tarjetas en Comercios Afiliados*, dated as of June 10, 2015, among the Receivables Seller, TACA International Airlines, S.A. and Credomatic, (b) the Merchant Application & Agreement, dated March 17, 2016 between Avianca USA, as agent on behalf of the Receivables Seller, and Credomatic, (c) the Amendment to the *Convenio Regional de Avianca-Grupo BAC Credomatic para el Procesamiento de Transacciones de Tarjetas en Comercios Afiliados*, dated as of November 9, 2017, among the Receivables Seller, TACA International Airlines, S.A. and Credomatic and (d) the Assignment of Rights Agreement, dated on or about the date hereof, among the Receivables Seller, TACA International Airlines, S.A., Avianca USA and Credomatic, in each case as modified by the Credomatic Notice and Consent.

“**Credomatic Notice and Consent**” means, collectively, one or more written agreements, instruments, or other documents dated as of, or on or about, the date hereof among the Receivables Seller, Credomatic, the Borrower, the Collateral Agent and the other parties thereto, substantially in the form of Exhibit B to the RSPA, pursuant to which (i) the transfer of the Contract Rights and Receivables under the Credomatic Contract from the Receivables Seller to the Borrower will be perfected as provided under Article 887 et. seq. of the Colombian Code of Commerce and Article 1959 et. seq. of the Colombian Civil Code, accordingly; and (ii) pursuant to Costa Rican and Florida law notice of such transfer will be given to, and consented to by, Credomatic.

“**Custodian**” means any receiver, interim receiver, receiver and manager, receiver-manager, trustee, assignee, liquidator, sequestrator or similar official under any Bankruptcy Law or any other Law respecting secured creditors and the enforcement of their security or any other person with like powers whether appointed judicially or out of court and whether pursuant to an interim or final appointment.

“**Debt Service Required Amount**” has the meaning specified in Section 2.3.3(a).

“**Debt Service Reserve Account**” means the Dollar deposit account with account number GB69CITI18500818821143 established and maintained by the Borrower at the U.K. Account Bank in London, England, or any successor or replacement account, which account will be under the control of the Collateral Trustee pursuant to the U.K. Account Charge.

“**Default**” means any event that is, or after notice or passage of time or both would be, an Event of Default.

“**Delegate**” has the meaning given to that term in the Security Trust Deed.

“**Dispose**” means to, directly or indirectly, consummate any sale, lease, transfer or other disposition (or series of related sales, leases, transfers or dispositions), including any disposition



by means of a merger, consolidation or similar transaction, of any property or assets. **“Disposition”** means any such sale, lease, transfer or other disposition (or series of related sales, leases, transfers or dispositions).

**“EEA Financial Institution”** means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

**“EEA Member Country”** means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

**“EEA Resolution Authority”** means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

**“English Security”** means the security created or expressed to be created in favor of the Collateral Trustee as trustee for the Secured Parties pursuant to the U.K. Account Charge.

**“English Security Documents”** means the Security Trust Deed and the U.K. Account Charge.

**“Environmental Law”** means all Laws relating to contamination, pollution, the protection of human health or the environment or the transportation, treatment, storage, disposal, release, threatened release or handling of or exposure to Hazardous Materials and any specific agreements entered into with any Governmental Authority that include commitments related to any of the above.

**“EU Bail-In Legislation Schedule”** means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

**“Event of Default”** means one of those circumstances described in Section 6.1.

**“Excluded Taxes”** has the meaning specified in Section 2.7.1.

**“Expenses Agreement”** means the Expenses Agreement dated December 12, 2017, between the Borrower and the Receivables Seller, providing for the Receivables Seller to pay certain fees to the Borrower and to pay various fees and expenses incurred by or payable to the Borrower, Maples and Calder, and MaplesFS Limited, including all costs, fees and expenses incurred by the Borrower and any other person contracted to provide services in relation to the Contract Rights and the Receivables, and other fees and expenses in connection with the organization, maintenance, and business of the Borrower.

**“Fee Letters”** means the Agent Fee Letter, the Arranger Fee Letter and the Collateral Trustee Fee Letter.

**“Fund”** means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of its activities.

**“Government Approvals”** means approvals, authorizations, permits, consents, exemptions and licenses of or by, and notices to or filings or registrations with, any Governmental Authority.

**“Governmental Authority”** means any nation or government, any state or municipality, any multilateral or similar organization or any other agency, instrumentality or political subdivision thereof and any entity exercising executive, legislative, judicial, monetary, regulatory or administrative functions of or pertaining to the government of Colombia, England, the Cayman Islands or any other jurisdiction.

**“Guarantee”** means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such other Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness (whether arising by virtue of partnership arrangements or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise) or (b) entered into for the purpose of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); provided, however, that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a corresponding meaning.

**“Guaranteed Obligations”** has the meaning specified in Section 8.19.1.

**“Guarantor”** has the meaning specified in the first paragraph of this Agreement.

**“Hazardous Materials”** means explosive or radioactive materials, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes, wastes and all hazardous or toxic substances, wastes or other pollutants (including petroleum or petroleum distillates) and any other chemicals, materials or substances designated, classified or regulated under any applicable Environmental Law.

**“Hedging Obligations”** of any Person means the obligations of such Person pursuant to any interest rate swap, currency swap, credit default swap or other derivative transaction (where the primary purpose is to hedge or minimize some business, interest, currency or credit risk).

**“Holdings”** means Avianca Holdings S.A., a Panamanian company.

**“IFRS”** means the International Financial Reporting Standards as adopted in the English language by the International Accounting Standards Board.

**“Incur”** means to issue, assume, Guarantee, incur or otherwise become liable for, provided, however, that any Indebtedness or capital stock of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Subsidiary at the time it becomes a Subsidiary. The term **“Incurrence”** when used as a noun shall have a correlative meaning. The accretion of principal of a non-interest bearing or other discount security, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms and the payment of dividends on capital stock in the form of additional shares of the same class of capital stock shall not be deemed the Incurrence of Indebtedness.

**“Indebtedness”** means, with respect to any Person on any date of determination (without duplication):

- (a) the principal in respect of (i) indebtedness of such Person for money borrowed and (ii) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable, including, in each case, any premium on such indebtedness to the extent such premium has become due and payable;

(b) all Capital Lease Obligations of such Person;

(c) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business and other monetary obligations to trade creditors existing on the Closing Date);

(d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in clauses (a) through (c) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the 20th Business Day following payment on the letter of credit);

(e) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any capital stock or, with respect to any Subsidiary of such Person, the liquidation preference with respect to any capital stock (but excluding, in each case, any accrued dividends);

(f) all obligations of the type referred to in clauses (a) through (e) of other Persons and all dividends of other Persons for the payment of which, in either case, such Person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including by means of any Guarantee;

(g) all obligations of the type referred to in clauses (a) through (f) of other Persons secured by any Lien on any property or asset of such Person (solely if such obligation is not assumed by such Person), the amount of such obligation being deemed to be the lesser of the value of such property or assets or the amount of the obligation so secured; and

(h) to the extent not otherwise included in this definition, Hedging Obligations of such Person.

The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations at such date; provided, however, that (i) the amount outstanding at any time of any Indebtedness issued with original issue discount is the amount of the liability in respect thereof determined in accordance with IFRS and (ii) Indebtedness shall not include any liability for foreign, federal, state, local or other taxes.

**"Indemnified Person"** has the meaning specified in Section 8.7.1.

**"Indemnified Taxes"** means Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Obligors under any Credit Document.

**"Interest Amount"** has the meaning specified in Section 2.5.1.

**"Interest Determination Date"** has the meaning specified in Section 2.5.3.

**"Interest Period"** has the meaning specified in Section 2.5.2.

**"Investment"** means any direct or indirect acquisition or investment by any Person in another Person, whether by means of: (a) the purchase or other acquisition of any equity interest, notes,

bonds, debentures or other securities of another Person, (b) a loan, advance or capital contribution to, guaranty or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit or all or a substantial part of the business of such Person.

“**Law**” means (a) any statute, law, treaty, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement or other governmental restriction or any interpretation or administration of any of the foregoing by any Governmental Authority (including Government Approvals) and (b) any directive, guideline, policy, requirement or any similar form of decision of or determination by any Governmental Authority, in each case, whether now or hereafter in effect (including, in each case, any Environmental Law).

“**Lender**” has the meaning specified in the first paragraph of this Agreement.

“**Lending Office**” as to any Lender, means the office or offices of such Lender described as such on Schedule 8.3.3, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“**LIBOR**” has the meaning specified in Section 2.5.3.

“**Lien**” means any mortgage, pledge, security interest, encumbrance, lien or charge to secure or provide for the payment of any obligation of any person (including any conditional sale or other title retention agreement or lease in the nature thereof).

“**Loan**” has the meaning specified in Section 2.1.1.

“**London Business Day**” has the meaning specified in Section 2.5.4.

“**Loss**” means any liability, damages, cost, loss or expense (including legal fees, costs and expenses and any value-added tax thereon) related to or arising from the inaccuracy or alleged inaccuracy of any representation and warranty made by any Obligor hereunder or under the Security Documents or any breach or alleged breach by any Obligor of any of its undertakings in this Agreement, the Notes or the Security Documents.

“**Material Adverse Effect**” means any material adverse effect on, or a material adverse change in: (a) the business, property, assets, liabilities, condition (financial or otherwise), results of operations or prospects of any Obligor or the Receivables Seller, (b) the ability of the Receivables Seller or any Obligor to perform its respective obligations under the Credit Documents to which it is a party, (c) the rights and/or remedies any of the Secured Parties are purported to have under any Credit Document, (d) the economic or financial condition or stability (financial, political or otherwise) of Cayman Islands, Colombia, Panama, Peru, Costa Rica or El Salvador, (e) the validity and enforceability of any Credit Document, (f) the Liens granted pursuant to the Security Documents or the value thereof or (g) the Contract Rights or the Receivables or the Collections in respect of either, including on the timeliness, payment frequency, collectability, amount, or ability to calculate the amount of such Collections.

“**Maturity Date**” means the fifth anniversary of the Closing Date; provided that if such day is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“**New York Pass-Through Account**” means the Dollar deposit account with account number 11925000 established and maintained by the Borrower at the U.S. Account Bank in New York, New York, or any successor or replacement account, which account will be under the control of the Collateral Agent pursuant to the Account Control Agreement.

“**New York Security Agreement**” means that certain first priority pledge and security agreement, dated on or about the date hereof, by and between the Borrower and the Collateral Agent and substantially in the form attached hereto as Exhibit F.

“**Note**” means each promissory note of the Borrower, duly executed and delivered by the Borrower to each Lender and in form and substance set out in Exhibit B hereto, evidencing the aggregate Indebtedness of the Borrower to the Lenders resulting from the Loan and also means all other promissory notes accepted from time to time in substitution therefor or renewal thereof.

“**Notice and Consent**” means each of the AMEX Notice and Consent and the Credomatic Notice and Consent, and any other notice and consent by and among, *inter alia*, the Borrower, the Receivables Seller, the Collateral Agent and the relevant Card Processor, notifying such Card Processor of (a) the assignment in favor of the Collateral Agent of the Contract Rights and Receivables and (b) the irrevocable instruction to deposit all Collections into the New York Pass-Through Account, substantially in the form attached hereto as Exhibit E (or otherwise as approved by the Required Lenders in their sole discretion).

“**Notice of Assignment and Assumption**” means the Notice of Assignment and Assumption in substantially the form set forth as Exhibit A to the Assignment and Assumption.

“**Notice of Borrowing**” has the meaning specified in Section 2.2.1.

“**Obligors**” means, collectively, the Borrower and each Guarantor.

“**OFAC**” means the U.S. Treasury Department Office of Foreign Assets Control.

“**Officer’s Certificate**” means, with respect to any Obligor, a certificate signed by the Chairman, Vice Chairman or other director of its board of directors, its President, Vice President, Secretary, Assistant Secretary, Chief Financial Officer, Comptroller, Treasurer, Assistant Treasurer, or other Authorized Signatory and delivered to the Administrative Agent or to the Borrower with authority to deliver the same to the Administrative Agent.

“**Other Connection Taxes**” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Credit Document, or sold or assigned an interest in any Credit Documents ).

“**Participant**” has the meaning specified in Section 8.8.4.

“**Participant Register**” has the meaning specified in Section 8.8.4.

“**Patriot Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272, of the United States.

“**Payment Date**” has the meaning specified in Section 2.5.1.

“**Permitted Holders**” means any or all of the following:

(a) Mr. Germán Efromovich, his spouse and their respective parents, aunts, uncles, brothers, sisters, nephews, nieces, in-laws and other family members (by marriage, adoption or otherwise) and the respective children, grandchildren and spouses of any of the foregoing;



(b) Roberto Jose Kriete Avila, his spouse and their respective parents, aunts, uncles, brothers, sisters, nephews, nieces, in-laws and other family members (by marriage, adoption or otherwise) and their respective children, grandchildren and spouses of any of the foregoing;

(c) the respective ancestors, descendants, spouses, heirs, legatees and successors of any Person described in paragraphs (a) and (b) above or in this paragraph (c);

(d) the executor, administrator, or other representative of any Person described in paragraphs (a), (b) or (c) above who is deceased, incompetent, or incapacitated;

(e) any trust or other entity in which any of the Persons described in paragraphs (a), (b), (c), or (d) above has an interest, whether or not fixed or exclusive; and

(f) any Affiliate of any one or more of the persons described in paragraphs (a), (b), (c), (d) or (e) above.

**“Permitted Lien”** means any of the following:

(a) Liens in favor of the Borrower pursuant to the Receivables Transfer Documents;

(b) Liens on any of a Guarantor’s property or assets existing on the Closing Date and listed on Schedule 5.12, and any renewals, replacements, or extensions of such Liens, provided that (x) the aggregate principal amount of the Indebtedness, if any, or obligations secured by such Liens does not increase from the amount outstanding on the Closing Date, and (y) any such renewal, replacement, or extension does not encumber any additional assets or properties of the Guarantor or its Subsidiaries;

(c) Liens for Taxes not yet due or which are being contested in good faith by appropriate proceedings properly instituted and diligently conducted, and for which the Guarantor has set aside on its books adequate reserves with respect thereto in accordance with IFRS;

(d) Carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s or other like Liens arising in the ordinary course of business which are not overdue for a period of more than ninety (90) days or which are being contested in good faith by appropriate proceedings properly instituted and diligently conducted, and for which the Guarantor has set aside on its books adequate reserves with respect thereto in accordance with IFRS;

(e) any Lien securing a judgment for the payment of money the entry of which shall not have constituted an Event of Default so long as such Lien is adequately bonded and any appropriate legal proceedings which may have been duly initiated for the review of the judgment have not been finally terminated or the period within which such proceeding may be initiated has not expired;

(f) Liens arising solely by virtue of any statutory or common law provisions relating to bankers’ Liens, rights of setoff, or similar rights and remedies with regard to deposit accounts or other funds maintained with depositary institutions;

(g) licenses, sublicenses, leases, and subleases as they relate to any aircraft, airframe, engine, or related equipment and to the extent such licenses, sublicenses, leases, or subleases do not interfere in any material respect with the business of the Guarantors, the Receivables Seller, and their respective Subsidiaries, taken as a whole;

(h) salvage or similar rights of insurers, in each case as it relates to any aircraft, airframe, engine, or other equipment installed on aircraft, if any;

(i) Liens on aircraft, airframe, engines, and appliances, parts, components, instruments, appurtenances, furnishings, and other equipment installed on aircraft;

(j) Liens on any of a Guarantor's property securing Indebtedness or obligations Incurred as all or part of the purchase price of such property or for value given to enable the Guarantor to acquire rights in or the use of the property, and any renewals, replacements, or extensions of such Liens, provided that (x) the aggregate principal amount of the Indebtedness, if any, or obligations secured by such Liens does not increase from the amount of the Indebtedness or obligations so Incurred, and (y) any such renewal, replacement, or extension does not encumber any additional assets or properties of the Guarantor or its Subsidiaries;

(k) Liens on a Guarantor's Air Travel Receivables; and

(l) other Liens (on assets or property that do not constitute Collateral) securing obligations in an aggregate amount not exceeding 50% of Consolidated EBITDA for the most recently ended Reference Period.

*provided* that under no circumstances shall a Lien on any of the Contract Rights or the Receivables or the Collections derived therefrom be considered to constitute a Permitted Lien, except a Lien created pursuant to the Credit Documents.

**"Permitted Termination"** means, with respect to a Card Processing Agreement, any termination of the Card Processing Agreement which is (a) initiated by the Card Processor thereunder without the Receivables Seller's consent in accordance with the terms of the Card Processing Agreement, (b) is initiated by the Receivables Seller without the consent of the Card Processor thereunder in accordance with the terms of the Card Processing Agreement on account of an insolvency event of the Card Processor thereunder, (c) is initiated (with the consent of the Required Lenders) by the Receivables Seller without the consent of the Card Processor thereunder in accordance with the terms of the Card Processing Agreement on account of a material breach by the Card Processor thereunder of the provisions of the Card Processing Agreement or (d) is requested by the Receivables Seller on account of its good faith dissatisfaction with the performance of the Card Processor thereunder and is agreed to by the Card Processor thereunder, provided that a Contract Rights and Receivables Addition for a replacement Card Processing Agreement has already been consummated prior to such termination.

**"Person"** means any legal person or entity, including any individual, partnership, joint venture, corporation, association, joint-stock company, trust, limited liability company, limited liability partnership, unincorporated organization, governmental entity or other entity of similar nature.

**"Platform"** has the meaning specified in Section 7.1.13.

**"Prepayment Date"** has the meaning specified in Section 2.6.1.

**"Principal Payment Amount"** means, (a) with respect to the first twelve (12) Payment Dates following the Closing Date, U.S.\$0 and (b) with respect to each of the forty-eight (48) Payment Dates thereafter, U.S.\$3,125,000.

**"Process Agent"** means National Registered Agents, Inc., 111 Eighth Avenue, New York, NY 10011.



**“Qualified Agent”** shall mean an institution (i) that is a Qualified Lender and (ii) that does not charge for the services to be provided in its capacity as an Agent in excess of the charges customarily assessed for such services by other reputable institutions that provide such services in the ordinary course of their business.

**“Qualified Lender”** means an institution that is (a) a Lender or any Affiliate (other than a natural person) of a Lender, or (b)(i) a commercial bank, commercial finance company or other financial institution or trust company having a combined capital and surplus of more than U.S.\$50,000,000 or (ii) a fund that is administered or managed by an entity described in clause (i) or its Affiliate, or has total assets under management of more than U.S.\$50,000,000 and, in each case, that is not based in a Sanctioned Jurisdiction.

**“Receivables”** means any and all Collections accrued under the Card Processing Agreements in respect of Specified Sales that are due by a Card Processor to Receivables Seller immediately prior to giving effect to the RSPA on the date of the RSPA.

**“Receivables Seller”** means Aerovías del Continente Americano S.A. Avianca.

**“Receivables Transfer Documents”** means the RSPA, the Undertaking Agreement, the Cash Management Agreement, the Costa Rican Assignment Agreement, the Colombian Back-Up Security Agreement, the Costa Rican Back-Up Security Agreement, the Expenses Agreement, the Administration Agreement and the Notices and Consents.

**“Receiver”** has the meaning given to that term in the U.K. Account Charge.

**“Recipient”** means (a) the Administrative Agent, (b) any Secured Party or (c) any other Person entitled to any payment under the Credit Documents, as applicable.

**“Reference Period”** means, at any date of determination, the most recently completed four consecutive fiscal quarters of Holdings on or immediately prior to such date.

**“Regulation U”** means Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

**“Regulation X”** means Regulation X of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

**“Related Party”** means, in respect of any Person, any Affiliate of that Person or any officer, director, employee, advisors or agent of that Person or any such Affiliate or any Person by whom any of them is controlled.

**“Required Lenders”** means, at any time, Lenders holding an outstanding principal amount of the Loan representing more than 50% of the outstanding principal amount of the Loans at such time.

**“Restricted Payment”** means, with respect to any Person, any dividend or other distribution (whether in cash, securities or other property) of such Person, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any capital stock of such Person, or on account of any return of capital to such Person’s stockholders, partners or members (or the equivalent Persons thereof).

**“Retention Event”** means the Collections Coverage Ratio is less than 2.5:1.0 on any date of determination.

“**RSPA**” means the Contract Rights and Receivables Sale, Purchase and Servicing Agreement, to be dated on or about the date hereof, among the Receivables Seller, as the seller, the Borrower as the purchaser and the Servicer, as the servicer.

“**Sales Slip**” means a sales slip under a Card evidencing a payment obligation of the holder of the Card in respect of goods or services purchased by such holder using such Card.

“**Sanctioned Jurisdiction**” means any country or territory that is the subject of Sanctions broadly restricting or prohibiting dealings with, in or involving such country or territory.

“**Sanctioned Person**” means any individual or entity that is, or is owned or controlled by Persons that are, (a) identified on a Sanctions List, (b) organized, domiciled or resident in a Sanctioned Jurisdiction, (c) with whom dealings are restricted or prohibited under Sanctions or (d) otherwise the subject or target of any Sanctions.

“**Sanctions**” means any economic or financial sanctions or trade embargoes imposed, administered or enforced by (a) the United States (including OFAC and the United States Department of State), (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) the United Kingdom (including Her Majesty’s Treasury) or (e) any Governmental Authority in the jurisdiction of any Obligor.

“**Sanctions List**” means the list of designated individuals or entities that are the subject of Sanctions, including, without limitation, in (a) the Specially Designated Nationals and Blocked Persons List maintained by OFAC, (b) the Consolidated United Nation Security Council Sanctions List, (c) the consolidated list of persons, groups and entities subject to EU financial sanctions maintained by the European Union and (d) the Consolidated List of Financial Sanctions Targets in the U.K. maintained by Her Majesty’s Treasury of the United Kingdom.

“**Secured Parties**” means the Lenders, the Agents, the Collateral Trustee, any Delegate and any Receiver.

“**Security Documents**” means the New York Security Agreement, the Account Control Agreement, the English Security Documents and all other documents, instruments and filings to be executed and delivered by the Borrower or the Guarantors in favor of any Secured Parties in connection with such agreements and the transactions contemplated thereby.

“**Security Trust Deed**” means the Security Trust Deed to be entered into on or about the date hereof among the Lenders, the Collateral Trustee and the Borrower.

“**Seller’s Account**” means account of the Receivables Seller no. 964258057 maintained at JPMORGAN CHASE BANK, N.A., ABA No. 021000021; Reference: Aerovías de Continente Americano S.A. Avianca.

“**Servicer**” means, initially, Aerovías del Continente Americano S.A. Avianca and, thereafter, its successors and permitted assigns and designees appointed in accordance with the terms of the RSPA to carry out the duties and responsibilities provided in Article III of the Undertaking Agreement.

“**Solvent**” means, when used with respect to any Person, that at the time of determination: (a) the assets of such Person, at a fair valuation, are in excess of the total amount of its debts (including contingent liabilities); (b) the present fair saleable value of its assets is greater than its probable liability on its existing debts as such debts become absolute and matured; (c) it is then able and expects to be able to pay its debts (including contingent liabilities and other commitments) as they mature; (d) it has capital sufficient to carry on its business as conducted and as proposed to

be conducted; and (e) it is “solvent” as such term is defined in the Uniform Commercial Code as in effect in the State of New York and is in compliance with each applicable solvency standard under the Applicable Laws of each jurisdiction other than the United States or any state, commonwealth or territory thereof where it is organized or maintains assets or conducts its business.

“**Specified Sales**” means the sales, including future sales, made by travel agencies in the United States and cleared through ARC of airline tickets or related services provided by the Receivables Seller where payment in the case of any such sale is made by a MasterCard® Card, Visa® Card, or American Express® Card, however branded, or any one or more of such Cards, including all such sales identified by those certain merchant codes set forth in any Notice and Consent or any notice given by a Card Processor to the Borrower and the Collateral Agent from time to time as provided in the Notice and Consent by and among, *inter alia*, the Borrower, the Receivables Seller, the Collateral Agent, and such Card Processor; provided that with respect to each Card Processing Agreement, “**Specified Sales**” shall include only “**Specified Sales**” as defined in the Notice and Consent relating to such Card Processing Agreement.

“**Subsidiary**” means, in respect of any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of capital stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by (a) such Person, (b) such Person and one or more Subsidiaries of such Person or (c) one or more Subsidiaries of such Person.

“**Taxes**” has the meaning specified in Section 2.7.1.

“**Trigger Event**” has the meaning assigned to such term in the RSPA.

“**Trust Property**” has the meaning assigned to such term in the Security Trust Deed.

“**Undertaking Agreement**” means the Receivables Maintenance Agreement, to be dated on or about the date hereof, among the Receivables Seller, the Borrower and Avianca USA.

“**Unrelated Person**” has the meaning specified in Section 5.15.

“**U.S.\$**” and “**Dollars**” denote the lawful currency for the time being of the United States of America.

“**U.K. Account Bank**” means the Collateral Agent, in its capacity as account bank under the U.K. Account Charge, or any other financial institution satisfactory to the Required Lenders.

“**U.K. Account Charge**” means the English law security agreement dated as of the date hereof and entered into between the Borrower as chargor, the Collateral Trustee and the U.K. Account Bank.

“**U.S. Account Bank**” means the Collateral Agent, in its capacity as account bank under the Account Control Agreement, or any other financial institution satisfactory to the Required Lenders.

“**Voting Stock**” of a Person means all classes of capital stock or other interests (including partnership interests) of such Person then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof.

**“Write-Down and Conversion Powers”** means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

## 1.2 Other Interpretive Provisions

With reference to this Agreement and each other Credit Document, unless otherwise specified herein or in such other agreement:

- 1.2.1 The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- 1.2.2 The words **“herein,” “hereto,” “hereof”** and **“hereunder”** and words of similar import when used in any Credit Document shall refer to such agreement as a whole and not to any particular provision thereof.
- 1.2.3 Article, Section, Exhibit and Schedule references are to the Credit Document in which such reference appears.
- 1.2.4 The term **“including”** is by way of example and not limitation.
- 1.2.5 The term **“documents”** includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.
- 1.2.6 In the computation of periods of time from a specified date to a later specified date, the word **“from”** means **“from and including,”** the words **“to”** and **“until”** each mean **“to but excluding,”** and the word **“through”** means **“to and including.”**
- 1.2.7 Section headings herein and in each Credit Document are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other agreement.
- 1.2.8 All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, IFRS, except as otherwise specifically prescribed herein.
- 1.2.9 A reference to an agreement shall be deemed to refer to such agreement as amended, modified and/or supplemented from time to time.
- 1.2.10 A reference to a party to any document includes that party’s successors and permitted assigns.
- 1.2.11 A reference to any law means such law as amended from time to time and includes any successor legislation thereto and any rules and regulations promulgated thereunder.

## 2. AMOUNT AND TERMS OF THE COMMITMENTS AND LOANS

### 2.1 The Loan

- 2.1.1 Subject to and in accordance with this Agreement, each Lender severally, but not jointly, agrees to make to the Borrower on the Closing Date a term loan in an aggregate amount of U.S.\$150,000,000 denominated in Dollars (each, a **“Loan”** and collectively, the

“**Loans**”) to the Borrower, which Loans shall be (a) incurred pursuant to a single drawing on the Closing Date and (b) made by each such Lender in an aggregate principal amount equal to its respective Commitment.

- 2.1.2 The Loan made by each Lender shall be evidenced by a Note, which the Borrower shall deliver to such Lender, duly executed by the Borrower, and which Notes shall be governed by New York law and shall comply with all requirements for the validity and enforceability of promissory notes under applicable Law in the Cayman Islands. The mutilation, loss, theft or destruction of a Note shall not imply or be deemed to constitute a cancellation of debt or of any other obligation under or in respect of this Agreement or any Loan. If a Note is mutilated, the Borrower shall issue and deliver a new Note of the same principal amount and maturity as the mutilated Note, provided that such mutilated Note shall be returned to the Borrower. If a Note is lost, stolen or destroyed, the Borrower shall, promptly upon the written request of the Lender, issue and deliver to the applicable Lender a new Note of the same principal amount and maturity as the lost, stolen or destroyed Note, provided that the applicable Lender delivers to the Borrower a lost, stolen or destroyed note affidavit and indemnity in form and substance reasonably satisfactory to the Borrower but without requiring any further action from the Lender other than as may be required by applicable Law.

## 2.2 Borrowing Procedures

- 2.2.1 The Borrower shall give written notice, substantially in the form of Exhibit H (a “**Notice of Borrowing**”), to the Administrative Agent of the proposed borrowing of the Loans not later than 11:00 a.m. (New York City time), two Business Days prior to the proposed Closing Date. The Notice of Borrowing shall be irrevocable and binding on the Borrower and shall specify (a) the requested Closing Date and (b) the principal amount of Loans to be borrowed, which shall not be in excess of the Commitments.
- 2.2.2 Following receipt of the Notice of Borrowing, the Administrative Agent shall promptly provide a copy of such Notice of Borrowing to each Lender. Subject to the satisfaction of the conditions set forth in Section 3, each Lender shall remit the amount of its applicable Loan to the Administrative Agent’s Account on the Closing Date in immediately available funds not later than 11:00 a.m. (New York City time) on the Closing Date specified in the Notice of Borrowing. The Administrative Agent shall remit all funds so received in like funds as received by the Administrative Agent by wire transfer to the Seller’s Account.

## 2.3 New York Pass-Through Account, Collections Account, Debt Service Reserve Account, Cash Management Agreement, RSPA

- 2.3.1 All Collections will be deposited by the Card Processors, as instructed in the relevant Notice and Consent, into the New York Pass-Through Account.
- 2.3.2 All Collections deposited in the New York Pass-Through Account shall be transferred by the Collateral Agent to the Collections Account on each Business Day if such Collections are received on or before 11:00 a.m. (New York City time) on such Business Day. Any Collections received after 11:00 a.m. (New York City time) on a Business Day shall be transferred to the Collections Account on the immediately succeeding Business Day. Upon receipt of notice that an Event of Default and a Trigger Event have occurred, the Collateral Agent is hereby authorized and directed by the Lenders to transfer all cash standing to the credit of the New York Pass-Through Account to the Collections Account.



- 2.3.3 (a) The Debt Service Reserve Account shall be funded pursuant to Section 2.01 of the Cash Management Agreement not later than the date that is sixty (60) days after the Closing Date and the amount in the Debt Service Reserve Account shall from such date and at all times thereafter be at least equal at all times to the sum of:
- (i) the Agent Fees Due during the immediately succeeding four months, *plus*;
  - (ii) the amount of the Interest Amount due under Section 2.5 on the next four consecutive Payment Dates, assuming for such purposes that LIBOR for such payments will be the same rate in effect as of such date of determination, *plus*;
  - (iii) the sum of the Principal Payment Amounts due under this Agreement for the immediately succeeding four months (together with clauses (i) and (ii), the **"Debt Service Required Amount"**).
- (b) The Collateral Agent shall make disbursements from the Collections Account to the Debt Service Reserve Account if the amount in the Debt Service Reserve Account is less than the Debt Service Required Amount, as provided in the Cash Management Agreement.
- 2.3.4 The Collateral Agent shall make disbursements from the Collections Account and the Debt Service Reserve Account on behalf of the Borrower in respect of all principal, interest and other amounts due to the Secured Parties and the other Persons entitled thereto, in each case as provided in the Cash Management Agreement.
- 2.3.5 Upon the receipt by the Administrative Agent of written notice from any Lender that a Retention Event has occurred or from the Required Lenders that an Adjustment Event (as defined in the Cash Management Agreement) or a Trigger Event, as applicable, has occurred, the Administrative Agent shall send a notice, substantially in the form attached to the Cash Management Agreement as Exhibit A thereto, to each Lender, the Borrower, the Receivables Seller, Avianca USA, the Collateral Agent and (in the case of a Trigger Event), the Collateral Trustee.
- 2.3.6 Upon the receipt by the Administrative Agent of any notices or other communications pursuant to or in connection with the Credit Documents or the Receivables Transfer Documents, the Administrative Agent shall promptly make available copies of such notices and communications to the Lenders hereunder in accordance with Section 7.1.13 hereof.

## 2.4 Payments

- 2.4.1 The Borrower shall repay or cause to be repaid the principal amount of the Loans on each Payment Date in the relevant Principal Payment Amount in accordance with this Agreement; provided that, on the Maturity Date, the Borrower shall pay the aggregate principal amount of all Loans outstanding on such date.
- 2.4.2 If any Retention Event or Event of Default (unless the Loans have been accelerated) has occurred and is continuing for three consecutive months, funds in the Collections Account shall be applied as set forth in the Cash Management Agreement, including to prepay the Principal Payment Amounts in inverse order of maturity and accrued interest thereon to the extent provided therein.

- 2.4.3 (a) All payments of principal and interest under this Agreement shall be made in Dollars and in immediately available funds, without set off or counterclaim, by transfer to the Administrative Agent's Account, as provided in the Cash Management Agreement. The following amounts shall be deemed payments by the Borrower under this Agreement: (i) payments made by disbursements from the Collections Accounts or the Debt Service Reserve Account and (ii) amounts paid to or received by the Administrative Agent from the Collateral Agent pursuant to the Security Documents.
- (b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal and interest then due hereunder, such funds shall be applied (i) first, toward payment of interest then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest then due to such parties, and (ii) second, toward payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties. The Parties hereto acknowledge that the Administrative Agent will not accept payments in respect of amounts hereunder other than principal, interest and break costs into the Administrative Agent's Account.
- (c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on the Loan or participations in the Loan resulting in such Lender receiving payment of a greater proportion of the aggregate amount of the Loan and accrued interest thereon relative to its *pro rata* share of the Loan than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loan to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest in their respective portions of the Loan, provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Obligors pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of the Loan to any assignee or participant, other than to the Obligors or any Affiliate thereof (as to which the provisions of this paragraph shall apply). The Obligors consent to the foregoing and agree, to the extent they may effectively do so under Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Obligors rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Obligors in the amount of such participation.
- 2.4.4 (a) The Administrative Agent shall on each Payment Date and each other Business Day, as applicable, and to the extent funds are received from the Collateral Agent pursuant to the terms of the Cash Management Agreement, cause to be distributed funds in the Administrative Agent's Account in respect of the payment of principal, interest or break costs ratably to the Lenders by wire transfer to such Lender's Lending Office, in each case to be applied in accordance with the terms of this Agreement, and the Administrative Agent's



Account shall not be used for any other purpose. Each Lender shall from time to time specify to the Administrative Agent any change to such Lender's Lending Office.

- (b) Upon execution of an Assignment and Assumption, delivery of an executed Notice of Assignment and Assumption to the Administrative Agent, recording of the information contained therein in the register pursuant to Section 8.8.3 and payment to the Administrative Agent of the Registration Fee (as defined in such Assignment and Assumption), from and after the effective date specified in such Notice of Assignment and Assumption, the Administrative Agent shall make all payments hereunder and under the Notes in respect of the interest assigned thereby to the assignee thereunder, and the parties to such Assignment and Assumption shall make all appropriate adjustments in such payments for periods prior to such effective date directly between themselves.

## 2.5 Interest

2.5.1 Interest shall accrue on the outstanding principal amount of the Loan at a rate of LIBOR plus 4.75% per annum during each applicable Interest Period. Interest accrued for each Interest Period (the "**Interest Amount**") shall be paid in cash on the last day of the Interest Period during which it accrued (each such day, a "**Payment Date**"). Interest shall be calculated by the Administrative Agent on the basis of a 360-day year and actual days elapsed.

2.5.2 As used herein, "**Interest Period**" means the period commencing on the Closing Date and ending on the date that is one calendar month thereafter; and thereafter each period commencing on the last day of the preceding Interest Period and ending on the date one month thereafter, provided that:

- (a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the first preceding Business Day;
- (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and
- (c) no Interest Period shall extend beyond the Maturity Date.

2.5.3 Two Business Days prior to the commencement of each Interest Period (the "**Interest Determination Date**"), the Administrative Agent shall determine "**LIBOR**" to be applicable to such Interest Period as the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) appearing on Reuters Screen LIBOR01 Page (or on any successor or substitute page of such service, or any successor to or substitute for such service, providing rate quotations comparable to those currently provided on such page of such service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to Dollar deposits in the London interbank market) at approximately 11:00 a.m., London, United Kingdom time, on the applicable Interest Determination Date, as the rate for Dollar deposits with a maturity comparable to such Interest Period, provided that, with respect to any Interest Period that does not coincide to

a length or period published by Reuters (or any applicable successor page or source providing quotations of BBA LIBOR as may be designated by the Administrative Agent from time to time), LIBOR shall be determined through the use of straight-line interpolation by reference to two such rates, one of which shall be determined as if the length of the period of such deposits were the period of time for which the rate for such deposits are available is the period next shorter than the length of such Interest Period and the other of which shall be determined as if the period of time for which the rate for such deposits are available is the period next longer than the length of such Interest Period. If for any reason rates are not available through Reuters or any applicable successor page, then "LIBOR" shall be determined using other such benchmark rate available to the Administrative Agent and notified by the Administrative Agent to the Borrower and the Lenders; and provided, further, that, if, in any case, such rate is less than zero, LIBOR shall be deemed to be zero.

- 2.5.4 As used herein, "**London Business Day**" shall mean a day (other than a Saturday or Sunday) on which banks in London, England generally are open for the conduct of substantially all of their commercial lending activities and on which dealings in Dollars are carried on in the London interbank market.
- 2.5.5 The Administrative Agent shall no later than the Business Day following the related Interest Determination Date, send a notice to the Borrower, the Collateral Agent and the Lenders by email containing LIBOR for such Interest Period, the Debt Service Required Amount (including the Agent Fees Due, the Interest Amount and the Principal Payment Amount) for such Interest Period.
- 2.5.6 During the continuation of any Event of Default, the Borrower shall pay interest on all outstanding obligations hereunder at the rate of 2% per annum above the rate specified in Section 2.5.1 to the fullest extent permitted by Law. Such interest shall continue to accrue, to the fullest extent permitted by Law, before, during and after any bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement or winding up or composition or readjustment of debts of the Obligors.

## 2.6 Optional Prepayment

- 2.6.1 In addition to principal payments due pursuant to Section 2.4, the Borrower may, at its option, prepay all, but not part, of the outstanding Loan on any Payment Date occurring at least 18 months after the Closing Date (such Payment Date, the "**Prepayment Date**") at a prepayment price equal to the sum of (a) the then-outstanding principal amount of the Loan multiplied by the percentage set forth in the following table plus (b) accrued interest thereon to the Prepayment Date plus (c) any Additional Amounts as may be payable thereon.

<u>Time Period</u>	<u>Percentage</u>
From and including the 18th month after Closing Date to and including the 24 <sup>th</sup> month after Closing Date	102.0%
From and including the 25 <sup>th</sup> month after Closing Date to and including the 48 <sup>th</sup> month after Closing Date	101.0%
From and including the 49 <sup>th</sup> month after Closing Date to and including the Maturity Date	100.0%

- 2.6.2 With respect to any optional prepayment of this Loan pursuant to Section 2.6.1, the Borrower will give the Administrative Agent written notice thereof no later than 30 days prior to the Prepayment Date, specifying the Prepayment Date and the premium payable in respect of such prepayment.

## 2.7 Taxes

- 2.7.1 Any and all payments by the Obligors under this Agreement or any Note or in respect thereof shall be made free and clear of and without deduction for any present or future taxes, levies, imposts, deductions, charges or withholdings, and all interest, penalties, additions to tax or other liabilities with respect thereto, imposed or levied at any time including interest, additions to tax or penalties applicable thereto (“**Taxes**”), excluding any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes and (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or commitment (other than pursuant to an assignment request by the Borrower under Section 2.9) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 2.7.1, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office. Any such Taxes described in the immediately preceding clauses (a) and (b) are hereinafter referred to as “**Excluded Taxes**”).
- 2.7.2 If the Obligors shall be required by law to deduct any Taxes or any present or future taxes, levies, imposts, deductions, charges or withholdings excluded above, including all interest, penalties or other liabilities with respect thereto, imposed or levied at any time, from or in respect of any sum payable under this Loan or in respect thereof to any Lender, (a) if such Taxes are Indemnified Taxes, the Obligors shall pay such additional amounts (“**Additional Amounts**”) as may be necessary so that after making all required deductions for Taxes (including deductions applicable to Additional Amounts payable under this clause (a)) such Recipient receives an amount equal to the sum it would have received had no such deductions been made, (b) the Obligors will make such deductions and (c) the Obligors will pay the full amount deducted to the relevant taxing authority or other authority in accordance with Law before penalties are payable or interest accrues thereon and, after each such payment of Taxes, the Obligors shall promptly and in any event within 30 days of such payment deliver to such Recipient (with a copy to the Administrative Agent) an official receipt or a certified copy thereof evidencing such payment.
- 2.7.3 The Borrower shall indemnify each Lender and each Agent, upon demand therefor, for the full amount of any Taxes or Additional Amounts (including Taxes or Additional Amounts imposed or asserted on or attributable to amounts payable under this Section 2.7) payable or paid by any Obligor or required to be withheld or deducted from a

payment to such Obligor, and any expenses arising therefrom or with respect thereto (other than, in relation to a payment to any Obligor, penalties resulting from the gross negligence or willful misconduct of such Lender or Agent, as determined by a court of competent jurisdiction in a final, non-appealable judgment), whether or not such Taxes or Additional Amounts were correctly or legally imposed or asserted by the relevant governmental authority.

## 2.8 Increased Costs

### 2.8.1 If any Change in Law shall:

- (a) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender; or
- (b) impose on any Lender or the London interbank market any other condition affecting this Agreement or the Loan made by such Lender or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining the Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then upon the request of such Lender, the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

2.8.2 If any Lender determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loan made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

2.8.3 A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as applicable, as specified in Section 2.8.1 or Section 2.8.2, shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

2.8.4 Failure or delay on the part of the Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to this Section 2.8.4 for any increased costs or reductions incurred more than 360 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor, provided, further, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 360-day period referred to above shall be extended to include the period of retroactive effect thereof.

## 2.9 Mitigation Obligation

If any Lender requests compensation under Section 2.8, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loan or, in cooperation with the Obligors, to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 2.8 in the future and (b) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be materially disadvantageous to such Lender. The Obligors hereby agree to pay all reasonable costs and expenses incurred by the Lender in connection with any such designation or assignment.

## **2.10 Break Funding Payments**

In the event of (a) the payment of any principal of the Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default) or (b) the failure to borrow, continue or prepay the Loan on the date specified in any notice delivered pursuant hereto (other than as a result of a default by the Lender), then, in any such event, the Borrower shall compensate each Lender for the actual losses, costs and expenses attributable to such event (excluding loss of anticipated margin or profit). Such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of the Loan had such event not occurred, at the interest rate that would have been applicable to the Loan, for the period from the date of such event to the last day of the then-current Interest Period therefor (or, in the case of a failure to borrow or continue, for the period that would have been the Interest Period for the Loan), over (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate that such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the London interbank market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.10 shall be delivered to the Borrower, with a copy to the Administrative Agent and the Collateral Agent, and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown due on any such certificate within 10 days after receipt thereof.

## **3. CONDITIONS TO LOAN**

### **3.1 Conditions Precedent**

The obligations of the Lenders to make the Loans on the Closing Date shall be subject to the satisfaction (or waiver by the Lenders in accordance herewith) of each of the conditions precedent set forth in this Section 3.1.

**3.1.1 Closing documents:** the Lenders shall have received the following documents in the form and substance satisfactory to the Lenders:

- (a) *Credit Documents:* this Agreement, the Notes, the Receivables Transfer Documents, the Security Documents and the Fee Letters, duly executed and delivered by the parties thereto, each of which shall be in full force and effect;
- (b) *Security Documents:* evidence of the taking of all action as may be required on or prior to the Closing Date (such as recordings, filings (including filings under the Uniform Commercial Code and updating the Borrower's register of mortgages and charges) and registrations), in the opinion of counsel to the Lenders, to perfect the Liens created thereby in the Collateral in favor of the Collateral Agent or the Collateral Trustee, as applicable, as first priority Liens,



and there shall be no outstanding governmental filings (including financing statements under the Uniform Commercial Code) against any of the Collateral;

- (c) *Legal opinions*: legal opinions dated the Closing Date and addressed to the Lenders and the Administrative Agent from (i) New York counsel to the Obligors, (ii) Panamanian counsel to the Lenders, (iii) Costa Rican counsel to the Lenders, (iv) Salvadorian counsel to the Lenders, (v) Peruvian counsel to the Lenders, (vi) Cayman Islands counsel to the Borrower and (vii) English counsel to the Lenders, in each case, in form and substance satisfactory to the Lenders;
- (d) *Closing certificate*: a closing certificate dated the Closing Date, addressed to the Lenders and the Administrative Agent and signed by a duly Authorized Signatory on behalf of each of the Obligors substantially in the form set forth in Exhibit C and Exhibit D;
- (e) *Incumbency certificate*: a certificate dated the Closing Date of an Authorized Signatory of the Obligors setting out the full name, title and true signature of each representative of each Obligor authorized to sign, on behalf of the Obligors, the Credit Documents to which it is a party and any documents to be delivered by the Obligors pursuant hereto;
- (f) *Process agent's acceptance*: evidence that the Process Agent mentioned in Section 3.17 of the Cash Management Agreement has agreed to receive process in the manner specified therein, in form reasonably satisfactory to the Lenders;
- (g) *Organizational documents and resolutions*: certified copies of (i) the certificate of incorporation, each certificate of incorporation on change of name (if any), by-laws, memorandum and articles of association or other organizational or constitutional documents of each of the Obligors, (ii) the register of members, register of directors and register of mortgages and charges of the Borrower and (iii) the resolutions of the board of directors or other governing body of each of the Obligors approving and authorizing the execution, delivery and performance of this Agreement, and the other Credit Documents to which it is a party, in each case certified as of the Closing Date by such Obligor as being in full force and effect without modification or amendment;
- (h) *Financial Statements*: Audited consolidated financial statements of each Obligor (other than the Borrower) and the Receivables Seller (including a balance sheet, statement of operations and statement of cash flows) as of and for the fiscal year ended on December 31, 2016;
- (i) *Fees*: evidence that the Borrower has paid all amounts due and payable hereunder and all fees, expenses and other charges it is required to pay in advance of the Closing Date under this Agreement or any other Credit Document, including the fees, charges and disbursements of all legal counsel to the Lenders and Agents and the Collateral Trustee that have been invoiced and delivered to the Borrower prior to the Closing Date; and
- (j) *Certificate of Good Standing*: (i) a certificate of good standing issued by the Registrar of Companies in the Cayman Islands with respect to the Borrower, dated no earlier than 14 days prior to the Closing Date, and (ii) such documents

and other certifications that the Lenders may reasonably require to evidence that each other Obligor is duly organized or formed and that such Obligor is validly existing, in good standing and qualified to engage in business in each jurisdiction where its conduct of business requires such qualification;

- 3.1.2 *Notice of Borrowing:* The Administrative Agent shall have received the Notice of Borrowing in accordance with Section 2.2.
- 3.1.3 *MAE:* There shall not have occurred a Material Adverse Effect.
- 3.1.4 *No Event of Default or Retention Event:* No Retention Event, Default or Event of Default shall have occurred and be continuing.
- 3.1.5 *Authorizations:* The Obligors and the Receivables Seller shall have obtained all authorizations, approvals, licenses, registrations and consents required in or by Law in connection with execution of the Credit Documents and the performance of their obligations thereunder.
- 3.1.6 *Collections:* The Lenders shall have received all data, reports, and/or other documentation fairly stating that the gross amount of sales that, if made after the date hereof, would fall under the definition of Specified Sales (a) in 2012 were \$369,151,330, (b) in 2013 were \$407,038,709, (c) in 2014 were \$403,216,884, (d) in 2015 were \$460,083,247, and that the net amount (including, but not limited to, net of any discount rate, any charges, any chargebacks, any refunds, any fees and any other amounts owed to the Card Processor under the relevant Card Processing Agreement) of collections paid to the Receivables Seller on account of such sales (e) in 2016 were \$456,909,053 and (f) in 2017, through October 31, were \$454,396,385, and the Lenders shall be reasonably satisfied that the net amounts due and payable on the Collections shall on an annual basis be sufficient to support the Loans.
- 3.1.7 *Collections Agreements:* The Receivables Transfer Documents and the Card Processing Agreements shall be in full force and effect, no default or event of default shall have occurred and be continuing thereunder, the Borrower shall have legal title to the Contract Rights and the Receivables and the Colombian Back-Up Security Agreement and the Costa Rican Back-Up Security Agreement shall have been registered as a moveable guarantee in their respective jurisdictions.
- 3.1.8 *Bondholder Consents:* The holders of the ordinary bonds of the Receivables Seller, dated September 4, 2009, shall have provided all consents to the transactions contemplated hereby as are required to permit such transactions under the documents evidencing and securing such bonds, in the form of the *Acta Asamblea Extraordinaria de Tenedores de los Bonos Emitidos por Aerovías del Continente Americano Avianca S.A. Emision Agosto de 2009*, dated October 19, 2017.
- 3.1.9 *Accuracy of representations:* The representations and warranties by the Obligors in this Agreement and the Credit Documents shall be true and correct as of the Closing Date.
- 3.1.10 *Security Documents:* Each Obligor shall have taken all actions required to be taken by it on or prior to the Closing Date pursuant to the Security Documents.
- 3.1.11 *Know your customer:* The Administrative Agent, the Collateral Agent, the Collateral Trustee and each Lender shall have received all necessary credit and other internal approvals, completed its due diligence with scope and results satisfactory to it in its sole discretion and received “know your customer” approval for the Obligors and the



Receivables Seller required under applicable client onboarding procedures or “know your customer” or anti-money laundering rules and regulations, including the Patriot Act.

3.1.12 *Lien Searches*: Customary lien searches shall have been run against the Borrower and the Receivables Seller, and the results of such searches shall be satisfactory to the Lenders.

#### **4. REPRESENTATIONS AND WARRANTIES**

##### **4.1 Obligors' Representations**

Each Obligor represents and warrants, in respect of itself, to the Lenders and the Administrative Agent that:

- 4.1.1 *Organization and power*: each Obligor is duly organized or incorporated and validly existing under the laws of its jurisdiction of incorporation, and each of the Obligors is qualified to do business in each jurisdiction in which the conduct of its business requires it to so qualify and has the requisite corporate power and authority to carry on its business, to borrow money, to guarantee, to grant security and to execute, deliver and perform each Credit Document to which it is or will be party;
- 4.1.2 *Authorization*: each Obligor has taken all necessary action to approve and authorize the execution of each Credit Document to which it is a party and the undertaking and performance of the obligations expressed to be assumed by it herein and therein;
- 4.1.3 *No breach*: the execution of each Credit Document to which it is a party and the undertaking and performance by each Obligor of the obligations expressed to be assumed by it therein and the use of proceeds will not conflict with, or result in a breach of or default under, (a) any Laws applicable to such Obligor, (b) the articles of incorporation, memorandum and articles of association, bylaws or other organizational documents of such Obligor or (c) any agreement or instrument to which it is a party or by which it is bound;
- 4.1.4 *Legal, valid, binding and enforceable*: the Credit Documents to which it is a party constitute and, upon due execution by or on behalf of such Obligor, will constitute legal, valid, binding and enforceable obligations of such Obligor, as such enforceability may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally and by general principles of equity (whether considered in a proceeding in equity or at law);
- 4.1.5 *Status*: the payment obligations of such Obligor under the Credit Documents to which it is a party will be direct, general, unconditional and unsubordinated obligations of such Obligor and will, except to the extent secured pursuant to the Security Documents, rank at least *pari passu* in priority of payment with all other existing and future unsecured and unsubordinated indebtedness of such Obligor, other than any indebtedness mandatorily preferred by law;
- 4.1.6 *Approvals*: no Government Approval is required to be taken, fulfilled or done for the carrying out of the transactions contemplated by the Credit Documents to which it is a party or the compliance by such Obligor with the terms thereof, as the case may be, except for those that have been (or will, prior to the Closing Date, be) obtained and are (or will, on the Closing Date, be) in full force and effect. All filings, registrations and Government Approval required for the validity and enforceability of each Credit Document to which such Obligor is a party have been duly made or obtained;

- 4.1.7 *Taxation*: no stamp or other duty is assessable or payable in, and no withholding or deduction for any taxes, duties, assessments or governmental charges of whatever nature is imposed or made for or on account of any income, registration, transfer or turnover taxes, customs or other duties or taxes of any kind, levied, collected, withheld or assessed by any Governmental Authority having power to tax in connection with the authorization, execution or delivery of the Credit Documents or with the authorization, execution and the performance of such Obligor's obligations under the Credit Documents to which it is a party save that Cayman Islands stamp duty will be payable if any of the Credit Documents are executed in or brought into the Cayman Islands in fully executed form;
- 4.1.8 *Subsidiaries*: the Borrower has no Subsidiaries. Schedule 4.1.8 hereto sets forth the corporate structure of each Guarantor, including the Subsidiaries of each Guarantor and the percentage ownership interest of such Guarantor therein;
- 4.1.9 *No Event of Default*: no Default or Event of Default has occurred;
- 4.1.10 *No Material Adverse Effect*: since December 31, 2016, no event or circumstance exists that has had or could reasonably be expected to have a Material Adverse Effect;
- 4.1.11 *No Insolvency*: immediately after the consummation of the transactions contemplated by the Credit Documents on the date hereof and on the Closing Date, each Obligor is and will be Solvent;
- 4.1.12 *Security Documents*: all representations and warranties of the Obligors set forth in the Credit Documents are true and correct and the Security Documents provide the Collateral Agent or the Collateral Trustee (as applicable, and in each case for the benefit of the Secured Parties) with effective, valid, legally binding and enforceable perfected first priority Liens on all of the Collateral;
- 4.1.13 *Liens*:
- (a) neither the execution, delivery or performance by such Obligor of the Credit Documents to which it is a party, nor compliance by such Obligor with the terms and provisions thereof, results in the creation or imposition of any Lien (other than the Liens created thereunder) upon any of the property or assets of such Obligor;
  - (b) the Borrower has not created, Incurred, assumed or otherwise caused or suffered to exist or become effective any Lien on or with respect to any of the Collateral, except as arising under the Security Documents; and
  - (c) the Obligors have not created, Incurred, assumed or otherwise caused or suffered to exist or become effective any Lien on or with respect to any of their assets, other than Permitted Liens.
- 4.1.14 *Use of Proceeds*: the Borrower's use of proceeds under the Loans will not violate Regulations U or X;
- 4.1.15 *Existing Indebtedness*: the Borrower does not have any Indebtedness other than Indebtedness pursuant to this Agreement or the Receivables Transfer Documents;
- 4.1.16 *Compliance with Laws*:

- (a) Each of the Obligors and their Subsidiaries is in compliance with all Laws and Government Approvals in respect of the conduct of its businesses and the ownership of its properties, except, solely in the case of the Guarantors and their Subsidiaries, such non-compliance as could not reasonably be expected to result in a Material Adverse Effect; provided, however, that where such compliance relates to any Anti-Corruption Laws or Sanctions, each of the Obligors and their Subsidiaries is in compliance in all respects and subject to no exceptions;
- (b) The Obligors have conducted their businesses in compliance with all applicable Anti-Money Laundering Laws. None of the Obligors or any of their Subsidiaries or any of their respective directors, officers or employees (i) has taken any action that would constitute or give rise to a violation of Anti-Corruption Laws or (ii) is or has been subject to any action, proceeding, litigation, claim or, to the Obligor's knowledge, investigation with regard to any actual or alleged violation of any Anti-Corruption Laws or Anti-Money Laundering Laws. The Obligors and their Subsidiaries have implemented, maintain and enforce policies and procedures designed to promote and achieve compliance by the Obligors and their Subsidiaries with all applicable Anti-Money Laundering Laws and Anti-Corruption Laws;
- (c) None of the Obligors or any of their Subsidiaries or any of their respective directors, officers, Affiliates, agents or employees (i) is a Sanctioned Person, (ii) is currently engaging or has during the five years prior to the date hereof engaged in any dealings or transactions with, involving or for the benefit of a Sanctioned Person, or in or involving any Sanctioned Jurisdiction in violation of Sanctions, or (iii) is subject to any action, proceeding, litigation, claim or, to the Obligor's knowledge, investigation with regard to any actual or alleged violation of Sanctions;

4.1.17 *Financial Statements*: each Obligor (other than the Borrower) has previously furnished to the Administrative Agent its consolidated financial statements (including a balance sheet, statement of operations and statement of cash flows): (a) as of and for the fiscal year ended on December 31, 2016, audited by and accompanied by the opinion of an internationally recognized independent public accountant and (b) as of and for the fiscal quarter ended on September 30, 2017. Such financial statements: (x) were prepared in good faith in accordance with IFRS consistently applied throughout the period covered thereby, other than with respect to mandatory changes required by IFRS; (y) fairly present its financial condition and its consolidated Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with IFRS consistently applied throughout the period covered thereby, other than with respect to mandatory changes required by IFRS; and (z) show all its material indebtedness and other liabilities, direct or contingent, and its consolidated Subsidiaries as of the date thereof;

4.1.18 *No Litigation*: there is no litigation, investigation, arbitration or other proceeding pending or, to the knowledge of any Obligor after due and diligent investigation, threatened in writing against any Obligor or any of their Subsidiaries before any arbitrator or Governmental Authority that, solely in the case of each Guarantor: (a) in the aggregate, has had or, if adversely determined, could reasonably be expected to have a Material Adverse Effect or (b) could reasonably be expected to materially and adversely

affect the legality, validity, binding effect or enforceability of any of the Credit Documents;

- 4.1.19 *Payment of Taxes*: each Obligor has filed, has caused to be filed or has been included in all material Tax returns (national, departmental, local, municipal and foreign) required to be filed and has paid all material Taxes due with respect to the years covered by such returns, except for any such Taxes whose amount, applicability or validity is being contested in good faith by appropriate proceedings properly instituted and diligently conducted, and for which such Obligor has set aside on its books adequate reserves with respect thereto in accordance with IFRS;
- 4.1.20 *Legal Form*: each of the Credit Documents is (or upon its coming into effect will be) in proper legal form under its governing law for the enforcement thereof against the parties thereto under such laws, and constitutes a legal, valid and binding obligation thereof, enforceable in accordance with its terms. Subject to the preceding sentence, all formalities required in the U.S. and the jurisdiction of incorporation of each Obligor for the validity and enforceability (including any necessary registration, recording or filing with any court or other Governmental Authority) of each Credit Document have been accomplished, and no taxes are required to be paid for the validity and enforceability thereof;
- 4.1.21 *Investment Company*: no Obligor is required to register as an “investment company”, as such term is defined in the Investment Company Act of 1940, as amended;
- 4.1.22 *True and Complete Disclosure*: each Obligor has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries or any other Obligor is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No information, report, financial statement, exhibit or schedule furnished by or on behalf of any Obligor or any of their Subsidiaries to any Agent or Lender in connection with the negotiation of any Credit Document or included therein or delivered pursuant thereto contained, contains any material misstatement of fact or omitted, omits or will omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were, are or will be made, not misleading; provided that to the extent any such information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast or projection, such Obligor represents only that it acted in good faith and utilized reasonable assumptions (based upon accounting principles consistent with its historical audited financial statements) and due care in the preparation of such information, report, financial statement, exhibit or schedule;
- 4.1.23 *Notices*: the instructions to the Card Processors found in the Notices and Consents are sufficient to legally obligate each such Card Processor to make payments of the Collections directly to the New York Pass-Through Account in order to discharge the Collections owed to the Borrower with respect to the relevant Card Processing Agreement;
- 4.1.24 *Immunity*: each Obligor and their Subsidiaries is subject to civil and commercial law with respect to its obligations under the Credit Documents to which it is a party, and the execution, delivery and performance by it of such Credit Documents constitute private and commercial acts rather than public or governmental acts. None of the Obligors or any of their Subsidiaries nor any of their respective properties is entitled to immunity on

the grounds of sovereignty or otherwise from the jurisdiction of any court or from any action, suit, set-off or proceeding, or service of process in connection therewith, arising under the Credit Documents;

- 4.1.25 *Labor Matters*: there are no strikes, work stoppages, slowdowns or lockouts pending or threatened against or involving any Obligor or any of their Subsidiaries. There are no unfair labor practices, grievances, complaints or arbitrations pending or, to any Obligor's knowledge, threatened, against or involving any Obligor or any of their Subsidiaries, nor are there any arbitrations or grievances threatened involving any Obligor or any of their Subsidiaries;
- 4.1.26 *No License*: it is not necessary in order for any Secured Party to enforce any rights or remedies under the Credit Documents, or solely by reason of the execution, delivery and performance by the Obligors of the Credit Documents, that any Secured Party be licensed or qualified with any Governmental Authority, or be entitled to carry on business in any relevant jurisdiction. No Secured Party is or will be deemed to be resident, domiciled or carrying on business in any relevant jurisdiction by reason only of the execution, performance and/or enforcement of any Credit Document.
- 4.1.27 *Collections*: the net amount (including, but not limited to, net of any discount rate of charges, any chargebacks, any refunds, any fees and any other amounts owed to the Card Processor under the relevant Card Processing Agreement) of collections (from sales that, if such sales were made after the date hereof, would fall under the definition of Specified Sales) paid (a) in 2012 were \$369,151,330, (b) in 2013 were \$407,038,709, (c) in 2014 were \$438,240,114, (d) in 2015 were \$475,663,696, (e) in 2016 were 488,124,169 and (f) in 2017, through July 31, were \$315,922,638.
- 4.1.28 *Affiliates*: the Borrower is not an Affiliate of the Receivables Seller or any Guarantor

## 4.2 Further Assurances

The Obligors shall execute any and all further documents, agreements and instruments, and take all further action at their own expense that may be required under Law, or that the Administrative Agent may reasonably request (acting at the direction of the Required Lenders), in order to effectuate the transactions contemplated by the Credit Documents.

## 5. COVENANTS

### 5.1 Enforceability, Rank

Each of the Obligors covenants and agrees with the Lenders that:

- (a) each Obligor shall obtain, comply with the terms of and do all that is necessary to maintain in full force and effect all authorizations, approvals, licenses, registrations and consents required in or by the laws and regulations of the United States, New York and its jurisdiction of incorporation to enable it lawfully to enter into and perform its obligations under the Credit Documents to which it is a party, perform its business or ensure the legality, validity, enforceability or admissibility in evidence of the Credit Documents in the United States, New York and its jurisdiction of incorporation;
- (b) each Obligor shall ensure that at all times its obligations under the Credit Documents to which it is a party will at all times rank at least *pari passu* with all other present and future unsubordinated Indebtedness of such Obligor, other than obligations mandatorily preferred by law;



- (c) the Borrower shall not amend or modify its certificate of incorporation, memorandum and articles of association, by-laws or other organizational documents without the consent of the Required Lenders; and
- (d) Holdings shall, upon demand by the Administrative Agent (acting at the direction of the Required Lenders) in connection with any action to enforce, or potential action to enforce, this Agreement, or any exercise of rights or remedies hereunder or thereunder, cause a certified translation of this Agreement in the Spanish language to be prepared as soon as practicable, but in any event no later than 10 Business Days following such demand.

## **5.2 Corporate Existence**

Each Obligor shall do or cause to be done all things necessary to preserve and keep in full force and effect the corporate existence, rights (charter and statutory), licenses and franchises of such Obligor and its Subsidiaries.

## **5.3 Payment of Taxes and Other Claims**

Each Obligor shall pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (a) all material taxes, assessments and governmental charges levied or imposed (i) upon such Obligor or any of its Subsidiaries or (ii) upon the income, profits or property of such Obligor or any of its Subsidiaries and (b) all material lawful claims for labor, materials and supplies, which, if unpaid, could reasonably be expected to become a Lien upon the property of such Obligor or any of its Subsidiaries; provided, however, that the Obligors will not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings properly instituted and diligently conducted, and for which such Obligor has set aside on its books adequate reserves with respect thereto in accordance with IFRS.

## **5.4 Maintenance of Properties**

Each Obligor shall cause all material properties owned by such Obligor and its Subsidiaries or used or held for use in the conduct of their respective businesses to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the reasonable judgment of such Obligor may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times.

## **5.5 Insurance**

Each Obligor shall at all times keep all of its and its respective Subsidiaries' properties that are of an insurable nature insured with insurers that are financially sound and responsible, against loss or damage to the extent that property of similar character is usually and customarily so insured by corporations in the relevant jurisdiction of such Obligor similarly situated and owning like properties.

## **5.6 Books and Records; Reporting**

- 5.6.1 Each Obligor shall keep proper books of record and account, in which full and correct entries will be made of all financial transactions and the assets and business of such Obligor in compliance with IFRS.



5.6.2 The Borrower shall provide to the Administrative Agent, in each case, prepared in accordance with IFRS:

- (a) within 180 days after the end of each fiscal year, audited year-end financial statements of the Borrower (including a balance sheet, statement of operations and statement of cash flows) reported by an internationally recognized independent public accountant;
- (b) within 180 days after the end of each fiscal year, audited year-end consolidated financial statements of Holdings and its Subsidiaries, and stand-alone financial statements of each other Guarantor (including, in each case, a balance sheet, statement of operations and statement of cash flows) reported by an internationally recognized independent public accountant;
- (c) within 90 days after the end of each of the first three fiscal quarters of each fiscal year, unaudited quarterly financial statements of the Borrower (including a balance sheet, statement of operations and statement of cash flows); and
- (d) within 90 days after the end of each of the first three fiscal quarters of each fiscal year, unaudited quarterly consolidated financial statements of Holdings and its Subsidiaries and stand alone financial statements of each other Guarantor (including, in each case, a balance sheet, statement of operations and statement of cash flows).

5.6.3 Concurrently with any delivery of financial statements:

- (a) the Borrower shall provide to the Administrative Agent an Officer's Certificate of the Borrower, stating that no Event of Default has occurred and is continuing (or, if an Event of Default has occurred, specifying the details of such Event of Default and the action that such Obligor has taken or proposes to take with respect thereto); and
- (b) Holdings shall provide to the Administrative Agent a Compliance Certificate of Holdings, stating that (i) no Event of Default has occurred and is continuing (or, if an Event of Default has occurred, specifying the details of such Event of Default and the action that such Obligor has taken or proposes to take with respect thereto) and (ii) containing all information and calculations necessary for determining compliance by Holdings and its Subsidiaries with the provisions of this Agreement as of the last day of the fiscal quarter or fiscal year of Holdings, as the case may be.

5.6.4 Each Obligor shall provide to the Administrative Agent for the benefit of, and for prompt (and in any event within no less than two Business Days) distribution to, the Lenders:

- (a) promptly and in any event within two Business Days after the occurrence of any Default or Event of Default, notice of such Default or Event of Default including the details thereof and the actions that are being taken or are proposed to be taken with respect thereto;
- (b) promptly and in any event within two Business Days after any Obligor obtains knowledge thereof, written notice of any litigation, claim, investigation, arbitration, other proceeding or controversy pending or, to its knowledge, threatened, involving or affecting any Obligor or any of their Subsidiaries: (i) that could give rise to a Lien on any of its properties, (ii) that could

reasonably be expected to have a Material Adverse Effect or (iii) relating to any of the Credit Documents;

- (c) promptly and in any event within two Business Days after any Obligor obtains knowledge thereof, written notice of any event, change, condition or circumstance that could reasonably be expected to have a Material Adverse Effect; and
- (d) from time to time such other information with respect to any Obligor or any of their Subsidiaries or the Credit Documents and/or the transactions contemplated hereby or thereby as any Lender (acting through the Administrative Agent) or the Administrative Agent (acting at the direction of the Required Lenders) may reasonably request, including any documentation or other evidence to enable such Lender or the Administrative Agent to carry out and be satisfied with the requirements of all applicable “know your customer” laws, regulations and codes of conduct.

## **5.7 Further Assurances; Security Filings**

The Borrower shall perform or cause to be performed, from time to time, any and all acts (and execute any and all documents) as may be necessary or required by applicable Law or reasonably requested by any Agent (acting at the direction of the Required Lenders) to maintain each Lien created by the Credit Documents in full force and effect and enforceable in accordance with its terms, including: (a) making filings and recordations, (b) making payments of fees and other charges, (c) issuing and, if necessary, filing or recording supplemental documentation, including continuation statements, (d) publishing or otherwise delivering a notice to third parties, and (e) taking all other actions either necessary or required by applicable Law or otherwise reasonably requested by any Agent (acting at the direction of the Required Lenders) to ensure that all after-acquired property intended to be covered by such Liens is subject to a valid and enforceable first priority Lien in favor of the applicable Agent (for the benefit of the Secured Parties).

## **5.8 Limitation on Indebtedness**

- 5.8.1 Other than Indebtedness incurred pursuant to this Agreement or the Receivables Transfer Documents, the Borrower shall not incur, assume or suffer to exist any Indebtedness.
- 5.8.2 Holdings hereby agrees that, so long as the Commitments remain in effect, or any Loan or other amount is owing to any Lender or the Administrative Agent hereunder, Holdings will maintain a Capitalization Ratio at all times during each Reference Period of not more than 0.86:1.00.
- 5.8.3 Holdings hereby agrees that, so long as the Commitments remain in effect, or any Loan or other amount is owing to any Lender or the Administrative Agent hereunder, Holdings will maintain an Adjusted EBITDAR Coverage Ratio at all times during each Reference Period of not less than 1.75:1.00.

## **5.9 Limitation on Restricted Payments**

- 5.9.1 The Borrower shall not declare or make, directly or indirectly, a Restricted Payment, or incur any obligation (contingent or otherwise) to do so.
- 5.9.2 No Obligor (other than the Borrower) shall declare or make, directly or indirectly, a Restricted Payment, or incur any obligation (contingent or otherwise) to do so except to the extent that such a payment is required by applicable Law; provided that the

restrictions set forth in this clause shall not apply if immediately prior to and immediately after giving effect to such Restricted Payment, no Retention Event, Default or Event of Default shall have occurred and be continuing.

#### 5.10 Limitation on Affiliate Transactions

5.10.1 No Guarantor shall enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property, employee compensation arrangements or the rendering of any service) with any Affiliate (an “**Affiliate Transaction**”) of such Guarantor unless (a) the transaction is with a Subsidiary of such Guarantor, or with another Guarantor, or with a Subsidiary of another Guarantor, or (b) such transaction would be immaterial to the financial condition and results of operations of such Guarantor and its Subsidiaries (taken as a whole), or (c) the terms thereof, taken as a whole, are no less favorable to such Guarantor than those that could be obtained at the time of such transaction in arm’s-length dealings with a Person that is not an Affiliate of such Guarantor.

5.10.2 The Borrower shall not enter into or permit to exist any Affiliate Transaction except pursuant to the Credit Documents or the Receivables Transfer Documents.

#### 5.11 Limitation on Sales of Assets

5.11.1 The Borrower shall not directly or indirectly, consummate any sale, lease, transfer or other Disposition (or series of related sales, leases, transfers or dispositions), including any Disposition by means of a merger, consolidation or similar transaction, of any property or assets.

5.11.2 The Guarantors shall not, and shall ensure their Subsidiaries do not, Dispose of any of their property, whether now owned or hereafter acquired, or, other than with respect to Holdings, issue or sell any of Receivables Seller’s, such Guarantor’s or such Subsidiary’s equity interests to any Person, except:

- (a) Dispositions in the ordinary course of business, including (i) Dispositions of obsolete or worn-out property, aircraft and equipment, (ii) Dispositions of aircraft and other equipment that has been leased to a Guarantor or any of their Subsidiaries pursuant to sale and leaseback transactions, (iii) Dispositions of aircraft and other equipment replaced within 180 days of such Disposition by aircraft and other equipment of approximately the same or greater value or with approximately the same or greater passenger capacity in connection with the upgrading of the Guarantors’ or their Subsidiaries’ fleet of aircraft, or (iv) leases and sub-leases of aircraft and related equipment to Affiliates;
- (b) Dispositions from Holdings or its Subsidiaries to the other Guarantors;
- (c) Dispositions of assets not constituting Core Assets and not otherwise described in clauses (i) and (ii); provided that at least 75% of the consideration received thereof by the Guarantors, as the case may be, is in the form of cash or Cash Equivalents; provided, further, that neither Receivables Seller nor Holdings nor any of their Subsidiaries shall make Dispositions the proceeds of which are reinvested in Subsidiaries of Holdings that are not Guarantors;
- (d) Dispositions of assets that would not exceed on a cumulative basis (i) for the period beginning on the Effective Date and ending on the Payment Date of the last Monthly Settlement Amount, 15% of the aggregate value (in accordance

with IFRS) of Holdings' consolidated assets (as such value is adjusted as of the end of each fiscal year of Receivables Seller, Holdings and each other Guarantor based on the inflation provision in IFRS), or (ii) in any single fiscal year of Holdings commencing after the Effective Date 5% of the aggregate value (in accordance with IFRS) of Receivables Seller's consolidated assets; and

- (e) Dispositions of Air Travel Receivables on which Liens are not prohibited by Section 5.12.2.

Notwithstanding the foregoing provisions of this Section 5.11.2, no Disposition, other than Dispositions pursuant to Section 5.11.2(a) shall be permitted if, at the time thereof, there shall exist and be continuing any Retention Event, Default, or Event of Default.

## **5.12 Limitation on Liens**

- 5.12.1 The Borrower shall not, directly or indirectly, create, Incur, assume or otherwise cause or suffer to exist or become effective any Lien of any nature whatsoever (for the avoidance of doubt, including but not limited to Permitted Liens) on any of its assets, except Liens created pursuant to a Credit Document.
- 5.12.2 No Guarantor shall, directly or indirectly, create, Incur, assume or otherwise cause or suffer to exist or become effective any Lien of any nature whatsoever on any of its assets, except for Permitted Liens.

## **5.13 Limitation on Lines of Business**

- 5.13.1 The Borrower shall not engage in any business or activity other than the transactions expressly contemplated by the Credit Documents.
- 5.13.2 No Guarantor shall make any substantial change to the general nature of the business of such Guarantor from that carried on at the date of this Agreement.
- 5.13.3 No Obligor shall (a) change its name or take any other action (other than those permitted hereunder) that could reasonably be expected to adversely affect the priority, perfection or validity of the Liens created by the Credit Documents, (b) change its country of domicile, (c) make or permit any material change in its accounting policies or reporting practices except as required by a change in IFRS or (d) change its fiscal year.

## **5.14 Consolidation, Merger**

No Obligor will consolidate or merge with or into, dissolve, liquidate, or convey, lease or transfer all or substantially all of its assets to, any Person in a single transaction or through a series of transactions, unless:

- (a) the Person formed by such consolidation or merger shall expressly assume, by an agreement supplemental hereto, executed and delivered to the Agents and the Lenders in form and substance satisfactory to the Administrative Agent, the performance of every covenant and obligation of the Obligor under this Agreement and the other Credit Documents to which it is a party; and
- (b) (i) such consolidation or merger and such supplemental agreement comply with this Section 5.14 and all conditions precedent herein relating to such transaction have been complied with, (ii) such supplemental agreement is legal, valid and binding and enforceable

against such Person in accordance with the terms of such supplemental agreement (except for laws affecting the enforcement of creditors' rights generally and general principles of equity in whatever proceeding asserted), (iii) following such consolidation or merger, the Collateral Agent shall continue to have an enforceable, valid, and effective security interest in and Lien on the Collateral, and (iv) the Administrative Agent shall have received favorable legal opinions from the Obligor's counsel covering such matters as shall have been covered by legal opinions given by such counsel as of the Closing Date; and

(c) if the Obligor undergoing such consolidation or merger is Holdings, only if the Lenders have in good faith determined, after receiving notice of the principal terms of such consolidation or merger and *pro forma* financial statements indicating the *pro forma* financial condition on the effective date of the transaction and projected results of operations of the surviving entity, that the merger or consolidation will not have a Material Adverse Effect or otherwise adversely affect the ability of Holdings and the other Guarantors to meet their obligations under this Agreement or the other Transaction Documents or of the Receivables Seller to meet its obligations under the RSPA, the Undertaking Agreement, the Cash Management Agreement or the other Transaction Documents;

provided that notwithstanding the foregoing provisions of this Section 5.14, no such consolidation, merger, conveyance, or transfer shall be permitted (a) if the Obligor is the Borrower or (b) if, at the time thereof, there shall exist and be continuing any Default, Event of Default, or Retention Event.

## 5.15 Maintenance of Separateness

The Borrower shall not take any action, or conduct its affairs in a manner that could reasonably be expected to result in its corporate existence being ignored by any court of competent jurisdiction or in its assets and/or liabilities being substantively consolidated with those of any other Person in a bankruptcy, reorganization or other insolvency proceeding. In furtherance of the foregoing, the Borrower shall conduct its business (and shall cause each Subsidiary to conduct its business) such that it is a separate and readily identifiable business from, and independent of, any other Person (each such person, an "**Unrelated Person**") and, in particular:

- 5.15.1 shall observe all corporate formalities necessary to remain a legal entity separate and distinct from, and independent of, all Unrelated Persons;
- 5.15.2 shall maintain its assets and liabilities separate and distinct from those of each Unrelated Person and shall not commingle its assets with those of any Unrelated Person;
- 5.15.3 shall maintain its accounts and funds separate and distinct from the accounts and funds of each Unrelated Person and will receive, deposit, withdraw and disburse its funds separately from any funds of any Unrelated Person;
- 5.15.4 shall maintain records, books, accounts and minutes separate from those of any Unrelated Person;
- 5.15.5 shall conduct its own business in its own name and not in the name of any Unrelated Person and correct any known misunderstanding regarding its status as a separate entity;
- 5.15.6 shall maintain an arm's-length relationship with its Affiliates;
- 5.15.7 shall maintain separate financial statements from each Unrelated Person;



- 5.15.8 shall pay its own liabilities and obligations out of its own funds, whether in the ordinary course of its business or otherwise, as a legal entity separate from each Unrelated Person;
- 5.15.9 shall not use stationery, invoices and checks of any Unrelated Person;
- 5.15.10 shall hold itself out as a separate legal entity and correct any known misunderstanding regarding its status as a separate entity;
- 5.15.11 shall not induce any third party to rely on the creditworthiness of any Unrelated Person in order that such third party may be induced to contract with it; and
- 5.15.12 shall observe all corporate or other procedures required by applicable law.

#### **5.16 Limitation on Investments**

The Borrower shall not make or acquire any Investment.

#### **5.17 Use of Proceeds**

The Borrower shall use the proceeds of the Loan only to purchase the Contract Rights and Receivables pursuant to the RSPA by payment to the Seller's Account. The Borrower shall not use the proceeds of the Loans directly or indirectly for "purchasing" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter be in effect or for any purpose which violates or is inconsistent with the provisions of Regulation U or X.

#### **5.18 Investment Company Act**

The Borrower shall not take (or permit any other Person on behalf of the Borrower to take) any action that could reasonably be expected to result in it being required to be registered as an "investment company" under the United States Investment Company Act of 1940.

#### **5.19 Compliance with Laws**

- 5.19.1 The Obligors shall, and shall cause their Subsidiaries to, comply with all requirements of Law, including all relevant Government Approvals and Environmental Laws, except, solely in the case of the Guarantors and their Subsidiaries, where any failure to so comply could not, individually or in the aggregate, have a Material Adverse Effect, and except that the Guarantors may, at their expense, contest by appropriate proceedings conducted in good faith the validity or application of any such requirement of Law, so long as (i) none of the Lenders, Agent or the Obligors would be subject to any criminal liability for failure to comply therewith and (ii) such contest does not involve any material risk of the sale, forfeiture or loss of any of the Collateral; provided, however, that the Obligors shall, and shall cause their Subsidiaries to, comply with all Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions in all respects and subject to no exceptions.
- 5.19.2 No Obligor shall directly or indirectly use the proceeds of the Loan, or contribute or otherwise make available such proceeds to any Person (a) to fund or facilitate any activities of or business with any person, or in any country or territory, that, at the time of such funding or facilitating, is a Sanctioned Person in violation of Sanctions; (b) to fund or facilitate any activities of or business in any Sanctioned Jurisdiction in violation of Sanctions; (c) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Law; (d) to engage in any transaction, activity or conduct that would



violate applicable Anti-Money Laundering Laws; or (e) in any other manner that will result in a violation of Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions by any person (including any person participating in the Loan Agreement).

- 5.19.3 No Obligor shall permit any part of the funds used in repayment of the Loans to be derived from a transaction with, or proceeds from, a Sanctioned Person or a Sanctioned Jurisdiction or use funds that were the subject of money laundering activities or any other activities unlawful under applicable Law to make any payments to the Secured Parties under this Agreement or otherwise make any payment to any Agent or Lender hereunder that would cause such Agent or Lender to be in violation of any applicable Law.
- 5.19.4 The Obligors shall, and shall cause their Subsidiaries to, continue to maintain and enforce policies and procedures designed to promote and achieve compliance by the Obligors and their Subsidiaries with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions. The Obligors shall promptly notify the Lenders, to the extent that any such notification does not violate Law (including any applicable privilege), in the event that (a) they or any of their Subsidiaries, or any of their respective directors, officers, Affiliates, agents or employees becomes a Sanctioned Person; and/or (b) they know or have reason to know that they or any of their Subsidiaries, or any of their respective directors, officers, Affiliates, agents or employees may violate or has violated Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions in connection with this Agreement or in any other manner that will result in a violation by any person (including any person participating in the Loan Agreement).

## **5.20 Card Processing Agreements**

- 5.20.1 Upon any amendment to a Card Processing Agreement, the Borrower shall provide prompt notice and a copy of such amendment to the Administrative Agent.
- 5.20.2 The Borrower shall cause the Receivables Seller to maintain and promptly, but in any event within two Business Days of an event requiring an update, update the merchant identification codes identified in each Notice and Consent so that it accurately reflects the merchant identification codes associated with the Contract Rights at all times and concurrently provide a copy of such updates to the relevant Card Processor and the Administrative Agent.
- 5.20.3 To the extent that the Borrower (which shall promptly notify the Agents in writing thereof) or any Agent (acting at the direction of the Required Lenders) shall at any time reasonably determine that the execution of a Notice and Consent is not sufficient to require a Card Processor in any jurisdiction to make payment of the Collections to such New York Pass-Through Account, take such other actions as requested by an Agent (acting at the direction of the Required Lenders) to ensure that such Card Processor is so required.
- 5.20.4 If any funds are received by the Borrower from time to time in respect of Collections: (a) promptly (and, in any event, within two Business Days) after its receipt thereof, remit such funds to the New York Pass-Through Account (and until so remitted, such funds shall be held in trust by the Borrower for the benefit of the Collateral Agent) and (b) promptly (and, in any event, by no later than the Business Day after any such remittance): (i) notify the Collateral Agent of its receipt of any such funds and of each such remittance by it (or on its behalf) into the New York Pass-Through Account (specifying the amount and date of the remittance and the Card Processing Agreement, if any, with respect to which it received such funds) and (ii) deliver to the Collateral Agent evidence that it has

sent a notice to the applicable Card Processor that all future payments on Collections are to be deposited into the New York Pass-Through Account.

- 5.20.5 The Borrower shall cause the Receivables Seller to ensure that each of the Card Processing Agreements remains the legal, valid and binding obligations of each of the parties thereto and perform and observe all of its material covenants and obligations contained in each Card Processing Agreement.

## **6. EVENTS OF DEFAULT**

### **6.1 Events of Default**

If any of the following events (each, an “**Event of Default**”) shall occur and be continuing:

- 6.1.1 any Obligor fails to pay any amount due under this Agreement or any Note when due, unless (a) the amount in the Collections Account is sufficient on such due date to pay or disburse all amounts due under this Agreement and each Note on such date and (b) such amount is paid or disbursed from the Collections Account to pay such amounts in full within 3 Business Days of its due date;
- 6.1.2 the Collections Coverage Ratio is below 1.75:1.00 at any date of determination or a Retention Event occurs and continues for six consecutive months;
- 6.1.3 any Obligor fails duly to perform or observe:
- (a) any term or obligation under Section 2.3, Section 2.4 or Section 5 (except Sections 5.3, 5.4, 5.5 and 5.19.1) hereof or under any Security Document; or
  - (b) any other term or obligation contained hereunder or in any other Credit Document (other than any Receivables Transfer Document) to which it is a party and such failure shall continue unremedied for 30 days after the earlier of (i) an Obligor obtaining knowledge of such failure or (ii) written notice thereof having been given by any Agent or any Lender to the Borrower;
- 6.1.4 the Receivables Seller or the Borrower fails duly to perform or observe any term or obligation contained in, or otherwise defaults under, the Receivables Transfer Documents, a Trigger Event occurs under the RSPA, or the RSPA is terminated for any reason;
- 6.1.5 any representation, warranty, certification or statement made or deemed to be made by the Receivables Seller or any Obligor in any Credit Document, or any certificate, financial statement or other document delivered pursuant to or in connection with any Credit Document or the Loans shall prove to have been incorrect when made or repeated (or deemed made or repeated) or the Receivables Seller or any Obligor shall provide any Agent or Lender with material false information;
- 6.1.6 any default, early amortization event or similar event shall occur with respect to (a) any Indebtedness of the Borrower or (b) any Indebtedness of the Receivables Seller or any Obligor (other than the Borrower) that exceeds in aggregate U.S.\$20,000,000 (including the Dollar equivalent of Indebtedness in any other currency), in each case if the effect thereof is to accelerate the maturity thereof, or to permit the holder(s) of such Indebtedness, or an agent or trustee on its or their behalf, to accelerate the maturity thereof or to require the mandatory prepayment, defeasance or redemption thereof;

- 6.1.7 Any final judgment or decree by a court or other adjudicatory authority of competent jurisdiction (not subject to appeal) (a) for the payment of money is entered against the Borrower or (b) for the payment of money in excess of U.S.\$20,000,000 (including the Dollar equivalent of Indebtedness in any other currency) is entered against the Receivables Seller or any Obligor (other than the Borrower), and in each case remains outstanding for a period of 30 days following such final judgment and is not discharged, waived or stayed;
- 6.1.8 a Card Processing Agreement is terminated by either party for any reason, unless such termination is a Permitted Termination and the Receivables Seller and the Borrower complete a Contract Rights and Receivables Addition acceptable to the Required Lenders promptly (and in any event within 10 days) following such termination;
- 6.1.9 the Receivables Seller or the Borrower breaches its obligations under a Card Processing Agreement and such breach gives the relevant Card Processor the right to terminate the Card Processing Agreement, unless the relevant Card Processor in writing waives its right to terminate the Card Processing Agreement on account of such breach;
- 6.1.10 a Card Processor fails to make payments under the relevant Card Processing Agreement into the New York Pass-Through Account for 10 consecutive days, unless the Card Processing Agreement is terminated within such 10 days in connection with a Permitted Termination;
- 6.1.11 any resolution of the shareholders of the Borrower is passed to wind-up the affairs of the Borrower and/or to approve the voluntary liquidation of the Borrower;
- 6.1.12 the Receivables Seller or any Obligor pursuant to or under or within the meaning of any Bankruptcy Law:
  - (a) commences a voluntary case or proceeding;
  - (b) consents to the making of a Bankruptcy Order in an involuntary case or proceeding or the commencement of any case against it;
  - (c) consents to the appointment of a Custodian of it or for substantially all of its property;
  - (d) makes a general assignment for the benefit of its creditors;
  - (e) files an answer or consent seeking reorganization or relief;
  - (f) shall admit in writing its inability to pay its debts generally; or
  - (g) consents to the filing of a petition in bankruptcy;
- 6.1.13 a court of competent jurisdiction in any involuntary case or proceeding enters a Bankruptcy Order against the Receivables Seller or any Obligor and such Bankruptcy Order remains unstayed and in effect for 60 consecutive days;
- 6.1.14 a Custodian is appointed out of court with respect to the Receivables Seller or any Obligor or with respect to all or any substantial part of the assets or properties of any such Person;
- 6.1.15 (a) the capacity or ability of the Receivables Seller to operate domestic and/or international flights is materially impaired for any reason or (b) the capacity or ability of

the Guarantors (other than Holdings), individually or collectively, to operate domestic and/or international flights is materially impaired for any reason, unless the gross revenue generated by their domestic and international flights immediately before such material impairment constituted less than 30% of the gross revenue generated by the Receivables Seller and all Guarantors (other than Holdings) in the aggregate in the previous 12 months;

6.1.16 any Change of Control occurs;

6.1.17 (a) any Credit Document or any term thereof (i) shall be revoked, terminated, become void or cease to be in full force and effect, (ii) shall become, or the performance of or compliance with any obligation thereunder shall become, unlawful, or (iii) shall be repudiated (or purportedly repudiated) by any party thereto (other than an Agent or a Lender) or its legality, validity or enforceability shall be challenged by any Person (other than an Agent or a Lender); or (b) the Receivables Seller or any Obligor shall deny that it has any or further liability or obligation under any Credit Document;

6.1.18 (a) any Security Document shall not provide or shall cease to provide the Secured Parties with effective, valid, legally binding and enforceable first priority perfected Liens on the Collateral secured or purported to be secured thereby as contemplated under the Credit Documents or (b) the Receivables Seller or any Obligor shall, directly or indirectly, contest the effectiveness, validity, legality, binding nature, enforceability or priority of such Liens;

6.1.19 any Government Approval at any time necessary to enable the Receivables Seller or any Obligor to comply with any of its obligations under any of the Credit Documents shall be revoked, withdrawn, withheld or otherwise not in full force and effect or shall be modified or amended in a manner that has had or could reasonably be expected to have a Material Adverse Effect;

6.1.20 any change in applicable Law shall occur affecting the Receivables Seller, any Obligor or any of their Subsidiaries if the effect thereof has or could reasonably be expected to have a Material Adverse Effect;

6.1.21 a moratorium applicable to any Loan shall be declared by any Governmental Authority having jurisdiction in respect of any Indebtedness owed by the Receivables Seller or any Obligor to the Lenders, or any Governmental Authority of any applicable jurisdiction declares any general payment delay, refusal to pay or acknowledge a payment obligation, repudiation or other action (whether or not formally announced), which in any such case relates to Indebtedness or any category of Indebtedness not to be paid in accordance with its terms or prevents the availability of foreign exchange to or by the Receivables Seller or an Obligor for the purpose of performing any obligation under this Agreement or any other Credit Document;

6.1.22 it is or becomes unlawful for the Receivables Seller or the Servicer to perform any of its obligations under the Receivables Transfer Documents to which it is a party;

6.1.23 any event or series of events occurs which, in the determination of the Administrative Agent (at the instruction of the Lenders acting reasonably), has or is reasonably likely to have a Material Adverse Effect (other than pursuant to clause (d) of the definition of Material Adverse Effect), and such event or series of events continues unremedied for 30 days after the Administrative Agent provides to the Borrower in writing a notice specifying with reasonable particularity such event or series of events that at the

instructions of the Lenders acting reasonably has or is reasonably likely to have a Material Adverse Effect; or

- 6.1.24 following a disbursement from the Debt Service Reserve Account pursuant to the Cash Management Agreement, the Debt Service Reserve Account does not have a balance at least equal to the Debt Service Required Amount within 3 Business Days of such disbursement;

then, and in every such event, (x) in the case of an event specified in Sections 6.1.11, 6.1.12, 6.1.13 or 6.1.14 the entire unpaid principal amount of the Loan and all other amounts payable in respect of the Loan shall automatically become and be forthwith due and payable (and, without limiting the rights of the Agents, the Collateral Trustee and the Lenders under the Credit Documents and applicable Law, all amounts deposited in the New York Pass-Through Account, the Collections Account and the Debt Service Reserve Account shall be applied to repay such amounts in accordance with the Cash Management Agreement and the Security Documents), and (y) in the case of any other event specified in this Section 6.1, at any time thereafter during the continuance of such event, with the consent of the Required Lenders, the Administrative Agent may (but shall not be obligated), or if so instructed by the Required Lenders, the Administrative Agent shall, by notice in writing given to the Obligors, declare the Loan immediately due and payable whereupon the entire unpaid principal amount of this Loan and all other amounts payable in respect of this Loan shall become and be forthwith due and payable, in each case without presentation, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Obligors to the extent permitted by Law (and, without limiting the rights of the Agents, the Collateral Trustee and the Lenders under the Credit Documents and applicable Law, all amounts deposited in the New York Pass-Through Account, the Collections Account and the Debt Service Reserve Account shall be applied to repay such amounts in accordance with the Cash Management Agreement and the Security Documents).

## **7. AGENTS**

### **7.1 The Agents**

- 7.1.1 The Lenders hereby irrevocably appoint each Agent as their agent hereunder and under the other Credit Documents to which such Agent is a party, and authorize each Agent to take such actions on their behalf and to exercise such powers as are delegated to such Agents by the terms hereof and thereof, together with such powers as are reasonably incidental thereto. Each of the Lenders (a) accepts the authorizations, appointments, acknowledgments and other actions taken by each Agent, on behalf of the Lenders, in accordance with this Agreement and the other Credit Documents to which it is a party, and (b) authorizes and directs each Agent to enter into from time to time such other Credit Documents (including, but not limited to, any amendments, supplements, accession agreements, acknowledgements or similar documents thereto or thereunder and any Notice and Consents) to which it is or is intended to be a party on its behalf, and each Lender agrees to be bound by all of the agreements of the Agents contained in such Credit Documents. The provisions of this Section 7 are solely for the benefit of the Agents and the Lenders, and the Borrower shall not have rights as a third-party beneficiary of any of such provisions.
- 7.1.2 Any Person serving as an Agent shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Obligors or any Affiliate thereof as if it were not



an Agent hereunder. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for, and generally engage in any kind of business with, the Borrower or any Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders.

- 7.1.3 No Agent shall have any duties or obligations except those expressly set forth in the Credit Documents to which it is a party. Without limiting the generality of the foregoing, (a) the duties of the Agents shall be mechanical and administrative in nature; no Agent shall have by reason of this Agreement a fiduciary relationship or other implied duties in respect of the Lenders, regardless of whether a Default has occurred and is continuing, (b) no Agent shall have any duty to take any discretionary action or exercise any discretionary powers (including providing any request, consent, approval waiver or authorization), except discretionary rights and powers expressly contemplated hereby and by the other Credit Documents to which it is a party, that such Agent is required to exercise as directed in writing by the Required Lenders, provided, that, no Agent shall be required to take any action that, in its opinion or in the opinion of its counsel, may expose such Agent to liability or that is contrary to any Credit Document or applicable Law, (c) the Agents make no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, warranties or representations (whether written or oral) made in or in connection with this Agreement or any other Credit Document and (d) except as expressly set forth in in the Credit Documents to which it is a party, no Agent shall have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Obligor or any of their Affiliates that is communicated to or obtained by the bank serving as Agent or any of its Affiliates in any capacity. Nothing in the Credit Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect of in the Credit Documents except as expressly set forth therein. No Agent shall be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders or in the absence of its own gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). The Agents shall not be deemed to have notice of any Default or Event of Default unless and until a Responsible Officer of the Agent has received written notice describing such Default or Event of Default by the Borrower or a Lender. No Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Credit Document, (ii) the existence, contents, accuracy or sufficiency of any certificate, valuation, search, report or other document delivered thereunder or in connection therewith (including recalculating or determining, confirming or verifying any calculation or information set forth therein, or made in, or in connection with, any Credit Document or the assets secured thereunder), (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Credit Document, (iv) the validity, enforceability, effectiveness or genuineness of any Credit Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article 3 or elsewhere in this Agreement or in any Credit Document other than to confirm receipt of items expressly required to be delivered to such Agent. “**Responsible Officer**,” when used with respect to any Agent, means any officer of such Agent with direct responsibility for the administration of any Credit Document.
- 7.1.4 The Agents shall be entitled to rely upon, and shall not incur any liability and shall be fully protected in relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been



signed or sent by the proper Person, and shall incur no liability and shall be fully protected in relying upon, the truth and correctness of the provisions contained therein. Each Agent may consult with legal counsel (who may be counsel for the Obligors), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. Each Agent shall be entitled to request written instructions, or written clarifications of any instruction, from the Required Lenders with respect to any right, power, authority, discretion or any action to be taken or not taken in connection with any Credit Document, and such Agent shall be entitled to refrain from exercising such right, power, authority, discretion or taking such action unless and until such Agent shall have received written instructions, or such written clarification, from the Required Lenders, and such Agent shall not incur liability to any Person by reason of acting on such written instructions or refraining from acting. Without limiting the foregoing, no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or refraining from acting hereunder or under any Credit Document, in accordance with the instructions of the Required Lenders.

7.1.5 Each Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by such Agent. Each Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of each Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

7.1.6 (a) Any Agent may resign at any time upon 30 days' prior notice to each of the Lenders and, unless a Default or Event of Default exists, the Obligors. Upon any such resignation, the Required Lenders shall have the right to appoint a successor Agent, which shall be a Qualified Agent and shall be consented to by the Borrower (such consent not to be unreasonably withheld or delayed and which shall be deemed to have been granted if the Borrower does not object in writing within five (5) Business Days of receiving written notice of such appointment) at all times other than during the existence of an Event of Default. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "**Resignation Effective Date**"), then the retiring Agent may (but shall not be obligated), on behalf of all of the Lenders, appoint a successor Agent that shall be a Qualified Agent or, at the expense of the Borrower, may (but shall not be obligated to) appeal to a court of competent jurisdiction for the appointment of one. Upon the acceptance of its appointment as Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent and the retiring Agent shall be discharged from its duties and obligations hereunder. After any Agent's resignation hereunder, the provisions of this Article 7 and Section 8.7.3 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Agent. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

- (b) The Required Lenders and the Borrower may at any time when an Agent has become the subject of a proceeding under any Bankruptcy Law, or had a receiver, conservator, trustee or custodian appointed for it, upon no less than 10 Business Days' prior written notice, remove such Agent. If such Agent is removed pursuant to the preceding sentence, the Required Lenders shall have the right to appoint a successor, which successor Agent shall be a Qualified Agent and shall be consented to by the Borrower (such consent not to be unreasonably withheld or delayed and which shall be deemed to have been granted if the Borrower does not object in writing within five (5) Business Days of receiving written notice of such appointment) at all times other than during the existence of an Event of Default, provided that the successor Agent shall not be the subject of a proceeding under any Bankruptcy Law, or had a receiver, conservator, trustee or custodian appointed for it, and shall succeed to and become vested with all of the rights, powers, privileges and duties of the replaced Agent, and the replaced Agent shall be discharged from all of its duties and obligations hereunder and under every Credit Document. If no such successor shall have been so appointed by the Required Lenders, and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders, as the case may be) (the "**Removal Effective Date**"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date. The provisions of this Article 7 and Section 8.7.3 shall continue in effect for the benefit of such replaced Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the replaced Agent was acting as Agent.
- (c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Agent shall be discharged from its duties and obligations hereunder and under the other Credit Document (except in the case of any Collateral held by the Collateral Agent on behalf of the Lenders under the Credit Documents, the retiring or removed Collateral Agent shall continue to hold such Collateral until such time as a successor Collateral Agent is appointed by the Required Lenders, the Collateral Agent) and (ii) except for any indemnity payments owed to the retiring or removed Agent all payments, communications and determinations provided to be made by, to or through an Agent shall instead be made by or to each Lender directly, until such time, if any, as a successor Agent is appointed as provided for above in this Section.
- (d) If an Agent consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business or assets to, another Person, the resulting surviving or transferee Person without any further act shall be the successor to such Agent.
- (e) The Required Lenders shall notify the Collateral Trustee on or prior to the effectiveness of any resignation, removal, merger, consolidation, conversion, transfer or appointment of any successor Agent in accordance with this Agreement.

7.1.7 Each Lender acknowledges that it has, independently and without reliance upon any Agent, and to the extent it deems appropriate, made and shall continue to make (a) its own independent investigation of the financial condition and affairs of the Obligor in connection with the making and the continuance of the Loan and the taking or not taking

of any action in connection herewith and (b) its own appraisal of the creditworthiness of the Obligors and, except as expressly provided in this Agreement, no Agent shall have any duty or responsibility, either initially or on a continuing basis, to provide any Lender or the holder of any Note in respect of the Obligors' obligations under this Agreement, the Security Documents or any Note with any credit or other information with respect thereto, whether coming into its possession before the making of the Loan or at any time or times thereafter. No Agent shall be responsible to any Lender or the holder of any Note in respect of the Obligors' obligations under any Credit Document for any recitals, statements, information, representations or warranties herein or in any document, certificate or other writing delivered in connection herewith or for the execution, effectiveness, genuineness, validity, enforceability, perfection, collectability, priority or sufficiency of any Credit Document or the financial condition of (i) the Obligors or any of their Affiliates or (ii) any other party to a Credit Document, or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of any Credit Document, or the financial condition of the Obligors or any of their Affiliates or the existence or possible existence of any Default or Event of Default.

- 7.1.8 No Agent shall have any duty to risk or advance its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties hereunder or under the Credit Documents, or be required to take any action that is contrary to this Agreement, any other Credit Document or applicable Law.
- 7.1.9 Notwithstanding anything else to the contrary herein, whenever reference is made in any Credit Document to any discretionary action by, consent, designation, specification, requirement or approval of, notice, request or other communications from or other direction given, duty or action to be undertaken or to be (or not to be) suffered or omitted by any Agent or to any election, decision, opinion, acceptance, use of judgment, expression of satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by any Agent, it is understood that in all cases such Agent shall be fully justified in failing or refusing to take any such action under such Credit Document if it shall not have received such written instruction, advice or concurrence of the Required Lenders, as such Agent deems appropriate. Notwithstanding anything else to the contrary herein or in any other Credit Document, no Agent shall be liable with respect to any action taken or omitted to be taken by it in accordance with the direction of the Required Lenders under this Agreement or any other Credit Document to which it is a party. This provision is intended solely for the benefit of each Agent and its successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim, or confer any rights or benefits on any party hereto.
- 7.1.10 In no event shall any Agent be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether such Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.
- 7.1.11 Notwithstanding anything in any Credit Document to the contrary, an Agent may refuse to perform any duty or exercise any right or power unless it receives indemnity and/or security satisfactory to it against the costs, expenses and liabilities that might be incurred by it in performing such duty or exercising such right or power.
- 7.1.12 Without limiting the rights and protections of the Agents provided under Article 7 of this Agreement, no Agent shall be liable absent such Agent's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-

appealable decision) for (a) any error or omission, express or implied, made or caused, directly or indirectly, by such Agent in connection with the calculation or determination of any amounts, rates or ratios pursuant to any Credit Document or (b) the validity or reliability of any data used or generated in any such calculation or determination. All calculations or determinations made by any Agent pursuant to the terms of any Credit Document shall be, absent manifest error, conclusive for all purposes and binding on all of the parties to such Credit Document, and no Agent shall have any liability therefor. Each Agent may, and in its sole discretion, appoint any other institution (including any Affiliate of such Agent) to serve as its agent from time to time in connection with the performance of any calculation or determination under any Credit Document, and shall not be responsible for the misconduct or negligence of any such agent appointed with due care. Insofar as any Credit Document provides for an Agent to obtain rates, quotes or other data from a bank, dealer or other institution for use in making any calculation or determination hereunder, such Agent may do so from any institution or institutions of the kind contemplated hereby notwithstanding that any one or more of such institutions are Affiliates of such Agent or Affiliates of any of its agents.

- 7.1.13 The Borrower and each Lender hereby acknowledge that the Administrative Agent will make information available to the Lenders by posting the information on Debt Domain or another similar electronic system (the “**Platform**”). Each Lender hereunder agrees that any document or notice posted on the Platform by the Administrative Agent shall be deemed to have been delivered to the Lenders. Borrower and the Lenders further agree that, to the extent reasonably practicable, any document delivered to the Administrative Agent for purposes of compliance with any provision of this Agreement or for dissemination to any other party hereto shall be delivered to the Administrative Agent in electronic form capable of being posted to the Platform.

Each of the Borrower and Lenders understands that the distribution of materials and other communications through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of the applicable agent, as determined by a final non-appealable judgment of a court of competent jurisdiction.

The Platform is provided “as is” and “as available.” Neither the Administrative Agent, any other Agent nor any of their respective Affiliates warrants the accuracy or completeness of the information contained on the Platform or the adequacy of the Platform and each expressly disclaims liability for errors or omissions in the information contained on the Platform. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects is made by the Administrative Agent, any other Agent or any of their respective Affiliates in connection with the information contained on the Platform.

- 7.1.14 The rights, privileges, protections and benefits given to the Agents are extended to, and shall be enforceable by, each Agent, hereunder and under any Credit Document to which it is a party. In the event that the Citibank, N.A., as Collateral Agent is also acting as U.K. Account Bank under the U.K. Account Charge, the rights and protections afforded to the Collateral Agent under this Agreement shall also be afforded to the Collateral Agent in its capacity as U.K. Account Bank. Neither the Collateral Agent nor the Administrative Agent shall be responsible or liable for any action taken or omitted by the Collateral Trustee, or for any of its obligations under the English Security Documents.



7.1.15 Each Agent and each Lender acknowledges and agrees that the Collateral Trustee is authorized by it and the other Secured Parties to apply any and all moneys received or recovered by the Collateral Trustee in connection with the enforcement of the English Security in accordance with Clause 3.1 (*Application of Proceeds*) of the Security Trust Deed.

## **8. MISCELLANEOUS**

### **8.1 Amendments and Waivers**

8.1.1 The provisions of this Agreement may from time to time be amended, modified or waived if such amendment, modification or waiver is in writing and consented to by the Obligors, the Required Lenders and, to the extent its rights, obligations, protections or privileges are affected by such amendment, modification or waiver, any Agent or the Collateral Trustee, provided that, without the written consent of each Lender, such amendment, modification or waiver shall not (a) extend the final maturity of the Loan or any Note, (b) extend any scheduled date for payment thereunder, (c) reduce the rate or amount or extend the time of payment of interest, premium or fees thereon, (d) reduce the principal amount thereof, (e) release any Guarantor or Collateral, (f) change any rights related to the Collections, (g) change any provision of this Section 8.1.1 or (h) change Section 2.4.4 in a manner that would alter the pro rata sharing of payments required thereby.

8.1.2 No failure or delay on the part of any Agent or Lender in exercising any power or right under any Credit Document will operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other power or right.

8.1.3 No notice to or demand on the Obligors in any case shall entitle it to any notice or demand in similar or other circumstances. No waiver or approval by any Agent or Lender under any Credit Document shall, except as may be otherwise stated in such waiver or approval, be applicable to subsequent transactions.

8.1.4 No waiver or approval hereunder shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder.

### **8.2 Time**

Any date or period specified herein may be postponed or extended by mutual agreement between the parties but, as regards any date or period originally fixed or so postponed or extended, time shall be of the essence.

### **8.3 Addresses for Notices**

All notices and other communications hereunder shall be made in writing and in English (by letter, electronic mail (provided that in such case of any Agent, such electronic notice shall be delivered in a “.pdf” attachment)) and shall be sent as follows:

8.3.1 *Borrower*: if to the Borrower, to it at:

USAVflow Limited  
c/o P.O. Box 1093  
Boundary Hall  
Cricket Square

Grand Cayman  
KY1-1102  
Cayman Islands  
Facsimile No.: (345) 945-7100;  
Telephone No.: (345) 945-7099;  
email: [info@maplesfs.com](mailto:info@maplesfs.com)

with a copy to

Aerovías del Continente Americano S.A. Avianca,  
Centro Administrativo,  
Avenida Calle 26 No. 59-15 Piso 10,  
Bogotá, D.C.,  
Colombia;  
Attention: Vicepresidente Financiero;  
Facsimile No.: (571) 413-9809;  
Telephone No.: (571) 295-6765;  
email: [Lucia.avila@Avianca.com](mailto:Lucia.avila@Avianca.com);

8.3.2 *Guarantors*: if to any Guarantor, at:

Avianca Holdings S.A.,  
c/o Aerovías del Continente Americano S.A. Avianca,  
Centro Administrativo,  
Avenida Calle 26 No. 59-15 Piso 10,  
Bogotá, D.C.,  
Colombia;  
Attention: Vicepresidente Financiero;  
Facsimile No.: (571) 413-9809;  
Telephone No.: (571) 295-6765;  
email: [Lucia.avila@Avianca.com](mailto:Lucia.avila@Avianca.com);

8.3.3 *Lenders*: if to any Lender as of the Closing Date, to it as set forth in Schedule 8.3.3 hereto.

8.3.4 *Administrative Agent*: if to the Administrative Agent, to it at:

Citibank, N.A.  
388 Greenwich Street  
New York, NY 10013  
Attn: Miriam Y. Molina  
Tel.: (212) 816-5576  
email: [miriam.molina@citi.com](mailto:miriam.molina@citi.com)

With a copy to:

Citibank, N.A.  
1615 Brett Rd  
Building #3  
New Castle, DE 19720  
Attn: Bank Loans, Syndication Department  
Facsimile: +1(646) 274-5080



And with a copy to the Collateral Agent to it as set forth below.

8.3.5 *Collateral Agent*: if to the Collateral Agent, to it at:

Citibank, N.A.  
388 Greenwich Street  
New York, NY 10013  
Attn: Karen Abarca  
Tel.: (212) 816-7759  
email: [karen.abarca@citi.com](mailto:karen.abarca@citi.com) / [cts.spag@citi.com](mailto:cts.spag@citi.com)

8.3.6 *Collateral Trustee*: if to the Collateral Trustee, to it at:

Citibank, N.A., London Branch  
6th floor, CGC-1  
Citigroup Centre  
Canada Square  
Canary Wharf  
London E14 5LB  
United Kingdom  
E-mail: [issuerpfla@Citi.com](mailto:issuerpfla@Citi.com)  
Fax: +44 207 500 5877

8.3.7 *Other Lenders:* if to any other Lender, to it at its address (or email) set forth in the applicable Assignment and Assumption.

## 8.4 Effectiveness

Every notice or other communication sent in accordance with Section 8.3 shall be effective upon receipt by a responsible party at the address or email specified therein.

## 8.5 Survival

The representations, warranties, agreements, undertakings and indemnities herein shall continue in full force and effect notwithstanding completion of the arrangements for the issue of the Notes or any investigation made by or on behalf of any Agent, Lender or Related Party.

## 8.6 Fees and Expenses

8.6.1 Whether or not the transactions contemplated in this Agreement and the other Credit Documents are consummated, the Obligor shall, jointly and severally, pay: (a) all reasonable out-of-pocket expenses incurred by any Agent, the Collateral Trustee, any Receiver, any Delegate, the Bookrunner and their respective Affiliates (including any fees due under the applicable Fee Letter as set forth therein, and the fees and expenses of counsel to the Agents and the Collateral Trustee) in connection with the syndication of the Loans, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Credit Documents, or any amendments, modifications or waivers of the provisions hereof or thereof and (b) all out-of-pocket expenses incurred by an Agent or any Lender (including the fees, charges and disbursements of any counsel for any Agent the Collateral Trustee, any Receiver, any Delegate or any Lender) in connection with the enforcement or protection of its rights or any enforcement or collection proceedings: (i) in connection with this Agreement and the other Credit

Documents, including its rights under this Section 8.6.1 or (ii) in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

- 8.6.2 The Obligors shall pay all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Credit Document, and the Obligors shall indemnify the Lenders, the Agents, the Collateral Trustee, any Receiver and any Delegate against any claim, demand, action, liability, damages, cost, loss or expense (including legal fees) that it may incur as a result or arising out of or in relation to any failure to pay or delay in paying any of the same.

## 8.7 Indemnities

- 8.7.1 Each Obligor undertakes with the Lenders that such Obligor will indemnify and hold harmless each Lender and any of a Lender's Related Parties (each an "**Indemnified Person**") from and against any and all Loss that any of them may incur or that may be made against any of them, and will reimburse each Indemnified Person for all costs, charges and expenses that any Indemnified Person may pay or incur in connection with investigating, disputing or defending any action or claim as such Loss is incurred; provided that such Loss does not result from such Indemnified Person's or any of its Related Parties' gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final and nonappealable judgment. This indemnity will be in addition to any liability that the Obligors may otherwise have. The Lenders shall not have any duty or other obligation, whether as fiduciary or trustee for any of its Related Parties or otherwise, to recover any such payment or to account to any other Person for any amounts paid to it under this Section 8.7.
- 8.7.2 The currency in which the Loan is denominated (the "**Contractual Currency**") is the sole currency of account and payment for all sums payable by each Obligor in respect of this Agreement, including damages. Any amount received or recovered in a currency other than the Contractual Currency (whether as a result of, or of the enforcement of, a judgment, order of a court of any jurisdiction or otherwise) by the Lenders in respect of any sum expressed to be due to them from any Obligor under the Loan or this Agreement shall only constitute a discharge to such Obligor to the extent of the amount in the Contractual Currency that the Lenders are able to purchase in accordance with normal banking procedures with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so). If that amount is less than the amount in the Contractual Currency expressed to be due to the Lenders in respect of the Loan and this Agreement, each Obligor shall indemnify the Lenders against any loss sustained by the Lenders as a result. In any event, each Obligor shall indemnify the Lenders against any cost of making such purchase. These indemnities constitute a separate and independent obligation from each Obligor's other obligations, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Lenders and shall continue in full force and effect despite any other judgment, order, claim or proof for a liquidated amount in respect of any sum due in respect of this Agreement and the Loan or any other judgment or order. Any such loss aforesaid shall be deemed to constitute a loss suffered by the Lenders and no proof or evidence of any actual loss will be required by any Obligor.

- 8.7.3 (a) Each Obligor shall jointly and severally indemnify each Agent, the Collateral Trustee, any Receiver, any Delegate and each Related Party of the Agents, the Collateral Trustee, any Receiver and any Delegate (each, an “**Agent Indemnified Person**”) against, and hold each Agent Indemnified Person harmless from and against any and all claims, expenses, obligations, liabilities, losses or damages (including attorney fees and expenses) (collectively, “**Claims**”) that any of them may incur or that may be made against any of them in connection with the execution, delivery and performance of the Credit Documents or the transactions contemplated thereby, and will reimburse each Agent Indemnified Person for all such Claims that any Agent Indemnified Person may pay or incur in connection with investigating, disputing or defending any actual or prospective action or claim related thereto, whether based on contract, tort or any other theory, whether brought by a third party or by any Obligor, and regardless of whether any Agent Indemnified Person is a party thereto; provided that such Claims does not result from such Agent Indemnified Person’s or any of its Related Parties’ gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final and nonappealable judgment. This indemnity will be in addition to any liability that any Obligor may otherwise have. No Agent shall have any duty or other obligation, whether as fiduciary or trustee for any of its Related Parties or otherwise, to recover any such payment or to account to any other Person for any amounts paid to it under this Section 8.7.3.
- (b) To the extent that the Obligors fail to pay any amount required to be paid by it to each Agent Indemnified Person under Section 8.7.3(a), each Lender severally agrees to indemnify each Agent, the Collateral Trustee, any Receiver and any Delegate and to pay each Agent Indemnified Person a portion of such unpaid amount equal to such Lender’s *pro rata* share of the Loan (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought); provided that the unreimbursed claims, expenses, obligations, liabilities, losses or damages (including attorney fees and expenses) were incurred by or asserted against the Agent Indemnified Person in its capacity as such.
- (c) To the extent permitted by Law, no party hereto shall assert, and hereby waives, any claim against any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Loan or the use of the proceeds thereof; provided that the foregoing sentence shall not apply to any damages in respect of any indemnity under this Section 8.7 or to amounts payable under Section 2.7.
- (d) All amounts due under this Section 8.7.3 shall be payable not later than three Business Days after written demand therefor.
- (e) The provisions of this Section 8.7.3 shall survive the termination of this Agreement or the earlier resignation or removal of the Administrative Agent, the Collateral Agent or the Collateral Trustee.

## 8.8 Assignment and Transfer

- 8.8.1 The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Obligor may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with Section 8.8.2, (ii) by way of participation in accordance with the provisions of Section 8.8.4, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 8.8.5 (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 8.8.4 and, to the extent expressly contemplated hereby, the Related Parties of each Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.
- 8.8.2 Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:
- (a) Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan assigned.
  - (b) No consent shall be required for any assignment except:
    - (i) the consent of Holdings (such consent not to be unreasonably withheld or delayed) shall be required unless (x) a Default or Event of Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that Holdings shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within 5 Business Days after having received notice thereof (provided that the parties to such assignment provide to the Administrative Agent evidence of such receipt in accordance with Section 8.3) and *provided, further*, that Holdings' consent shall not be required during the primary syndication of the Loans; and
    - (ii) the acceptance of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments of any Loans to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund; and
    - (iii) the acceptance by the Collateral Trustee of the accession of a permitted assignee or transferee of a Lender to the Security Trust Deed as a Secured Party shall be required in accordance with the Security Trust Deed.
  - (c) The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of U.S.\$3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment.

- (d) The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.
- (e) No such assignment shall be made to Holdings or any of Holdings' Affiliates or Subsidiaries.
- (f) No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 8.8.3, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 8.6 and 8.7 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 8.8.4.

- 8.8.3 The Administrative Agent shall maintain a register recording the names and addresses of the Lenders and the principal amount of the Loan owing to each Lender from time to time. The entries in such register shall be conclusive and binding for all purposes, absent manifest error, and the Obligors, the Administrative Agent and the Lenders may treat each Person whose name is recorded in such register as a Lender hereunder for all purposes of this Agreement. Such register shall be available for inspection by the Obligors or any Lender at any reasonable time and from time to time upon reasonable prior notice.
- 8.8.4 Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 8.7.3 with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.7, 2.8 and 2.10 (subject to the requirements and limitations therein) to the same extent as if it



were a Lender and had acquired its interest by assignment pursuant to Section 8.8.2; provided that such Participant (i) agrees to be subject to the provisions of Section 2.9 as if it were an assignee under Section 8.8.2; and (ii) shall not be entitled to receive any greater payment under Sections 2.7 or 2.8, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 8.17 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.4.3 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Loans or other obligations under the Credit Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

- 8.8.5 Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

## **8.9 Law and Jurisdiction**

- 8.9.1 THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (NOT INCLUDING SUCH STATE'S CONFLICT OF LAWS PROVISIONS OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).
- 8.9.2 Each of the parties hereto hereby irrevocably consents to the exclusive jurisdiction of any court of the State of New York or any United States federal court sitting in the Borough of Manhattan, New York City, New York, United States, and any appellate court from any thereof in respect of any actions or proceedings brought against it hereunder, and hereby waives its rights to any other jurisdiction that may apply by virtue of its present or any other future domicile or for any other reason. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, any objection to any suit, action, or proceeding that may be brought in connection with the Credit Documents in such courts whether on the grounds of venue, residence or domicile or on the ground that any such suit, action or proceeding has been brought in an inconvenient forum. Additionally, each of the parties hereto hereby waives the right to assert counterclaims in any such proceedings and agrees that final judgment in any such suit, action or proceeding brought in such court shall be conclusive and binding upon such party and



may be enforced in any court of the jurisdiction to which such party is subject by a suit upon such judgment.

8.9.3 EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION OR LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO ANY CREDIT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH OF THE PARTIES HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

#### **8.10 Service of Process**

Each Obligor agrees that service of all writs, processes and summonses in any suit, action or proceeding brought in connection with the Credit Documents against either Obligor in any court of the State of New York or any United States federal court sitting in the Borough of Manhattan, New York City, New York, United States, may be made upon the Process Agent, whom such Obligor irrevocably appoints as its authorized agent for service of process. Each Obligor represents and warrants that the Process Agent has agreed to act as the agent for service of process for the Obligor. Each Obligor agrees that such appointment shall be irrevocable until one year after the Maturity Date or until the irrevocable appointment by such Obligor of a successor in the City of New York as its authorized agent for such purpose and the acceptance of such appointment by such successor. Each Obligor further agrees to take any and all action, including the filing of any and all documents and instruments, that may be necessary to continue such appointment in full force and effect as aforesaid. If the Process Agent shall cease to act as the agent for service of process for any Obligor, such Obligor shall appoint without delay another such agent and provide prompt written notice to the Administrative Agent and the Lenders of such appointment. With respect to any such action in any court of the State of New York or any United States federal court in the Borough of Manhattan, New York City, New York, United States, service of process upon the Process Agent, as the authorized agent of the Obligors for service of process, and written notice of such service to the Obligors shall be deemed, in every respect, effective service of process upon the Obligors. Nothing in this Section 8.10 shall affect the right of any party to serve legal process in any other manner permitted by law.

#### **8.11 Partial Invalidity**

If at any time any provision of this Agreement or any Note is or becomes invalid, illegal or unenforceable in any respect in any jurisdiction, neither the validity, legality or enforceability of the remaining provisions hereof or thereof, nor the validity, legality or enforceability of such provision under the laws of any other jurisdiction, shall in any way be affected or impaired thereby.

#### **8.12 Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

### **8.13 Rights in Collections Account and New York Pass-Through Account**

Each Obligor (other than the Borrower) confirms that it has no rights in either the Collections Account or the New York Pass-Through Account, and the Borrower confirms that (a) its rights in the Collections Account are subject to the first priority continuing and perfected security interest therein and Lien thereon the Borrower has granted to the Collateral Trustee, for the benefit of the Secured Parties, pursuant to the U.K. Account Charge and (b) its rights in the New York Pass-Through Account are subject to the first priority continuing and perfected security interest therein and Lien thereon the Borrower has granted to the Collateral Agent, for the benefit of the Secured Parties, pursuant to the New York Security Agreement. In the event that any Obligor (other than the Borrower) is considered for any purpose to have rights in the Collections Account or the New York Pass-Through Account prior to the Collateral Trustee's or Collateral Agent's (as applicable) release of its security interest with respect thereto, such Obligor hereby pledges, assigns, hypothecates, transfers, conveys, delivers and grants to the Collateral Trustee or the Collateral Agent (as applicable), for the benefit of the Agents and the Lenders, a first priority continuing and perfected security interest in and lien on all of such Obligor's rights as security for the prompt and complete payment and performance of the Loan and all advances, debts, liabilities and obligations, howsoever arising, owed by the Obligors under this Agreement or any Credit Document of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising (including all interest, fees, charges, expenses, indemnifications, attorneys' fees and consultants' fees chargeable to the Obligors) under this Agreement or any Credit Document. In furtherance of the foregoing, the Obligors consent to the terms of the English Security Documents and the New York Security Agreement.

### **8.14 Patriot Act**

In order to comply with the laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including, without limitation, those relating to the funding of terrorist activities and money laundering, including Section 326 of the USA PATRIOT Act of the United States, the Administrative Agent is required to obtain, verify, record and update certain information relating to the individuals and entities which maintain a business relationship with the Administrative Agent. Accordingly, each of the parties agree to provide to the Administrative Agent, upon request and from time to time such identifying information and documentation as may be available for such party in order to enable the Administrative Agent to comply with such law.

### **8.15 Acknowledgement and Consent to Bail-In of EEA Financial Institutions**

Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;

- (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or
- (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

#### **8.16 Force Majeure**

No Agent shall incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of such Agent (including, but not limited to, any act or provision of any present or future law or regulation or governmental authority, any act of God or war, civil unrest, local or national disturbance or disaster, any act of terrorism or the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility).

#### **8.17 Right of Setoff**

If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or Affiliate to or for the credit or the account of the Obligors against any of and all the obligations of the Obligors now or hereafter existing under this Agreement held by such Lender or Affiliate, irrespective of whether or not such Lender or Affiliate shall have made any demand under this Agreement and although such obligations may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness. The applicable Lender shall notify the Obligors and the Administrative Agent promptly after such set-off or application, provided that any failure to give or any delay in giving such notice shall not affect the validity of any such set-off or application under this Section. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of set-off) that such Lender may have.

#### **8.18 Confidentiality**

Each of the Administrative Agent and the Lenders agree to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners); (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process; (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder; (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and

obligations under this Agreement, or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder; (g) on a confidential basis to (i) any rating agency in connection with rating Holdings or its Subsidiaries or the Loans or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loans; (h) with the consent of Holdings; or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than Holdings. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Agents and the Lenders in connection with the administration of this Agreement, the other Credit Documents, and the Loans.

For purposes of this Section, “**Information**” means all information received from the Borrower, Holdings or any of their Subsidiaries relating to the Borrower, Holdings or any of their Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower, Holdings or any of their Subsidiaries; provided that, in the case of information received from the Borrower, Holdings or any of their Subsidiaries after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

## 8.19 Guarantee

8.19.1 Guarantee: in order to induce the Agents and the Lenders to enter into this Agreement and to extend credit hereunder, and in recognition of the direct benefits to be received by the Guarantors from the Loan, the Guarantors, jointly and severally, hereby unconditionally and irrevocably guarantee as primary obligors and not merely as surety the full and prompt payment when due, whether upon maturity, acceleration or otherwise, of any and all of the obligations of the Borrower to the Secured Parties under the Credit Documents (the “**Guaranteed Obligations**”). If any or all of the Guaranteed Obligations of the Borrower to the Secured Parties becomes due and payable hereunder, the Guarantors unconditionally and irrevocably promise to pay, jointly and severally, such indebtedness to the Administrative Agent and/or the other Secured Parties, on demand, together with all expenses (including legal fees and expenses) that may be incurred by the Administrative Agent and the other Secured Parties in collecting any of the Guaranteed Obligations. If claim is ever made upon any Secured Parties for repayment or recovery of any amount or amounts received in payment or on account of any of the Guaranteed Obligations and any of the aforesaid payees repays all or part of said amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over such payee or any of its property or (b) any settlement or compromise of any such claim effected by such payee with any such claimant (including the Borrower), then and in such event the Guarantors agree that any such judgment, decree, order, settlement or compromise shall be binding upon the Guarantors, notwithstanding any revocation of this Guarantee or other instrument evidencing any liability of the Borrower, and the Guarantors shall be and remain liable to the aforesaid payees hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by any such payee.



- 8.19.2 Nature of Liability: the liability of the Guarantors hereunder is primary, absolute and unconditional, exclusive and independent of any security for or other guaranty of the Guaranteed Obligations, whether executed by any other guarantor or by any other party, and the liability of the Guarantors hereunder shall not be affected or impaired by (a) any direction as to application of payment by the Borrower or by any other party, (b) any other continuing or other guaranty, undertaking or maximum liability of the Guarantors, any other guarantor or of any other party as to the Guaranteed Obligations, (c) any payment on or in reduction of any such other guaranty or undertaking, (d) any dissolution, termination or increase, decrease or change in personnel by the Borrower, (e) any payment made to any Secured Party on the Guaranteed Obligations that any such Secured Party repays to the Borrower pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceeding, and the Guarantors waive any right to the deferral or modification of its obligations hereunder by reason of any such proceeding, (f) any action or inaction by the Secured Parties as contemplated in Section 8.19.4 or (g) any invalidity, irregularity or enforceability of all or any part of the Guaranteed Obligations or of any security therefor.
- 8.19.3 Independent Obligation: the obligations of the Guarantors hereunder are independent of the obligations of any other party or the Borrower, and a separate action or actions may be brought and prosecuted against any Guarantor whether or not action is brought against any other party or the Borrower and whether or not any other guarantor, any other party or the Borrower is joined in any such action or actions. The Guarantors waive, to the fullest extent permitted by Law, the benefit of any statute of limitations affecting its liability hereunder or the enforcement thereof. Any payment by the Borrower or other circumstance that operates to toll any statute of limitations as to the Borrower shall operate to toll the statute of limitations as to the Guarantors.
- 8.19.4 Authorization: the Guarantors authorize the Secured Parties without notice or demand (except as shall be required by applicable statute and cannot be waived), and without affecting or impairing its liability hereunder, from time to time to:
- (a) change the manner, place or terms of payment of, and/or change or extend the time of payment of, renew, increase, accelerate or alter, any of the Guaranteed Obligations (including any increase or decrease in the principal amount thereof or the rate of interest or fees thereon), any security therefor, or any liability incurred directly or indirectly in respect thereof, and this guarantee shall apply to the Guaranteed Obligations as so changed, extended, renewed or altered;
  - (b) take and hold security for the payment of the Guaranteed Obligations and sell, exchange, release, impair, surrender, realize upon or otherwise deal with in any manner and in any order any Collections or other property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, the Guaranteed Obligations or any liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and/or any offset there against, in each case in accordance with the Security Documents;
  - (c) exercise or refrain from exercising any rights against the Borrower, any other Guarantor or others or otherwise act or refrain from acting;
  - (d) release or substitute any one or more endorsers, guarantors, the Borrower or other obligors;

- (e) settle or compromise any of the Guaranteed Obligations, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and subordinate the payment of all or any part thereof to the payment of any liability (whether due or not) of the Borrower or any other Guarantor to its creditors other than the Secured Parties;
- (f) apply any sums by whomsoever paid or howsoever realized to any liability or liabilities of the Borrower to the Secured Parties regardless of what liability or liabilities of the Borrower remain unpaid;
- (g) consent to or waive any breach of, or any act, omission or default under, this Agreement, any other Credit Document or any of the instruments or agreements referred to herein or therein, or otherwise amend, modify or supplement this Agreement, any other Credit Document or any of such other instruments or agreements; and/or
- (h) take any other action that would, under otherwise applicable principles of common law, give rise to a legal or equitable discharge of any Guarantor from its liabilities under this guarantee.

8.19.5 Reliance: it is not necessary for any Secured Party to inquire into the capacity or powers of the Guarantors or any of their subsidiaries or the officers, directors, partners or agents acting or purporting to act on their behalf, and any Guaranteed Obligations made or created in reliance upon the professed exercise of such powers shall be guaranteed hereunder.

8.19.6 Waiver

- (a) The Guarantors waive any right (except as shall be required by applicable statute and cannot be waived) to require any Secured Party to (i) proceed against the Borrower, any other guarantor or any other party, (ii) proceed against or exhaust any Collections or other security held from the Borrower, any other guarantor or any other party or (iii) pursue any other remedy in any Secured Party's power whatsoever. The Guarantors waive any defense based on or arising out of any defense of the Borrower, any other guarantor or any other party, other than payment of the Guaranteed Obligations to the extent of such payment, based on or arising out of the disability of the Borrower, any other guarantor or any other party, or the validity, legality or unenforceability of the Guaranteed Obligations or any part thereof from any cause, or the cessation from any cause of the liability of the Borrower other than payment of the Guaranteed Obligations to the extent of such payment. The Secured Parties may, at their election, foreclose on any security held by the Administrative Agent, the Collateral Agent or any other Secured Party by one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable (to the extent such sale is permitted by Law), or exercise any other right or remedy the Secured Party may have against the Borrower or any other party, or any security, without affecting or impairing in any way the liability of the Guarantor hereunder except to the extent the Guaranteed Obligations have been paid. The Guarantors waive any defense arising out of any such election by the Secured Parties, even though such election operates to impair or extinguish any right of reimbursement or



subrogation or other right or remedy of the Guarantors against the Borrower or any other party or any security.

- (b) The Guarantors waive all presentments, demands for performance, protests and notices, including notices of nonperformance, notices of protest, notices of dishonor, notices of acceptance of this Guarantee, and notices of the existence, creation or incurring of new or additional Guaranteed Obligations. The Guarantors assume all responsibility for being and keeping itself informed of the Borrower's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that the Guarantors assume and incur hereunder, and agree that neither the Administrative Agent nor any of the other Secured Parties shall have any duty to advise the Guarantors of information known to them regarding such circumstances or risks.

8.19.7 Payments: all payments made by the Guarantors pursuant to this Section 8.19 shall be made in Dollars and will be made without setoff, counterclaim or other defense, and shall be subject to the provisions of Article 2.

8.19.8 Maximum Liability: it is the desire and intent of the Guarantors and the Secured Parties that this guarantee shall be enforced against any Guarantor permissible under the Laws and public policies applied in each jurisdiction in which enforcement is sought. If, however, and to the extent that, the obligations of any Guarantor under this guarantee shall be adjudicated to be invalid or unenforceable for any reason (including, because of any applicable state or federal Law relating to fraudulent conveyances or transfers), then the amount of such Guarantor's obligations under this Guarantee shall be deemed to be reduced and such Guarantor shall pay the maximum amount of the Guaranteed Obligations that would be permissible under Law.

8.19.9 Discharge Only Upon Payment in Full; Reinstatement In Certain Circumstances: the obligations of the Guarantors hereunder shall remain in full force and effect until all of the payment and performance obligations of the Borrower under the Credit Documents shall have been paid or otherwise performed in full. If at any time any payment made under this Agreement or any other Credit Document is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, reorganization or similar event of the Borrower, any Guarantor or any other Person or otherwise, then the obligations of the Guarantors hereunder with respect to such payment shall be reinstated at such time as though such payment had been due but not made at such time.

## **8.20 Secured Parties' Undertakings and Clawback**

8.20.1 The Agents and the Lenders shall supply to the Collateral Trustee (in the case of the Lenders, through the Administrative Agent), such information as the Collateral Trustee may reasonably specify (through the Administrative Agent) as being necessary or desirable to enable the Collateral Trustee to perform its functions as trustee under the Security Trust Deed. Each Lender shall deal with the Collateral Trustee exclusively through the Administrative Agent and shall not deal directly with the Collateral Trustee.

8.20.2 The Agents and the Lenders shall not have any independent power to enforce, or have recourse to, any of the Trust Property or to exercise any right, power, authority or discretion arising under the U.K. Account Charge except through the Collateral Trustee.

- 8.20.3 If any Agent or Lender has received an amount as a result of the enforcement of the English Security and the Collateral Trustee is subsequently required to pay an amount equal to that amount (a “**Clawback Amount**”) to a liquidator (or any other party) whether pursuant to a court order or otherwise such Agent or Lender will promptly on the request of the Collateral Trustee pay an amount equal to such Clawback Amount to the Collateral Trustee for payment to the liquidator (or such other party).
- 8.20.4 The Administrative Agent shall, subject to the Article VII hereof, provide any notice, instruction or approval, in each case on instructions from the Required Lenders, as contemplated under any Credit Document.
- 8.20.5 The parties to this Agreement acknowledge and agree that the undertakings and obligations in this Section 8.20 are for the benefit of the Collateral Trustee and are provided in connection with the Security Trust Deed.

## **8.21 Third Party Beneficiaries**

- 8.21.1 Except as set forth in Section 8.21.2 below, the parties do not confer any rights or remedies upon any Person other than the parties to this Agreement and their respective successors and permitted assigns.
- 8.21.2 The parties hereby designate the Collateral Trustee, any Receiver and any Delegate as third-party beneficiaries of Sections 7.1.6(e), 7.1.15, 8.1.1, 8.6, 8.7, 8.20 and 8.21 of this Agreement having the right to enforce Sections 7.1.6(e), 7.1.15, 8.1.1, 8.6, 8.7, 8.20 and 8.21.

## **8.22 Limited Recourse**

- 8.22.1 Notwithstanding any other provision of this Agreement or the Credit Documents, each party hereto hereby agrees that the Borrower’s obligations under this Agreement and the Credit Documents shall be limited recourse obligations of the Borrower, with recourse against the Borrower being limited to the Collateral and the actual amount derived from the Collateral (including the proceeds of any contingent claims that are included in the Collateral, other than the ordinary share capital and any transaction fee charged by the Borrower pursuant to the Administration Agreement) of the Borrower at such time available for application by or on behalf of the Borrower in making payments in accordance with this Agreement and the Credit Documents. The parties hereby acknowledge and agree that the Borrower’s obligations under this Agreement and the Credit Documents are solely the corporate obligations of the Borrower, and that none of the officers, directors, shareholders or agents of the Borrower, any of its Affiliates or any other Person, other than the Guarantors, shall be personally liable to make any payments of principal, interest or any other sum now or hereafter owing by the Borrower hereunder. Without limitation of the obligations of the Guarantors hereunder, after the Borrower’s Collateral (including liquidation of any contingent claims that are included in the Collateral, other than the ordinary share capital and any transaction fee charged by the Borrower pursuant to the Administration Agreement) is realized and exhausted, all sums due but still unpaid in respect of the Borrower’s obligations hereunder shall be extinguished and shall not thereafter revive with respect to the Borrower and its liability hereunder, and the parties hereto shall not have the right to proceed against the Borrower or any of its Affiliates or any of its officers, directors, shareholders or agents for the satisfaction of any monetary claim or for any deficiency judgment remaining after foreclosure of any of its assets, it being agreed that the Guarantors shall remain liable for all of such obligations.


- 8.22.2 No party hereto shall take any steps for the purpose of procuring the appointment of any examiner, administrator, liquidator, provisional liquidator or bankruptcy trustee or the making of any administrative order or court order or application or for instituting any bankruptcy, examinership, reorganization, arrangement, insolvency, winding up, liquidation, composition or any like proceedings under applicable Law in respect of the Borrower or its Affiliates or in respect of any of their liabilities, including, without limitation, as a result of any claim or interest of such parties; *provided* that nothing in this Section 8.22.2 shall prohibit or restrict the appointment of a Receiver and/or Delegate under and/or in accordance with and/or as contemplated by any provisions of the U.K. Account Charge.
- 8.22.3 The provisions of this SCHEDULE 1Part 1Section 1 8.22.3 shall survive termination of this Agreement.

*[signature pages follow]*

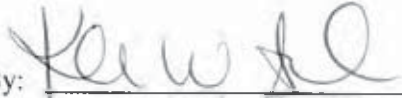
**AS WITNESS** the hands of the duly authorized representatives of the parties to this Agreement the day and year first before written.

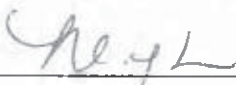
CITIBANK, N.A., as Administrative Agent

By:   
Name: Miriam Molina  
Title: Vice President

By:   
Name: Karen Abarca  
Title: Vice President

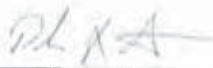
CITIBANK, N.A., as Collateral Agent

By:   
Name: Karen Abarca  
Title: Vice President

By:   
Name: Miriam Molina  
Title: Vice President

*Signature page to Loan Agreement*

USAFLOW LIMITED, as Borrower

By:   
Name: Peter Lundin  
Title: Director

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Signature page to Loan Agreement*

AVIANCA HOLDINGS S.A., as Guarantor

By:   
Name: RENATO COVELO  
Title: LEGAL REPRESENTATIVE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Signature page to Loan Agreement*



AVIANCA COSTA RICA S.A., as Guarantor

By: Viviana Martin  
Name: Viviana Martin  
Title: President

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Signature page to Loan Agreement*

TACA INTERNATIONAL AIRLINES, S.A., as  
Guarantor

By: 

Name: DANILO CORREA SEPULVEDA

Title: PRESIDENT


By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Signature page to Loan Agreement*

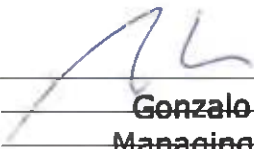
TRANS AMERICAN AIRLINES S.A., as  
Guarantor

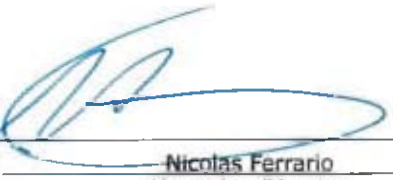
By:   
Name: GLORIA IRENE LOZA MURRUGARRA  
Title: AUTHORIZED REPRESENTATIVE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Signature page to Loan Agreement*

DEUTSCHE BANK AG, LONDON BRANCH, as  
Lender

By:   
Name: Gonzalo Barbon  
Title: Managing Director

By:   
Name: Nicolas Ferrario  
Title: Managing Director

*Signature page to Loan Agreement*

BANK UNITED N.A., as Lender

By: 

Name: Jennifer Garcia-Bachan

Title: Vice President


By: 

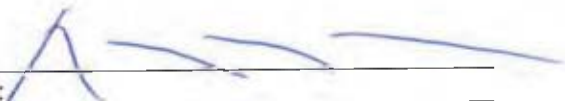
Name: Jason K. Lohler

Title: Managing Director

*Signature page to Loan Agreement*

BANCO DE CREDITO DEL PERU, MIAMI  
AGENCY as Lender

By:   
Name: General Manager  
Title: BCP Miami Agency

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Luis Awapara**  
**VP of Corporate and**  
**Relationship Banking**

*Signature page to Loan Agreement*



FIRST CITIZENS BANK LIMITED, as Lender

By: 

Name: LINDA CALCARAH-TULL

Title: HEAD-LEGAL COMPLIANCE

& GOVERNANCE / CORPORATE SECRETARY

By: 

Name: STERLING FROST

Title: DEPUTY CEO OPERATIONS AND  
ADMINISTRATION

*Signature page to Loan Agreement*

METROBANK S.A., as Lender



By: \_\_\_\_\_

Name: Ernesto A. Boyd, Jr.

Title: Power of Attorney

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

USAVflow Limited

*Signature page to Loan Agreement*



MONEDA S.A. ADMINISTRADORA GENERAL  
DE FONDOS ACTING ON BEHALF OF  
MONEDA LATINOAMERICA DEUDA LOCAL  
FONDO DE INVERSION, as Lender

By: 

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Signature page to Loan Agreement*

MONEDA S.A. ADMINISTRADORA GENERAL  
DE FONDOS ACTING ON BEHALF OF  
MONEDA DEUDA LATINOAMERICANA  
FONDO DE INVERSION, as Lender

By: 

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Signature page to Loan Agreement*

## EXHIBIT A

This Assignment and Assumption (the “**Assignment and Assumption**”) is dated as of the Effective Date set forth below and is entered into by and between [the][each]<sup>1</sup> Assignor identified in item 1 below ([the][each, an] “**Assignor**”) and [the][each]<sup>2</sup> Assignee identified in item 2 below ([the][each, an] “**Assignee**”). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees]<sup>3</sup> hereunder are several and not joint.]<sup>4</sup> Capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreement identified below (as amended, the “**Loan Agreement**”), receipt of a copy of which is hereby acknowledged by [the][each] Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full. [The][Each] Assignor is party to a security trust deed dated December 12, 2017 (the “**Security Trust Deed**”, among Citibank, N.A., London Branch as collateral trustee, Citibank, N.A. as administrative agent, Citibank, N.A. as collateral agent, the Secured Parties named therein and USAVflow Limited.

### Part 1

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Loan Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor’s][the respective Assignors’] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Loan Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] (including without limitation any guarantees included in such facilities), and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Loan Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] “**Assigned Interest**”). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

1. Assignor[s]: \_\_\_\_\_  
\_\_\_\_\_

<sup>1</sup> For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

<sup>2</sup> For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

<sup>3</sup> Select as appropriate.

<sup>4</sup> Include bracketed language if there are either multiple Assignors or multiple Assignees.



2. Assignee[s]: \_\_\_\_\_

[Assignee is an [Affiliate][Approved Fund] of [identify Lender]

3. Borrower(s): USAVFLOW LIMITED

4. Administrative Agent: CITIBANK, N.A., as the administrative agent under the Loan Agreement

5. Loan Agreement: The U.S.\$150,000,000 Loan Agreement dated as of December 12, 2017 among USAVFLOW LIMITED, the guarantors party thereto, the Lenders parties thereto, CITIBANK, N.A., as Administrative Agent, and the other agents party thereto

6. Assigned Interest[s]:

Assignor[s] <sup>5</sup>	Assignee[s] <sup>6</sup>	Aggregate Amount of Loans for all Lenders <sup>7</sup>	Amount of Loans Assigned <sup>8</sup>	Percentage Assigned of Loans <sup>8</sup>	CUSIP Number
		\$	\$	%	
		\$	\$	%	
		\$	\$	%	

[7. Trade Date: \_\_\_\_\_]<sup>9</sup>

## Part 2

In consideration of [the][each] Assignee being accepted as a Secured Party for the purposes of the Security Trust Deed, [the][each] Assignee hereby confirms that, as from [Effective Date], it intends to be party to the Security Trust Deed as a Secured Party, undertakes to perform all the obligations expressed in the Security Trust Deed to be assumed by a Secured Party and agrees that it shall be bound by all the provisions of the Security Trust Deed, as if it had been an original party to the Security Trust Deed.

Part 2 of this Assignment and Assumption has been entered into as of the Effective Date set forth below.

[Signature Pages follow]

<sup>5</sup> List each Assignor, as appropriate.

<sup>6</sup> List each Assignee, as appropriate.

<sup>7</sup> Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

<sup>8</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

<sup>9</sup> To be completed if the Assignor(s) and the Assignee(s) intend that the minimum assignment amount is to be determined as of the Trade Date.

Effective Date: \_\_\_\_\_, 20\_\_\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR[S]<sup>10</sup>  
[NAME OF ASSIGNOR]

By: \_\_\_\_\_  
Title: \_\_\_\_\_

[NAME OF ASSIGNOR]

By: \_\_\_\_\_  
Title: \_\_\_\_\_

ASSIGNEE[S]<sup>11</sup>  
[NAME OF ASSIGNEE]

By: \_\_\_\_\_  
Title: \_\_\_\_\_

[NAME OF ASSIGNEE]

By: \_\_\_\_\_  
Title: \_\_\_\_\_

<sup>10</sup> Add additional signature blocks as needed. Include both Fund/Pension Plan and manager making the trade (if applicable).

<sup>11</sup> Add additional signature blocks as needed. Include both Fund/Pension Plan and manager making the trade (if applicable).

Accepted:

CITIBANK, N.A., as  
Administrative Agent

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

[Consented to:]<sup>12</sup>

AVIANCA HOLDINGS S.A.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted by the Collateral Trustee (for purposes of the Security Trust Deed)

\_\_\_\_\_  
for and on behalf of Citibank, N.A., London Branch  
Date: \_\_\_\_\_

<sup>12</sup> To be added only if the consent of the Borrower is required by the terms of the Loan Agreement.

ANNEX 1  
to the Assignment and Assumption

[ ]<sup>13</sup>

STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor[s]. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Loan Agreement or any other Credit Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Credit Document, or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Credit Document.

1.2. Assignee[s]. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Loan Agreement, (ii) it meets all the requirements to be an assignee under Section 8.8 of the Loan Agreement (subject to such consents, if any, as may be required thereunder), (iii) from and after the Effective Date, it shall be bound by the provisions of the Loan Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Loan Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 5.6 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, and (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Credit Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the

<sup>13</sup> Describe Loan Agreement at option of Administrative Agent.

Effective Date. Notwithstanding the foregoing, the Administrative Agent shall make all payments of interest, fees or other amounts paid or payable in kind from and after the Effective Date to [the][the relevant] Assignee.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. Part 1 of this Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York. Part 2 of this Assignment and Assumption shall be governed by and construed in accordance with English law.

**EXHIBIT B**  
**FORM OF PROMISSORY NOTE**

\$[\_\_\_\_\_]

New York, New York  
[Date]

FOR VALUE RECEIVED, the undersigned USAVFLOW LIMITED, an exempted company incorporated with limited liability and registered under the laws of the Cayman Islands with registered number 324668 and having its registered office at the offices of MaplesFS Limited, PO Box 1093, Queensgate House, Grand Cayman, KY1-1102, as borrower (the "Borrower"), hereby promises to pay to [\_\_\_\_\_] or its registered assigns (the "Lender") in lawful money of the United States and in immediately available funds, the principal amount of [\_\_\_\_\_] DOLLARS or, if less, the aggregate unpaid principal amount of all Loans made by the Lender outstanding under the Loan Agreement (as defined below), which sum shall be due and payable in such amounts on the Maturity Date (as defined in said Loan Agreement) or, if sooner, on such other dates as are set forth in said Loan Agreement. Borrower further agrees to pay interest in like money at such office on the unpaid principal amount hereof from time to time outstanding at the rates, and on the dates, specified in Sections 2.4 and 2.5 of the Loan Agreement. Terms used herein which are defined in the Loan Agreement shall have such defined meanings unless otherwise defined herein.

The holder of this Note may endorse and attach a schedule to reflect the date and amount of each Loan evidenced by this Note and the date and amount of each payment or prepayment of principal hereof; provided that the failure of the holder to make any such recordation (or any error in such recordation) shall not affect the obligations of Borrower hereunder or under said Loan Agreement.

This Note is one of the Notes referred to in the Loan Agreement, dated as of December 12, 2017 (as amended, amended and restated, supplemented, waived or otherwise modified from time to time, the "Loan Agreement"), by and among the Borrower, as borrower, each Person party thereto as a lender from time to time, AVIANCA HOLDINGS S.A., a company organized under the laws of Panama, TACA INTERNATIONAL AIRLINES, S.A., a company organized under the laws of El Salvador, AVIANCA COSTA RICA S.A. (formerly known as LINEAS AEREAS COSTARRICENSES S.A.), a company organized under the laws of Costa Rica, and TRANS AMERICAN AIRLINES, S.A., a company organized under the laws of Peru, as guarantors, Citibank, N.A., as Administrative Agent, and Citibank, N.A., as Collateral Agent. This Note is subject to the provisions thereof and is subject to optional and mandatory prepayment in whole or in part as provided therein.

This Note is secured and guaranteed as provided in the Loan Agreement and the Security Documents. Reference is hereby made to the Loan Agreement and the Security Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and guarantees, the terms and conditions upon which the security interest and each guarantee was granted and the rights of the holder of this Note in respect thereof.

Upon the occurrence and during the continuation of any one or more of the Events of Default specified in the Loan Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided therein.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

**THIS NOTE MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS OF THE LOAN AGREEMENT. TRANSFERS OF THIS NOTE MUST BE RECORDED**



**IN THE REGISTER MAINTAINED BY THE ADMINISTRATIVE AGENT PURSUANT TO THE TERMS OF THE LOAN AGREEMENT.**

**THIS NOTE AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT, TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.**

[Signature Page follows.]

**USAVFLOW LIMITED**

as Borrower

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT C**  
**FORM OF BORROWER'S OFFICERS' CERTIFICATE**

[•], 2017

I, the undersigned, a director of USAVFLOW LIMITED, an exempted company incorporated, registered and existing under the laws of the Cayman Islands (the "**Borrower**"), DO HEREBY CERTIFY that:

1. This Certificate is furnished pursuant to Section 3.1.1 of the Loan Agreement, dated as of December 12, 2017, between the Borrower, the guarantors party thereto, the lenders party from time to time thereto, Citibank, N.A., as administrative agent and Citibank, N.A., as collateral agent (the "**Loan Agreement**"). Unless otherwise defined herein, capitalized terms used in this Certificate have the meanings assigned to those terms in the Loan Agreement.
2. Attached hereto as Annex A is a true, correct and complete copy of the resolutions of the Borrower approving the execution, delivery and performance of the Transaction Documents, which resolutions are in full force and effect without modification or amendment as of the date hereof.
3. Attached hereto as Annex B is a true, correct and complete copy of the memorandum and articles of association, the certificate of incorporation and each certificate of incorporation on change of name (if any) of the Borrower which, in each case, are in full force and effect as of the date hereof.
4. Attached hereto as Annex C is a true and correct copy of the register of directors, register of members and register of mortgages and charges of the Borrower which, in each case, are in full force and effect as of the date hereof.
5. The persons listed on Annex C hereto are duly authorized and qualified to sign the Loan Agreement, the other Credit Documents to which the Borrower is a party and all documents delivered in connection therewith (the "**Transaction Documents**") and instructions and certificates in connection therewith on behalf of the Borrower and the signatures set forth opposite the names of such individuals are true and correct manual signatures of such individuals or a facsimile thereof.
6. On the date hereof, the representations and warranties of the Borrower in the Transaction Documents are true and correct.
7. On the date hereof, no event or circumstance has occurred or is in existence that has had or could reasonably be expected to have a Material Adverse Effect.
8. The Borrower has taken all actions required to be taken by the Borrower pursuant to the Transaction Documents on or prior to the date thereof.

IN WITNESS WHEREOF, I have hereunto set my hand on behalf of the Borrower as of the date first written above.

USAVFLOW LIMITED

By: \_\_\_\_\_

Name:

Title:

The undersigned, being the duly elected and qualified [\_\_\_\_\_] of the Borrower, hereby certifies that [\_\_\_\_\_] is the duly elected and qualified [\_\_\_\_\_] of the Borrower and that the foregoing signature appearing above her name is her genuine signature.

IN WITNESS WHEREOF, I have hereunto set my hand on behalf of the Borrower as of the date first written above.

USAVFLOW LIMITED

By: \_\_\_\_\_

Name:

Title:

ANNEX A - Resolutions

ANNEX B – Constitutional Documents



ANNEX C – Statutory Registers

ANNEX D – Incumbency

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[•]		
[•]		
[•]		

**EXHIBIT D**  
**FORM OF GUARANTOR'S OFFICERS' CERTIFICATE**

[•], 2017

I, the undersigned, [•] of [AVIANCA HOLDINGS S.A.][TACA INTERNATIONAL AIRLINES, S.A.][AVIANCA COSTA RICA S.A., f/k/a LINEAS AÉREAS COSTARRICENSES S.A.][TRANS AMERICAN AIRLINES, S.A.], a company organized and existing under the laws of [•] (the “**Guarantor**”), DO HEREBY CERTIFY that:

1. This Certificate is furnished pursuant to Section 3.1.1 of the Loan Agreement, dated as of December 12, 2017, between the Borrower, the Guarantor, the other guarantors party thereto, the lenders party from time to time thereto, Citibank, N.A., as administrative agent and Citibank, N.A., as collateral agent (the “**Loan Agreement**”). Unless otherwise defined herein, capitalized terms used in this Certificate have the meanings assigned to those terms in the Loan Agreement.
2. Attached hereto as Annex A is a true, correct and complete copy of the resolutions of the Guarantor approving the execution, delivery and performance of the Transaction Documents, which resolutions are in full force and effect without modification or amendment as of the date hereof.
3. Attached hereto as Annex B is a true, correct and complete copy of the organizational documents and by-laws of the Guarantor.
4. The persons listed on Annex C hereto are duly authorized and qualified to sign the Loan Agreement, the other Credit Documents to which the Guarantor is a party and all documents delivered in connection therewith (the “**Transaction Documents**”) and instructions and certificates in connection therewith on behalf of the Guarantor and the signatures set forth opposite the names of such individuals are true and correct manual signatures of such individuals or a facsimile thereof.
5. On the date hereof, the representations and warranties of the Guarantor in the Transaction Documents are true and correct.
6. On the date hereof, no event or circumstance has occurred or is in existence that has had or could reasonably be expected to have a Material Adverse Effect.
7. The Guarantor has taken all actions required to be taken by the Guarantor pursuant to the Transaction Documents on or prior to the date thereof.

IN WITNESS WHEREOF, I have hereunto set my hand on behalf of the Guarantor as of the date first written above.

[AVIANCA HOLDINGS S.A.][TACA INTERNATIONAL AIRLINES, S.A.][AVIANCA COSTA RICA S.A.][TRANS AMERICAN AIRLINES, S.A.]

By: \_\_\_\_\_  
Name:  
Title:

The undersigned, being the duly elected and qualified [ ] of the Guarantor, hereby certifies that [ ] is the duly elected and qualified [ ] of the Guarantor and that the foregoing signature appearing above her name is her genuine signature.

IN WITNESS WHEREOF, I have hereunto set my hand on behalf of the Guarantor as of the date first written above.

[AVIANCA HOLDINGS S.A.][TACA INTERNATIONAL AIRLINES, S.A.][ AVIANCA COSTA RICA S.A.][TRANS AMERICAN AIRLINES, S.A.]

By: \_\_\_\_\_  
Name:  
Title:

ANNEX A – Resolutions

ANNEX B – Organizational Documents



ANNEX C – Incumbency

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[•]		
[•]		
[•]		

**EXHIBIT E**  
**FORM OF NOTICE AND CONSENT**



Avianca S.A. and the Company hereby give [CARD PROCESSOR] written notice that,

- (i) pursuant to, and subject to the terms and conditions of, the RSPA, Avianca S.A. will sell to the Company, and the Company will buy from Avianca S.A., finally, definitively, and irrevocably, the Assigned Contract Rights and the Assigned Receivables;
- (ii) pursuant to the Colombian Back-Up Security Agreement, Avianca S.A. will grant to the Company a security interest (garantía mobiliaria) in certain contingent future receivables associated with, and assign to the Company, as collateral, all of Avianca S.A.'s right, title, and interest in and to the Assigned Contract Rights and the Assigned Receivables; and
- (iii) pursuant to the New York Security Agreement, the Company will grant to the Collateral Agent a first priority security interest in, and lien on, all of the Company's right, title, and interest in and to the Assigned Contract Rights and the Assigned Receivables.

## 2. Avianca S.A. Representation and Agreement

Pursuant to and in connection with the [CARD PROCESSOR] Contract, Avianca S.A. represents and agrees (i) that Avianca S.A. is the sole owner of the Assigned Contract Rights and the Assigned Receivables and therefore entitled to all amounts payable in respect of the Assigned Contract Rights and the Assigned Receivables and (ii) that after giving effect to the transactions described in Section 1 above, the Company is the sole owner of the Assigned Contract Rights and the Assigned Receivables and therefore entitled to all amounts payable in respect to the Assigned Contract Rights and the Assigned Receivables.

Avianca S.A. hereby agrees that it shall promptly notify [CARD PROCESSOR] and the Collateral Agent of any changes, modifications or supplements to the merchant numbers that fairly identify the Specified Sales by delivering a Merchant ID Supplement.

### 3. [CARD PROCESSOR] Representations and Agreements

Pursuant to and in connection with section [●] of the [CARD PROCESSOR] Contract, which requires [CARD PROCESSOR]'s prior written consent for the assignment of rights under the [CARD PROCESSOR] Contract, by [CARD PROCESSOR]'s signature below, [CARD PROCESSOR] unconditionally and irrevocably:

- (i) acknowledges, and consents to, the transactions described in section 1 set forth above;

- (ii) (a) represents that, to its knowledge, immediately before giving effect to the transactions described in 1 above, Avianca S.A. is entitled under the [CARD PROCESSOR] Contract to the Assigned Contract Rights and Assigned Receivables and (b) agrees that after giving effect to the transactions described in 1 above, (x) the Company is entitled under the [CARD PROCESSOR] Contract to the Assigned Contract Rights and Assigned Receivables and (y) [CARD PROCESSOR] will make all applicable payments with respect to the Assigned Contract Rights and the Assigned Receivables, including, without limitation, in respect of any airline ticket sales and related services identified by those certain merchant numbers, geographic jurisdictions and/or other distinguishing characteristics specified on Exhibit A hereto, in accordance with the instructions set forth below;
- (iii) represents that Exhibit A hereto sets forth as of the date hereof the merchant numbers that fairly identify the Specified Sales and agrees that it will (x) use commercially reasonable efforts to notify the Collateral Agent of any changes to such merchant numbers and (y) promptly acknowledge and accept any Merchant ID Supplement properly delivered to it by Avianca S.A. and reflecting all merchant numbers associated at such time with all Specified Sales;
- (iv) represents that, to its knowledge, the Carriers are not in breach of any obligation under the [CARD PROCESSOR] Contract;
- (v) represents that, to its knowledge, it has not received notice of any currently effective assignment of, or pledge of any security interest in, any of the Assigned Contract Rights or the Assigned Receivables; and
- (vi) agrees that if it enters into any other contract or replacement contract with the Carriers or any of their affiliates with respect to the Specified Sales, such contract will be automatically subject to this Notice and Consent and the defined term "[CARD PROCESSOR] Contract" shall be deemed to include any such contract for all purposes hereunder.

#### 4. Directions Regarding Payments

In connection with the Agreements, notwithstanding anything to the contrary set forth in the [CARD PROCESSOR] Contract, Avianca S.A. hereby irrevocably authorizes and instructs [CARD PROCESSOR] to pay all amounts payable by [CARD PROCESSOR] in respect of the Assigned Contract Rights and the Assigned Receivables in U.S. dollars to the Company's account specified below:

Wire to:	Citibank, N.A.
ABA:	021000089
SWIFT:	CITIUS33

Cr: A&T Account Administration  
A/C# 36114317  
FFC: A/C# 11925000  
Ref: USAVflow Ltd

or to such other account as may from time to time be designated in writing by the Collateral Agent to [CARD PROCESSOR] by sending a written request (together with a copy of this Notice and Consent) via first class mail or overnight delivery to:

[CARD PROCESSOR ADDRESS]

and otherwise to act in accordance with the payment instructions of the Collateral Agent in connection therewith, in each case, without further instruction from Avianca S.A. or the Company and (ii) cease making any such payments to any other account(s).

#### 5. Other Provisions

This Notice and Consent supersedes all prior payment instructions from Avianca S.A. to [CARD PROCESSOR] with respect to amounts payable to Avianca S.A. or the Company in respect of the Assigned Contract Rights and the Assigned Receivables.

All notices related to this Notice and Consent (i) to [CARD PROCESSOR] should be made to the address set forth above, (ii) to Collateral Agent should be made to the address set forth on its signature page below and (iii) to Avianca S.A. or the Company should be made to the address set forth below:

Aerovías del Continente Americano S.A. Avianca  
Centro Administrativo  
Avenida Calle 26 No. 59-15 Piso 10  
Bogotá, D.C.  
Colombia  
Attention: Vicepresidente Financiero;  
E-mail: lucia.avila@avianca.com;

The parties hereto agree that such payment instructions may not be revoked or changed and this Notice and Consent may not be amended without the prior written consent of the Collateral Agent, except that the Parties hereto hereby agree that Exhibit A may be amended by the delivery of a Merchant ID Supplement from Avianca S.A. to [CARD PROCESSOR] and the Collateral Agent, and such amendment shall be effective upon the acceptance and acknowledgment thereof by [CARD PROCESSOR] and the Collateral Agent

Nothing in this Notice and Consent shall be construed as creating or implying any additional obligation of [CARD PROCESSOR] under the [CARD PROCESSOR] Contract, except as expressly provided herein, and nothing contained herein shall otherwise amend or modify the terms and conditions of the [CARD PROCESSOR] Contract. For the avoidance of



doubt, Company and Avianca S.A. each acknowledge that [CARD PROCESSOR] retains all of its rights under the [CARD PROCESSOR] Contract, including, but not limited to, [CARD PROCESSOR]'s right to Chargeback and exercise Protective Actions under Section [●] of the [CARD PROCESSOR] Contract.

THIS NOTICE AND CONSENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (NOT INCLUDING SUCH STATE'S CONFLICT OF LAWS PROVISIONS OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

The Company and Avianca S.A. will indemnify and hold harmless [CARD PROCESSOR] from any and all liabilities, claims, demands, actions or judgments, including but not limited to attorneys' fees, arising out of or resulting from their respective acts or omissions, or those of their respective employees, officers or agents in connection arising or resulting from [CARD PROCESSOR]'s compliance with the terms of this Notice and Consent.

Notwithstanding the fact that this Notice and Consent is governed by the law of the State of New York, it perfects the transfer (*tradición*) of the Assigned Contract Rights and the Assigned Receivables to be sold by Avianca S.A. to the Company under the RSPA, pursuant to articles 887 *et seq* of the Colombian Commercial Code and article 1959 of the Colombian Civil Code, respectively, and the transfer of a security interest in and lien on the Assigned Contract Rights and the Assigned Receivables to be created by Avianca S.A. in favor of the Company under the Colombian Security Agreement pursuant to Secured Transaction Law 1676 of 2013.

This Notice and Consent may be executed in any number of counterparts and by different parties on separate counterparts. Each of such counterparts shall be deemed to be an original, and all of such counterparts, taken together, shall constitute but one and the same agreement. Delivery of an executed counterpart of this Notice and Consent by electronic mail shall be equally as effective as delivery of a manually executed counterpart.

Any reference to the Collateral Agent in this Notice and Consent shall be construed as a reference to the Collateral Agent acting as agent for and on behalf of the Lenders and in accordance with the Loan Agreement. In relation to the giving of any consent, approval or direction by the Collateral Agent hereunder, it is acknowledged and accepted by the parties hereto that in all cases the Collateral Agent shall be acting, giving, withholding or otherwise undertaking and exercising such action solely on behalf of the Lenders and as directed in accordance with the terms of the Loan Agreement. Under no circumstances shall the Collateral Agent be under any obligation to any party hereto to give any consent, approval or direction, or take any other action in connection with this Notice and Consent. The Collateral Agent shall have no liability to [CARD PROCESSOR] or to any other party hereto in connection with this Notice and Consent or for or in connection with any action or inaction on its part under or in connection with this Notice and Consent, and such parties agree that any such liability shall be excluded to the fullest extent permitted by applicable law. Nothing herein shall be construed to be an agreement by the Collateral Agent to any of the provisions contained herein, it being

understood and agreed by all parties hereto that the Lenders have agreed to the terms of this Notice and Consent and pursuant to the Loan Agreement have instructed the Collateral Agent to enter into this Notice of Transfer, as agent for and on behalf of the Lenders. The Collateral Agent shall be entitled to all of the rights, benefits, privileges, protections and indemnities provided to it in the Loan Agreement as if specifically set forth herein.

*[Remainder of page intentionally left blank]*

Please acknowledge your receipt of this Notice and Consent and your agreement to the payment terms specified above by executing this Notice and Consent where indicated below and returning it in pdf format by electronic mail to the Company and the Collateral Agent. Thank you for your cooperation in this matter.

Very truly yours,

AEROVIAS DEL CONTINENTE AMERICANO  
S.A. AVIANCA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACCEPTED AND AGREED AS OF THE DATE  
FIRST WRITTEN ABOVE

[CARD PROCESSOR]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACCEPTED AND AGREED AS OF THE DATE  
FIRST WRITTEN ABOVE

Citibank, N.A., as Collateral Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for Notices:

Citibank, N.A.

388 Greenwich Street

New York, NY 10013

Attn: Karen Abarca

Tel.: (212) 816-7759

E-mail: karen.abarca@citi.com / cts.spag@citi.com

## SCHEDULE 1

### DEFINED TERMS

“**ARC**” means Airlines Reporting Corporation, or any successor or replacement thereof.

“**Assigned Contract Rights**” means the contract rights of Avianca S.A. now existing arising under the [CARD PROCESSOR] Contract to (a) receive any kind of payments, indemnities or economic compensations derived from Specified Sales, including the right, among other things, to receive all future Collections derived therefrom; and (b) to enforce the rights referred to in (a) against [CARD PROCESSOR]. For the avoidance of doubt, the Assigned Contract Rights shall not include (x) any obligation or liability of Avianca S.A. under the [CARD PROCESSOR] Contract or arising in any manner therefrom; or (y) the rights of Avianca S.A.:

- (i) to honor Cards or conduct any Card sale as payment for travel costs or otherwise, or to request authorization to honor Cards;
- (ii) to submit Sales Slips for billing or issue credit slips in any manner provided by [CARD PROCESSOR] Contract;
- (iii) to request, to treat or to have access to confidential information pertaining to cardholder account information;
- (iv) to request or receive a restricted card list pursuant to the [CARD PROCESSOR] Contract;
- (v) to grant consent to [CARD PROCESSOR] to display or show the trademarks, logos or company names of Avianca S.A. in promotion, advertising, press releases or otherwise pursuant to the [CARD PROCESSOR] Contract;
- (vi) to use trademarks and service marks of a card association in its advertising, press releases or otherwise pursuant to the [CARD PROCESSOR] Contract;
- (vii) to handle all claims or complaints by a cardholder with respect to Card transactions;
- (viii) to receive documentation from [CARD PROCESSOR] that is required in connection with the defense of any claim of a cardholder asserted in connection with the [CARD PROCESSOR] Contract; or
- (ix) to receive any Collections derived from sales which are not Specified Sales.

**“Assigned Receivables”** means any and all Collections accrued under the [CARD PROCESSOR] Contract in respect of Specified Sales that are due by [CARD PROCESSOR] to Avianca S.A. immediately prior to giving effect to the RSPA on the date of the RSPA.

**“Cards”** means credit, debit, charge and ATM cards under which cardholders purchase goods and services of Avianca S.A and its affiliates.

**“Collections”** means all cash collections and other cash proceeds derived from the Assigned Contract Rights or the Assigned Receivables, whether received by Avianca S.A., the Company, or any other Person.

**“Merchant ID Supplement”** means a notice, substantially in the form of Exhibit B hereto.

**“Sales Slip”** means a sales slip under a Card evidencing a payment obligation of the holder of the Card in respect of goods or services purchased by such holder using such Card.

**“Specified Sales”** means the sales, including future sales, made by travel agencies in the United States and cleared through ARC of airline tickets or related services provided by the Receivables Seller where payment in the case of any such sale is made by an American Express® Card, however branded, or any one or more of such Cards, including all such sales identified by those certain merchant codes set forth on Exhibit A hereto, with such changes, if any, as shall have been made from time to time after delivery and acceptance of a Merchant ID Supplement.



EXHIBIT A

MERCHANT NUMBERS

[●]

Exhibit A

EXHIBIT B  
MERCHANT ID SUPPLEMENT

This Merchant ID Supplement, dated as of [●], is delivered pursuant to the Notice and Consent, dated as of [●], 2017 (as it may from time to time be amended, modified or supplemented in accordance with its terms, the “**Notice and Consent**”), among Aerovías del Continente Americano S.A. Avianca (“**Avianca S.A.**”), [CARD PROCESSOR] (together with its successors or assigns, “[**CARD PROCESSOR**]”) and Citibank, N.A. Capitalized terms used herein but not defined herein are used with the meanings given them in the Notice and Consent.

Avianca S.A. represents and warrants that the attached replacement Exhibit A accurately and completely lists all merchant numbers that fairly identify the Specified Sales and hereby agrees that such replacement Exhibit A will replace Exhibit A to the Notice and Consent from and after the date of this Merchant ID Supplement.

IN WITNESS WHEREOF, Avianca S.A. has caused this Merchant ID Supplement to be duly executed and delivered by its duly authorized officer or representative as of the date first written above.

AEROVÍAS DEL CONTINENTE AMERICANO  
S.A. AVIANCA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit B

ACCEPTED AND AGREED AS OF THE DATE  
FIRST WRITTEN ABOVE

[CARD PROCESSOR]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit B

ACCEPTED AND AGREED AS OF THE DATE  
FIRST WRITTEN ABOVE

Citibank, N.A., as Collateral Agent

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

Exhibit B

REPLACEMENT EXHIBIT A

Exhibit B

**EXHIBIT F**  
**FORM OF NEW YORK SECURITY AGREEMENT**

## FORM OF NEW YORK SECURITY AGREEMENT

SECURITY AGREEMENT, dated as of December 12, 2017 (as amended, supplemented or modified from time to time (this “**Agreement**”), is made by and between USAVflow Limited, an exempted company incorporated and registered under the laws of the Cayman Islands (the “**Grantor**”), represented in this act by Peter Lundin, and Citibank, N.A., in its capacity as collateral agent for the Secured Parties (in such capacity, together with its successors and assigns in such capacity, if any, the “**Collateral Agent**”, together with each other party hereto, the “**Parties**” and each individually a “**Party**”) represented in this act by Karen Abarca and Miriam Molina.

### RECITALS:

WHEREAS, the Grantor, as borrower, each Person listed as a guarantor on the signature pages thereto, each lender that is a signatory thereto, and each other Person that becomes a “**Lender**” thereunder (collectively, the “**Lenders**”), the Collateral Agent and Citibank, N.A. as administrative agent (the “**Administrative Agent**”) are parties to the Loan Agreement, dated as of the date hereof (such agreement, as amended, restated, supplemented, modified or otherwise changed from time to time, including any replacement agreement therefor, being hereinafter referred to as the “**Loan Agreement**”);

WHEREAS, pursuant to the Loan Agreement, the Lenders have agreed to make certain term loans (collectively, the “**Loans**”) to the Grantor; and

WHEREAS, it is a condition precedent to the Lenders making any Loan to the Grantor pursuant to the Loan Agreement that the Grantor shall have executed and delivered this Agreement to the Administrative Agent for the benefit of the Secured Parties;

NOW, THEREFORE, in consideration of the premises and the agreements herein and in order to induce the Lenders to make and maintain the Loans to the Grantor pursuant to the Loan Agreement, the Grantor hereby agrees with the Collateral Agent, for the benefit of the Secured Parties, as follows:

### SECTION 1. Definitions

(a) Reference is hereby made to the Loan Agreement for a statement of the terms thereof. All capitalized terms used in this Agreement that are defined in the Loan Agreement or in Article 8 or 9 of the Code and which are not otherwise defined herein shall have the same meanings herein as set forth therein; provided that terms used herein which are defined in the Code on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as the Collateral Agent may otherwise determine.

(b) For the avoidance of doubt, the following terms shall have the respective meanings provided for in the Code: “Accounts”, “Account Debtor”, “Cash Proceeds”, “Chattel Paper”, “Deposit Account”, “Documents”, “Electronic Chattel Paper”, “General Intangibles”, “Instruments”, “Investment Property”, “Letter-of-Credit Rights”, “Noncash



Proceeds”, “Payment Intangibles”, “Proceeds”, “Promissory Notes”, “Record”, “Securities Account” and “Supporting Obligations”.

(c) As used in this Agreement, the following terms shall have the respective meanings indicated below, such meanings to be applicable equally to both the singular and plural forms of such terms:

“**Administrative Agent**” has the meaning assigned to such term in the preamble hereto.

“**Assigned Agreements**” has the meaning assigned to such term in Section 2 hereof.

“**Code**” means the Uniform Commercial Code as in effect from time to time in the State of New York.

“**Collateral**” has the meaning assigned to such term in Section 2 hereof.

“**Costa Rican Collateral**” means all rights to the Collateral derived from the Credomatic Contract as well as any rights of the Grantor as a secured party under the Costa Rican Back-Up Security Agreement.

“**Costa Rican Notary Public**” means a Costa Rican notary public, in good standing and with no legal impediments to act as the enforcer of the Costa Rican Collateral in accordance with the Law on Security over Moveable Assets and this Agreement.

“**Costa Rican Security**” means the security granted over the Costa Rican Collateral (“*bien dado en garantía*”) as understood under the Law on Security over Moveable Assets and incorporating all the rights and obligations that the Law on Security over Moveable Assets grants in relation to such secured collateral.

“**Costa Rican Trustee**” means any legally appointed trustee (“*fiduciario*”) in good standing according to the laws of Costa Rica and able to perform the duties required of a trustee under the Law on Security over Moveable Assets.

“**Filing**” means (a) any UCC financing statement (including continuation statements and amendment statements, as applicable) or (b) any analogous filing, registration or record under applicable law, in each case covering any Collateral, that is filed, registered or recorded with any governmental, municipal or other office.

“**Grantor**” has the meaning assigned to such term in the preamble hereto.

“**Law on Security over Moveable Assets**” means under Costa Rican law, the *Ley de Garantías Mobiliarias*, law number 9246 and its bylaws.

“**Lender**” has the meaning assigned to such term in the Recitals hereto.

“**Loan**” has the meaning assigned to such term in the Recitals hereto.

“**Loan Agreement**” has the meaning assigned to such term in the Recitals hereto.

“**Moveable Asset Security System**” means the *Sistema de Garantías Mobiliarias* as understood under the Law on Security over Moveable Assets.

“**Notice of Registration of Costa Rican Collateral**” means the notice of registration of Costa Rican Collateral delivered by the Grantor to the Collateral Agent in form and substance set out in Exhibit A hereto, evidencing the specific language to be included by the Collateral Agent in the Security Registration Forms. The Notice of Registration of Costa Rican Collateral shall be delivered accompanied by a Spanish translation of such notice.

“**Out of Court Enforcement**” means the enforcement procedure agreed to under this Agreement for the enforcement of the Costa Rican Collateral established in accordance to Articles 57 and 58 of the Law on Security over Moveable Assets (“*ejecución en sede extrajudicial*”).

“**Secured Obligations**” has the meaning assigned to such term in Section 3 hereof.

“**Security Enforcement Form**” means the form or forms required under the Law on Security over Moveable Assets or any other law, regulation, bylaw or otherwise required by the Moveable Asset Security System, the Costa Rican National Registry or any other public or private entity, including any courts or other authority appointed to enforce the Costa Rican Collateral. This term includes the term “*formulario de ejecución*” as utilized in Article 57 of the Law on Security over Moveable Assets.

“**Security Registration Forms**” means the form or forms required under the Law on Security over Moveable Assets or any other law, regulation, bylaw or other regulation, required by the Moveable Asset Security System, the Costa Rican National Registry or any other public or private entity to register and perfect the security interest in the Costa Rican Collateral in favor of the Collateral Agent. This term includes the “*formulario de publicidad inicial*”, “*formulario de modificación*”, “*formulario de cancelación*”, “*formulario de ejecución*” and any other forms” as established in articles 11, 43 and 44 of the Law on Security over Moveable Assets.

“**Termination Date**” means the date on which the Grantor’s obligations under the Credit Documents have been paid or otherwise performed in full and all of the Commitments have been terminated. For the purposes of registration of the Costa Rican Collateral, the termination date shall be the one set out in the Notice of Registration of Costa Rican Collateral and may be adapted from time to time to adjust to the Termination Date of the Credit Documents.

## SECTION 2. Grant of Security Interest; Power of Attorney.

(a) As collateral security for the payment, performance and observance of all of the Secured Obligations, the Grantor hereby pledges and assigns to the Collateral Agent (and its agents and designees), and grants to the Collateral Agent (and its agents

and designees), for the benefit of the Secured Parties, a continuing security interest in, all of the following property, wherever located and whether now or hereafter existing and whether now owned or hereafter acquired, all of the Grantor's right, title and interest in (all being collectively referred to herein as the "**Collateral**");

- (i) the Contract Rights;
- (ii) the Receivables;
- (iii) the Collections;
- (iv) the New York Pass-Through Account;
- (v) the RSPA, the Undertaking Agreement, the Cash Management Agreement, the Costa Rican Assignment Agreement, the Costa Rican Back-Up Security Agreement, the Colombian Back-Up Security Agreement, the Notices and Consents and all other agreements to which the Grantor is a party (each as amended, restated, supplemented, modified or otherwise changed from time to time, collectively the "**Assigned Agreements**"), including (i) all claims of the Grantor for damages arising out of or for breach of or default under the Assigned Agreements and (ii) all rights of the Grantor to terminate, amend, supplement, modify or waive performance under the Assigned Agreements, to perform thereunder and to compel performance and otherwise to exercise all remedies thereunder;
- (vi) all Accounts, Chattel Paper (whether tangible or electronic), Documents, General Intangibles (including Payment Intangibles), Instruments (including Promissory Notes), Investment Property, Letter-of-Credit Rights and Supporting Obligations, in each case, to the extent relating to the Contract Rights, the Receivables, the Collections or the Assigned Agreements;
- (vii) any security interests or liens that the Grantor has in any of the foregoing;
- (viii) all Proceeds, including all Cash Proceeds and Noncash Proceeds, and products of any and all of the foregoing Collateral; and
- (ix) all other proceeds, products, offspring, accessions, rents, profits, income, benefits, substitutions and replacements of and to any and all of the foregoing Collateral (including, without limitation, any proceeds of insurance thereon and all causes of action, claims and warranties now or hereafter held by the Grantor in respect of any of the items listed above), and all books, correspondence, files and other Records, including, without limitation, all tapes, disks, cards, software, data and computer programs in the possession or under the control of the Grantor or any other Person from time to time acting for the Grantor that at any time evidence or contain information relating to any of the foregoing Collateral hereof or are otherwise necessary or helpful in the collection or realization thereof;

in each case, howsoever the Grantor's interest therein may arise or appear (whether by ownership, security interest, claim or otherwise).

(b) Additionally, the Grantor hereby, (i) based on the Law on Security over Moveable Assets and (ii) constituting a Costa Rican Security, grants to the Collateral Agent (and its agents and designees) for the benefit of the Secured Parties, a continuing security interest in the Costa Rican Collateral to secure full, complete and indefeasible performance of the Secured Obligations. With respect to such Costa Rican Collateral, the Collateral Agent may (but shall not be obligated to) at its option exercise from time to time all rights and remedies under this Agreement, the Law on Security over Moveable Assets or any other available legal instrument.

(c) The Grantor hereby authorizes the Collateral Agent to file the Security Registration Forms before the relevant entities. The Collateral Agent may appoint anyone it deems appropriate to act on its behalf to file the Security Registration Forms;

(d) Anything contained herein to the contrary notwithstanding:

(i) the Grantor will remain liable under the Assigned Agreements, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed;

(ii) the exercise by the Collateral Agent of any of its rights hereunder will not release the Grantor from any of its duties or obligations under the Assigned Agreements; and

(iii) neither the Collateral Agent nor any other Secured Party will have any obligation or liability under any Assigned Agreement by reason of or arising out of this Agreement or any other document related thereto, nor will the Collateral Agent or any other Secured Party be required or obligated in any manner to perform or fulfill any of the obligations or duties of the Grantor thereunder or to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim, or take any action to collect or enforce any claim for payment included in the Collateral.

(e) None of the Collateral Agent, any other Secured Party or any purchaser at a foreclosure sale under this Agreement will be obligated to assume any obligation or liability under any Assigned Agreement unless the Collateral Agent, such other Secured Party or such purchaser otherwise expressly agrees in writing to assume any or all of said obligations or liabilities.

(f) Grantor hereby constitutes and appoints the Collateral Agent its true and lawful attorney, irrevocably, with full power (i) to exercise any right of the Grantor under the Assigned Agreements, and (ii) after the occurrence of and during the continuance of an Event of Default (in the name of Grantor or otherwise) to act, require, demand, receive, compound and give acquittance for any and all moneys and claims for moneys due or to become due to Grantor under or arising out of the Collateral, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings necessary or advisable (as determined by the Required Lenders) to protect the interests of the Secured Parties, which appointment as attorney is coupled with an interest.

SECTION 3. Security for Secured Obligations. The security interest created hereby in the Collateral constitutes continuing collateral security for all of the following obligations, whether now existing or hereafter incurred (the “**Secured Obligations**”):

(a) the prompt payment by the Grantor, as and when due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), of all amounts from time to time owing by the Grantor in respect of the Loan Agreement and/or the other Credit Documents, including, without limitation, all interest, fees, commissions, charges, expense reimbursements, indemnifications and all other amounts due or to become due under any Credit Document (including, without limitation, all interest, fees, commissions, charges, expense reimbursements, indemnifications and other amounts that accrue after the commencement of any proceeding under any Bankruptcy Law of any Obligor, whether or not the payment of such interest, fees, commissions, charges, expense reimbursements, indemnifications and other amounts are unenforceable or are not allowable, in whole or in part, due to the existence of such proceeding); and

(b) the prompt payment and due performance and observance by the Grantor of all of its other obligations from time to time existing in respect of this Agreement and any other Credit Document.

SECTION 4. Guaranteed Amount

For purposes of the Costa Rican Security only, the guaranteed amount will be considered to be of USD \$150,000,000 plus any additional amounts arising out of the Secured Obligations.

SECTION 5. Representations and Warranties. The Grantor represents and warrants as follows:

(a) Schedule I hereto sets forth a complete and accurate list as of the date hereof of (i) the exact legal name of the Grantor, (ii) the jurisdiction of incorporation of the Grantor, (iii) the type of company of the Grantor, (iv) the address of the Grantor's principal place of business, namely its registered office address in the Cayman Islands and (v) the address or addresses where the Grantor keeps its Records concerning Accounts and all originals of all Chattel Paper, in each case, that relate to the Collateral.

(b) The Grantor is and will be at all times the sole and exclusive owner of, or otherwise have and will have adequate rights in, the Collateral free and clear of any Liens (other than the Lien, if any, created by the Receivables Seller in favor of the Grantor, which the Grantor has pledged and assigned to the Collateral Agent hereunder). No effective financing statement or other instrument similar in effect covering all or any part of the Collateral is on file in any recording or filing office, other than financing statements or other instruments in favor of the Collateral Agent or in favor of the Grantor and assigned of record to the Collateral Agent.

(c) This Agreement creates a legal, valid and enforceable first priority security interest in favor of the Collateral Agent, for the benefit of the Secured Parties, in the Collateral, as security for the Secured Obligations.



(d) The Grantor has delivered to the Initial Lenders, for filing in the applicable governmental, municipal or other office specified in Schedule II, true, complete and correct copies of all appropriate Filings containing an accurate description of the Collateral. Such Filings are all of the Filings that are necessary to perfect the security interest in favor of the Collateral Agent (for the benefit of the Secured Parties) in respect of all Collateral in which the Security Interest may be perfected by filing, recording or registration in the United States. No further or subsequent Filing is necessary in the United States, except as provided under applicable law with respect to (i) the filing of continuation statements and (ii) any changes to the Grantor's organizational structure or to the Grantor's organizational documents permitted by the Loan Agreement, as required pursuant thereto in order for the Collateral Agent to continue to have at all times following each such change a legal, valid and perfected security interest in all the Collateral.

(e) The Grantor does not maintain, nor at any time after the date of this Agreement shall establish or maintain, any demand, time, savings, passbook or similar account, except for the New York Pass-Through Account, the Collections Account and the Debt Service Reserve Account.

#### SECTION 6. Covenants as to the Collateral.

(a) Further Assurances. The Grantor will take such action and execute, acknowledge and deliver, at its sole cost and expense, such agreements, instruments or other documents as may be necessary or required by applicable law or as the Collateral Agent may require from time to time in order (i) to perfect and protect, or maintain the perfection of, the security interest and Lien purported to be created hereby; (ii) to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder in respect of the Collateral; or (iii) otherwise to effect the purposes of this Agreement, including, without limitation: (A) at the request of the Collateral Agent, marking conspicuously all of its Records pertaining to the Collateral with a legend, in form and substance satisfactory to the Collateral Agent, indicating that such Records are subject to the security interest created hereby, (B) if any Account relating to the Collateral shall be evidenced by a Promissory Note or other Instrument or Chattel Paper, delivering and pledging to the Collateral Agent such Promissory Note, other Instrument or Chattel Paper, duly endorsed and accompanied by executed instruments of transfer or assignment, all in form and substance satisfactory to the Collateral Agent, (C) executing or authenticating (to the extent, if any, that the Grantor's signature is required thereon or its authentication is required with respect thereto) and filing of such financing or continuation statements or amendments thereto, (D) furnishing to the Collateral Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Collateral Agent may reasonably request, all in reasonable detail, and (E) taking all actions required by law in any relevant Uniform Commercial Code jurisdiction, or by other law as applicable in any foreign jurisdiction. The Grantor shall not take or fail to take any action which could in any manner impair the validity or enforceability of the Collateral Agent's security interest in and Lien on any Collateral.

(b) Accounts Relating to the Collateral. The Grantor (or the Servicer on its behalf) will, except as otherwise provided in this subsection (b), continue to collect, at its own expense, all amounts due or to become due under the Accounts relating to the Collateral. In

connection with such collections, the Grantor (or the Servicer on its behalf) may (and, at the Collateral Agent's direction, will) take such action as the Grantor (or, if applicable, the Collateral Agent) may deem necessary or advisable to enforce collection or performance of such Accounts; provided, however, that the Collateral Agent shall have the right at any time, to notify the Card Processors or obligors under any such Accounts of the assignment of such Accounts to the Collateral Agent and to direct such Card Processors or obligors to make payment of all amounts due or to become due to the Grantor thereunder in respect of the Collection Rights directly to the Collateral Agent or its designated agent and, upon the occurrence and during the continuance of an Event of Default, to enforce collection of any such Accounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as the Grantor might have done. All amounts and proceeds (including Instruments) received by the Grantor in respect of such Accounts relating to the Collateral shall be received in trust for the benefit of the Collateral Agent hereunder, shall be segregated from other funds of the Grantor and shall be forthwith paid over to the Collateral Agent or its designated agent in the same form as so received (with any necessary endorsement) and applied as specified in the Loan Agreement and the Grantor will not adjust, settle or compromise the amount or payment of any such Account relating to the Collateral or release wholly or partly any Card Processor or obligor thereof or allow any credit or discount thereon. Any such securities, cash, investments and other items so received by the Collateral Agent or its designated agent in respect of the Collateral shall (in the sole and absolute discretion of the Collateral Agent) be held as additional Collateral for the Secured Obligations or distributed in accordance with Section 8 hereof.

(c) Control. The Grantor hereby agrees to take any or all action that may be necessary or desirable or that the Collateral Agent may request in order for the Collateral Agent to obtain control in accordance with Sections 9-104, 9-105, 9-106, and 9-107 of the Code with respect to the following to the extent they relate to the Collateral: (i) Electronic Chattel Paper, (ii) Investment Property and (iii) Letter-of-Credit Rights. The Grantor hereby acknowledges and agrees that any agent or designee of the Collateral Agent shall be deemed to be a "secured party" with respect to the Collateral under the control of such agent or designee for all purposes.

(d) Records; Inspection and Reporting.

(i) The Grantor shall keep adequate records concerning the Collateral.

(ii) The Grantor shall not, without the prior written consent of the Collateral Agent, amend, modify or otherwise change (A) its name, (B) its jurisdiction of incorporation as set forth in Schedule I hereto or (C) its registered office address in the Cayman Islands as set forth in Schedule I hereto. The Grantor shall immediately notify the Collateral Agent in writing upon obtaining an organizational identification number, if on the date hereof, the Grantor did not have such identification number.

(e) New York Pass-Through Account. For the New York Pass-Through Account, the Grantor shall cause the U.S. Account Bank to execute and deliver to the Collateral Agent, on or prior to the date hereof, the Account Control Agreement.



SECTION 7. Additional Provisions Concerning the Collateral.

(a) To the maximum extent permitted by applicable law, and for the purpose of taking any action that the Collateral Agent may deem necessary or advisable to accomplish the purposes of this Agreement, the Grantor hereby (i) authorizes the Collateral Agent to execute any such agreements, instruments or other documents in the Grantor's name and to file such agreements, instruments or other documents in the Grantor's name and in any appropriate filing office, (ii) authorizes the Collateral Agent at any time and from time to time to file, one or more financing or continuation statements and amendments thereto, relating to the Collateral and (iii) ratifies such authorization to the extent that the Collateral Agent has filed any such financing statements, continuation statements, or amendments thereto, prior to the date hereof; *provided, however*, that, without limiting the foregoing, the Collateral Agent shall not be responsible for preparing, executing or filing any financing or continuation statements or any amendments thereto, for authenticating any signature of the Grantor, or otherwise for perfecting or maintaining the perfection of any security interest in the Collateral (including the Costa Rican Collateral). A photocopy or other reproduction of this Agreement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.

(b) The Grantor hereby irrevocably appoints the Collateral Agent as its attorney-in-fact and proxy, with full authority in the place and stead of the Grantor and in the name of the Grantor or otherwise, from time to time in the Collateral Agent's discretion, to take any action and to execute any instrument that the Collateral Agent may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, (i) to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any Collateral, (ii) to receive, endorse, and collect any drafts or other Instruments, Documents and Chattel Paper in connection with preceding clause (i), (iii) to receive, endorse and collect all Instruments made payable to the Grantor representing any dividend, interest payment or other distribution in respect of any Collateral and to give full discharge for the same, (iv) to file any claims or take any action or institute any proceedings which the Collateral Agent may deem necessary or desirable for the collection of any Collateral or otherwise to enforce the rights of each Secured Party with respect to any Collateral, (v) to execute assignments, licenses and other documents to enforce the rights of each Secured Party with respect to any Collateral, (vi) to pay or discharge taxes or Liens levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Collateral Agent (in its sole discretion), and such payments made by the Collateral Agent shall constitute additional Secured Obligations of the Grantor to the Collateral Agent, be due and payable immediately without demand, and shall bear interest from the date payment of said amounts is demanded at the rate set forth in Section 2.5.6 of the Loan Agreement, and (vii) to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, assignments, verifications and notices in connection with Accounts, Chattel Paper and other documents relating to the Collateral. This power is coupled with an interest and is irrevocable until the Termination Date.

(c) If the Grantor fails to perform any agreement or obligation contained herein, the Collateral Agent may itself perform, or cause performance of, such

agreement or obligation, in the name of the Grantor or the Collateral Agent, and the fees and expenses of the Collateral Agent incurred in connection therewith shall be payable by the Grantor pursuant to Section 13(g) hereof constitute additional Secured Obligations of the Grantor to the Collateral Agent, be due and payable immediately without demand and bear interest from the date payment of said amounts is demanded at the rate set forth in Section 2.5.6 of the Loan Agreement.

(d) The powers conferred on the Collateral Agent hereunder are solely to protect the interests of the Secured Parties in the Collateral and shall not impose any duty upon it to exercise any such powers. Other than the exercise of reasonable care to assure the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against other parties or any other rights pertaining to any Collateral and shall be relieved of all responsibility for any Collateral in its possession upon surrendering it or tendering surrender of it to the Grantor (or whomsoever shall be lawfully entitled to receive the same or as a court of competent jurisdiction shall direct). The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Collateral Agent accords its own property; it being understood that the Collateral Agent shall not have responsibility for ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Collateral, whether or not the Collateral Agent has or is deemed to have knowledge of such matters. The Collateral Agent shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehouseman, carrier, forwarding agency, consignee or other agent or bailee selected by the Collateral Agent in good faith.

(e) The Grantor hereby authorizes the Secured Parties to file any such financing statements without the signature of such Assignor where permitted by law (and such authorization includes describing the Collateral as "all assets of Debtor, whether now owned or hereafter acquired or arising." of such Grantor).

SECTION 8. Remedies Upon Default. If any Event of Default shall have occurred and be continuing:

(a) The Collateral Agent may exercise in respect of the Collateral, in addition to any other rights and remedies provided for herein or otherwise available to it, all of the rights and remedies of a secured party upon default under the Code (whether or not the Code applies to the affected Collateral), and also may (i) take absolute control of the Collateral, including, without limitation, transfer into the Collateral Agent's name or into the name of its nominee or nominees (to the extent the Collateral Agent has not theretofore done so) and thereafter receive, for the benefit of each Secured Party, all payments made thereon, give all consents, waivers and ratifications in respect thereof and otherwise act with respect thereto as though it were the outright owner thereof, (ii) require the Grantor to, and the Grantor hereby agrees that it will, at its expense and upon request of the Collateral Agent forthwith, assemble all or part of the Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place or places to be designated by the Collateral Agent that is reasonably

convenient to both parties, and (iii) without notice except as specified below and without any obligation to prepare or process the Collateral for sale, sell the Collateral or any part thereof at public or private sale, at any of the Collateral Agent's offices, at any exchange or broker's board or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable. The Grantor agrees that, to the extent notice of sale or any other disposition of the Collateral shall be required by law, at least 10 days' prior notice to the applicable Grantor of the time and place of any public sale or the time after which any private sale or other disposition of the Collateral is to be made shall constitute reasonable notification. If the Collateral Agent sells any of the Collateral upon credit, the Grantor will be credited only with payments actually received by the Collateral Agent from the purchaser thereof, and if such purchaser fails to pay for the Collateral, the Collateral may resell the Collateral and the Grantor shall be credited with proceeds of the sale. The Collateral Agent shall not be obligated to make any sale or other disposition of Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The Grantor hereby waives any claims against each Secured Party arising by reason of the fact that the price at which the Collateral may have been sold at a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Secured Obligations, even if the Collateral Agent accepts the first offer received and does not offer the Collateral to more than one offeree, and waives all rights that the Grantor may have to require that all or any part of the Collateral be marshaled upon any sale (public or private) thereof. The Grantor hereby acknowledges that (A) any such sale of the Collateral by the Collateral Agent shall be made without warranty, (B) the Collateral Agent may specifically disclaim any warranties of title, possession, quiet enjoyment or the like, (C) the Collateral Agent may bid (which bid may be, in whole or in part, in the form of cancellation of indebtedness), if permitted by law, for the purchase, lease, license or other disposition of the Collateral or any portion thereof for the account of the Collateral Agent (on behalf of itself and each Secured Party) and (D) such actions set forth in clauses (A), (B) and (C) above shall not adversely affect the commercial reasonableness of any such sale of the Collateral.

(b) Any cash held by the Collateral Agent (or its agent or designee) relating to the Collateral and all Cash Proceeds received by the Collateral Agent (or its agent or designee) in respect of any sale of or collection from, or other realization upon, all or any part of the Collateral, may, in the discretion of the Collateral Agent, be held by the Collateral Agent (or its agent or designee) as Collateral for, and/or then or at any time thereafter applied (after payment of any amounts payable to the Collateral Agent pursuant to Section 13(g) hereof) in whole or in part by the Collateral Agent against, all or any part of the Secured Obligations in such order as the Collateral Agent shall elect, consistent with the provisions of the Loan Agreement. Any surplus of such cash or Cash Proceeds held by the Collateral Agent (or its agent or designee) and remaining after the Termination Date shall be paid over to whomsoever shall be lawfully entitled to receive the same or as a court of competent jurisdiction shall direct.

(c) [Reserved.]

(d) The Grantor hereby acknowledges that if the Collateral Agent

complies with any applicable requirements of law in connection with a disposition of the Collateral, such compliance will not adversely affect the commercial reasonableness of any sale or other disposition of the Collateral.

(e) The Collateral Agent shall not be required to marshal any present or future collateral security (including, but not limited to, this Agreement and the Collateral) for, or other assurances of payment of, the Secured Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of the Collateral Agent's rights hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights, however existing or arising. To the extent that the Grantor lawfully may, the Grantor hereby agrees that it will not invoke any law relating to the marshalling of collateral which might cause delay in or impede the enforcement of the Collateral Agent's rights under this Agreement or under any other instrument creating or evidencing any of the Secured Obligations or under which any of the Secured Obligations is outstanding or by which any of the Secured Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, the Grantor hereby irrevocably waives the benefits of all such laws.

(f) Notwithstanding the foregoing and any provision to the contrary herein, amounts credited to the New York Pass-Through Account shall be transferred to the Collections Account in accordance with the Loan Agreement, to be applied as described in the Cash Management Agreement.

SECTION 9. Remedies Upon Default for the Costa Rican Collateral. Notwithstanding any remedies available to the Collateral Agent under this Agreement, the following shall be applicable with respect to the enforcement of Costa Rican Collateral in the Republic of Costa Rica:

(a) Forced Assignment of Collections and Contract Rights.

(i) If an Event of Default has occurred and is continuing, the Collateral Agent may provide notice of such event to the Grantor and submit the Security Enforcement Form before the relevant Costa Rican authorities under the Law on Security over Moveable Assets.

(ii) To the extent that a Security Enforcement Form is filed, the Collateral Agent may request in writing to the Grantor to (i) wire any Collections received and not previously wired or transferred at that moment to the Collections Account and (ii) to assign the Contract Rights not previously assigned to the Collateral Agent.

(iii) The Collateral Agent may also notify Grantor's applicable counterparties of the assignment of the Costa Rican Collateral and instruct them to (i) wire any Collections to be sent to Grantor to the Collections Account, or any other such account that the Collateral Agent instructs and (ii) to take note of and implement the assignment of Contract Rights in favor of the Collateral Agent.

(b) Out of Court Enforcement



(i) The Parties fully and irrevocably agree that after an Event of Default has occurred and is continuing, the Collateral Agent may, in addition to the Forced Assignment of Collections and Contract Rights outlined above and to any other rights and remedies provided for herein or otherwise available to it, exercise all of the rights and remedies of a secured party upon default under the Law on Security over Moveable Assets, including the forced sale of the Costa Rican Collateral through Out of Court Enforcement.

(ii) Appointment of Enforcement Agent. Upon registration of the Security Enforcement Form, the Collateral Agent may appoint a Costa Rican Notary Public or Costa Rican Trustee to serve as the person designated to enforce its security interest in the Costa Rican Collateral through the Out of Court Enforcement (the “**Enforcement Agent**”); it being understood and agreed that the Collateral Agent shall have no responsibility for or incur any liability in respect of any actions taken or not taken by any such Enforcement Agent.

(iii) Within two (2) business days of being appointed as such, the Enforcement Agent shall be required to provide notice to the Grantor so that it can, within a term of five (5) business days after receiving such notice, provide documentation evidencing payment of all Secured Obligations (“**Full Performance**”).

(iv) If Full Performance is not properly evidenced at the end of such term, the Enforcement Agent may proceed with the forced sale or auction of the Collateral.

(v) If the Enforcement Agent is instructed to proceed with the forced sale or auction of the Collateral, it shall publish a notice of sale in a Costa Rican newspaper of national circulation with at least 8 days’ notice prior to the date of the sale or auction. Such notice must indicate the time, place and date of the sale as well as a brief description of the assets to be sold, a base price and parameters for additional base prices were they to be adjusted for auction. Written notice of the sale must also be provided to all interested parties which have a legal right over the Costa Rican Collateral in accordance to article 57 of the Law on Security over Moveable Assets.

(vi) If the first auction is unsuccessful, the Enforcement Agent, at the direction of the Collateral Agent, may hold a second and up to a third auction. Such auctions may be held immediately after the first auction or at later dates that shall not be set at more than ten (10) business days after the immediately preceding auction. In each succeeding auction the Enforcement Agent will set lower base prices in accordance with the parameters established in the notice published before the first auction. If the third auction is unsuccessful, the Costa Rican Collateral will be awarded to the Collateral Agent as payment for the base price of the third auction.

(vii) From the sale or auction, the Enforcement Agent will prepare an affidavit to be signed by the Enforcement Agent and the purchaser of the Costa Rican Collateral. Upon payment of the price in the sale or auction, the Enforcement Agent shall grant evidence of title to the purchaser. The transfer of title over the Collateral in the event of a forced sale or auction will be free of any liens established pursuant to this Agreement.

SECTION 10. Notices, Etc. All notices and other communications provided for

hereunder shall be given in accordance with Section 8.3 of the Loan Agreement. For purposes of the registration of the Costa Rican Collateral, the notice addresses shall be as set out in the Notice of Registration of Costa Rican Collateral and may be adapted from time to time in accordance with Section 8.3 of the Loan Agreement.

#### SECTION 11. Security Interest Absolute.

(a) All rights of the Secured Parties, all Liens and all obligations of each of the Grantor hereunder shall be absolute and unconditional irrespective of (i) any lack of validity or enforceability of the Loan Agreement or any other Credit Document, (ii) any change in the time, manner or place of payment of, or in any other term in respect of, all or any of the Secured Obligations, or any other amendment or waiver of or consent to any departure from the Loan Agreement or any other Credit Document, (iii) any exchange or release of, or non-perfection of any Lien on any Collateral, or any release or amendment or waiver of or consent to departure from any guaranty, for all or any of the Secured Obligations, (iv) any release of or consent to the departure of any Guarantor from the Loan Agreement or any other Credit Document or (v) any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Grantor in respect of the Secured Obligations. All authorizations and agencies contained herein with respect to any of the Collateral are irrevocable and powers coupled with an interest.

(b) The Grantor hereby waives (i) promptness and diligence, (ii) notice of acceptance and notice of the incurrence of any Secured Obligation, (iii) notice of any actions taken by the Collateral Agent, any Lender, or any other Person under any Credit Document or any other agreement, document or instrument relating thereto, (iv) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of the Secured Obligations, the omission of or delay in which, but for the provisions of this subsection (b), might constitute grounds for relieving the Grantor of any of the Grantor's obligations hereunder and (v) any requirement that any Agent or any Lender protect, secure, perfect or insure any security interest or other lien on any property subject thereto or exhaust any right or take any action against the Grantor or any other Person or any collateral.

#### SECTION 12. Limited Recourse.

(a) Notwithstanding any other provision of this Agreement, each party hereto hereby agrees that the Grantor's obligations under this Agreement shall be limited recourse obligations of the Grantor, with recourse against the Grantor being limited to the Collateral and the actual amount derived from the Collateral (including the proceeds of any contingent claims that are included in the Collateral, other than the ordinary share capital and any transaction fee charged by the Grantor pursuant to the Administration Agreement) of the Grantor at such time available for application by or on behalf of the Grantor in making payments in accordance with this Agreement. The parties hereby acknowledge and agree that the Grantor's obligations under this Agreement are solely the corporate obligations of the Grantor, and that none of the officers, directors, shareholders or agents of the Grantor, any of its Affiliates or any other Person, other than the Guarantors, shall be personally liable to make any payments of principal, interest or any other sum now or hereafter owing by the Grantor hereunder. Without limitation of the obligations of the Guarantors under the Credit Documents, after the Grantor's

Collateral (including the proceeds of any contingent claims that are included in the Collateral, other than the ordinary share capital and any transaction fee charged by the Grantor pursuant to the Administration Agreement) is realized and exhausted, all sums due but still unpaid in respect of the Grantor's obligations hereunder shall be extinguished and shall not thereafter revive with respect to the Grantor and its liability hereunder, and the parties hereto shall not have the right to proceed against the Grantor or any of its Affiliates or any of its officers, directors, shareholders or agents for the satisfaction of any monetary claim or for any deficiency judgment remaining after foreclosure of any of its assets, it being agreed that the Guarantors shall remain liable for all of such obligations.

(b) No party hereto shall take any steps for the purpose of procuring the appointment of any examiner, administrator, liquidator, provisional liquidator or bankruptcy trustee or the making of any administrative order or court order or application or for instituting any bankruptcy, examinership, reorganization, arrangement, insolvency, winding up, liquidation, composition or any like proceedings under applicable Law in respect of the Grantor or its Affiliates or in respect of any of their liabilities, including, without limitation, as a result of any claim or interest of such parties; provided that nothing in this Section 12(b) shall prohibit or restrict the appointment of a Receiver and/or Delegate under and/or in accordance with and/or as contemplated by any provisions of the U.K. Account Charge.

(c) The provisions of this Section 12 shall survive termination of this Agreement.

#### SECTION 13. Miscellaneous.

(a) No amendment of any provision of this Agreement (including any Schedule attached hereto) shall be effective unless it is in writing and signed by the parties hereto, and no waiver of any provision of this Agreement, and no consent to any departure by the Grantor therefrom, shall be effective unless it is in writing and signed by the Collateral Agent, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) No failure on the part of the Collateral Agent (on behalf of the Secured Parties) or the Secured Parties to exercise, and no delay in exercising, any right hereunder or under any other Credit Document shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Secured Parties provided herein and in the other Credit Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Secured Parties under any Credit Document against any party thereto are not conditional or contingent on any attempt by such Person to exercise any of its rights under any other Credit Document against such party or against any other Person, including but not limited to, the Grantor.

(c) This Agreement shall create a continuing security interest in the Collateral and shall (i) remain in full force and effect, subject to paragraph (e) below, until the Termination Date and (ii) be binding on the Grantor all other Persons who become bound as debtor to this Agreement in accordance with Section 9-203(d) of the Code, and shall inure,



together with all rights and remedies of the Secured Parties hereunder, to the benefit of the Secured Parties and their respective successors, transferees and assigns. Without limiting the generality of clause (ii) of the immediately preceding sentence, each Secured Party may assign or otherwise transfer its respective rights and obligations under this Agreement and any other Credit Document to any other Person pursuant to the terms of the Loan Agreement, and such other Person shall thereupon become vested with all of the benefits in respect thereof granted to the Secured Parties herein or otherwise. Upon any such assignment or transfer, all references in this Agreement to any Secured Party shall mean the assignee of any such Secured Party. None of the rights or obligations of the Grantor hereunder may be assigned or otherwise transferred without the prior written consent of the Collateral Agent, and any such assignment or transfer shall be null and void.

(d) After the occurrence of the Termination Date, (i) subject to paragraph (e) below, this Agreement and the security interests and licenses created hereby shall terminate and all rights to the Collateral shall revert to the Grantor, and (ii) the Collateral Agent will, upon the Grantor's request and at the Grantor's cost and expense, (A) request the cancelation of the registration of the security interest over the Costa Rican Collateral before the Moveable Asset Security System (B) promptly return to the Grantor (or whomsoever shall be lawfully entitled to receive the same or as a court of competent jurisdiction shall direct) such of the Collateral as shall not have been sold or otherwise disposed of or applied pursuant to the terms hereof, and (C) promptly execute and deliver to the Grantor such documents as the Grantor shall reasonably request to evidence such termination, without representation, warranty or recourse of any kind. In addition, upon any sale or disposition of any item of Collateral in a transaction expressly permitted under the Loan Agreement, the Collateral Agent agrees to execute a release of its security interest in such item of Collateral, and the Collateral Agent shall, upon the reasonable written request of the Grantor and at the Grantor's cost and expense, execute and deliver to the Grantor such documents as the Grantor shall reasonably request to evidence such release, without representation, warranty or recourse of any kind.

(e) This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against the Grantor for liquidation or reorganization, should the Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of the Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment or performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

**(f) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (NOT INCLUDING SUCH STATE'S CONFLICT OF LAWS PROVISIONS OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).**

(g) In addition to and without limitation of any of the foregoing, this Agreement shall be deemed to be a Credit Document and shall otherwise be subject to all of terms and conditions contained in Sections 8.5, 8.6, 8.7 and 8.9 of the Loan Agreement, *mutatis mutandi*.

(h) Each party to this Agreement irrevocably consents to service of process in the manner provided for in Section 8.10 of the Loan Agreement. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

(i) The Grantor irrevocably and unconditionally waives any right it may have to claim or recover in any legal action, suit or proceeding with respect to this Agreement any special, exemplary, punitive or consequential damages.

(j) Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

(k) Section headings herein are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(l) This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which shall be deemed an original, but all of such counterparts taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile or electronic mail shall be equally effective as delivery of an original executed counterpart.

(m) Any reference to the Collateral Agent in this Agreement shall be construed as a reference to the Collateral Agent acting as agent for and on behalf of the Secured Parties and in accordance with the terms of the Loan Agreement, and in each case acting on instructions of Lenders given under the Loan Agreement. The Collateral Agent shall be entitled to all of the rights, benefits, privileges, protections and indemnities provided to it in the Loan Agreement as if specifically set forth herein.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the Grantor and the Collateral Agent have caused this Agreement to be executed and delivered by their respective officers thereunto duly authorized, as of the date first above written.

USAVFLOW LIMITED, as Grantor

By: \_\_\_\_\_

Name:

Title:

Citibank, N.A. as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE I**

**LEGAL NAME; JURISDICTION OF ORGANIZATION;  
 TYPE OF ORGANIZATION; LOCATIONS**

<b>Legal Name</b>	<b>Jurisdiction of Incorporation</b>	<b>Type of Company</b>	<b>Location of Principal Place of Business</b>	<b>Address where the Grantor keeps its Records concerning Accounts and all originals of all Chattel Paper, in each case, that relate to the Collateral.</b>
USAVflow Limited	Cayman Islands	Exempted Company with Limited Liability	Offices of MaplesFS Limited Queensgate House Grand Cayman. KY1-1102 Cayman Islands	Offices of the Servicer Centro Administrativo Avenida Calle 26 No. 59-15 Piso 10 Bogotá, D.C., Colombia Attn: Vicepresidente Financiero

Exhibit A

Form of Notice of Registration of Costa Rican Collateral

Information to be included by the Collateral Agent in the Security Registration Forms

**Lender Information**

**Name:** Citibank, N.A.

**Identification Type:** Corporate identification number.

**Identification Number:** 3-012-114186.

**Country of Residence:** Costa Rica.

**Address of Residence:** San José, Costa Rica.

**General Information**

**Initial Date:** December 12, 2017

**Termination Date:** December 12, 2022

**Country of Currency:** United States of America.

**Currency:** United States Dollars.

**Amount:** 150,000,000.00.

**Standard Interest:** 4.75%

**Default Interest:** 6.75%

**Maximum Guaranteed Amount:** 150,000,000.00.

**Execution (Judicial or Extrajudicial):** Extrajudicial.

**Observations:** The standard and default interest rates are in addition to LIBOR, as defined in the Loan Agreement. Definition of interest to be paid is made in accordance to Section 2.5 of the Loan Agreement and that clause will govern all matters related to the interest rate to be paid.

**Form of payment, payment schedule:** Payment will be made according to Section 2.4 of the Loan Agreement.

**Operation number:** N/A.

**Collateral**

**\*Type of Inclusion:** Assignment of Economic Rights.

**Observations:** All of USAV Flow's rights over the (i) Contract Rights, (ii) the Receivables and (iii) the Collections arising out of the Credomatic Contract as well as all rights USAV flow may have as a secured party under the Costa Rican Back-Up Security Agreement.

**\*Classification of Collateral:** Accounts Receivable.

**Description of Collateral:** Credomatic Contract by and among Taca International Airlines S.A., Aerovias del Continente Americano, S.A. AVIANCA, and Bac International Bank Inc. dated as of June 10, 2015, as amended to this date.

Costa Rican Back Up Security Agreement by and among Aerovias del Continente Americano, S.A. AVIANCA and USAVFLOW Limited, dated as of December 12, 2017, with registration number in the Moveable Asset Security System \_\_\_\_\_.

**Parties Associated to the Collateral**

**\*Borrower/Assignor:**

**Identification Type:** Corporate identification number.

**Identification Number:** 3-012-749743

**Name:** USAVFLOW LIMITED

**Country of Residence:** Cayman Islands

**Phone Number:** 40362800

**Email:** info@maplesfinance.com

**Address of Residence:** P.O. Box 1093GT, Queensgate House, South Church Street, Georgetown, Grand Cayman, Cayman Islands.

**Other Information:** to contact via phone number, contact at the Cayman Islands phone number (345) 945-7099.

**Contractual Address:** Cayman Islands, P.O. Box 1093GT, Queensgate House, South Church Street, Georgetown, Grand Cayman

**Exact Address:** P.O. Box 1093GT, Queensgate House, South Church Street, Georgetown, Grand Cayman, Cayman Islands

**Type of entity:** Assignor

**Economic Activity:** Commercial



**EXHIBIT G**  
**FORM OF COMPLIANCE CERTIFICATE**

**HOLDINGS COMPLIANCE CERTIFICATE**

The undersigned, [OFFICER'S NAME], [TITLE] of AVIANCA HOLDINGS S.A., a company organized under the laws of Panama (the "**Company**") hereby certifies on behalf of the Company, pursuant to Section 5.6.3(b) of the Loan Agreement, dated as of December 12, 2017 (the "**Loan Agreement**"), by and among USAVFLOW LIMITED, as Borrower, the Company, as a guarantor, the other guarantors party thereto, the Lenders party thereto and Citibank, N.A., as Administrative Agent and Collateral Agent that:

1. Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

2. Attached hereto and set forth in reasonable detail are computations evidencing compliance with the covenants contained in Sections 5.8.2 and 5.8.3 of the Loan Agreement as of the date of the financial statements delivered herewith or for the relevant period provided in the Loan Agreement, as applicable. The information furnished in the calculations attached hereto was true, accurate, correct and complete as of the last day of such period and for such period, as the case may be.

3. I reviewed the Loan Agreement and the Credit Documents and have made or caused to be made such investigations as are necessary or appropriate for the purposes of this certificate and hereby certify that:

(a) each Obligor during such period has observed and performed all of the covenants and other agreements, and satisfied every condition contained in the Loan Agreement and the other Credit Documents to which it is a party to be observed, performed or satisfied by it [except as has heretofore been notified to the Administrative Agent by the Company in writing or except as described in Schedule [X] hereto];

(b) the [quarterly] [annual] financial statements delivered to the Lenders and the Administrative Agent herewith were prepared in accordance with IFRS and fairly represent the financial position of the Company and its Subsidiaries as of the date hereof;

(c) no event has occurred and is continuing that constitutes a Default or Event of Default [except as has heretofore been notified to the Administrative Agent by the Company in writing or except as described in Schedule [X] hereto];

(d) the representations and warranties of the Company contained in the Loan Agreement or in any other Credit Document to which it is a party are true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

IN WITNESS WHEREOF, the undersigned has executed this Compliance Certificate on behalf of the Company as of this [DAY OF MONTH] day of [MONTH], [YEAR].

AVIANCA HOLDINGS S.A.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT H**  
**NOTICE OF BORROWING**

Date: December \_\_, 2017

To: Citibank, N.A., as Administrative Agent

Ladies and Gentlemen:

1. Reference is made to that certain Loan Agreement to be entered into on or about December 12, 2017 (as amended, restated or otherwise modified from time to time, the "**Loan Agreement**"; terms defined therein, unless otherwise defined herein, being used herein as defined in the draft of the Loan Agreement attached hereto), among you, the other agents party thereto, the lenders party thereto, the guarantors party thereto and the undersigned.

2. The undersigned hereby requests a borrowing of Loans on December \_\_, 2017 (a Business Day) (the "**Borrowing Date**") in the amount of U.S. \$150,000,000.

In the event of the failure to borrow a Loan from any Lender on the date specified herein (other than as a result of a default by the Lender), then, in any such event, the Borrower shall compensate such Lender for the actual losses, costs and expenses attributable to such event (excluding loss of anticipated margin or profit). Such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of the Loan had such event not occurred, at the interest rate that would have been applicable to the Loan, for the period from the date of such event to the last day of the then-current Interest Period therefor (or, in the case of a failure to borrow or continue, for the period that would have been the Interest Period for the Loan), over (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate that such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the London interbank market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant hereto shall be delivered to the Borrower, with a copy to the Administrative Agent, and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown due on any such certificate within 10 days after receipt thereof.

Very truly yours,

USAVflow Limited

By \_\_\_\_\_

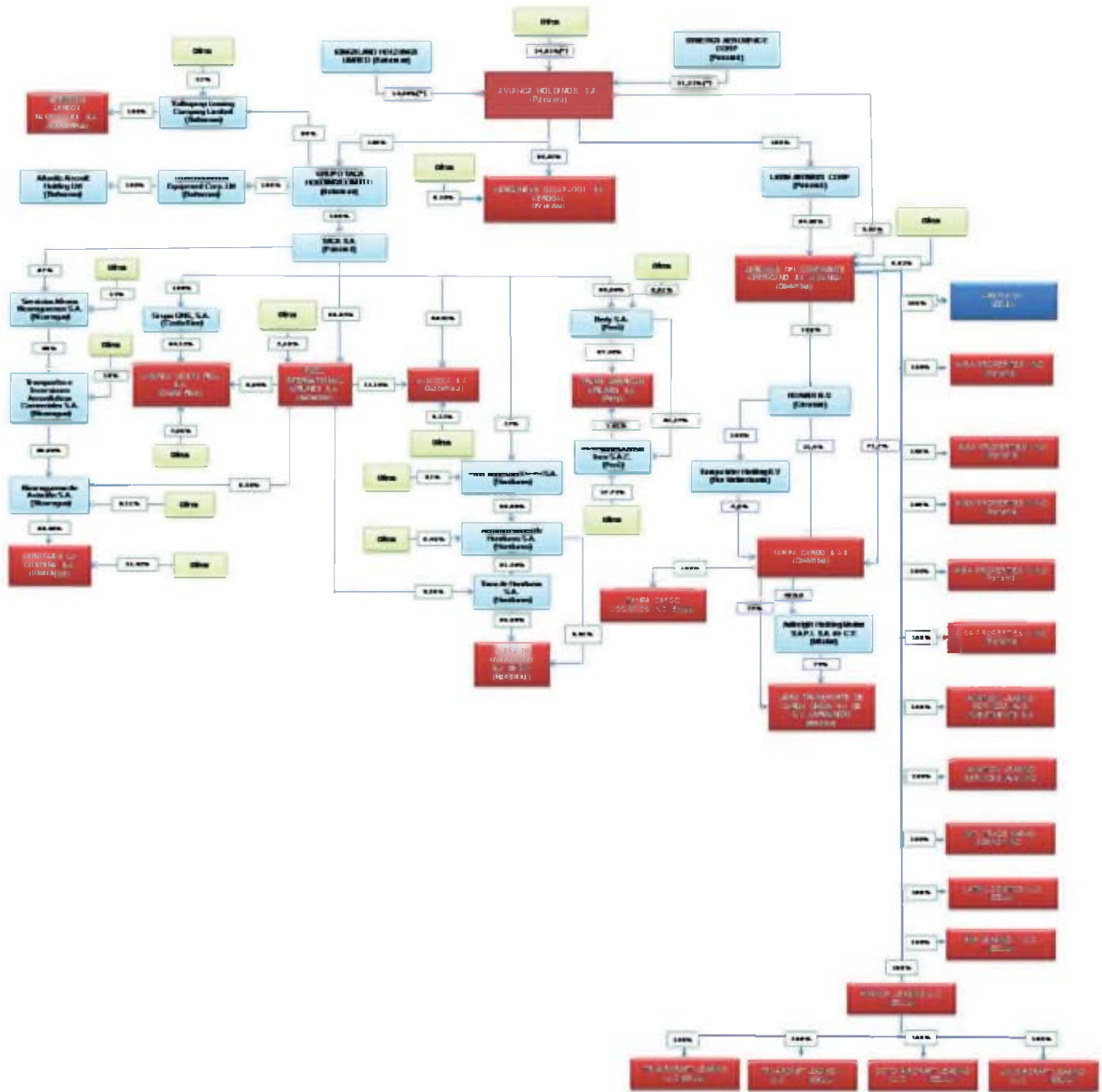
Name:

Title:

**SCHEDULE 1.1  
COMMITMENTS**

<b>Lender</b>	<b>Commitment</b>
Deutsche Bank AG, London Branch	U.S.\$ 33,500,000
Banco de Credito del Peru, Miami Agency	U.S.\$ 26,000,000
First Citizens Bank Limited	U.S.\$ 22,000,000
BankUnited NA	U.S.\$ 17,500,000
Metrobank SA	U.S.\$ 17,500,000
Moneda Deuda Latinoamericana Fondo de Inversion	U.S.\$ 13,000,000
Moneda Latinoamerica Deuda Local Fondo de Inversion	U.S.\$ 12,000,000
Prival Bank, SA	U.S.\$ 8,500,000
Total:	U.S.\$150,000,000

**SCHEDULE 4.1.8**  
**CORPORATE STRUCTURE OF THE GUARANTORS**



### Schedule 4.1.8

**SCHEDULE 5.12  
PERMITTED LIENS**

Mortgagor	Property	Mortgagee
Taca Intl. Airlines	Corporate Office Building located at Av. El Espino entre Blvd. Sur y Calle El Almendro, Urbanizacion Madreselva, Antiguo Cuscatlan, El Salvador	BCIE
Avianca SA	Corporate Office Building located at Av. Calle 26 # 59-15 Bogota, Colombia	BANCO DE BOGOTA

**SCHEDULE 8.3.3**  
**APPLICABLE LENDING OFFICES AND ADDRESSES FOR NOTICES**

<b>Institution Name</b>	Banco de Crédito del Perú, Miami Agency
<b>Admin/Operations Matters Contact</b>	<p><b><u>Primary</u></b>  Cecilia Recinos  121 Alhambra Plaza, Suite 1200  Coral Gables  Miami, FL 33134  Country: USA  Tel: 305-448-0971  E-mail: crecinos@bcpmiami.com</p> <p><b><u>Secondary</u></b>  Rosa Bardelas  121 Alhambra Plaza, Suite 1200  Coral Gables  Miami, FL 15074  Country: USA  Tel: 305-448-0971  E-mail: rbardelas@bcpmiami.com</p>
<b>Disclosure Contact</b>	Paola Cueva 121 Alhambra Plaza, Suite 1200 Coral Gables Miami, FL 33134 Country: USA Tel: 305-448-0971 E-mail: pcueva@bcpmiami.com
<b>Routing Instruction</b>	<p><b>Correspondent Bank Name:</b> Standard Chartered Bank  <b>ABA/CHIPS #:</b> 026002561  <b>Account Name:</b> Banco de Credito del Peru Miami Agency  <b>Account#:</b> 3544031768002  <b>Reference:</b> Avianca Holdings SA  <b>Attention:</b> Credit Services Department</p>



<b>Institution Name</b>	Metrobank, S.A.
<b>Admin/Operations Matters Contact</b>	<p><b>Primary</b>  María José Orozco  Calle Isaac Hanono Missri, Torre  Metrobank, Piso 4, Punta Pacífica  Panama City, Panama 0816-02041  Country: Panama  Tel: 507-204-9138  Fax: 507-204-9001  E-mail: maria.orozco@metrobanksa.com</p> <p><b>Secondary</b>  María Luisa Muñoz  Calle Isaac Hanono Missri, Torre  Metrobank, Piso 4, Punta Pacífica  Panama City, Panama 0816-02041  Country: Panama  Tel: 507-831-2429  Fax: 507-204-9001  E-mail: marialuisa.munoz@metrobanksa.com</p>
<b>Disclosure Contact</b>	Lil Patricia Vásquez Calle Isaac Hanono Missri, Torre Metrobank, Piso 4, Punta Pacífica Panama City, Panama 0816-02041 Country: Panama Tel: 507-204-9103 Fax: 507-204-9001 E-mail: lilpatricia.vasquez@metrobanksa.com
<b>Routing Instruction</b>	<p><b>Correspondent Bank Name:</b> The Bank of New York  225 Liberty Street  New York, NY 10286</p> <p><b>Swift:</b> IRVTUS3N / Swift: METOPAPA</p> <p><b>ABA/CHIPS #:</b> 021000018</p> <p><b>Account Name:</b> Metrobank, S.A. Panama City, Panama</p> <p><b>Account#:</b> 8901331848</p> <p><b>Benef. Acct. Name:</b> Transitoria Depto. Préstamos</p> <p><b>Benef. Acct. #:</b> 2230370100020000</p> <p><b>Reference:</b> Avianca</p> <p><b>Attention:</b> Lil Patricia Vásquez</p>

<b>Institution Name</b>	Deutsche Bank AG, London Branch
<b>Admin/Operations Matters Contact</b>	<u><b>Primary</b></u> 2, Boulevard Konrad Adenauer 1115 Country: Luxembourg E-mail: loan.admin-uk@db.com
<b>Disclosure Contact</b>	Joaquin Arias / Rodrigo Nonaka 60 Wall Street New York, NY 10005 Country: USA Tel:+1 (212) 250-3653 E-mail: joaquin.arias@db.com / <a href="mailto:rodrigo.nonaka@db.com">rodrigo.nonaka@db.com</a>
<b>Routing Instruction</b>	New York, NY 10005 <b>ABA/CHIPS #:</b> 021-001-033, Chips ABA 0103, Chips UID 096804 <b>Account Name:</b> Deutsche Bank Trust Co Americas <b>Account#:</b> 04-411-739 <b>Benef. Acct. Name:</b> Deutsche Bank, London Branch <b>Benef. Acct. #:</b> Deutsche Bank, London Branch

<b>Institution Name</b>	BankUnited, NA
<b>Admin/Operations Matters Contact</b>	<p><b><u>Primary</u></b>  Maria Ledesma  7815 NW 148<sup>th</sup> Street – 2-CMMLO-6802  Miami Lakes, Florida 33016  Country: USA  Tel: 305-569-2039  Fax: 877-208-8066  E-mail: mledesma@bankunited.com</p> <p><b><u>Secondary</u></b>  7815 NW 148<sup>th</sup> Street – 2-CMMLO-6802  Miami Lakes, Florida 33016  Country: USA  Tel: 305-461-6847  Fax: 877-208-8066  E-mail: srodriguez@bankunited.com</p>
<b>Routing Instruction</b>	<p><b>Correspondent Bank Name:</b> BankUnited  7815 NW 148<sup>th</sup> Street – 2-CMMLO-6802  Miami Lakes FL 33016</p> <p><b>ABA/CHIPS #:</b> 267 090 594  <b>Account Name:</b> Loan Payment in Process  <b>Account#:</b> 09998-134028  <b>Reference:</b> Loan Name and Account number</p>

<b>Institution Name</b>	First Citizens Bank Limited
<b>Admin/Operations Matters Contact</b>	<p><b><u>Primary</u></b>  Jo-anne Ward  9 Queen's Park East  Port of Spain  Country: Trinidad  Tel: (1) 868 624 3178 ext. 3025  Fax: (1) 868-624-0818  E-mail: jo-anne.ward@firstcitizenstt.com</p> <p><b><u>Secondary</u></b>  Marilyn Pahal-Prince  9 Queen's Park East  Port of Spain  Country: Trinidad  Tel: (1) 868 624 3178 ext. 3028  Fax: (1) 868-624-0818  E-mail: marilyn.pahal@firstcitizenstt.com</p>
<b>Disclosure Contact</b>	Felipe Castro Oficentro Eurocenter Diursa Heredia Country: Costa Rica Tel: +506-2239-5581 (Office) +506-8708-7285 (Mobile) Fax: +506-2239-5860 E-mail: felipe.castro@firstcitizenstt.com
<b>Routing Instruction</b>	<p><b>Correspondent Bank Name:</b> Wells Fargo Bank NA  Philadelphia, Pennsylvania 19101-3866</p> <p><b>ABA/CHIPS #:</b> 026 005 092</p> <p><b>Benef. Acct. Name:</b> First Citizens Bank Limited</p> <p><b>Benef. Acct. #:</b> 2000090600010</p> <p><b>Reference:</b> Avianca</p> <p><b>Attention:</b> Cibu – Dereck Ramlal</p>

<b>Institution Name</b>	Moneda Deuda Latinoamericana Fondo de Inversión
<b>Admin/Operations Matters Contact</b>	<p><b><u>Primary</u></b>            Natalia Martinez            Isidora Goyenechea 3621 piso 8            Las Condes            Santiago, RM            Country: Chile            Tel: +562-2337-7929            E-mail: Funds-MO@moneda.cl</p> <p><b><u>Secondary</u></b>            Susana San Martin            Isidora Goyenechea 3621 piso 8            Las Condes            Santiago, RM            Country: Chile            Tel: +562-29280-288            E-mail: Funds-MO@moneda.cl</p>
<b>Disclosure Contact</b>	Martin Cipriani Isidora Goyenechea 3621 piso 8 Las Condes Santiago, RM Country: Chile Tel: +56223377929 E-mail: Funds-MO@moneda.cl
<b>Routing Instruction</b>	<p><b>Correspondent Bank Name:</b> JP Morgan Chase            New York, NY</p> <p><b>ABA/CHIPS #:</b> 021000021</p> <p><b>Account Name:</b> JPM Securities LLC</p> <p><b>Account#:</b> 066001633</p> <p><b>Benef. Acct. Name:</b> Moneda Deuda            Latinoamericana FI</p> <p><b>Benef. Acct. #:</b> 102-21946</p>

<b>Institution Name</b>	Moneda Latinoamericana Deuda Local Fondo de Inversión
<b>Admin/Operations Matters Contact</b>	<p><b><u>Primary</u></b>            Natalia Martinez            Isidora Goyenechea 3621 piso 8            Las Condes            Santiago, RM            Country: Chile            Tel: +562-2337-7929            E-mail: Funds-MO@moneda.cl</p> <p><b><u>Secondary</u></b>            Susana San Martin            Isidora Goyenechea 3621 piso 8            Las Condes            Santiago, RM            Country: Chile            Tel: +562-29280-288            E-mail: Funds-MO@moneda.cl</p>
<b>Disclosure Contact</b>	Martin Cipriani Isidora Goyenechea 3621 piso 8 Las Condes Santiago, RM Country: Chile Tel: +56223377929 E-mail: Funds-MO@moneda.cl
<b>Routing Instruction</b>	<p><b>Correspondent Bank Name:</b> JP Morgan Chase            New York, NY</p> <p><b>ABA/CHIPS #:</b> 021000021  <b>Account Name:</b> JPM Securities LLC  <b>Account#:</b> 066001633  <b>Benef. Acct. Name:</b> Moneda Latinoamericana            Deuda Local FI  <b>Benef. Acct. #:</b> 102-39884</p>

<b>Institution Name</b>	Prival Bank, S.A.
<b>Admin/Operations Matters Contact</b>	<p><b><u>Primary</u></b>  Magda Mendoza  Calle 50 y 71 San Francisco  Panama, Panama 0832-00396  Country Panama  Tel: 507-303-1932 / 507-303-1900  E-mail: mmendoza@prival.com</p> <p><b><u>Secondary</u></b>  Eva Duarte  Calle 50 y 71 San Francisco  Panama, Panama 0832-00396  Country Panama  Tel: 507-303-1932 / 507-303-1900  E-mail: eduarte@prival.com</p>
<b>Disclosure Contact</b>	Vilma Durling Calle 50 y 71 San Francisco Panama, Panama 0832-00396 Country Panama Tel: 507-303-1966 / 507-303-1900 E-mail: vduling@prival.com
<b>Routing Instruction</b>	<p><b>Correspondent Bank Name:</b> Deutsche Bank Trust Company Americas  New York, NY</p> <p><b>ABA/CHIPS #:</b> 021001033  <b>Account Name:</b> Prival Bank, S.A.  <b>Account#:</b> 04453509  <b>Reference:</b> USAVflow Limited / Prestamo Sindicado  <b>Attention:</b> Vilma Durling / Magda Mendoza</p>



**EXHIBIT III**

ORAL ARGUMENT REQUESTED

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**Case Nos. 1:20-cv-08008-LTS; 1:20-cv-08364-LTS**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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IN RE AVIANCA HOLDINGS S.A., ET AL.,  
*DEBTORS.*

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USAV SECURED LENDER GROUP,  
USAVFLOW LIMITED,  
*APPELLANTS,*

V.

AVIANCA HOLDINGS S.A., ET AL.,  
*APPELLEES.*

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APPEAL FROM THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
BANKR. CASE No. 20-11133 (MG)

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**APPENDIX TO OPENING BRIEF FOR  
APPELLANT USAV SECURED LENDER GROUP  
VOLUME 2 OF 5 (PAGES A570-A884)**

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[brandon.batzel@whitecase.com](mailto:brandon.batzel@whitecase.com)

*Attorneys for the USAV Secured Lender Group*

Pursuant to Fed. R. Bankr. P. 8018(b)(1), in support of its brief filed concurrently herewith, Appellant USAV Secured Lender Group<sup>1</sup> submits this Appendix comprised of the following documents:

<b>AX<sup>2</sup></b>	<b>Document Description (Date of Entry)</b>	<b>Docket No.</b>	<b>App'x Page Range</b>
<b>VOLUME 1</b>			
1	Docket entries from Main Chapter 11 Bankruptcy Case, <i>In re Avianca Holdings S.A.</i> , Case No. 20-11133 (MG) (Bankr. S.D.N.Y.)	N/A	A1-A106
2	Docket entries from Adversary Proceeding, <i>Avianca Holdings S.A. v. USAVflow Limited</i> , Case No. 20-01189 (MG) (Bankr. S.D.N.Y.)	N/A	A107-A111
3	Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts <sup>3</sup> (6/23/2020)	Bk.Dkt.306 <sup>4</sup>	A112-A131
4	Declaration of Adrian Neuhauser in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (6/23/2020)	Bk.Dkt.306-1	A132-A136
5	Contract Rights and Receivables Sale, Purchase and Servicing Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 1	A137-A270

<sup>1</sup> Capitalized terms used but not defined in this Appendix have the meanings provided in the USAV Secured Lender Group's opening brief.

<sup>2</sup> "AX" refers to the Appendix Exhibit Number, as cited in the USAV Secured Lender Group's opening brief.

<sup>3</sup> The cover notice to the Rejection Motion has been omitted.

<sup>4</sup> "Bk.Dkt." refers to docket entries from the main Chapter 11 bankruptcy case captioned *In re Avianca Holdings S.A.*, Case No. 20-11133 (MG) (Bankr. S.D.N.Y.).

6	Receivables Maintenance Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 2	A271-A303
7	Cash Management Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 4	A304-A336
8	Credomatic Notice of Transfer, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 5	A337-A374
9	Credomatic Consent and Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 6	A375-A381
10	AMEX Notice and Consent, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 7	A382-A409
11	Loan Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 9	A410-A569
<b>VOLUME 2</b>			
12	Complaint <sup>5</sup> (6/23/2020)	Ap.Dkt.1, <sup>6</sup> Bk.Dkt.307	A570-A581
13	USAVflow Limited's Objection and Reservation of Rights to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (7/22/2020)	Bk.Dkt.616	A582-A600
14	Legal Opinion of Gómez-Pinzón Abogados S.A.S., Dated December 12, 2017 (7/22/2020)	Bk.Dkt.616-1	A601-A611
15	Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (7/22/2020)	Bk.Dkt.617	A612-A645
16	Declaration of Jorge Suescún Melo in Support of Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order	Bk.Dkt.618	A646-A654

<sup>5</sup> Exhibits to the Complaint have been omitted. The USAV Secured Lender Group can provide all the exhibits upon the Court's request.

<sup>6</sup> "Ap.Dkt." refers to docket entries from the adversary proceeding captioned *Avianca Holdings S.A. v. USAVflow Limited*, Case No. 20-01189 (MG) (Bankr. S.D.N.Y.).

	Authorizing Rejection of Certain Executory Contracts (7/22/2020)		
17	Notice of Trigger Event, Dated March 31, 2020 (7/23/2020)	Bk.Dkt.619-1	A655-A660
18	Transcript of Telephonic Status Conference Held on July 27, 2020 <sup>7</sup> (7/28/2020)	Bk.Dkt.647	A661-A690
19	Official Committee of Unsecured Creditors' Reply in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/07/2020)	Bk.Dkt.681	A691-A702
20	Debtors' Reply to the Objections of USAV and the USAV Secured Lender Group to the Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/07/2020)	Bk.Dkt.683	A703-A734
21	Second Declaration of Adrian Neuhauser in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/07/2020)	Bk.Dkt.683-1	A735-A740
22	Email Communication amongst Avianca and Citibank, N.A., Between July 5, 2020 and July 8, 2020 (8/07/2020)	Bk.Dkt.683-4	A741-A744
23	Certified English Translation of Declaration of Jaime Alberto Arrubla-Paucar in Support of the "Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts" (8/07/2020)	Bk.Dkt.684-1	A745-A758
24	Supplemental Response of the Official Committee of Unsecured Creditors to the Court's Questions Posed at the July 27, 2020 Status Conference (8/18/2020)	Bk.Dkt.714	A759-A763

<sup>7</sup> All transcript indexes in this Appendix have been omitted. The USAV Secured Lender Group can provide the full index upon the Court's request.

25	Debtors' Response to the Court's Questions Posed at the July 27, 2020 Status Conference (8/18/2020)	Bk.Dkt.715	A764-A782
26	USAV Secured Lender Group's Supplemental Brief in Support of Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/18/2020)	Bk.Dkt.716	A783-A803
27	USAVflow Limited's Combined Response to (A) Debtors' Reply in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts and (B) Questions Posed by the Court at the July 27, 2020 Status Conference (8/18/2020)	Bk.Dkt.717	A804-A817
28	Sur-Reply of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/18/2020)	Bk.Dkt.718	A818-A850
29	Declaration of Vicente Lines in Support of the USAV Secured Lender Group's Supplemental Brief and Sur-Reply in Support of Objection to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/19/2020)	Bk.Dkt.719	A851-A857
30	Second Declaration of Jorge Suescún Melo in Support of Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/19/2020)	Bk.Dkt.720	A858-A884
<b>VOLUME 3</b>			
31	Option Agreement, Dated December 12, 2017 (8/19/2020)	Bk.Dkt.721-1	A885-A896
32	Waiver Request Letter from Avianca to the Lenders, the Agents, and USAV, Dated February 19, 2018 (8/19/2020)	Bk.Dkt.721-11	A897-A900

33	Waivers of Trigger Events, Dated on or about April 13, 2018 and November 27, 2019 (8/19/2020)	Bk.Dkt.721-12	A901-A956
34	Transcript of Hearing Held on August 19, 2020 (8/20/2020)	Bk.Dkt.743	A957-A980
35	Transcript of Hearing Held on August 18, 2020 (8/21/2020)	Bk.Dkt.742	A981-A998
36	Order with Questions that Counsel for the Parties Should Address During the Hearing of the Rejection Motion (8/25/2020)	Bk.Dkt.757	A999-A1001
<b>VOLUME 4</b>			
37	Avianca's August 26, 2020 Hearing Demonstrative (8/26/2020)	N/A	A1002-A1030
38	USAV Secured Lender Group's August 26, 2020 Hearing Demonstrative (8/26/2020)	N/A	A1031-A1067
<b>VOLUME 5</b>			
39	Transcript of Hearing Held on August 26, 2020 (8/27/2020)	Bk.Dkt.788	A1068-A1204
40	Memorandum Opinion Granting in Part and Denying in Part Debtors' Motion to Reject the USAV Agreements (9/04/2020)	Bk.Dkt.850	A1205-A1245
41	USAV Secured Lender Group's Notice of Appeal <sup>8</sup> (9/18/2020)	Bk.Dkt.959	A1246-A1251
42	USAVflow Limited's Notice of Appeal <sup>9</sup> (9/18/2020)	Bk.Dkt.960	A1252-A1257

<sup>8</sup> Exhibits to the USAV Secured Lender Group's Notice of Appeal have been omitted. Exhibit A to the Notice of Appeal, the Order, is included in this Appendix as Exhibit 40.

<sup>9</sup> Exhibits to USAV's Notice of Appeal have been omitted. Exhibit A to the Notice of Appeal, the Order, is included in this Appendix as Exhibit 40.



October 14, 2020  
New York, New York

Respectfully submitted,

**WHITE & CASE LLP**

By: /s/ Glenn M. Kurtz

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**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

-----X	
In re:	:
	: Chapter 11
AVIANCA HOLDINGS S.A., <i>et al.</i> ,	:
	: Case No. 20-11133 (MG)
Debtors. <sup>1</sup>	:
	: (Jointly Administered)
	:
AVIANCA HOLDINGS S.A., <i>et al.</i> ,	:
	:
Plaintiffs.	:
	:
v.	: Adv. Proc. _____
	:
USAVFLOW LIMITED,	:
	:
Defendant.	:
-----X	

<sup>1</sup> The Debtors in these cases, and each Debtor's federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); AeroInversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int'l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Islaña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

## **COMPLAINT**

1. Plaintiffs, the above-captioned debtors (the “Debtors”), bring this action against USAVflow Limited (“USAV”) and allege as follows:

### **NATURE OF THE ACTION**

2. In December 2017, the Debtors engaged in a series of agreements involving USAV (collectively, the “USAV Transaction”) that purportedly constituted a sale of the Debtors’ receivables under certain credit card processing agreements in exchange for cash. In substance and reality, however, the USAV Transaction was a disguised secured financing. Accordingly, the Debtors seek to recharacterize the USAV Transaction as such.<sup>2</sup>

3. To the extent the USAV Transaction is recharacterized as a disguised secured financing, the Debtors also seek a declaration that USAV has no security interest in certain postpetition credit card receivables and related collateral (the “Credit Card Receivables”) pursuant to section 552 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the “Bankruptcy Code”).

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This adversary proceeding constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(A), (E), and (K).

5. Venue is proper pursuant to 28 U.S.C. § 1409(a).

6. Pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure, the Debtors consent to the entry of final orders or judgment by the bankruptcy court.

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<sup>2</sup> Simultaneously herewith, the Debtors are filing a motion to reject the contracts memorializing the USAV Transaction under section 365 of the Bankruptcy Code. In the event such motion is granted, the Debtors intend to withdraw this Complaint.

## **THE PARTIES**

7. The Debtors are the second-largest airline group in Latin America. Avianca is the largest airline in the Republic of Colombia (the third largest Latin American economy), a code-share partner of United Airlines, and a member of the Star Alliance which, with 26 members, is the world's largest global airline alliance.

8. Upon information and belief, Defendant USAV is an exempted company incorporated and registered under the laws of the Cayman Islands. USAV is a special purpose vehicle established to "purchase" credit card receivables from the Debtors and to pledge those receivables in order to obtain financing.

## **FACTS**

9. The Debtors operate an extensive network of routes from their primary hubs in Bogotá and San Salvador (in addition to other focus markets) and offer passenger services on more than 5,350 weekly flights to more than 76 destinations in 27 countries. With approximately 18,900 employees and approximately \$3.9 billion in annual revenues, the Debtors play a key role in the Latin American airline market.

10. On March 20, 2020, the Republic of Colombia, consistent with what numerous other governments around the world have done, announced that it would close its airspace to address the spread of COVID-19. As a result of the restrictions imposed by the Colombian government, as well as similar measures in various other of the Debtors' primary markets, on March 24, 2020 the Debtors announced that they were suspending all scheduled passenger flights from March 25, 2020. This suspension is ongoing as of the time of this filing.

11. On May 10, 2020 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors remain in possession

of their properties and continue to operate and manage their businesses as debtors-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

12. In 2017, Avianca retained an investment banker to assist it in securing new debt financing. The USAV Transaction was the result of these efforts.

13. On December 12, 2017, the Debtors and USAV entered into that certain Contract Rights and Receivables Sale, Purchase and Servicing Agreement (the “RSPA”).<sup>3</sup> The RSPA is governed by the laws of Colombia. *See* Ex. A at § 9.09.

14. On its face, the RSPA purports to memorialize a sale of credit card receivables and related contract rights of the Debtors under card processing agreements with (i) American Express Travel Related Services Company, Inc. and American Express Payment Services Limited (the “AMEX Agreement”) and (ii) BAC International Bank Inc. and its subsidiaries (the “Credomatic Agreement” and, together with the AMEX Agreement, the “Credit Card Processing Agreements”) related to the purchases in the United States of airline tickets and related services with American Express, Visa, and MasterCard credit cards. *See* Ex. A at Recitals & § 2.01. The aggregate “purchase price” for the purported “sale” of the credit card receivables was (i) \$150 million as an advance payment (the “Advance Payment”) and (ii) future credit card receivables generated in any payment period less a reserved amount generally equal to the amount required for USAV’s monthly amortization payments (the “Additional Purchase Price”) under the USAV Loan Agreement (as defined below). *See* Ex. A at § 3.01(a).

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<sup>3</sup> A true and correct copy of the RSPA is attached to this Complaint as Exhibit A.

15. Contemporaneously with the execution of the RSPA, USAV entered into a loan agreement (the “USAV Loan Agreement”) with certain lenders (the “Lenders”), certain Debtors as Guarantors, and Citibank, N.A. as Administrative Agent and Collateral Agent (in such capacities, “Citibank”).<sup>4</sup> At the same time, Avianca, USAV, and Citibank entered into that certain Cash Management Agreement (the “Cash Management Agreement”), which governs the distribution of the proceeds of the credit card receivables.<sup>5</sup>

16. Under the USAV Loan Agreement, the Lenders advanced to USAV \$150 million—the same amount USAV used to make the Advance Payment under the RSPA. *See* Ex. C at § 2.1.1. To repay this loan, USAV retains a portion of the collections on credit card receivables—funneled through a New York-based bank account—sufficient to make the required amortization payments under the USAV Loan Agreement. Any surplus above what is required to be repaid or reserved under the USAV Loan Agreement is remitted to the Debtors. *See* Ex. A at § 2.01; Ex. C at § 2.02.

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<sup>4</sup> A true and correct copy of the USAV Loan Agreement is attached to this Complaint as Exhibit B. The USAV Loan Agreement is governed by New York law. *See* Ex. B at § 8.9.1.

<sup>5</sup> A true and correct copy of the Cash Management Agreement is attached to this Complaint as Exhibit C. The Cash Management Agreement is also governed by New York law. *See* Ex. C at § 3.08(a).



17. To aid this Court in understanding the structure of the USAV Transactions, the Debtors provide Figure 1 below:

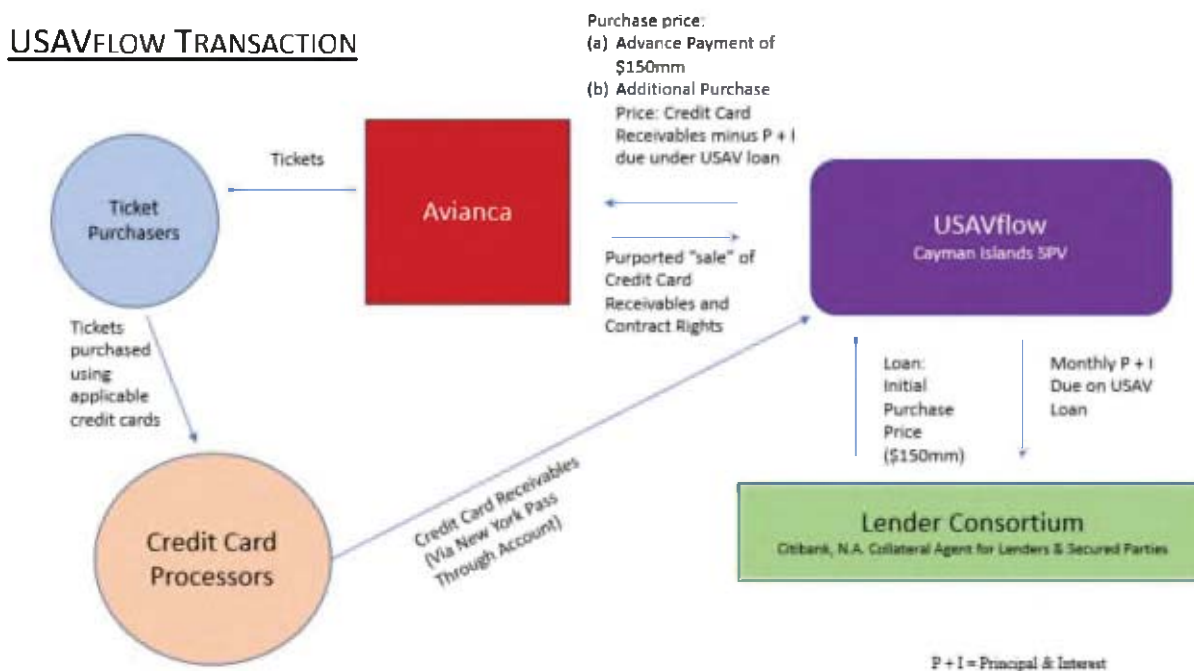


Figure 1

18. The RSPA lists a number of events that constitute a “Trigger Event” thereunder. *See* Ex. A at § 6.01. Importantly, however, USAV’s only recourse under the RSPA during a “Trigger Event” is to demand payment from the Debtors of the outstanding balance under the USAV Loan Agreement as liquidated damages (plus administrative costs associated with unwinding the transaction). *See* Ex. A at § 6.02. The RSPA provides that once the outstanding balance under the USAV Loan Agreement is paid, the purported “sale” will be unraveled, and the rights to the credit card receivables will revert back to Avianca. *Id.* (“Once the Liquidated Damages is paid in full as provided for hereunder, the Purchaser may proceed to unwind the purchase and sale by transferring back to the Seller the Contract Rights, the Receivables, and all Collections derived therefrom.”).

19. In apparent recognition of the possibility that the transaction could be recharacterized as a secured financing, the Debtors, as grantor, and USAV, as secured party, entered on December 12, 2017 into that certain Pledge Over Contract Rights and Future Revenues governed by Colombian law (the “Colombian Back-Up Security Agreement”) and that certain Costa Rican Back-Up Security Agreement governed by Costa Rican law (the “Costa Rican Back-Up Security Agreement”) as prophylactic security agreements (the “Security Agreements”). The Security Agreements granted USAV a security interest in the credit card receivables in the event a court were to recharacterize the USAV Transaction as a financing rather than a sale.<sup>6</sup> The security interest under the Colombian Back-Up Security Agreement extends to the Contract Rights under the Credit Card Processing Agreements, future revenues and collections derived therefrom, and “Proceeds” of the foregoing. *See* Ex. D at § 2.01. In contrast, the Costa Rican Back-Up Security Agreement does *not* state that the security interest extends to proceeds of the collateral listed therein. *See* Ex. E.

20. On May 11, 2020—a day after the Petition Date—Citibank issued “at the direction of the Required Lenders” a Notice of Retention Event to Avianca and USAV pursuant to section 2.09(b) of the Cash Management Agreement.<sup>7</sup> Under the RSPA and the Cash Management Agreement, when a Retention Event has been declared, the Debtors are not entitled to receive the Additional Purchase Price.<sup>8</sup> As a result, none of the credit card receivables are currently flowing to the Debtors as Additional Purchase Price.

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<sup>6</sup> True and correct copies of the Colombian Back-Up Security Agreement and Costa Rican Back-Up Security Agreement are attached to this Complaint as Exhibits D and E, respectively. Nothing in this Complaint should be construed as an admission that the Security Agreements created valid, perfected liens under applicable laws. The Debtors reserve all rights to challenge the validity and/or perfection of any such liens.

<sup>7</sup> A true and correct copy of the Notice of Retention Event is attached to this Complaint as Exhibit F.

<sup>8</sup> *See* Ex. A at § 3.01(a)(ii) (“[N]o Additional Purchase Price shall be paid during the continuance of a Retention Event.”).

**COUNT ONE**  
**(RECHARACTERIZATION OF THE USAV TRANSACTION)**

21. Plaintiffs restate and reallege the allegations in the preceding paragraphs as if fully set forth herein.

22. Under both Colombian and New York law, the economic substance of the USAV Transaction was that of a financing, and not a sale, because (among other reasons):

- Once USAV has repaid the loan outstanding under the USAV Loan Agreement in full, the right to receive and retain the credit card receivables reverts to Avianca.
- USAV incurred debt under the USAV Loan Agreement expressly for the purpose of “purchasing” the credit card receivables and, as a special purpose vehicle, lacked the economic capacity, without incurring such debt, to purchase the credit card receivables.
- The only benefit USAV received from the USAV Transaction was the repayment of the loan under the USAV Loan Agreement.
- The parties filed prophylactic security agreements recognizing that the USAV Transaction may be recharacterized as a financing.
- USAV’s only remedy upon the occurrence of a “Trigger Event” under the RSPA is to demand the payment of USAV’s outstanding loan balance, plus administrative costs.

23. Accordingly, whether the Court applies New York or Colombian law, the economic reality of the USAV Transaction was not that of a sale, but that of a secured financing.

24. Accordingly, the Court should recharacterize the USAV Transaction as a financing.

**COUNT II**  
**(DECLARATION THAT DEFENDANT HAS NO INTEREST IN**  
**ESTATE PROPERTY PURSUANT TO SECTION 552)**

25. Plaintiffs restate and reallege the allegations in the preceding paragraphs as if fully set forth herein.

26. An actual controversy has arisen and now exists between USAV and the Debtors as to whether USAV's prepetition security interests extend to the Credit Card Receivables. *See* 28 U.S.C. § 2201.

27. Section 552 of the Bankruptcy Code mandates that property acquired by the debtor's estate after the commencement of a bankruptcy case is not subject to a prepetition lien unless the property constitutes proceeds, products, offspring, or profits of the prepetition collateral. Section 552(a) states, in relevant part:

Except as provided in subsection (b) of this section, property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.

11 U.S.C. § 552(a). Section 552(b) states, in relevant part:

. . . if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, products, offspring, or profits of such property, then such security interest extends to such proceeds, products, offspring, or profits acquired by the estate after the commencement of the case to the extent provided by such security agreement and by applicable nonbankruptcy law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

11 U.S.C. § 552(b).

28. The Credit Card Receivables (and any proceeds thereof) constitute property acquired by the Debtors' estate after the commencement of these chapter 11 cases. In accordance with section 552 of the Bankruptcy Code, USAV has no security interest in the Credit Card Receivables unless USAV was granted a security interest in the proceeds, products, offspring, or profits of the prepetition collateral, and unless the Credit Card Receivables constitute proceeds, products, offspring, or profits of the prepetition collateral.

29. In the case of the Costa Rican Back-Up Security Agreement, USAV was not granted a secured interest in any proceeds. Thus, section 552(b) of the Bankruptcy Code is inapplicable.

30. Although the Colombian Back-Up Security Agreement grants a security interest in “Proceeds” of the collateral listed therein, “Proceeds” is not defined therein. Therefore, what constitutes “Proceeds” is determined by Colombian law. Under Colombian Law 1676 of 2013, which regulates guarantees over moveable assets in Colombia, a grantor can pledge any assets or money received from the substitution, transformation, or transfer of the assets that are pledged as collateral (*bienes derivados y atribuibles*). Thus, Colombian law recognizes that proceeds are limited to situations in which collateral is transformed into another form of property. Here, the collateral pledged under the Colombian Back-Up Security Agreement is not being substituted or transformed into another form of property. Rather, *new* property is being created through the Debtors’ labor in generating Credit Card Receivables. Thus, section 552(b) is inapplicable.

31. For these reasons, the Court should declare that USAV does not have any security interest in the Credit Card Receivables (and the proceeds thereof) pursuant to section 552 of the Bankruptcy Code.

### **RELIEF REQUESTED**

**WHEREFORE**, Plaintiffs respectfully request that the Court enter a judgment: (i) recharacterizing the USAV Transaction as a secured financing; and (ii) declaring, pursuant to section 552(a) of the Bankruptcy Code, that USAV has no security interest in the Credit Card Receivables.

Dated: June 23, 2020

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:	)	
	)	Chapter 11
AVIANCA HOLDINGS S.A., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 20-11133 (MG)
Debtors.	)	
	)	Jointly Administered
	)	
	)	Re: D.I. 306

**USAVFLOW LIMITED'S OBJECTION AND RESERVATION OF  
RIGHTS TO DEBTORS' MOTION FOR ENTRY OF AN ORDER  
AUTHORIZING REJECTION OF CERTAIN EXECUTORY CONTRACTS [D.I. 306]**

<sup>1</sup> The Debtors in these chapter 11 cases, and each Debtor's federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int'l Enterprises, Inc. (59- 2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



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USAVflow Limited (“USAV”), a party in interest in the above-captioned Chapter 11 cases (the “Chapter 11 Cases”), in support of its objection and reservation of rights (the “Objection”) concerning the *Debtors’ Motion for Entry of an Order Authorizing Rejection of Certain Contracts* (the “Motion”)<sup>2</sup> [D.I. 306], respectfully states as follows:

### **PRELIMINARY STATEMENT**

1. Through the Motion the debtors (the “Debtors”) misuse section 365 of the Bankruptcy Code to try to repatriate Contract Rights and Receivables (both defined below) that they already sold to USAV in 2017. The Debtors’ right to reject executory contracts, however, is not an avoidance power and does not permit them to reacquire property they previously sold. The Contract Rights and Receivables are not property of the Debtors’ Chapter 11 estates, and no provision of the Bankruptcy Code permits them to become property of the estates.

2. First, the Sale Agreements (defined below) that the Debtors seek to reject are no longer executory. The Debtors sold the Contract Rights and Receivables to USAV at the December 12, 2017 closing of the sale transactions. The Debtors have no further salient obligations under the Sale Agreements; certainly none so far unperformed that failure to do so would constitute a material breach by the Debtors of the Sale Agreements.

3. Second, USAV’s obligation to pay additional consideration for the rights it purchased, if any, does not make the Sale Agreements executory. It is black letter law that a non-debtor counterparty’s or even a debtor’s mere obligation to pay money where the counterparty has already performed its obligations is not executory within the meaning of section 365 of the Bankruptcy Code.

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<sup>2</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

4. Third, the Debtors cannot end run section 365 and its applicable law indirectly by bootstrapping the Sale Agreements to another agreement or two that that may be executory. This is not a situation where the parties placed into separate agreements mutually interdependent bilateral obligations, ones that cannot exist without the others, such that the Court must read the agreements as indivisible parts of a unitary whole. Here the related agreements the Debtors try to access are merely related to the sale transaction that closed in 2017, and these agreements operate separately, independently, and serve distinct purposes. The breach of one of these agreements does not breach the executed Sale Agreements nor rescind the transaction evidenced thereby.

5. Fourth, under controlling United States Supreme Court precedent, *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652 (2019), even if the Debtors could reject the already closed Sale Agreements, this “rejection” would merely constitute a breach of the agreement, not its rescission, and would not result in the recovery of the sold Contract Rights and Receivables.

6. Accordingly, USAV respectfully submits that the Court must deny the Motion.

### **BACKGROUND**

#### **A. The USAV Agreements.**

7. On December 12, 2017, the Debtors entered into several agreements with USAV (the “USAV Agreements”) including among others: (i) the Contract Rights and Receivables Sale, Purchase and Servicing Agreement (the “RSPA”); (ii) the Receivables Maintenance Agreement (the “Undertaking Agreement”); and (iii) the RSPA Assignment of Rights Agreement (the “Assignment Agreement”) (together, the “Assignment and Transfer Agreements”).

8. In connection with the execution of the USAV Agreements, the Debtors’ special counsel, Gomez-Pinzón Abogados S.A.S., issued an opinion to Debtor Avianca and to USAV regarding the irrevocable sale and title-transferring legal effect of the USAV Agreements under

Colombian law (the “Colombia Law Opinion”), attached hereto as **Exhibit A**. Among other matters, Colombian counsel opined that:

- “[T]he sale and transfer of the Receivables and the Contract Rights under the RSPA (and the right to receive all present **and future** Collections as a consequence of the exercise of such Contract Rights under the Card Processing Agreements) **constitutes a valid and irrevocable sale and transfer of the Receivables and the Contract Rights existing on the date of execution of the RSPA**. As a consequence of such sale and transfer, **the Purchaser has the right to receive all future Collections derived from the exercise of such Contract Rights.**” *See Colombia Law Opinion*, at ¶ 8 (emphasis added).
- “Upon the sale and transfer to the Purchaser of the Contract Rights and the sale and transfer of the Receivables pursuant to the RSPA and the Notice and Consents, **the Receivables and the Contract Rights (and the right to receive all present and future Collections as a consequence of the exercise of such Contract Rights under the terms of the Card Processing Agreements) will not constitute right or property, as the case may be, of the Seller.**” *See id.* at ¶ 9 (emphasis added).

**B. The Flight Impairment Trigger Event and Bankruptcy.**

9. The RSPA lists a number of conditions that constitute “Trigger Events,” the occurrence of which result in a number of consequences. *See RSPA* § 6.01. For instance, a Trigger Event occurs where “the capacity or ability of the Seller to operate domestic and/or international flights is materially impaired for any reason” (a “Flight Impairment Trigger Event”). *RSPA* §

6.01(i)(i). Upon the occurrence of a Trigger Event, one consequence is that “no Additional Purchase Price shall be paid during the continuance of . . . a Trigger Event.” *RSPA* § 3.01(a)(ii).<sup>3</sup>

10. A Flight Impairment Trigger Event occurred when the Debtors’ planes were grounded at the beginning of the COVID crisis. *See Declaration of Adrian Neuhauser in Support of Chapter 11 Petitions and First Day Pleadings* [D.I. 20] ¶ 7 (the “First Day Declaration”). Consequently, the Debtors’ rights to any Additional Purchase Price terminated automatically. *RSPA*, § 3.01(a)(ii).

11. On May 10, 2020, the Debtors filed petitions under chapter 11 of the Bankruptcy Code. On June 23, 2020, the Debtors filed the Motion seeking to reject all of the USAV Agreements by asserting they are “intertwined,” with most if not all being executory contracts, and that therefore they all could be rejected as executory. The Debtors further and remarkably assert that if permitted to reject the USAV Agreements, the Court could divest USAV of the Contract Rights and Receivables that the Debtors “irrevocably” sold to USAV three years ago. *Motion*, ¶ 37.<sup>4</sup>

**C. The Relationships among the USAV Agreements.**

12. Each of the USAV Agreements has a separate and distinct purpose. In particular, as the Debtors acknowledge, the RSPA is a sale agreement pursuant to which Avianca irrevocably sold its rights to future credit card receivables (the “Receivables”) and associated contract rights (the “Contract Rights”) under a credit card processing agreement between Avianca and Credomatic and a credit card processing agreement between Avianca and AMEX (together, the

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<sup>3</sup> “Additional Purchase Price” are amounts payable to the Seller under the RSPA subject to the satisfaction of various conditions, including that no Trigger Event be continuing. *RSPA* §§ 1.01, 3.01(a).

<sup>4</sup> The Debtors have also commenced an adversary proceeding seeking to recharacterize the transactions described in the Motion as a financing. However, the relief sought in the Motion is premised on the validity of the sale transaction as set forth in the RSPA. *Motion*, ¶ 1, nt. 2.

“Card Processing Agreements,” and, with the Contract Rights, and Receivables, the “Contract Rights and Receivables”). Credomatic and AMEX agreed, among other things, to pay Avianca for sales, including future sales, made by travel agencies in the United States of Avianca’s airline tickets and related services purchased in the United States with Visa or Mastercard credit cards and American Express credit cards, respectively. *Motion*, ¶ 12. The purchase price under the RSPA was \$150 million plus the Additional Purchase Price as such term is defined in the RSPA. *Motion*, ¶ 12 (citing *RSPA* § 3.01(a)).

13. Under the Assignment Agreement, Avianca agreed to assign to USAV its interests in its Card Processing Agreement with Credomatic in exchange for the purchase price paid under the RSPA. Similarly the Debtors transferred to USAV the Contract Rights and Receivables under the AMEX Card Processing Agreement through a notice and consent (the Amex Notice, together with the Assignment Agreement, the “Assignment and Transfer Agreements”). *Motion*, ¶ 29.

14. Avianca has already fully performed its obligations under the RSPA and the Assignment and Transfer Agreements by selling the Contract Rights and Receivables to USAV. Now, three years later, there simply is nothing left for Avianca to do to complete the irrevocable sale of this property.

15. Separately, Avianca does have certain ongoing obligations under other USAV Agreements. For example, under the Undertaking Agreement, Avianca agreed to carry out certain duties and responsibilities as a servicer of the Contract Rights and Receivables. *See Motion*, ¶ 16. As such, Avianca has an ongoing responsibility to USAV concerning late and delinquent receivables, including to collect USAV-owned receivables so that they can be delivered to USAV. The Undertaking Agreement operates separately and has a different purpose from the Sale Agreements. It is not a title transferring agreement, it is a collection agreement. It can and does

operate separately from the fully executed Sale Agreements. Thus, though related, the agreements are not legally indivisible such that the breach or nonperformance of the Undertaking Agreement implicates the three-year old sale to USAV.

### **OBJECTION**

16. The RSPA and the related Assignment and Transfer Agreements (together, the “Sale Agreements”) are separate and distinct from the other USAV Agreements. The Sale Agreements have been fully executed. Avianca has fully performed all of its material obligations under the Sale Agreements. The Debtors can no longer “reject” the fully executed Sale Agreements under section 365 of the Bankruptcy Code. The Debtors cannot now rescind the Sale Agreements or repatriate the Contract Rights and Receivables that the Debtors sold to USAV in 2017. As the Debtors’ Colombian counsel opined, the Debtors irrevocably sold the Contract Rights and Receivables to USAV, and they are no longer the Debtors’ property.

#### **A. The Sale Agreements are not Executory Contracts.**

17. A sale agreement in which the seller has fulfilled its obligation to sell its assets is not an executory contract even if the buyer still has obligations, such as payment of the full purchase price. *In re Sjoquist*, 484 B.R. 207, 216 (Bankr. C.D. Cal. 2012). This is because an agreement is only executory when ***both parties*** have unfulfilled material obligations. *See In re Penn Traffic Co.*, 524 F. 3d 373, 379 (2d Cir. 2008) (cited in Motion, ¶ 23). Here, the Debtors fulfilled all of their material obligations by irrevocably conveying the Contract Rights and the Receivables to USAV. As such, the Sale Agreements are not executory.

#### ***a. Sale of a Contract Right for Future Benefits is Non-Executory.***

18. Courts treat agreements whereby the Debtors sell future rights and obligations related to receivables the same as any other consummated sale agreement; that is, they are non-executory where, as here, one side’s material obligations are fulfilled. In *In re DMR Fin. Servs.*,



*Inc.*, 274 B.R. 465, 472 (Bankr. E.D. Mich. 2002), the Court held that a contract between the Chapter 11 debtor, as mortgage servicer, and the purchaser of the debtor's servicing rights was a contract for sale of debtor's servicing rights and "[Purchaser] MVB became 'entitled to all the rights and benefits of the Servicing' on the Sale and Transfer date. On that same date, MVB 'assume[d] the obligations to service the portfolio[s]....' Thus, on the Sale and Transfer date, ownership of the servicing rights became fixed in MVB, more than a year before Debtor filed its petition for relief." *Id.* The Court further added that "[t]his sale cannot be undone through rejection of the Agreement" and that the contract-at-issue was not executory. *Id.* The Court emphasized that the ownership of the services rights had become "fixed" in the purchaser upon consummation of the sale; the debtor could not "regain them through rejection," and "rejection [would] not relieve Debtor of any future obligations, burdensome, substantial or otherwise." *Id.*, at 473-4. Other courts evaluating similar transactions have come to the same conclusion. *See also In re Charge Trucking, Inc.*, 236 B.R. 620, 625 (Bankr. E.D. Tex. 1999) (receivables agreement between bank and debtor, whereby sold Bank accounts receivable up to \$100,000, is not an executory contract).

19. Here, the Sale Agreements memorialize a straightforward executed sale transaction. In December 2017, USAV paid the Debtors \$150 million, have since paid many millions more, and undertook the obligation to make the Additional Purchase Price payments in exchange for ownership of the Contract Rights and Receivables. Under applicable Colombian law (and New York law), at closing USAV became the irrevocable owner of the Contract Rights and Receivables. *See Colombia Law Opinion*, ¶¶ 8, 9. As in *DMR*, the sale of the future rights and benefits fulfills at least one party's material obligation under the RSPA, rendering the Sale Agreements non-executory and not eligible for rejection.

**b. USAV's Purported Obligation to Pay does not Make that Contract Executory.**

20. The Debtors cite the Additional Purchase Price payments as USAV's primary unfulfilled obligation. *See Motion*, ¶ 27. As a preliminary matter, USAV is no longer required to make these payments. The obligation to make any Additional Purchase Price payments ended no later than March 31, 2020 upon the Flight Impairment Trigger Event.<sup>5</sup> *See Motion*, ¶ 14. Indeed, the Debtors themselves submitted an affidavit attesting that "pursuant to the terms of the USAV Agreements, USAV currently has no obligation to pass the proceeds of any credit card receivables to Avianca." *Declaration of Adrian Neuhauser in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts* [D.I. 306-1], ¶ 6. As such, USAV did not have any payment obligations to the Debtors on the Petition Date. *See COR Route 5 Co., LLC v. Penn Traffic Co.*, 524 F.3d 373, 381 (2d Cir. 2008) (executoriness generally determined as of petition date).

21. The Sale Agreements would not have been executory even had this payment obligation subsisted. Courts routinely hold that the obligation to make future monetary payments does not make a contract executory. In fact, a payment obligation is evidence that the Sale Agreements are non-executory and that there is no basis for rejection.<sup>6</sup> *In re Ideal Mortg. Bankers, Ltd.*, 539 B.R. 409, 437 (Bankr. E.D.N.Y. 2015), *aff'd sub nom. Holzer v. Barnard*, No. 15-CV-6277 (JFB), 2016 WL 4046767 (E.D.N.Y. 2016) (under the Countryman test, "executory contracts

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<sup>5</sup> There is no record of the Debtors requesting a waiver of the Flight Impairment Trigger Event, as they have done on several occasions with respect to previous Trigger Events. The Debtors did not respond to the associated March 31 notice whatsoever.

<sup>6</sup> The Debtors also make the unsupported argument that USAV's obligation to maintain books and records pursuant to Cayman Islands law is a material obligation. *Motion*, ¶ 27. The Debtors have cited no authority, and USAV has found none, that a Cayman law books and records maintenance obligation is so material that, if unperformed (and it has been performed), that breach would allow the Debtors to undo a fully executed sale transaction from 2017.

exclude those contracts where one party has completed performance and the only performance that remains is the payment of money by the other party.”); *see also In re Drake*, 136 B.R. 325, 327 (Bankr. D. Mass. 1992) (finding that when sole remaining obligation is a series of installment payments, the contract is not executory); *Sjoquist*, 484 B.R. at 216 (future payments connected to original sale transaction may just be an allocation of the purchase price; contract found non-executory). And the Debtors concede as much. *See Motion*, ¶ 27 (“...courts have found that contracts are not executory where the only remaining obligation is the payment of one party (and the other party has fully performed”).

***c. Moreover, the Sale Agreements are not Executory Contracts because only One Party Allegedly has a Remaining Unfulfilled Material Obligation.***

22. Courts uniformly hold that when only one party to an agreement has an unfulfilled material obligation, the agreement is non-executory. *In re Chateaugay Corp.*, 102 B.R. 335, 348 (Bankr. S.D.N.Y. 1989) (finding contract to be non-executory because “both parties” do not have unfulfilled obligations, as one party has only “remote, contingent or *de minimus*” obligations); *In re Calpine Corp.*, No. 05-60200 (BRL), 2008 WL 3154763, at \*4; (Bankr. S.D.N.Y. Aug. 4, 2008) (citing *In re Digicon, Inc.*, 71 Fed. Appx. 442 (5th Cir. 2003) (“A contract is not executory if the only performance required by one side is the payment of money.”). As such, a contract is not executory when “there is no performance remaining due from [Debtor] Calpine under the Loan Agreement” and only certain monies are sought in connection with the agreement))(quotations omitted). *Id.*; *see also In re Cont'l Airlines, Inc.*, 154 B.R. 172, 175 (Bankr. D. Del. 1993) (“An

‘executory contract’ does not exist where, as here, the non-debtor party has completed performance.” (citation and quotations omitted).<sup>7</sup>

23. The Debtors have no remaining material obligations. A court will only evaluate whether “material” obligations remain unfulfilled in deciding whether a contract is executory. *See Sjoquist*, 484 B.R. at 213: “Courts have defined ‘material performance’ as ‘the essence of what the other party sought and expected when he entered into the ... Agreement, and without it, the party will lose the benefit of the bargain that he thought he had struck.’” (citing *In re WorldCom*, 343 B.R. 486, 496–97 (Bankr. S.D.N.Y. 2006) (quoting *Teligent*, 268 B.R. at 730–31)). In a similar vein, material performance has been defined as the ‘bargained for’ objective or consideration. *See, e.g., In re Conseco, Inc.*, 2005 WL 2737507 at \*5, 2005 U.S. Dist. Lexis 24584 at \*15 (N.D. Ill. 2005), *aff’d* 458 F.3d 573 (7th Cir. 2006) (applying Indiana law); *In re Waldron*, 36 B.R. 633, 637 (Bankr. S.D. Fla. 1984).

24. The Debtors argue that Avianca has a material obligation to generate receivables to maintain a Collections Coverage Ratio of 1.75:1.00 (*see Motion*, ¶ 26 (citing *RSPA* §§ 6.01(a), 6.01(b))). However, a plain reading of the *RSPA* indicates that failure to maintain this ratio is not an “obligation” that can give rise to a “breach” of the *RSPA*, much less a material obligation. Rather, under *RSPA* Sections 6.01 and 6.02, Avianca’s failure to maintain the ratio suspends USAV’s obligation to pay the Additional Purchase Price. The Debtors’ failure to satisfy this *RSPA* condition does not equate to failing to satisfy a material obligation. Accordingly, the Debtors’ lack of an unperformed material obligation proves the Sale Agreements as non-executory.

25. Courts are careful to distinguish between an *obligation* that if unfulfilled results in

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<sup>7</sup> *See also In re Teligent, Inc.*, 268 B.R. 723, 732 (Bankr. S.D.N.Y. 2001) (“...if **both** parties have substantial, unperformed obligations, the contract is executory even though the uncompleted obligation of one of the parties only involves the payment of money”) (emphasis added; citation omitted).

the material breach of an agreement (indicating the agreement is executory) and a *condition* that if unfulfilled merely excuses the counterparty's performance and does not result in a material breach of the agreement (indicating the agreement is non-executory). *See In re Hawker Beechcraft, Inc.*, 486 B.R. 264, 276 (Bankr. S.D.N.Y. 2013):

In applying Countryman's "material breach" test [whereby both agreement parties having unfulfilled obligations that result in a material breach and a finding that the contract is executory], one must distinguish between a failure of condition and a breach of duty. 'Non-occurrence of a condition is not a breach by a party unless he is under a duty that the condition occur.' RESTATEMENT (SECOND) OF CONTRACTS § 225(3) (1981)...Thus, "while a contracting party's failure to fulfill a condition excuses performance by the other party whose performance is so conditioned, it is not, without an independent promise to perform the condition, a breach of contract subjecting the nonfulfilling party to liability for damages.' (citing *Merritt Hill Vineyards, Inc. v. Windy Heights Vineyard, Inc.*, 61 N.Y.2d 106, 472 N.Y.S.2d 592)

26. Because the failure to maintain the Collections Coverage Ratio does not give rise to a breach, it is not an obligation that can make the contract executory. Rather, maintaining the coverage ratio is a condition to USAV's obligation to make payments of the Additional Purchase Price consideration and that obligation is suspended during periods when the Collection Coverage Ratio is not satisfied. *See In re Gencor Indus., Inc.*, 298 B.R. 902, 911 (Bankr. M.D. Fla. 2003) (Finding "[t]he failure of one party to fulfill a condition, merely excuses the performance of the other party." The Court explains "[A]lthough immaterial or conditional obligations may exist, there are no *material* obligations remaining to be performed under the settlement agreement. Both parties performed all material obligations when they executed the settlement agreement in 1994, Gencor paid \$1,200,000, and [counter-party] Standard granted Gencor the irrevocable license. The obligations [remaining] are not obligations at all. They are instead, conditions to payment, similar to the customer's right to receive payment in *Columbia Gas*." (citing *In re Columbia Gas Sys. Inc.*, 50 F.3d 233, 242-44 (3d Cir. 1995), where customer who executed a release could receive

settlement monies, but failure by the customer to execute the settlement documents would not result in a material breach because they were just conditions to payment)). *See also In re Level Propane Gases, Inc.*, 297 B.R. 503, 508 (Bankr. N.D. Ohio 2003), *aff'd*, 2007 WL 1821723 (N.D. Ohio 2007)(“... if the remaining obligations in the contract are mere conditions, as opposed to duties, then the contract cannot be executory for purposes of § 365 because no material breach could occur.”).

**d. *The Sale Agreements are Separate and Distinct from the other USAV Agreements.***

27. The Debtors next try to argue that, even if the Sale Agreements are non-executory, they must be viewed as part of a single indivisible agreement comprised of all of the USAV Agreements, rejectable on the strength of certain allegedly as of yet unfulfilled obligations in an ancillary agreement. Indeed, the Sale Agreements clearly operate independently from other USAV Agreements, with separate purposes and obligations. Courts hold that when several agreements are not mutually dependent on each other, the agreements must be viewed as separate and distinct from each other (even when they are found in the same document). As such, they cannot be combined and then assumed or rejected as one agreement pursuant to section 365. *See In re AbitibiBowater Inc.*, 418 B.R. 815, 827 (Bankr. D. Del. 2009) (citing *Arciniaga v. Gen. Motors Corp.*, 460 F.3d 231, 237 (2d Cir. 2006))(Two agreements cannot be viewed as a single agreement, and the debtors can reject one of two agreements when “the contracts were not mutually dependent, because one agreement would not end if the other agreement ‘fails.’”). Furthermore, when a consummated *sale agreement*, which is the central agreement and non-executory in nature, is combined with another potentially executory agreement, the result is that both agreements are characterized as non-executory, defeating the purpose of the section 365 motion: *In re Ecoventure Wiggins Pass, Ltd.*, 406 B.R. 123, 131 (Bankr. M.D. Fla.

2009)(Where Accommodation Agreement and Sale agreement had mutually dependent and interrelated obligations, and where sale agreement is not executory and cannot be terminated, Debtor cannot combine and assume the Agreements under section 365 [because both must be viewed as non-executory], nor may Debtor “sever the Purchase and Sale Agreement and assume only a portion of the parties' total agreement..”). These cases make clear: (1) if the terms and obligations of agreements are not mutually dependent, those agreements must be treated as separate agreements; and (2) when the movant seeks to combine the sale agreement with related agreements, the Court may actually hold that all the agreements are a single non-executory agreement, the opposite outcome to what the Debtors seek.

28. Here, the terms of the Sale Agreements are not mutually dependent on the terms of other USAV agreements. Instead, the Sale Agreements perforce concern a separate and distinct transaction from other USAV Agreements, and breach of one of these other Agreements does not halt performance of the Sale Agreements (which already have been performed). Multiple courts on virtually identical facts have held the servicing and sale components of an agreement, particularly when the agreement involves the sale and service of a group of loans, as separate and distinct from the already performed sale obligations. Notably, courts recognize that loan servicing obligations may be ongoing, while loan sale obligations are fulfilled. *See In re Am. Home Mortg. Holdings, Inc.*, 402 B.R. 87, 93 (Bankr. D. Del. 2009) (holding that a Master Mortgage Loan Purchase and Servicing Agreement “is severable into two agreements, one for the origination and sale of mortgage loans (the ‘*Loan Sale Agreement*’), and the other for the servicing of mortgage loans (the ‘*Loan Servicing Agreement*’),” where parties stipulated that Loan Servicing Agreement was non-executory, but Court did not address whether Loan Sale Agreement was executory or non-executory); *In re Cutters, Inc.*, 104 B.R. 886, 889 (Bankr. M.D. Tenn. 1989)(court determined



that a single document contained separate agreements regarding sale of assets and future mutual obligations to market certain inventory; the sale portion of the contract was substantially performed and non-executory while the marketing agreement was executory and rejectable).<sup>8</sup>

29. Here, the Undertaking Agreement and any related loan servicing agreements, which may or may not be executory in nature, are plainly separate and distinct from the Sale Agreements. Even if the Debtors have any further obligation to perform collection activities under the Undertaking Agreement, such obligations would have no impact on the Sales Agreements. And breach of the Undertaking Agreement does not constitute a breach of the Sales Agreement that would permit the Sale Agreements' rescission. Therefore, these separate Agreements, with distinct rights and responsibilities for each of the signatories, cannot be viewed as a single, undivided contractual relationship, and the Debtors cannot be allowed to characterize all of the USAV Agreements as executory when the Sale Agreements clearly are not.

***e. The Contract Rights and Receivables cannot be Returned to the Estates under Section 365 of the Bankruptcy Code.***

30. The Debtors also argue that they can reject the Sales Agreements under the “functional approach” because rejection would “ultimately benefit the estate and its creditors.” *See Ideal*, 539 B.R. at 437. The problem with relying on the functional approach to contract rejection in this instance is that there is nothing that the Debtors can take back from USAV – the Contract Rights and Receivables have been irrevocably sold and are now USAV's property. Rejection would deliver nothing to the estate. Indeed, when an agreement is deemed non-

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<sup>8</sup> Inasmuch as courts are clear that even a single document can contain multiple agreements, some executory and others non-executory, and that these agreements need not be assumed or rejected together, (*see, e.g., Title Guar. Co. v. Old Republic Nat. Title Ins. Co.*, 83 F.3d 735, 741–42 (5th Cir. 1996); *In re Gardinier, Inc.*, 831 F.2d 974, 975 (11th Cir. 1987)), it then is certainly the case that here, where the parties separated the executed and executory obligations into distinct agreements recognizing their different nature and purposes the Debtors cannot then try to combine them to make the executed contract executory and subject to rescission.

executory, rights pursuant to the contract will not be gained upon rejection: the “Court has ruled that the Sales Agreement is not an executory contract and so was not rejected by Trustee under § 365(d)(1). Nor would Debtor obtain rights to these contracts upon rejection.” *See Sjoquist*, 484 B.R. at 219. *See also In re Helm*, 335 B.R. 528, 537 (Bankr. S.D.N.Y. 2006) (“The key to deciphering the meaning of the executory contract rejection provisions, is to work backward, proceeding from an examination of the purposes rejection is expected to accomplish. If those objectives have already been accomplished, or if they can’t be accomplished through rejection, then the contract is not executory ...”) (citations and quotations omitted).

**B. Rejection Would Not Revest the Contract Rights and Receivables in the Estates.**

31. Rejection of the Sale Agreements would have no impact on the ownership of the Contract Rights and Receivables. The United States Supreme Court held and clarified in *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652 (2019) that rejection of an executory contract is merely a breach and does not reverse a transfer that has been completed under applicable law:

What is the effect of a debtor’s (or trustee’s) rejection of a contract under Section 365 of the Bankruptcy Code? Today, we hold that both Section 365’s text and fundamental principles of bankruptcy law command the first, rejection-as-breach approach. We reject the competing claim that by specifically enabling the counterparties in some contracts to retain rights after rejection, Congress showed that it wanted the counterparties in all other contracts to lose their rights...Rejection of a contract—any contract—in bankruptcy operates not as a rescission but as a breach.

*Id.* at 1661. *See also In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. 687, 709 (Bankr. S.D.N.Y. 1992)(citing Andrew, *Executory Contracts Revisited: A Reply to Professor Westbrook*, 62 U. Colo. L. Rev. 1, 16-17 (1991)(“Consistent with bankruptcy law’s general deference to state-law rights in or to specific property, rejection of a contract does not terminate such rights that arise from rejected contracts.”)).

32. The Debtors have acknowledged for the purpose of this motion that the Sale Agreements are true sales of the Contract Rights and the Receivables and that they would have to be successful in the pending adversary proceeding to recharacterize those transactions as something other than sales. Moreover, the Debtors' own Colombia Law Opinion states that the "irrevocable" sale of the Contract Rights and Receivables took place at the consummation of the Sale Agreements, leaving the Debtors nothing to re-acquire upon rejecting the Sale Agreements. The Contract Rights and Receivables are now beyond the Debtors' reach. *See Sjoquist*, 484 B.R. at 218: ("[t]he Sales Agreement is not an executory contract. Even if it were and the contract was deemed rejected by operation of law, rejection of that contract simply constitutes a breach as of the filing of the petition. Rejection is not abandonment by the estate and does not revest the Sales Agreement and rights thereunder in Debtor."); *see Drexel Burnham Lambert Grp., Inc.*, 138 B.R. 709: ("[R]ejection is not itself an avoiding power....") (quotation and citation omitted). As such, even if the Debtors could reject the Sale Agreements, they would not obtain what they seek – the Contract Rights and Receivables.

### **CONCLUSION**

33. The Sale Agreements are non-executory agreements and cannot be combined with other agreements to render them executory. The Debtors cannot use section 365 of the Bankruptcy Code to rescind a 2017 sale of assets for which it has received \$150 million and further millions over the last three years. USAV owns the Contract Rights and Receivables irrevocably. USAV respectfully requests that the Court enter an order denying the Motion and granting USAV such other and further relief as is just and proper.

Dated: July 22, 2020  
New York, New York

/s/ Sheron Korpus

Sheron Korpus

David S. Rosner

David J. Mark

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*Counsel for USAVflow Limited*

**EXHIBIT 14**

GÓMEZ-PINZÓN

25 AÑOS

Bogotá D.C., December 12, 2017

GPA-628-17

**USAVflow Limited**

as Purchaser

P.O. Box 1093GT, Queensgate House, South Church Street,  
Georgetown, Grand Cayman, Cayman Islands

**Citibank, N.A.**

as Administrative Agent and as Collateral Agent

388 Greenwich Street  
New York, NY 10013, USA

**Citibank, N.A., London Branch**, as Collateral Trustee

**Lenders**

Ladies and Gentlemen:

We have acted as special Colombian counsel to Aerovías del Continente Americano S.A. AVIANCA (the "Seller"), in connection with the execution of:

- (i) the Contract Rights and Receivables Sale, Purchase and Servicing Agreement, dated as of December 12, 2017 (the "RSPA"), between the Seller and USAVflow Limited, an exempted company incorporated in the Cayman Islands with limited liability (the "Purchaser");
- (ii) the Receivables Maintenance Agreement dated as of December 12, 2017 (the "Maintenance Agreement"), between the Seller and the Purchaser;
- (iii) the Cash Management Agreement, dated as of December 12, 2017 (the "Cash Management Agreement"), among the Seller, the Purchaser, Citibank, N.A. as Administrative Agent (in such capacity, the "Administrative Agent") and Citibank, N.A. as Collateral Agent (in such capacity, the "Collateral Agent");
- (iv) the Notice of Transfer, dated December 12, 2017 (the "Credomatic Notice of Transfer") from the Seller, Taca, Avianca, Inc., the Purchaser and the Collateral Agent to BAC International Bank, Inc. ("Credomatic");
- (v) the Consent and Agreement, dated December 12, 2017 (the "Credomatic Consent and Agreement") executed by Credomatic;
- (vi) the Notice and Consent, dated December 12, 2017 (the "Amex Notice and Consent") among the Seller, Taca, Avianca Costa Rica, TAA, Aviateca S.A.,

American Central Corporation, Lifemiles Corp., the Purchaser, Avianca, Inc., American Express Travel Related Services Company, Inc., American Express Payment Services Limited and Citibank, N.A;

- (vii) the Colombian Back-Up Security Agreement (*Contrato de Garantía Mobiliaria sobre Ingresos Futuros*), dated as of December 12, 2017, between the Seller and the Purchaser (the "Colombian Back-Up Security Agreement");
- (viii) the Mutual Assignment of Rights Agreement, dated December 12, 2017 (the "Mutual Assignment Agreement") among the Seller, Taca, and Credomatic; and
- (ix) the RSPA Assignment of Rights Agreement, dated December 12, 2017 (the "RSPA Assignment Agreement") between the Seller and the Purchaser.

The documents referred to in clauses (i) through (ix) above, inclusive, are referred to herein as the "Opinion Documents". This opinion is delivered to you pursuant to Section 2.02(b)(ii) of the RSPA. Terms defined in the RSPA are used herein as applicable and as therein defined, unless otherwise defined herein.

In connection with this legal opinion (the "Opinion"), we have examined signed copies, or conformed copies of each of the following documents:

- a. A copy of the executed version of the Opinion Documents;
- b. A copy of the certificate of existence and legal representation of the Seller, issued by the Chamber of Commerce of Barranquilla, dated as of December 6, 2017;
- c. A copy of the By-laws of the Seller updated as of May 9, 2017; and
- d. A copy of the Minute No. 2533 of the Board of Directors of the Seller, dated October 18, 2017.

We have examined such corporate records, certificates and other documents, and such questions of law, as we have considered necessary or appropriate for the purposes of this Opinion.

In stating our opinions expressed herein, we have assumed: (i) the genuineness of all signatures on original or certified copies submitted to us, (ii) the authenticity of documents submitted to us as originals and (iii) the conformity to original or certified copies of all copies submitted to us as certified or reproduction copies. We have also assumed, for the purposes of the opinions expressed herein, that, (i) each party to the Opinion Documents, other than the Seller, has the corporate power and authority to enter into and perform each of the Opinion Documents; (ii) the Opinion Documents have been duly authorized, executed and delivered by such party other than the Seller; and (iii) each party to each of the Opinion Documents other than the Seller has complied with all legal requirements applicable to such party under the laws of the applicable jurisdictions (other than Colombia) that are necessary to make the Opinion Documents enforceable against such party in accordance with its terms.



As to the factual matters, we have relied on the documents that we have examined and on the representations made therein.

Based upon the foregoing, we are of the opinion that:

1. The Seller is a company duly organized as a corporation (*sociedad anónima*), in good standing and validly existing under the laws of the Republic of Colombia.
2. The Seller has all requisite corporate power and authority to execute, deliver and perform its obligations under the Opinion Documents and to consummate the transactions contemplated thereby.
3. The execution, delivery and performance of the Opinion Documents by the Seller will not conflict with or constitute or result in a breach or violation of any of (i) the by-laws of the Seller or (ii) any statute, rule, regulation, order or any applicable law of the Republic of Colombia.
4. No approval, authorization, consent, order, registration or qualification under any laws of Colombia or approval, authorization, consent of or filing with any Colombian governmental or regulatory commission, board, body, authority or agency (other than those which have been obtained or made and are in full force and effect) is required for the execution, delivery and performance by the Seller of the Opinion Documents or for the consummation by the Seller of the transactions contemplated thereby.
5. The Opinion Documents are legal, valid and binding obligations enforceable against the Seller in accordance with their terms.
6. Upon execution and delivery of the RSPA by the Seller and the Purchaser, the Contract Rights and the Receivables with respect to the Specified Sales (hereinafter referred to as the "Contract Rights" and the "Receivables" respectively) were sold to the Purchaser.
7. Upon the execution and delivery of the Credomatic Notice of Transfer, the Credomatic Consent and Agreement and the AMEX Notice and Consent by the parties thereto, the Contract Rights arising under the Credomatic Contract and the AMEX Contract were transferred to the Purchaser.
8. The sale and transfer of the Receivables and the Contract Rights under the RSPA (and the right to receive all present and future Collections as a consequence of the exercise of such Contract Rights under the Card Processing Agreements) constitutes a valid and irrevocable sale and transfer of the Receivables and the Contract Rights existing on the date of execution of the RSPA. As a consequence of such sale and transfer, the Purchaser has the right to receive all future Collections derived from the exercise of such Contract Rights. After such sale and transfer, the Purchaser will have good title to the Contract Rights, and such title shall be free and clear of any liens (other than liens created pursuant to the Opinion Documents). Upon execution and delivery of the RSPA, no other action will be required to effectuate the sale and transfer of the Receivables and the Contract Rights from the Seller to the Purchaser, other than the execution of the Notice and

Consents, for purposes of complying with the provisions of the Card Processing Agreements and Colombian laws.

9. Upon the sale and transfer to the Purchaser of the Contract Rights and the sale and transfer of the Receivables pursuant to the RSPA and the Notice and Consents, the Receivables and the Contract Rights (and the right to receive all present and future Collections as a consequence of the exercise of such Contract Rights under the terms of the Card Processing Agreements) will not constitute right or property, as the case may be, of the Seller. As of the date thereof, there are no specific laws or, to the best of our knowledge, after due research, precedents, providing that, upon the existence of any bankruptcy or similar proceeding involving the Seller, (i) the sale and transfer of the Contract Rights, as proposed to be conducted by the Seller, should not be recognized and upheld; or (ii) such Contract Rights should not be part of the Seller's estate during any of such proceedings.

Therefore, it is our opinion that (i) the RSPA is a true, definitive and final transfer of the Contract Rights to the Purchaser; (ii) in any reorganization proceeding in Colombia involving the Seller, neither the Seller nor any other Person (including any Governmental Authority) should have the right to direct that payments under the Contract Rights (and the right to receive all present and future Collections, as a consequence of the exercise of such Contract Rights under the terms of the Card Processing Agreements) be placed under the direction or control of the Seller or any other Person prior to, on or after such reorganization proceeding involving the Seller; and (iii) the assignment of Contract Rights should not be capable of being set aside or invalidated at the instigation of the Seller, any creditor of the Seller or any other person (including any *síndico*, promoter, liquidator, trustee, receiver or similar official with respect to the Seller), pursuant to any Colombian proceeding, including an *acción revocatoria* under Colombian laws.

10. The Colombian Back-Up Security Agreement creates in favor of the Purchaser a legal, valid and binding and enforceable security interests over the Contract Rights or Receivables specified therein upon the acquisition of such Contract Rights or Receivables by the Seller. Upon the registration before the unified registry of liens over movable assets (*Registro de Garantías Mobiliarias*), the Colombian Back-Up Security Agreement will be recognized as a first priority lien in favor of the Purchaser enforceable vis-à-vis third parties upon the acquisition of such Contract Rights or Receivables by the Seller.
11. If the Contract Rights are transferred to the Seller during the course of a reorganization proceeding pursuant to Law 1116 of 2006, or upon the failure of any court to recognize the transfer of such rights to the seller pursuant to the RSPA, the security interest created under the Colombian Back-Up Security Agreement in favor of the Purchaser in connection therewith should be recognized by a bankruptcy court in Colombia for purposes of granting payment priority to the Purchaser over the Contract Rights or Receivables subject to such agreement, according to Colombian laws, *provided*, however, that during the course of a reorganization proceeding pursuant to Law 1116 of 2006, all security interests are suspended pursuant to the provisions thereof (which means that the secured party may not enforce such security interest during the pendency of any such reorganization proceeding as further described below); and, *provided*, further that

the Contract Rights or Receivables will be deemed to be isolated from the liquidation estate of the Seller for the benefit of the Purchaser if at the time of a liquidation proceeding, such Credit Rights or Receivables are the property of the Seller.

12. None of the Purchaser or the other parties to the Opinion Documents will be deemed to be resident, domiciled, carrying on business or subject to taxation in Colombia solely by reason of the execution, delivery, performance or enforcement of the Opinion Documents, assuming that such person is not domiciled or is a resident of Colombia or has a permanent establishment in Colombia.
13. It is not necessary in order to enable the Purchaser or any other party to the Opinion Documents to enforce its respective rights under the Opinion Documents that it should be domiciled, resident, licensed, qualified or entitled to carry on business in Colombia.
14. As a general rule, no fees or taxes, including, without limitation, stamp, transaction, or similar fees and taxes, are required to be paid in Colombia for the legality, validity, or enforceability of the Opinion Documents, except for the expenses resulting from the registration of the Colombian Back-Up Security Agreement in the registry of liens over movable assets (*Registro de Garantías Mobiliarias*).
15. Each of the Opinion Documents is in proper legal form under the laws of Colombia and any political subdivision thereof or any authority or agency therein for the enforcement thereof, and except as otherwise expressed in this opinion, to ensure the legality, validity, enforceability or admissibility in evidence in Colombian courts of the Opinion Documents, it is not necessary that such documents be filed or recorded with any court or other authority in Colombia, or that any stamp, registration or similar tax or duties to be paid to any court, authority or agency of Colombia or any political subdivision thereof; *provided, however*, that in the event that a legal proceeding is brought before the courts of Colombia, a Spanish translation prepared and stamped by a court approved translator of any such documents will be required in such proceeding.
16. Subject to the qualifications set forth below, the choice of law of the State of New York as the governing law of the Cash Management Agreement is a valid choice of law under the laws of Colombia, and the courts of Colombia will honor this choice of law. The irrevocable submission of the Seller to the jurisdiction of the courts specified in Section 3.08(b) of the Cash Management Agreement and the appointment of National Registered Agents, Inc, (the "Agent") as the agent for service of process in any suit or proceeding based on or arising under the Cash Management Agreement in any federal or state court in the State of New York or any United States federal court sitting in the Borough of Manhattan, New York City, New York, United States, is valid and enforceable under Colombian law and would be recognized by the courts of Colombia. The Seller has the requisite corporate power and authority to designate, appoint and empower the Agent.

17. The courts of Colombia would give effect to and enforce a final judgment rendered by any court of the State of New York or any courts outside of Colombia through a procedural system provided for under Colombian law known as "*exequatur*", subject to the provisions of Article 605 of the Colombian General Code of Procedure which requires that there be reciprocity in the recognition of foreign judgments between the courts of the relevant jurisdiction and the courts of Colombia and subject to compliance with provisions of Articles 606 and 607 of the Colombian General Code of Procedure.
18. Subject to the qualifications described below, the irrevocable agreement in the RSPA and the Undertaking Agreement to resolve disputes through arbitration under the arbitration rules of the International Chamber of Commerce by an arbitration panel whose legal seat is Miami, is valid under the laws of Colombia and will be recognized and enforced by the courts of Colombia.
19. Subject to the qualifications expressed below, an arbitral award obtained against the Seller in an arbitration proceeding will be recognized and enforceable by the courts in Colombia without reconsideration on the merits.
20. The Seller is not entitled to claim any immunity from suit or execution of any judgment on the ground of sovereignty or otherwise.

This Opinion is subject to the following qualifications:

- (i) For purposes of this Opinion, the indication that is in "good standing" means that: (a) such company has been properly incorporated and registered with the Chamber of Commerce of its main place of business (hereinafter, the "Registry"); (b) such company has been, as evidenced by the information available to us at the Registry, in continuous legal existence since its date of establishment in Colombia; and (c) that there are no documents filed with the Registry revealing the dissolution or liquidation of such company.
- (ii) The enforcement of the Opinion Documents may be limited by applicable laws relating to the enforcement of creditors' rights generally.
- (iii) During the course of a Law 1116 of 2006 reorganization proceeding, secured creditors are not allowed to enforce the security interests granted by the debtor-in-default and, in the case of cash collateral, they are not entitled to isolate the pledged cash nor to have exclusive benefit from the same.
- (iv) The enforcement of the Opinion Documents may be limited: (a) by articles 823 of the Colombian Code of Commerce and 251 of the General Code of Procedure, and those provisions which complement, amend or replace such legislation, pursuant to which any proceeding in Colombia requires that an official translation into Spanish be the basis for enforcement; in any event of a disagreement over the meaning of the translation, the official Spanish translation will govern rather than the original English text for purposes of such proceeding; and (b) by applicable laws pursuant to which indemnification provisions are not enforceable if there has been gross negligence or willful misconduct from the indemnified party.

(v) The enforcement of the Opinion Documents may be limited: (a) by statute of limitations limiting the period for commencement of actions in Colombia; (b) by applicable laws pursuant to which indemnification provisions are not enforceable if there has been gross negligence or willful misconduct by the indemnified party; and (c) by the requirement that, in any proceeding filed, commenced or brought to a court in Colombia, service of process or notice to the parties will be made in accordance with the provisions of the General Code of Procedure and subject to the limitation that contractual provisions regarding service of process will not be enforceable.

(vi) Under the laws of Colombia, the choice of the law of the State of New York as the governing law to the Cash Management Agreement would be recognized subject to the proof of the provisions of the applicable law of the State of New York in the manner provided for in such proceedings in Colombia. In any proceeding in Colombia to enforce a document subject to the law of the State of New York, the court would interpret the provisions of such document by reference to law of the State of New York provided that the provisions of law of the State of New York do not violate the public order Laws of Colombia.

(vii) The courts of Colombia would give effect to and enforce a final judgment rendered by any court of the State of New York or any courts outside of Colombia through a proceeding provided for under Colombian law known as "*exequatur*", subject to the provisions of Article 605 of the Colombian General Code of Procedure, which requires that there be reciprocity in the recognition of foreign judgments between the courts of the relevant jurisdiction and the courts of Colombia, and subject to compliance with the provisions of Article 606 and 607 of the Colombian General Code of Procedure. The pertinent provisions of Articles 606 and 607, as they would affect a judgment obtained in a foreign court are as follows: (a) the foreign judgment filed in Colombia for recognition does not refer to in rem rights vested on assets which were located within Colombian territory at the time of the commencement of the proceedings in the foreign court which issued the judgment; (b) the foreign judgment filed in Colombia for recognition does not contravene or conflict with Colombian public policy rules, other than procedural laws; (c) the foreign judgment is final and not subject to appeal in accordance with the laws of the country in which it was obtained; (d) a duly legalized copy of the foreign judgment (together with an official translation into Spanish, if the judgment is issued in a foreign language) has been filed before the competent court in Colombia; (e) no proceedings are pending in Colombia with respect to the same matter and no final judgment has been awarded in any proceeding in Colombia on the same matter; (f) in the proceedings commenced in the foreign court which issued the judgment, the defendant was served process in accordance with the law of such foreign jurisdiction and was given a reasonable opportunity to defend itself against the action; (g) the foreign judgment does not refer to any matter upon which Colombian courts have exclusive jurisdiction; and (h) the *exequatur* requirement has been observed.

(viii) Bankruptcy proceedings, composition, liquidation, creditor's arrangements proceedings, annulment of corporate resolutions, repossession, and proceedings in connection with *in rem* actions over assets located in Colombian territory are under the exclusive jurisdiction of Colombian courts.



(ix) The United States of America and Colombia do not have any bilateral treaty providing for reciprocal recognition and enforcement of judgments in civil and commercial matters, but the Supreme Court of Colombia has accepted that reciprocity exists when it has been proven either that a United States court has enforced a Colombian judgment or that a United States court would enforce a foreign judgment including a judgment issued by a Colombian court.

(x) In any proceeding in Colombia, service of notice to the parties thereto must be made in accordance with the provisions of the Colombian General Procedure Code. Contractual provisions regarding service of notice procedures will not be enforceable with respect to any proceeding in Colombia.

(xi) In order for a foreign arbitral award to be enforceable in Colombia, it must be recognized in accordance with Law 1563 of 2012, Articles 111 through 116, pursuant to which a complaint for the recognition of a foreign arbitral award must be filed before Colombia's Colombian Supreme Court.

(xii) Article 111 of Law 1563 of 2012 provides for the recognition and enforcement of international arbitral awards by Colombian courts, unless the party against whom recognition is being invoked proves one of the following grounds for denying recognition of the arbitral award set forth in Article 112 of Law 1563 of 2012:

(A) the party against whom the arbitration award was rendered proves that: (a) at the time of execution of the arbitration agreement such party was affected by some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or (b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or (c) the award deals with a difference not contemplated by the arbitration agreement or contains decisions on matters beyond the scope of the submission to arbitration; or (d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or (e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which it was made; or

(B) the competent judicial authority evidences that: (a) according to Colombian law, the issue in controversy is not subject to settlement by arbitration; or (b) the recognition or enforcement of the arbitration award conflicts with the international public order laws of Colombia.

If an application for the setting aside or suspension of the award has been made to a competent authority in the seat of the arbitration, the Colombian judicial authority may, if it so considers appropriate, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

(xiii) In the event the Seller enters into an insolvency proceeding, and the available assets are insufficient to cover the liabilities or have a negative effect on any of the

lenders or affected the payment order, a challenge can be brought against transactions of the respective insolvent entity that were entered into within eighteen (18) months prior to the insolvency, including against the RSPA. For the challenge to succeed the claimant must evidence that the acquirer or contracting party acted in bad faith, which in certain judicial precedents has been understood as the previous knowledge by the acquirer or contracting party of the possible insolvency of the insolvent entity.

(xiv) Furthermore, we express no opinion as to whether a court in any proceeding in Colombia would give effect to certain provisions that may be limited by: (a) the unavailability under Colombian law of equitable remedies or injunctive relief, except, for the enforcement of fundamental constitutional rights; (b) provisions of the Colombian Civil Code, and in particular Article 1499 therein, that prevents any guarantee, indemnity or ancillary document to be unconditional upon prepayment or expiration of the obligation guaranteed in accordance with its terms; (c) applicable procedural rules that do not allow waivers of immunity and service of process by private companies within Colombia and pursuant to which any immunity from proceedings (jurisdiction, execution or attachment) which might in the future be available under Colombian law may not be validly waived in advance; or (d) any provision contrary to general bankruptcy principles.

(xv) With respect to court proceedings in Colombia, under Article 365 of the General Code of Procedure, any recovery of legal costs incurred in connection with such court proceedings would be limited to those cost ordered by the respective court.

(xvi) Article 16 of law 1116 of 2006 states that contractual provisions that have as purpose or effect limiting the initiation of an insolvency proceeding or that impose any restriction or unfavorable effects for the debtor shall have no effect (*ineficaz*) without the need of a court decision in Colombia. Accordingly, a waiver by a Colombian company of legal defenses that arise from the postponement, discharge or reduction resulting from an insolvency proceeding, may be deemed as having no effect (*ineficaz*) by a Colombian insolvency court.

(xvii) The ability of the Seller to perform obligations payable in non-Colombian currency (and the ability of any person to remit out of Colombia the proceeds of any judgment award in non-Colombian currency by a court in Colombia) will be subject to the exchange regulations which may be in effect at the time of payment (or such remittance); exchange regulations in effect as of the date hereof, do not impose restrictions on the ability of the Seller to pay when and as due, amounts owed under the Opinion Documents.

(xviii) Pursuant to Articles 15 and 16 of Colombia's Civil Code (*Código Civil*), the waiver of rights is permissible provided that said waiver does not refer to public order laws and only affects the rights of the waiving party.

(xix) Contractual provisions that waive future willful misconduct (*dolo*) are null and void under Article 1522 of the Colombian Civil Code. A provision whereby one party waives defenses that arise out of an invalid or illegal obligation may be understood as a waiver of future willful misconduct and as such deemed null and void by a Colombian court.



GÓMEZ-PINZÓN

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(xx) Under Articles 2495 et seq. of the Colombian Civil Code, the statutory order of claims is established, under which tax and labor liabilities, as well as expenses related to bankruptcy proceedings shall be paid with preference, prior to the obligations of unsecured creditors. Under Articles 2497 and 2499 of the Colombian Civil Code, secured creditors are creditors with liens or mortgages, such secured creditors are preferred over unsecured creditors (*acreedores quirografarios*).

(xxi) In accordance with Article 902 of Colombian Code of Commerce, any nullification of a provision of an Opinion Document would nullify such Opinion Document entirely if the parties would not have entered into such Opinion Document in the absence of such nullified provision.

(xxii) Contractual provisions which treat certain determinations as conclusive may be subject to review in a proceeding in Colombia to determine the correctness of such determinations.

We are licensed to practice law in Colombia and we do not hold ourselves out as being conversant with, and express no opinion as to, the laws of any jurisdiction other than those of Colombia. This Opinion is limited to matters of Colombian law.

This Opinion is provided to you in connection with the transactions contemplated by the Opinion Documents and may not be relied upon by you for any other purpose. This opinion letter may not be relied upon by, or furnished or disclosed to, any other person for any purpose, or filed with any governmental agency without, in each instance, our prior written consent; provided, however, that (i) copies of this opinion letter may be furnished to, and relied on by, persons to whom a Loan (or an interest therein) under the Loan Agreement is assigned in compliance with the terms of the Loan Agreement during the 60-day period commencing on the date of this opinion letter, and (ii) copies of this opinion letter may be furnished to, but may not be relied on by, (w) assignees (other than those specified in clause (i) above) and potential assignees of a Loan (or an interest therein) under the Loan Agreement, (x) your or an assignee's auditors and bank examiners in connection with their audit and examination functions, (y) any person to whom disclosure is required to be made by law or court order, or at the request of regulatory authorities and (z) USAVflow Limited.

The opinions expressed herein are being delivered to you as the date hereof, and we assume no obligation to advise you of any changes of law or fact that may occur after the date hereof, notwithstanding that such changes may affect the legal analysis or conclusions contained herein.

Very truly yours,

  
GÓMEZ-PINZÓN ABOGADOS S.A.S.  


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**EXHIBIT 15**

Hearing Date and Time: July 29, 2020 at 11:00 a.m. (ET)

Objection Deadline: July 22, 2020 before 11:59 p.m. (ET)

Re: ECF 306

WHITE & CASE LLP  
1221 Avenue of the Americas  
New York, New York 10020  
Telephone: (212) 819-8200  
Glenn M. Kurtz  
Scott Greissman  
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Brandon D. Batzel

*Attorneys for the USAV Secured Lender Group*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 20-11133 (MG)  
)  
) (Jointly Administered)  
)

**OBJECTION OF THE USAV SECURED LENDER GROUP TO  
DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
REJECTION OF CERTAIN EXECUTORY CONTRACTS**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number (to the extent applicable) are as follows: Aero Transporte de Carga Unión, S.A. de C.V.; Aeroinversiones de Honduras, S.A.; Aerovias del Continente Americano S.A. Avianca; Airlease Holdings One Ltd.; Avianca Costa Rica S.A.; Avianca Holdings S.A.; Avianca, Inc. (13-1868575); Avianca Leasing, LLC (46-2586415); Avianca Perú S.A.; Avianca-Ecuador S.A.; Aviateca, S.A.; Avifreight Holding Mexico, S.A.P.I. de C.V.; Grupo Taca Holdings Limited; International Trade Marks Agency Inc.; Inversiones del Caribe, S.A.; Islaña de Inversiones, S.A. de C.V.; Latin Airways Corp.; Latin Logistics, LLC (00-0107425); Regional Express Américas S.A.S.; Ronair N.V.; Taca de Honduras, S.A. de C.V.; Taca International Airlines S.A.; Taca S.A.; Tampa Cargo S.A.S.; AV International Holdco S.A.; AV International Holdings S.A.; AV International Investments S.A.; AV International Ventures S.A.; AV Investments One Colombia S.A.S.; AV Investments Two Colombia S.A.S.; AV Taca International Holdco S.A.; Servicios Aeroportuarios Integrados SAI S.A.S. The address of the Debtors' principal offices is Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

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The group of secured lenders (the “USAV Secured Lender Group”) under the Loan Agreement (as defined below), by and through its undersigned counsel, hereby submits this objection (the “Objection”)<sup>2</sup> to the *Debtors’ Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts* [ECF 306] (the “Motion”), and respectfully represents as follows:<sup>3</sup>

### **PRELIMINARY STATEMENT**<sup>4</sup>

1. The Debtors request authorization to “reject” eight distinct contracts (the “USAV Agreements”) underlying numerous transactions consummated in 2017 among the Debtors, USAVflow Limited (“USAV” or the “Purchaser”), an offshore special purpose vehicle, certain credit card processors, and other counterparties (collectively, the “USAV Transactions”) in connection with USAV’s purchase of certain existing contract rights—including the proceeds generated from the credit card receivables—and accrued receivables from the Debtors for \$150 million plus the potential for additional amounts. The USAV Secured Lender Group financed the \$150 million purchase price in exchange for primary and guarantee claims against USAV and certain Debtors.

2. While the Debtors style the relief they seek as a “rejection,” they actually seek to rescind their prepetition sale of contract rights (and related proceeds), while also keeping the benefit of the bargain that the Debtors received, namely the \$150 million that the USAV Secured Lender Group advanced to finance the sale. The Debtors cannot reject the contracts at issue, but even if they could, they would not be entitled to get back what they sold in 2017.

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<sup>2</sup> In support of this Objection, the USAV Secured Lender Group relies on (i) the Declaration of Joshua D. Weedman in Support of Objection of the USAV Secured Lender Group to Debtors’ Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (the “Weedman Decl.”) and (ii) the Declaration of Jorge Suescún Melo in Support of Objection of the USAV Secured Lender Group to Debtors’ Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (the “Prof. Suescún Decl.”), both filed contemporaneously herewith. “Ex. \_\_” references are to Exhibits attached to the Weedman Decl.

<sup>3</sup> Capitalized terms not defined herein have the meanings provided in the Motion.

<sup>4</sup> Pursuant to Federal Rule of Civil Procedure 44.1, as made applicable by Bankruptcy Rule 9017, the USAV Secured Lender Group hereby gives notice that it intends herein to raise issues of Colombian law as set forth in the Prof. Suescún Decl. and this Objection.

3. *First*, the United States Supreme Court held in 2019 that Section 365 of the Bankruptcy Code does not permit a debtor to unwind an agreement and take back property rights that it sold to another party, as rejection does not “rescind rights that the contract previously granted.” *Mission Prod. Holdings v. Tempnology, LLC*, 139 S. Ct. 1652, 1666 (2019). Consequently, the Debtors cannot use rejection to take back the contract rights they sold to USAV in 2017. *See infra* ¶¶ 18-26.

4. *Second*, the sale and transfer of contract rights and receivables to USAV constitutes a final and irrevocable sale and transfer under Colombian and U.S. law that cannot be altered by a “rejection” of the USAV Agreements. As such, rejection would not result in anything being delivered to the Debtors because the contract rights (and related proceeds) are not property of the estates and, therefore, not subject to turnover under Section 542. *See id.* ¶¶ 27-33.

5. *Third*, there are eight separate contracts that make up the USAV Agreements, six of which the Debtors admit are not executory contracts subject to rejection. Hence, the Debtors allege that all of the USAV Agreements must be viewed as inseparable from each other for purposes of rejection. The Debtors are wrong, as the contracts make clear. And, again, rejecting the eight contracts would not allow the Debtors to get back the contract rights they sold to USAV in 2017 or the proceeds thereof. *See id.* ¶¶ 34-43.

6. *Fourth*, rejection is unavailable because the two contracts that the Debtors claim are executory—the RSPA and Undertaking Agreement—are not executory. Those two contracts do not have material bilateral unperformed obligations. Nor would rejection allow the Debtors to get back the contract rights they sold to USAV in 2017 or the proceeds thereof. *See id.* ¶¶ 44-60.

7. *Fifth*, the Debtors cannot prove that rejection is an exercise of the Debtors' sound business judgment, as the alleged "benefit" to the Debtors is just the return of the contract rights they sold to USAV in 2017, and that relief is not available through rejection. *See id.* ¶¶ 61-63.

### **BACKGROUND**

8. On May 10, 2020 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

9. On June 23, 2020, the Debtors filed the Motion seeking to reject the USAV Agreements pursuant to Section 365 of the Bankruptcy Code and Bankruptcy Rule 6006, *nunc pro tunc* to the date the Motion was filed. In addition, the Motion alleges that if the USAV Agreements are rejected, the receivables "must be delivered to the Debtors pursuant to section 542 of the Bankruptcy Code." Motion ¶ 37.

10. On the same day, the Debtors commenced an adversary proceeding against USAV by filing a complaint [ECF 307] (the "Adversary Complaint") that advanced the exact opposite position. There, the Debtors alleged that the USAV transactions are not agreements for the sale of the assets, subject to rejection, but rather a disguised secured financing.

#### **A. The USAV Transactions**

11. On December 12, 2017 (the "Effective Date"), one of the Debtors, Aerovías del Continente Americano S.A., a Colombian *sociedad anónima* ("Aerovías" or the "Seller"), entered into the RSPA with USAV, a special purpose vehicle that was set up by the Debtors themselves.

12. Pursuant to the RSPA, USAV purchased (i) certain *existing* contract rights (the "Contract Rights"), including the right to receive all future receivables derived therefrom (the "Proceeds"); and (ii) *accrued* receivables (the "Receivables"), arising from card processing agreements with Credomatic and AMEX, for \$150 million and potentially additional amounts provided certain requirements were met. The RSPA is governed by Colombian law. *See* RSPA

§§ 4.01, 9.09. The USAV Secured Lender Group advanced USAV the \$150 million purchase price under the Loan Agreement.

13. In addition to the RSPA, various parties executed a number of separate agreements under various governing laws, including the USAV Agreements that the Debtors seek to reject. The primary purposes of those other contracts are as follows:

- **Undertaking Agreement**, between Aerovías, as Seller and Servicer, and USAV, as Purchaser, which establishes covenants between Aerovías in favor of USAV and appoints Aerovías as Servicer in respect of the Contract rights and Receivables;
- **Cash Management Agreement**, among Aerovías, as Seller and Servicer, USAV, as Purchaser, the Administrative Agent, and the Collateral Agent, which provides the mechanics and timing for distributions from the accounts securing the USAV Secured Lender Group's collateral, and sets out the priorities of payments in respect of amounts owed under the RSPA (if certain conditions were met) as well as the Loan Agreement;
- **Assignment Agreement**, between Aerovías and USAV, by which Aerovías assigned all of the Contract Rights and Receivables under the Credomatic card processing agreements to USAV to ensure that the sale and transfer of such Contract Rights and Receivables would be respected in Costa Rica. *See* Assignment Agreement § 4;
- **Credomatic Notice**, provided to, and consented to by, Credomatic, and agreed to by, among others, Aerovías, USAV, and the Collateral Agent, which perfected the transfer of the relevant Contract Rights and Receivables and irrevocably instructed Credomatic to pay all Proceeds to USAV's New York Pass-Through Account;
- **Credomatic Consent and Agreement**, executed by Credomatic, by which Credomatic agreed to the Credomatic Notice and additional covenants and representations;
- **AMEX Notice**, provided to, and consented to by, AMEX, and agreed to by, among others, Aerovías, USAV, AMEX, and the Collateral Agent, which perfected the transfer of the relevant Contract Rights and Receivables and irrevocably instructed AMEX to pay all Proceeds to USAV's New York Pass-Through Account; and
- **Expenses Agreement**, between USAV and Aerovías, under which Aerovías agreed to indemnify USAV against "any and all fees and expenses of [USAV] incurred in connection with its entry into and the performance of its obligations under any of the agreements relating to the Business." Expenses Agreement § 3.1.

**B. The Flight Impairment Trigger Event**

14. The RSPA lists a number of conditions that constitute “Trigger Events,” the occurrence of which results in a number of consequences. *See* RSPA § 6.01. For instance, Section 3.01(a)(ii) of the RSPA provides that “no Additional Purchase Price shall be paid during the continuance of . . . a Trigger Event.” RSPA § 3.01(a)(ii). Additionally, a Trigger Event occurs where “the capacity or ability of the Seller to operate domestic and/or international flights is materially impaired for any reason” (a “Flight Impairment Trigger Event”). RSPA § 6.01(i)(i).

15. A Flight Impairment Trigger Event occurred when the Debtors’ planes were grounded at the beginning of the COVID crisis. *See Declaration of Adrian Neuhauser in Support of Chapter 11 Petitions and First Day Pleadings* [ECF 20] ¶ 7 (the “First Day Declaration”). On March 31, 2020, the Administrative Agent, at the direction of the USAV Secured Lender Group, notified USAV and the Debtors of the occurrence of the Flight Impairment Trigger Event (the “March 31 Notice”).<sup>5</sup> Consequently, the rights of the Debtors to an Additional Purchase Price were automatically cut off. *See* Section 3.01(a)(ii) of the RSPA; Prof. Suescún Decl. ¶ 12.<sup>6</sup>

**C. The Adversary Proceeding and the Debtors’ Efforts to Avoid Defenses**

16. Although the USAV Secured Lender Group is a key party in interest in these matters, the Debtors have directed their challenge at USAV, an offshore special purpose vehicle set up by the Debtors with no independent financial capacity to defend itself in this Court. The Debtors are obligated to indemnify USAV against “any and all fees and expenses of [USAV]

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<sup>5</sup> A true and correct copy of the March 31 Notice is attached as Ex. A to the Weedman Decl. A copy of the March 31 Notice was sent by the Administrative to USAV and the Debtors in an e-mail dated March 31, 2020. A true and correct copy of that e-mail is attached as Ex. B to the Weedman Decl.

<sup>6</sup> The Debtors’ statements claiming that they have stopped “receiving . . . financial benefits under the USAV Agreements” due to a declaration of a Retention Event on May 11, 2020 (the “May 11 Notice”) and that a Retention Event “entitles USAV to withhold the Additional Purchase Price from Avianca” are incorrect. *See* Motion ¶¶ 22, 36. In fact, the Debtors’ right to an Additional Purchase Price was cut off at the latest by March 31, 2020 on account of the Flight Impairment Trigger Event. Further, the occurrence of such Trigger Event did not “*entitle*” USAV to hold back the Additional Purchase Price—the right to the Additional Purchase Price was cut off automatically by operation of the RSPA without any action required by USAV or any other party. RSPA § 3.01(a)(ii). Thus, the May 11 Notice had no impact on the Additional Purchase Price.



incurred in connection with its entry into and the performance of its obligations under any of the agreements relating to the Business.” See Expenses Agreement § 3.1. But the Debtors have refused to comply with their obligations.<sup>7</sup> Thus, the Debtors sued USAV, and then cut off the capital necessary for its defense.<sup>8</sup>

**D. The Lenders’ Interest**

17. To finance the purchase of the Contract Rights and Receivables, USAV entered into a \$150 million loan agreement dated December 12, 2017 (the “Loan Agreement”), by and among, USAV, as Borrower, certain Debtors, as Guarantors, the financial institutions comprising the USAV Secured Lender Group, as Lenders, and Citibank, N.A., as Administrative Agent and Collateral Agent. Under the Loan Agreement, the Lenders are paid amortization and interest payments from the Proceeds of the Contract Rights and Receivables that USAV purchased from the Debtors. USAV granted security interests in all of its assets for the benefit of the Lenders to secure the obligations under the Loan Agreement, and USAV maintains cash in a debt service reserve account to satisfy debt service reserve requirements. Because the Contract Rights and Receivables are the fundamental collateral securing the Lenders’ claims against USAV, the Lenders are principal parties in interest in this dispute.<sup>9</sup>

**OBJECTION**

**A. The Debtors Cannot Unwind the USAV Transactions Under Section 365**

18. The Supreme Court’s 2019 decision in *Mission Product* is controlling, yet the Debtors failed to cite the case in their Motion. *Mission Prod. Holdings v. Tempnology, LLC*, 139

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<sup>7</sup> See E-mail from P. Lundin to A. Renenger (June 24, 2020); E-mail from J. Eldridge to A. Renenger (June 25, 2020); E-mail from A. Renenger to J. Eldridge (June 26, 2020). True and correct copies of those e-mails are attached as Exs. C, D, and E to the Weedman Decl., respectively.

<sup>8</sup> Given the threat posed by the Debtors’ litigation strategy, the USAV Secured Lender Group agreed to indemnify expenses for USAV to obtain U.S. counsel so that USAV would be able to accept service of process and defend against the Motion and the Adversary Complaint. These expenses are recoverable under the Loan Agreement, the Cash Management Agreement, and other documents related thereto.

<sup>9</sup> Notably, the Debtors failed even to provide notice of the Adversary Complaint to the USAV Secured Lender Group.

S. Ct. 1652 (2019). The Debtors cannot get back through rejection the Proceeds of the Contract Rights they sold in 2017.

19. *Mission Product* involved a debtor's attempt in a Chapter 11 case to terminate a trademark license it had previously granted to a licensee by rejecting the underlying licensing agreement. *Id.* at 1658-59. The debtor argued that, as a result of such rejection, the debtor not only was free to stop performing under the parties' agreement, but also that rejection terminated the licensee's right to use the licensed trademark going forward. *Id.* The bankruptcy court agreed, reasoning that the debtor's rejection of a trademark licensing agreement must extinguish the rights that the agreement had conferred in the trademark licensee. *Id.* at 1659.

20. The Bankruptcy Appellate Panel reversed, relying on the Seventh Circuit's decision in *Sunbeam Prods. v. Chicago Am. Mfg., LLC*, 686 F.3d 372 (7th Cir. 2012), in determining that while rejection converts a debtor's unfulfilled obligations to a pre-petition damages claim, it does not "terminate the contract" or "vaporize[ ]" the counterparty's rights, so the licensee could continue to use the trademark as previously granted to it by the debtor. *Id.* The First Circuit rejected the Panel's view, reinstating the bankruptcy court's opinion terminating the license. *Id.* The Supreme Court granted certiorari to resolve the circuit split. *Id.* at 1660.

21. In an 8-1 decision,<sup>10</sup> Justice Kagan, writing for the Court, reversed the decision of the First Circuit, holding that rejection of an executory contract gives rise to a claim for breach of contract against the debtor, but it does not operate as a termination or rescission of the rejected contract, so a debtor cannot evade its pre-rejection grant of rights. *Id.* at 1657-58. The Court deemed this distinction a "rejection-as-breach" approach, as opposed to the "rejection-as-rescission" approach advocated by the debtor and adopted by the First Circuit. *Id.* at 1663.

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<sup>10</sup> The one dissent did not disagree, writing only about mootness.

22. Section 365 of the Bankruptcy Code provides that, subject to bankruptcy court approval, a debtor may “reject any executory contract”—meaning a contract that neither party has finished performing.” *Id.* at 1657 (quoting 11 U.S.C. § 365(a)). The Supreme Court explained that rejection is a breach, and the consequences of such breach are determined by “non-bankruptcy contract law.” *Id.* at 1662. Thus, “a debtor’s rejection of an executory contract in bankruptcy has the same effect as a breach outside of bankruptcy.” *Id.* at 1666. That is, it “does not eliminate rights to the contract...already conferred on the non-breaching party.” *Id.* at 1659. “It gives the counterparty a claim for damages, while leaving intact the rights the counterparty has received under the contract.” *Id.* at 1661.

23. Thus, a debtor does not have a right to repudiate prior performance, but rather can only “repudiat[e] any further performance of its duties.” *Id.* at 1658; 1662 (a debtor “cannot unilaterally revoke” what it contracted to provide the counterparty based on the debtor’s own breach); *In re Lyondell Chem. Co.*, 416 B.R. 108, 115 (Bankr. S.D.N.Y. 2009); *In re Executive Tech. Data Sys.*, 79 B.R. 276, 282 (Bankr. E.D. Mich. 1987). “A rejection breaches a contract but does not rescind it. And that means all the rights that would originally survive a contract breach, remain in place.” *Mission Prod.*, 139 S. Ct. at 1657-58; 1666 (“[Rejection] cannot rescind rights that the contract previously granted.”); *In re Rudaw/Empirical Software Prods., Ltd.*, 83 B.R. 241, 245 (Bankr. S.D.N.Y. 1988) (“debtor cannot undo an executed sale of property where title has passed. Such property does not revert...as a result of the debtor’s rejection of the executory contract”). “When it occurs, the debtor and counterparty do not go back to their pre-contract positions. Instead, the counterparty retains the rights it has received under the agreement. As after a breach, so too after a rejection, those rights survive.” *Mission Prod.*, 139 S. Ct. at 1662.

24. The Supreme Court in *Mission Product* further explained that “the rejection—as–rescission approach would circumvent the Code’s stringent limits on ‘avoidance’ actions”:

[A trustee’s avoidance powers] can be invoked in only narrow circumstances—unlike the power of rejection, which may be exercised for any plausible economic reason. . . . If trustees (or debtors) could use rejection to rescind previously granted interests, then rejection would become functionally equivalent to avoidance. Both, that is, would roll back a prior transfer. And that result would subvert everything the Code does to keep avoidances cabined—so they do not threaten the rule that the estate can take only what the debtor possessed before filing.

*Id.* at 1663; *see also Cohen v. Drexel Burnham Lambert Grp.*, 138 B.R. 687, 709 (Bankr. S.D.N.Y. 1992) (“Rejection is not itself an avoiding power.”). A debtor can expand the estate’s property interests beyond what existed on the petition date in only one way: by bringing and prevailing in an action under the avoidance provisions of the Bankruptcy Code. 11 U.S.C. §§ 541-50.

25. *Mission Product* applies to all contracts, not just trademark licenses: “we reject an argument for the rescission approach turning on the distinctive features of trademark licenses. Rejection of a contract—any contract—in bankruptcy operates not as a rescission but as a breach.” 139 S. Ct. at 1661. As the Court explained, Section 365 provides debtors with a “powerful tool: Through rejection, the debtor can escape all of its future contract obligations, without having to pay much of anything in return,” given that debtors typically pay claims at “only cents on the dollar.” *Id.* at 1665, 1658. “The Code of course aims to make reorganizations possible. But it does not permit anything and everything that might advance that goal.” *Id.* at 1665. “Section 365 does not grant the debtor an exemption from all the burdens that generally applicable law—whether involving contracts or trademarks—imposes on property owners. . . . In thus delineating the burdens that a debtor may and may not escape, Congress also weighed (among other things) the legitimate interests and expectations of the debtor’s counterparties.” *Id.* at 1665-66. “The resulting balance may indeed impede some reorganizations, of trademark, licensors and others. But that is

only saying that Section 365's edict that rejection is breach expresses a more complex set of aims than [the debtor] acknowledges." *Id.* at 1666.

26. As in *Mission Product*, the Debtors sold and transferred interests in property pre-bankruptcy, and now seek to reacquire them. In addition to not citing *Mission Product*, the Debtors take care to avoid using the words "rescind" or "unwind," but the only way for the Debtors to get back the Proceeds of the Contract Rights and Receivables they sold in 2017 would be through rescission, which is not available through rejection. Prof. Suescún Decl. ¶¶ 13-14 (rescission would be required, but remedy unavailable here).

**B. The Proceeds that the Debtors Seek Are Not Subject to Turnover**

27. The Debtors argue that "[i]f the USAV Agreements are rejected...the receivables generated by the Debtors must be delivered to the Debtors pursuant to section 542 of the Bankruptcy Code." Motion ¶ 37.<sup>11</sup> The Debtors are wrong.

28. Under Section 542 of the Bankruptcy Code, only property of the estate is subject to turnover. *See In re Bracewell*, 454 F.3d 1234, 1243 (11th Cir. 2006), *cert. denied*, 549 U.S. 1301 (2007) ("§541(a)(1) was implicated because §542(a) authorizes turnover of property in another's possession only if it is property of the estate."). The Debtors have no right to the Proceeds of the Contract Rights and Receivables sold pre-petition, which are the USAV Secured Lender Group's collateral and not property of the estate. *See supra* ¶ 12; *infra* ¶ 30-32.

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<sup>11</sup> A request for turnover under 542(a) requires an adversary proceeding—not a motion. *See In re MF Global, Inc.*, 531 B.R. 424, 431 (Bankr. S.D.N.Y. 2015) ("Accordingly, an action to compel turnover of estate property pursuant to section 542(a) constitutes an adversary proceeding under Bankruptcy Rule 7001(1)"); *In re Markus*, 610 B.R. 64, 80 (Bankr. S.D.N.Y. 2019). To the extent the Motion seeks turnover under Section 542, the USAV Secured Lender Group objects on the ground that the Motion should have been filed as an adversary proceeding pursuant to Bankruptcy Rule 7001(1). Similarly, to the extent the Court's disposition of the Motion requires a determination as to whether property constitutes estate property, the USAV Secured Lender Group further objects on the ground that Bankruptcy Rule 7001(2) likewise requires an adversary proceeding. *See In re Motors Liquidation Co.*, 576 B.R. 325, 393 (Bankr S.D.N.Y. 2017); *In re Whitehall Jewelers Holdings, Inc.*, 2008 Bankr. LEXIS 2120, at \*6-7 (Bankr. D. Del. July 28, 2008); *PAPCO, Inc., v. Oleum Exploration, LLC*, 2019 U.S. Dist. LEXIS 120524, at \*7 (M.D. Pa. July 19, 2019).

29. The Supreme Court’s decision in *Mission Product* again controls: “In preserving those rights [conveyed pre-petition], Section 365 reflects a general bankruptcy rule: The estate cannot possess anything more than the debtor itself did outside of bankruptcy.” 139 S. Ct. at 1663 (citing *Board of Trade of Chicago v. Johnson*, 264 U.S. 1, 15 (1924); 11 U.S.C. § 541(a)(1) (defining the estate to include the “interests of the debtor in property”) (emphasis added)). “The rejection-as-breach rule (but *not* the rejection-as-rescission rule) ensures that result.” *Id.* (emphasis in original). Simply stated, rejection does not expand the Debtors’ estates under Section 541.

30. For purposes of determining what is property of the estate, a debtor’s rights in the subject property are determined under applicable state law. *Butner v. United States*, 440 U.S. 48, 55 (1979). Under Colombian law, the Debtors validly, finally and irrevocably sold and transferred the Contract Rights and Receivables to USAV in 2017. Prof. Suescún Decl. ¶¶ 7-9. The RSPA expressly states:

The Sales and Transfers made pursuant to this Agreement constitute final and definitive Sales and Transfers, as the case may be, of the Contract Rights and the Receivables from the Seller to the Purchaser, under the Applicable Laws of Colombia, and any other Applicable Laws, and it is the intention of the Seller that the title to such Contract Rights and Receivables not be part of the Seller’s estate in the event of an Insolvency Event in respect of the Seller or any Affiliate.

RSPA § 4.01(v); *see also* AMEX Notice § 2 (confirming to AMEX that USAV is the “sole owner” of the applicable Contract Rights and Receivables and “therefore entitled to all amounts payable” in respect thereof). Consequently, USAV is the sole owner of the Contract Rights and Receivables, and all of the Proceeds. Prof. Suescún Decl. ¶ 9.

31. Indeed, the Debtors fail to disclose to the Court that there was a legal opinion issued on December 12, 2017 by the Debtors’ own Colombian counsel, Gómez-Pinzón Abogados S.A.S. (the “GPZ Opinion”), addressing the issue.<sup>12</sup> The GPZ Opinion confirmed that the USAV

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<sup>12</sup> A true and correct copy of the GPZ Opinion is attached as Ex. F to the Weedman Decl.



Transactions constituted “a true, definitive and final transfer of the Contract Rights to the Purchaser.” Further, the GPZ Opinion was provided to the Lenders by the Debtors with the knowledge and expectation that they would rely on that opinion. The Debtors do not even attempt to dispute the truth and accuracy of their own counsel’s opinion on foreign law here.

32. Thus, the Debtors have no interests in the Proceeds of the Contract Rights and Receivables, which they sold to USAV nearly three years ago. Rather, the Debtors had a contractual right potentially to receive Additional Purchase Price from USAV, but the Debtors no longer had such right on the Petition Date due to the Flight Impairment Trigger Event. *See supra* ¶ 15. Moreover, upon rejection, the Debtors would lose that contractual right, so even that previous potential, and now extinguished, right would not provide Debtors with any right to the Proceeds. *See Sterling Vision, Inc. v. Sterling Optical Corp.*, 371 B.R. 680, 692 n.13 (Bankr. S.D.N.Y. 2007) (“A debtor may not reject (i.e., breach) one obligation under a contract and still enjoy the benefits of that same contract.”).

33. Rejection also would not allow the Debtors to take back from USAV Proceeds of the Contract Rights they sold in 2017 because of the contract mechanics. The Proceeds do not run through the Debtors’ bank accounts. Rather, the Proceeds are paid directly into the New York Pass-Through Account (an account established and maintained by USAV) and under the control of the Collateral Agent. Rejection would not terminate the AMEX Notice, the Credomatic Notice, and the Credomatic Consent and Agreement, so the rights and obligations of the non-Debtor counterparties would remain in place as among each other. *Mission Prod.*, 139 S. Ct. at 1662; *Fraunhofer-Gesellschaft Zur Förderung Der Angewandten Forschung E.V. v. Sirius XM Radio Inc.*, 940 F.3d 1372, 1379-80 (Fed. Cir. 2019) (rights of non-debtor parties not unilaterally terminated by a debtor’s rejection of a license agreement; instead, status of non-debtor parties’



rights among themselves depended on non-bankruptcy law). Consequently, rejection would not allow AMEX and Credomatic to stop making payments to USAV's New York Pass-Through Account.

**C. The USAV Agreements Are Not a Single Contract for Purposes of Rejection**

34. Only contracts that are executory can be rejected under Section 365. *Mission Prod.*, 139 S. Ct. at 1657. The Debtors admit that six of the USAV Agreements are non-executory: (i) the Cash Management Agreement, (ii) the Expenses Agreement, (iii) the Assignment Agreement, (iv) the Credomatic Notice, (v) the Credomatic Consent and Agreement, and (vi) the AMEX Notice. Motion ¶ 29 (the foregoing contracts “*may not be executory* by their own terms” (emphasis added)). The Debtors seek to avoid the law by arguing incorrectly that “the Court should deem these agreements as inseparable from the RSPA and Undertaking Agreement for purposes of rejection.” *Id.*

35. “Whether multiple writings should be construed as one agreement depends upon the intent of the parties.” *Commander Oil Corp. v. Advance Food Serv. Equip.*, 991 F.2d 49, 52-53 (2d Cir. 1993); *see Arciniaga v. GMC*, 460 F.3d 231, 237 (2d Cir. 2006) (noting that under New York law, “multiple agreements may be read as one contract only if the parties so intended, which we determine from the circumstances surrounding the transaction”). Where the terms of a written contract are clear and unambiguous, the intent of the parties must be ascertained within the “four corners” of the contract. *RJE Corp. v. Northville Indus. Corp.*, 329 F.3d 310, 314 (2d Cir. 2003).

36. Both the Undertaking Agreement and the RSPA unmistakably record the parties’ intention to enter separate agreements. The Undertaking Agreement states:

For all legal and contractual purposes the servicing agreement *shall be deemed to be a separate contract* from the purchase and sale contained herein. As a consequence, for no reason shall the servicing agreement contained herein recharacterize the purchase and sale agreement as an executory contract (*contrato de ejecución sucesiva*).

Undertaking Agreement § 3.01 (emphasis added).

37. The RSPA includes the same agreement:

The Parties have *separately agreed* that the Servicer will provide servicing duties in respect of the Contract Rights and the Receivables *solely pursuant to the Undertaking Agreement* as set forth therein.

RSPA (*Recitals*) (emphasis added).

38. Such language “evokes the substance of a merger clause, which cuts against the idea that [multiple agreements] should be read together.” *Torres v. Major Auto. Grp.*, 2014 U.S. Dist. LEXIS 136292, at \*29 (E.D.N.Y. Sep. 24, 2014) (citing *MAT Movies & Television Productions GMBH & Co. Project IV KG v. RHI Entm’t Distribution, LLC*, 752 F. Supp. 2d 373, 378 (S.D.N.Y. 2010) (“As is the case in all merger clauses, the reference to other documents . . . simply assures the continued vitality of those documents and prevents their being merged into the subsequent Agreement.”); *see also Broadhollow Funding, LLC v. Bank of Am., N.A.*, 390 B.R. 120, 136-37 (Bankr. D. Del. 2008) (holding that under New York law even if only one of three allegedly integrated contracts has an integration clause, it is strong evidence that they are all separate agreements). The parties’ stated intent should control.

39. The Debtors contend that an intent contrary to the agreed-to language should be inferred merely from the fact that the agreements were executed on the same closing date as part of the “same transaction” and “were executed to effectuate or facilitate the assignment of Avianca’s rights in the Card Processing Agreements.” Motion ¶ 30. But the fact that “underlying transactions and events are interrelated” does not transform “distinct, separate” agreements into a single contract, absent an express incorporation of terms of the one into the other. *In re J. M. Fields, Inc.*, 22 B.R. 861, 864 (Bankr. S.D.N.Y. 1982). Indeed, “[m]any transactions involve the simultaneous negotiation and execution of multiple agreements embodied in multiple documents,

which are *almost always related*, but relatedness alone does not warrant the undoing of a structure purposefully chosen by the parties.” *In re Abitibowater Inc.*, 418 B.R. 815, 828 (Bankr. D. Del. 2009) (interpreting New York law) (emphasis in original); see *In re Gulf Oil/Cities Serv. Tender Offer Litig.*, 725 F. Supp. 712, 731-32 (S.D.N.Y. 1989) (“Here, there were separate contracts for separate purposes. To the extent that plaintiffs are proposing that all contracts vaguely relating to the same deal should be read together in spite of explicit language to the contrary in those contracts . . . has absolutely no support in contract law[.]”). “The mere fact that a contract refers to another contract does not mean that it has incorporated the other[.]” *Veleron Holding, B.V. v. BNP Paribas SA*, 2014 U.S. Dist. LEXIS 199357, at \*52 (S.D.N.Y. Apr. 16, 2014).

40. “[O]ne agreement...may follow from and even have as its *raison d’etre* to another and yet be independently enforceable. And, indeed in the absence of some clear indication that the parties had a contrary intention, contracts manifesting separate assents to be bound are generally presumed to be separable.” *In re Refco Inc.*, No. 05-60006 (RDD), Hr’g Tr. (Jan. 31, 2006), 73:5-11 (Bankr. S.D.N.Y. Jan. 31, 2006), ECF 1473 (“Refco Jan. 31, 2006 Hr’g Tr.”) (quoting *Nat’l Union Fire Ins. Co. v. Clairmont*, 231 A.D.2d 239, 241-42 (1st Dep’t 1997));<sup>13</sup> see also *Kopel v. Campanile*, 232 B.R. 57, 66 n.5 (Bankr. E.D.N.Y. 1999) (“[T]he dependence of [one agreement] on the execution of the[] other documents does not require the conclusion that one agreement would not have been executed without the other....”).

41. Thus, as Judge Drain recognized in *Refco*:

[T]he timing and the interrelatedness of the agreements, including the fact that consideration for one may also have served as consideration for the other, is not necessarily dispositive but is only one element of several elements or facts within the confines of the contracts that I can interpret as evidence of whether the agreements were intended to be one or several.

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<sup>13</sup> Judge Drain’s ruling in *Refco* was followed by an order dated February 14, 2006. *In re Refco*, No. 05-60006 (RDD) (Bankr. S.D.N.Y. Feb. 14, 2006), ECF 1311, *aff’d*, *Cargill, Inc. v. Refco Inc.*, 2006 U.S. Dist. LEXIS 66686 (S.D.N.Y. Sept. 13, 2006).

Refco Jan. 31, 2006 Hr’g Tr. at 74:1-7.

42. In addition to the explicitly stated agreement that the contracts are separate, two other factors prove the point. *First*, the USAV Agreements were not executed by the same parties. *See, e.g., Clairmont*, 231 A.D.2d at 242 (the fact that agreements were made between different parties “weigh[s] heavily in favor of contractual separability”); *Rudman v. Cowles Commc’ns, Inc.*, 330 N.Y.S.2d 33, 42 (1972) (multiple agreements were not a single contract because, inter alia, “the agreements involved formally different parties”); *Applehead Pictures LLC v. Perelman*, 2009 N.Y. Misc. LEXIS 6440, at \*8-9 (Sup. Ct. N.Y. Cnty. Nov. 13, 2009) (same), *aff’d*, 80 A.D.3d 181 (1st Dep’t 2010). The RSPA, Undertaking Agreement, Assignment Agreement, and Expenses Agreement are between Aerovías and USAV, and the rest of the USAV Agreements are among different parties. *See Arciniaga*, 460 F.3d at 237 (parties to two agreements were different where one contract was executed by parties A, B, and C and the other was executed by parties A and B).

43. *Second*, the USAV Agreements are governed by the laws of four different jurisdictions and designate different forums to resolve disputes. *See, e.g., Nat’l Union Fire Ins. Co. v. Williams*, 223 A.D.2d 395, 396 (1st Dep’t 1996) (“The choice of different law to be applied to each contract and the designation of a different forum for the litigation of disputes arising out of its performance indicate that the respective agreements are intended to be separate.”); *Cargill v. Refco*, 2006 U.S. Dist. LEXIS 66686, at \*13 (finding that the bankruptcy court correctly concluded that agreements were not a single contract for purposes of Section 365 because “the intent of the parties that the [three agreements] be separately enforceable is demonstrated by the differences in the choice of law, choice of forum and jury waiver provisions”); Refco Jan. 31, 2006 Hr’g Tr. at 78:5-7 (noting that multiple agreements “hav[ing] different choice of law provisions . . . seems to me to be quite inconsistent with an integrated agreement”). The parties could not have

intended to treat the contracts as one where they are among different parties and require those different parties to litigate in different jurisdictions.

**D. The USAV Agreements Are Not Executory Contracts Under Section 365 of the Bankruptcy Code**

44. The party seeking to reject a contract has the burden of demonstrating that it is executory. *In re Exide Techs.*, 607 F.3d 957, 962 (3d Cir. 2010); *see also In re M. Fine Lumber Co.*, 383 B.R. 565, 573 (Bankr. E.D.N.Y. 2008) (“The debtor bears the burden of showing that the requirements for assumption under § 365 have been met.”). Here, the Debtors argue that only the RSPA and the Undertaking Agreement are executory on a stand-alone basis. Motion ¶ 29. Thus, the Debtors’ argument for rejecting all of the USAV Agreements rests on their inseparable contract theory, which fails for the reasons stated above. *See supra* ¶¶ 34-43. Additionally, this argument fails because not even the RSPA and the Undertaking Agreement are executory.

45. The RSPA and the Undertaking Agreement are not executory contracts under either of the two lines of jurisprudence the Debtors cite regarding the definition of executory contracts: (i) the Countryman test (the majority approach), and (ii) the “functional approach.” Motion ¶ 23; *cf. In re MF Glob. Holdings Ltd.*, 466 B.R. 239, 241 (Bankr. S.D.N.Y. 2012) (“[T]he legislative history refers with approval to the so-called Countryman definition[.]”) (citations omitted).

**1. The Countryman Test**

46. Under the Countryman test, the Court must determine (i) whether both parties have material unperformed obligations, and (ii) assess whether the failure of one party to perform those obligations would constitute a material breach excusing performance by the other party. *See In re Helm*, 335 B.R. 528, 535 (Bankr. S.D.N.Y. 2006).

47. USAV has no material unperformed obligations. *See In re Hawker Beechcraft, Inc.*, 486 B.R. 264, 276 (Bankr. S.D.N.Y. 2013) (“If performance remains due on only one side,

the contract is not executory, and hence, neither assumable nor capable of rejection.”); *In re Cont'l Airlines, Inc.*, 154 B.R. 172, 175 (Bankr. D. Del. 1993) (same); *see also In re Teligent, Inc.*, 268 B.R. 723, 732 (Bankr. S.D.N.Y. 2001) (“[I]f **both** parties have substantial, unperformed obligations, the contract is executory....” (emphasis in original)).

48. The Debtors primarily rely on an alleged obligation of USAV “to make Additional Purchase Price payments to [Aerovías].” Motion ¶ 27. But the payment of any Additional Purchase Price was cut off automatically by March 31, 2020, at the latest, due to the Flight Impairment Trigger Event.<sup>14</sup> *See supra* ¶ 14. Indeed, the Debtors themselves submitted an affidavit attesting that “pursuant to the terms of the USAV Agreements, USAV currently has no obligation to pass the proceeds of any credit card receivables to Avianca.” *Declaration of Adrian Neuhauser in Support of Debtors’ Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts* [ECF 306-1] ¶ 6. Thus, USAV did not have any payment obligations to the Seller on the Petition Date. *See COR Route 5 Co., LLC v. Penn Traffic Co.*, 524 F.3d 373, 381 (2d Cir. 2008) (executoriness generally assessed as of petition date).

49. The only other duty of USAV under the RSPA that the Debtors cite is “the maintenance of books and records as required to comply with Cayman Islands law.” Motion ¶ 27 (citing RSPA § 3.04). The Debtors have not specified any unperformed obligations of USAV under the Undertaking Agreement, and the only one is the *de minimis* and contingent obligation to provide documents requested by Aerovías in connection with carrying out its servicing and related duties. *See Undertaking Agreement* § 3.05. None of those terms are material.

50. Whether a contractual breach is material is a question of applicable non-bankruptcy law. *Hawker Beechcraft*, 486 B.R. at 276; *In re WorldCom*, 343 B.R. 486, 493 (Bankr. S.D.N.Y.

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<sup>14</sup> The Obligors and the Seller did not request a waiver of the Flight Impairment Trigger Event, as they have done on several occasions in respect of previous Trigger Events, and in fact did not provide any response to the March 31 Notice whatsoever.



2006). Here, the RSPA and Undertaking Agreement are both governed by Colombian law. RSPA § 9.09; Undertaking Agreement § 4.09. According to Professor Suescún, in order for the non-breaching party to have a right to request from a Colombian court the termination of ongoing obligations under a contract such that the non-breaching party may be excused from further performance under the contract, the breach must be of great magnitude (*gran magnitud*), severity (*gravedad*) and intensity (*intensidad*). Prof. Suescún Decl. ¶ 15 (citing authorities). In essence, a breach of great magnitude (*gran magnitud*), severity (*gravedad*) and intensity (*intensidad*) is one that frustrates the ends of the contract or undermines its purpose. *Id.*

51. The standard under New York law is the same. A material breach goes to the root or essence of the contract, “and is so substantial that it defeats that object of the parties in making the contract.” *In re Helm*, 335 B.R. at 535 (quoting *Wechsler v. Hunt Health Sys., Ltd.*, 330 F.Supp.2d 383, 414 (S.D.N.Y. 2004)); see *In re WorldCom*, 343 B.R. at 496-97; *In re Conseco, Inc.*, 2005 U.S. Dist. LEXIS 24584, at \*15 (N.D. Ill. Oct. 18, 2005) (material breach goes to the objective bargained for). The essence of the RSPA was the sale of the Contract Rights and Receivables in exchange for \$150 million and potentially additional amounts. That sale definitively closed in 2017. See *supra* ¶¶ 11-12, 30-32; Prof. Suescún Decl. ¶¶ 7-11.

52. The ongoing terms identified by the Debtors within the two (of eight) contracts are immaterial. *In re Conseco, Inc.*, 2005 U.S. Dist. LEXIS 24584, at \*16 (party’s agreement to “cooperate” in connection with collections was “ministerial only and not an unperformed, material obligation,” and noting that “[c]ourts have routinely held that similar administrative obligations are not material and do not render a contract executory”); *In re CHATEAUGAY Corp.*, 102 B.R. 335, 346-48, 350 (Bankr. S.D.N.Y. 1989) (contracts non-executory because tax filing and notice provisions were “*de minimis*” and failure of such obligations “would not affect any of the Debtors



[sic] economic and possessory rights in the property”); *In re Spectrum Info. Techs.*, 190 B.R. 741, 751 (Bankr. E.D.N.Y. 1996) (agreements with ongoing consulting provisions were non-executory because such consulting obligations were “de minimis” in light of the purpose of the contracts).<sup>15</sup>

53. Such de minimis acts would not excuse the performance of the other party. *See, e.g., Katzenstein v. VIII SV5556 Lender, LLC*, 440 B.R. 587, 601 (Bankr. S.D.N.Y. 2010) (none of the outstanding performance obligations under a contract were “so material that a breach would excuse [d]ebtor’s obligation to perform”); *In re Calpine Corp.*, 2008 Bankr. LEXIS 2152, at \*20 (Bankr. S.D.N.Y. Aug. 4, 2008) (“The obligations that [the non-debtor party] asserts that arise from the [contract] and are outstanding...are incidental, not material obligations that if breached would excuse [the debtor’s] performance under the [contract].”); *In re Helm*, 335 B.R. at 536 (“When one party commits a material breach, the other party is relieved, or excused, from its further performance obligations.”).

54. In fact, the parties explicitly agreed that a breach by USAV will not excuse the Seller’s performance:

The Seller unconditionally and irrevocably waives any rights it may claim to have under article 870 of the Colombian Code of Commerce and under articles 1546 and 1609 of the Colombian Civil Code or otherwise to rescind this Agreement or any other Transaction Document for any reason or to refrain from complying with its obligations hereunder (including as a result of the failure by the Purchaser to satisfy any of its obligations hereunder, including the making of any payment pursuant to Section 3.01(a)(ii)). As a result of such waiver, the Seller understands, acknowledges, and agrees that: (a) its remedies in the case of a failure by the Purchaser to make one or more payments of Additional Purchase Price hereunder shall be limited to the right to make a claim against the Purchaser for payment of

<sup>15</sup> *See also, e.g., Olah v. Baird (In re Baird)*, 567 F.3d 1207, 1212 (10th Cir. 2009) (finding no executory contract because a party’s continuing obligations, including the “obligation to provide cooperation in the course of defense to any liability claims,” were “at best considered ministerial”); *Enter. Energy Corp. v. United States (In re Columbia Gas Sys.)*, 50 F.3d 233, 244 (3d Cir. 1995) (holding that a requirement to execute contract supplements was little more than a perfunctory act, not a material obligation sufficient to render a contract executory); *In re Curry*, 526 B.R. 276, 281 (Bankr. C.D. Ill. 2015) (stating that the obligations of a servicing agent to review one of the debtor’s income and “income-based repayment” payments were “ministerial and not significant enough to render the ... contract executory”); *In re S’holders Funding*, 188 B.R. 150, 161-62 (Bankr. E.D. Pa. 1995) (finding a contract non-executory where a creditor had assigned rights to the debtor and the creditor’s remaining obligation to complete “a new Modification Agreement . . . pale[d] in comparison to the legal significant of [the creditor] assigning all of its rights to [the debtor]” and “any such obligation appeare[d] largely ministerial”).

any Additional Purchase Price payments that are past due and unpaid, and (b) the Seller shall not be entitled to and shall not attempt to, under any circumstances, reclaim any right, title, or interest in, to or under any of the Contract Rights or the Receivables.

RSPA § 2.05.

55. In addition, the RSPA also provides that:

The Seller hereby irrevocably waives its right to request the resolución of the Agreement, pursuant to article 1546 of the Colombian Civil Code and article 870 of the Colombian Code of Commerce, upon any failure of the Purchaser to pay when due the Additional Purchase Price. As a consequence, upon any such breach, the Seller irrevocably consent and agrees that its sole remedy shall be a claim for monetary damages hereunder.

*Id.* § 3.01(e).<sup>16</sup>

56. The Debtors unperformed obligations are irrelevant given that USAV has no material unperformed obligations. *See supra* ¶¶ 47-53. Nonetheless, the Debtors argue that Aerovías has unperformed obligations under the Undertaking Agreement to “service and administer the Contract Rights and the Collections,” and “to ensure the Card Processing Agreements remain legal and binding.” Motion ¶¶ 24-25. Those duties are largely not ongoing because Aerovías was automatically terminated in its role as Servicer pre-petition. *See* Undertaking Agreement § 3.12(b) (“The Servicer’s appointment shall automatically terminate upon the occurrence of any Trigger Event....”).<sup>17</sup>

57. In addition, the Debtors allege that they have “obligations [that] are also ongoing” under the RSPA “to generate Receivables sufficient to (i) pay to USAV the Monthly Settlement Amount (as defined in the Cash Management Agreement) and (ii) maintain a Collections Coverage

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<sup>16</sup> Similarly, the Undertaking Agreement is also independently clear that only the Purchaser, and not Aerovías, has the right to terminate Aerovías’s servicing and administrative duties thereunder. *See* Undertaking Agreement §§ 3.08 (stating that “Avianca shall not be permitted to resign from its appointment as Servicer hereunder”), 3.12.

<sup>17</sup> Technically, the Purchaser or the Administrative Agent must take the formal step of appointing a replacement Servicer to give full effect to the termination of Aerovías as Servicer. However, the USAV Secured Lender Group will not direct the Administrative Agent to complete this formality without obtaining permission from this Court.

Ratio of at least 1.75:1.00 at any date of determination.” Motion ¶ 26 (citing RSPA §§ 6.01(a), 6.01(b)). This statement is simply wrong. There is no obligation to generate receivables because the provisions relating to the Monthly Settlement Amount and the Collections Coverage Ratio (and all other Trigger Events) are conditions, not duties. RSPA § 6.01 (“Each of the following *events* shall constitute a ‘Trigger Event’” (emphasis added)). “Conditions” and “duties” are distinct concepts and only “duties” are executory. See *Hawker Beechcraft*, 486 B.R. at 276 (“In applying Countryman’s ‘material breach’ test, one must distinguish between a failure of condition and a breach of duty. ‘Non-occurrence of a condition is not a breach by a party unless he is under a duty that the condition occur.’”) (quoting RESTATEMENT (SECOND) OF CONTRACTS § 225(3)).<sup>18</sup> The failure of a condition is simply not a breach.

58. Courts have held that agreements by debtors to sell contractual rights to receivables are treated the same as other completed sales—i.e., they are non-executory where at least one party’s material obligations have been performed. See *In re DMR Fin. Servs., Inc.*, 274 B.R. 465, 472 (Bankr. E.D. Mich. 2002); *In re Charge Trucking, Inc.*, 236 B.R. 620, 624-25 (Bankr. E.D. Tex. 1999). Additionally, an obligation to pay Additional Purchase Price would not render the RSPA or the Undertaking Agreement executory. See, e.g., *In re Ideal Mortg. Bankers, Ltd.*, 539 B.R. 409, 437 (Bankr. E.D.N.Y. 2015) (“[E]xecutory contracts exclude those contracts where one party has completed performance and the only performance that remains is the payment of money by the other party.”); *In re Teligent, Inc.*, 268 B.R. at 732 (a contract is not executory if one party substantially performed and “the only remaining obligation is the other party’s duty to pay for that performance”).

<sup>18</sup> See also *In re Gencor Indus., Inc.*, 298 B.R. 902, 912 (Bankr. M.D. Fla. 2003) (“The obligations [remaining] are not obligations at all. They are instead, conditions to payment....”); *In re Level Propane Gases, Inc.*, 297 B.R. 503, 508 (Bankr. N.D. Ohio 2003) (“[I]f the remaining obligations in the contract are mere conditions, as opposed to duties, then the contract cannot be executory for purposes of § 365 because no material breach could occur.”).

## **2. Functional Approach**

59. The USAV Agreements are also non-executory under the “functional approach,” which focuses on whether the estate will benefit from assumption or rejection. *In re Spectrum Info. Techs., Inc.*, 190 B.R. 741, 747 (Bankr. E.D.N.Y. 1996). As that case explained:

In applying what is now termed the functional approach, “it is necessary to work backward, proceeding from an examination of the goals rejection is expected to accomplish . . . . If those purposes have already been accomplished or if they cannot be accomplished through rejection, then the contract is not executory within the meaning of the [Bankruptcy] Code.”

*Id.* at 747; *see also In re VisionAmerica, Inc.*, 2001 Bankr. LEXIS 1142, at \*11 (Bankr. W.D. Tenn. Sep. 12, 2001).

60. The Debtors’ only purpose for seeking rejection is to get back the Proceeds of the Contract Rights and Receivables that the Debtors sold in 2017. As addressed above, under recent Supreme Court authority, that purpose cannot be accomplished through rejection. *See supra* ¶¶ 18-26. For the same reason, the Debtors have failed to demonstrate that rejection would benefit their estates. Consequently, the USAV Agreements are not executory under the functional approach. *See In re Schneeweiss*, 233 B.R. 28, 32 (Bankr. N.D.N.Y. 1999) (holding that an agreement was not executory under the functional approach “because creditors would not benefit from rejection”); *Jarvis v. Ready Prods. Inc.*, 2005 Bankr. LEXIS 536, at \*14-15 (Bankr. D.N.H. Mar. 28, 2005) (“[U]nder the functional analysis test, the Agreement is not rendered executory because the bankruptcy estate would not benefit from a rejection of the Agreement.”). And rejection under the functional approach would run afoul of *Mission Product*. *See supra* ¶¶ 18-26.

### **E. Rejection of the USAV Agreements Is Not a Sound Exercise of the Debtors’ Business Judgment**

61. The Debtors also have not demonstrated that the proposed rejection is supported by sound business judgment. Courts generally approve motions to reject executory contracts “upon

a showing that the debtor's decision to take such action will benefit the debtor's estate and is an exercise of sound business judgment." *MF Glob. Holdings*, 466 B.R. at 242.

62. The "business judgment" standard "requires a showing that assumption or rejection of the executory contract or unexpired lease will benefit the Debtor's estate." *Id.*; see also *In re Delta Air Lines, Inc.*, 359 B.R. 468, 476 (Bankr. S.D.N.Y. 2006) ("[T]he standard for deciding a motion to reject an executory contract under Section 365(a) is the business judgment rule, which basically means that if it makes economic sense for the debtor in the judgment of management, the motion to reject will be granted.").

63. For the reasons set forth above, the Debtors cannot demonstrate any benefits to the estates from rejection. The Debtors' stated purpose for rejecting the USAV Agreements—that rejection will cause the Proceeds to flow into the estates—is wrong. See *supra* ¶¶ 18-26. It is true that the Debtors are "not receiving the full benefit of the proceeds generated from those receivables," Motion ¶ 35, but that is because the Debtors sold the Contract Rights (including all rights to the Proceeds) in 2017. The Debtors also do not support the inference that they will save money because they incur "the cost incidental to providing and servicing flights." Motion ¶ 35. Operating flights and selling tickets is the *sine qua non* of the Debtors' airline business and essential for the Debtors to continue as a going concern. See First Day Declaration, *passim*. The Debtors intend to continue operating flights and selling tickets, so rejection will not save money. There is no benefit from being relieved of obligations that the Debtors will continue to perform.

**F. Nunc Pro Tunc Relief Is Wholly Unsupported**

64. The Debtors seek to reject the USAV Agreements effective as of June 23, 2020. In addition to the fact that the Debtors are not entitled to reject the USAV Agreements, *nunc pro tunc* rejection would be inappropriate. The Second Circuit has not decided whether a bankruptcy court

has the equitable authority to order retroactive approval of rejection under Section 365. *See, e.g., Adelphia Bus. Solutions, Inc. v. Abnos*, 482 F.3d 602, 607 (2d Cir. 2007). Courts in this Circuit that have approved retroactive dates for rejection have most commonly done so in the context of unexpired leases of nonresidential real property under Section 365(d)(3), *e.g., In re Jamesway Corp.*, 179 B.R. 33, 38 (S.D.N.Y. 1995), which precedent is inapposite to the present Motion.

65. The Debtors appear to recognize that Section 365 does not provide any basis for the *nunc pro tunc* rejection of the USAV Agreements, and instead turn to this Court's equitable powers under Section 105(a) of the Bankruptcy Code. Section 105(a), however, is unavailing because there is no bankruptcy right that is being implemented through equitable relief. *See Law v. Siegel*, 571 U.S. 415, 421 (2014) (“[W]hatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code.”). Further, the Debtors have not attempted to address the balancing of the equities, and instead simply repeat that “the USAV Agreements are no longer beneficial to the Debtors’ estates.” Motion ¶ 41.

66. In any event, the Debtors have not explained what retroactive rejection of the USAV Agreements would accomplish here. Nor can they, because the Contract Rights and the Proceeds derived therefrom are not property of the estate, and would not be transformed into property of the estate by rejection. *See supra* ¶¶ 18-26.

### **CONCLUSION**

67. For the reasons set forth above, the Motion should be denied.

July 22, 2020  
New York, New York

Respectfully submitted,

**WHITE & CASE LLP**

By: /s/ Glenn M. Kurtz

Glenn M. Kurtz

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Joshua D. Weedman

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*Attorneys for the USAV Secured Lender  
Group*



**EXHIBIT 16**

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Glenn M. Kurtz  
Scott Greissman  
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Mark Franke  
Brandon D. Batzel

*Attorneys for the USAV Secured Lender Group*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

---

In re:	) Chapter 11
	)
AVIANCA HOLDINGS S.A., <i>et al.</i> , <sup>1</sup>	) Case No. 20-11133 (MG)
	)
Debtors.	) (Jointly Administered)
	)

---

**DECLARATION OF JORGE SUESCÚN MELO IN SUPPORT OF  
OBJECTION OF THE USAV SECURED LENDER GROUP TO  
DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
REJECTION OF CERTAIN EXECUTORY CONTRACTS**

I, Jorge Suescún Melo, hereby declare as follows:

1. I submit this declaration in support of the USAV Secured Lender Group's Objection<sup>2</sup> to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (the "Objection").<sup>3</sup>

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number (to the extent applicable) are as follows: Aero Transporte de Carga Unión, S.A. de C.V.; Aeroinversiones de Honduras, S.A.; Aerovías del Continente Americano S.A. Avianca; Airlease Holdings One Ltd.; Avianca Costa Rica S.A.; Avianca Holdings S.A.; Avianca, Inc. (13-1868575); Avianca Leasing, LLC (46-2586415); Avianca Perú S.A.; Avianca-Ecuador S.A.; Aviateca, S.A.; Avifreight Holding Mexico, S.A.P.I. de C.V.; Grupo Taca Holdings Limited; International Trade Marks Agency Inc.; Inversiones del Caribe, S.A.; Isleña de Inversiones, S.A. de C.V.; Latin Airways Corp.; Latin Logistics, LLC (00-0107425); Regional Express Américas S.A.S.; Ronair N.V.; Taca de Honduras, S.A. de C.V.; Taca International Airlines S.A.; Taca S.A.; Tampa Cargo S.A.S.; AV International Holdco S.A.; AV International Holdings S.A.; AV International Investments S.A.; AV International Ventures S.A.; AV Investments One Colombia S.A.S.; AV Investments Two Colombia S.A.S.; AV Taca International Holdco S.A.; Servicios Aeroportuarios Integrados SAI S.A.S. The address of the Debtors' principal offices is Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

<sup>2</sup> Capitalized terms not defined herein have the meanings provided in the Objection.

### ***Qualifications***

2. I obtained my law degree at Universidad del Rosario in 1970. I am a member of the Colombian bar. I have been working at Suescún Abogados for nearly forty years. The firm was established under its current name in 2013 after the restructuring of the former Suescun & de Brigard and Lleras, Suescun & de Brigard, which were originally established in 1998 and 1981, respectively. My experience covers a wide range of legal areas, such as contracts, commercial law, law of obligations, dispute resolution, and arbitration.

3. I have acted as lead counsel, arbitrator and chairman in over 150 arbitrations under the auspices of the International Chamber of Commerce (ICC), the Chamber of Commerce of Bogota (CCB) and in ad-hoc proceedings under the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules.

4. Those domestic and international arbitrations involved disputes in various areas including banking, broadcasting, concession contracts, construction, corporate, distributorship and agency, energy, engineering, electricity and gas supply, finance, government contracts, infrastructure, insurance and reinsurance, joint ventures, licensing, maritime, mergers and acquisitions, mining and natural resources, real estate, oil & gas, sales, telecommunications, TMT (telecommunications, media and technology), trusts, turnkey projects and general commercial disputes.

5. I have been Adjunct Professor on Law of Obligations, Contracts, Commercial Law, Admiralty Law and Finance Law at Universidad del Rosario and Universidad de los Andes both in Bogota, Colombia.

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<sup>3</sup> The USAV Secured Lender Group is composed of the following members: Deutsche Bank AG, London Branch; Bank United N.A.; Banco de Credito del Peru, Miami Agency; First Citizens Bank Limited; Metrobank S.A.; Prival Bank S.A.; Moneda Latinoamerica Deuda Local Fondo de Inversion; and Moneda Deuda Latinoamericana Fondo de Inversion.

6. I am the author of “*Derecho Privado – Estudios de Derecho Civil y Comercial Contemporaneo*” (Private Law – Studies in Contemporary Civil and Commercial Law), a leading publication in its field, and numerous articles on business law matters for various specialized publications. This publication has been cited in approximately 72 arbitral awards applying Colombian law, approximately 40 rulings by the Supreme Court of Justice, the Constitutional Court, the Council of State, the Superintendence of Corporations, the Superior Tribunal of the Judicial District of Bogota, the Superior Tribunal of the Judicial District of Medellin and the Superior Tribunal of Buga. It is also used as a course book in various Colombian law schools, including in the law schools at Universidad del Rosario and Universidad de los Andes.

***Under Colombian Law, the Sale of the Contract Rights and Receivables under the RSPA Constitutes a Valid, Final and Irrevocable Sale and Transfer as of the Effective Date***

7. Under Colombian law, the sale and transfer of a right or asset from one party to another requires two distinct elements: (i) legal title (*título*) and (ii) an act of transfer (*modo*).<sup>4</sup>

8. In the case of the Contract Rights and Receivables sold under the RSPA, both requirements for USAV to acquire ownership were met. Upon execution of the RSPA, the Debtors sold the Contract Rights and accrued receivables to USAV (a perfected *título*). Upon the execution of the AMEX Notice, the Credomatic Notice, and the Credomatic Consent and Agreement, the Debtors transferred the Contract Rights and the accrued receivables to USAV (a perfected *modo*).

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<sup>4</sup> See Colombian Council of State, Ruling of April 1, 2016, Issuing Justice: Jaime Orlando Santofimio (holding that the legal title (*título*) and the act of transfer (*modo*) are mandatory under Colombian law for a purchase and sale agreement). All sources cited in this declaration are included in Exhibit A annexed hereto. White & Case will file translations of such sources when translations are completed.

9. Accordingly, the sale and transfer of the Contract Rights and Receivables constitutes a valid, final and irrevocable sale and transfer as of the Effective Date as a matter of Colombian law. As a consequence of such sale and transfer (*título y modo*), USAV is the sole owner of the Contract Rights and Receivables, and all amounts that are the Proceeds thereof. Therefore, USAV has the right to receive all future Collections (as defined in the RSPA) derived from the Contract Rights. Further, as of the Effective Date, the Contract Rights and Receivables, and all of the Proceeds thereof, were no longer the property of the Seller.

***Under Colombian Law, the RSPA is a “Single Execution Contract” (Contrato de Ejecución Instantánea) and the Essential Obligations were Performed on the Effective Date in 2017***

10. Under Colombian law, purchase and sale agreements—such as the RSPA—are “single execution contracts” (*contratos de ejecución instantánea*), pursuant to which the essential obligations of the parties (i.e., the payment of purchase price and the transfer of assets) are performed instantaneously.<sup>5</sup> Upon the Effective Date in 2017, the essential obligations of the Seller and USAV were performed, namely, the sale and transfer (*título y modo*) of the Contract Rights and Receivables by the Seller to USAV in exchange for, among other consideration, the payment of the initial purchase price by USAV to the Seller. As such, on the Effective Date, the sale and transfer (*título y modo*) of the Contract Rights and Receivables was completed.

11. A *contrato de ejecución instantánea* does not lose its character as such even if the contract contemplates additional future payments. Indeed, Colombian courts have repeatedly affirmed that purchase and sale agreements in which the purchaser covenants to pay the price in one or more installments are still a *contrato de ejecución instantánea* as its obligations can be

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<sup>5</sup> See Superior Tribunal of the Judicial District of Pasto, Ruling of July 18, 2018 (holding that in purchase and sale agreements the payment and transfer of the property are obligations performed only one time upon the effectiveness of a purchase and sale; thus, being *contratos de ejecución instantánea*)

executed in a single act.<sup>6</sup> Therefore, the fact that the RSPA contemplates the potential for certain additional rights of the Seller (including, to receive Additional Purchase Price) does not alter the character of the RSPA as a *contrato de ejecución instantánea*.

12. In any case, the ongoing contingent obligation of USAV to pay periodic payments of Additional Purchase Price no longer exists because a “Trigger Event” occurred. The occurrence of that “Trigger Event” has a number of consequences under the RSPA. One is no Additional Purchase Price shall be paid during the continuance of . . . a Trigger Event.” RSPA § 3.01(a)(ii). A “Trigger Event” under the RSPA occurs where “the capacity or ability of the Seller to operate domestic and/or international flights is materially impaired for any reason.” *Id.* § 6.01(i)(i). I am informed that a Trigger Event of this kind occurred on or before March 31, 2020 and notice of that Trigger Event was duly provided to the Seller. Accordingly, as a matter of Colombian contract law, the obligation of USAV to pay Additional Purchase Price does not exist.<sup>7</sup>

***Under Colombian Law, to Unwind the Sale and Transfer (Título y Modo) of the Contract Rights and Receivables, the Seller Would be Required To Seek an Order from a Colombian Court Rescinding the RSPA***

13. In order to receive back the proceeds of the Contract Rights and Receivables sold to USAV in 2017, the Seller would be required under Colombian law to seek an order from a Colombian Court rescinding the RSPA,<sup>8</sup> which, if granted, would result in a complete unwinding

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<sup>6</sup> See Colombian Council of State, Ruling of April 26, 2012, Issuing Justice: Danilo Rojas Betancourth; Colombian Council of State, judgment of 28 February 2013, Issuing Justice: Danilo Rojas Betancourth; Superior Tribunal of the Judicial District of Pasto, Ruling of July 18, 2018.

<sup>7</sup> See Colombian Council of State, Ruling of April 26, 2012, Issuing Justice: Danilo Rojas Betancourth (establishing that parties to a purchase and sale agreement can agree that payment may be subject to certain conditions.)

<sup>8</sup> Colombian Supreme Court of Justice, Ruling of August 26, 2011, Issuing Justice: Arturo Solarte.

of the transactions consummated under the contract.<sup>9</sup> Here, while the remedy of rescission would not be available to the Seller (as explained below), if it were, it would require proof of a breach that is of great magnitude (*gran magnitud*), severity (*gravedad*) and intensity (*intensidad*).<sup>10</sup> If it were granted, it would require the return of the Contract Rights and Receivables to the Seller by USAV and the return of the Initial Purchase Price paid by USAV to the Seller on the Effective Date and any Additional Purchase Price paid.<sup>11</sup>

14. Rescission of the RSPA would not be available as a remedy to the Seller, however, because the sale and transfer (*título y modo*) of the Contract Rights and Receivables was valid, final and irrevocable as of the Effective Date, and that sale and transfer (*título y modo*) has been completely performed for valid consideration.<sup>12</sup> A mere breach of the minimal continuing obligations under the RSPA would not result in a right of the Seller to rescind the RSPA.<sup>13</sup> In any case, under Section 2.05 of the RSPA, the Seller has validly waived its right to seek to rescind the RSPA. RSPA § 2.05.<sup>14</sup> Section 2.05 of the RSPA is enforceable under Colombian law.<sup>15</sup>

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<sup>9</sup> See Colombian Council of State, judgment of 28 February 2013, Issuing Justice: Danilo Rojas Betancourth (stating that the consequence of the rescission of a contract is the return to the status quo prior to the execution of the contract.).

<sup>10</sup> See Colombian Supreme Court of Justice, Ruling of 14 January 2005, Issuing Justice: Edgardo Villamil Portilla (stating that the rescission of the contract is only possible when breach is of such a magnitude, severity or intensity that it renders such good absolutely improper for the purposes of the contract.)

<sup>11</sup> See Colombian Supreme Court of Justice, Ruling of August 26, 2011, Issuing Justice: Arturo Solarte.

<sup>12</sup> See Colombian Supreme Court of Justice, Ruling of 26 August 2011, Issuing Justice: Arturo Solarte Rodríguez, p.19 (stating that in some cases it is impossible to rescind the contract because, “due to the nature of the duties assumed by the contracting parties, it is not feasible to roll back what has been already given or delivered”).

<sup>13</sup> See Colombian Supreme Court of Justice, Ruling of 11 September 1984, Issuing Justice: Humberto Murcia Ballén, cited in: Colombian Supreme Court of Justice, Ruling of 22 October 2003, Issuing Justice: Carlos Ignacio Jaramillo (“the contract may not be rescinded if the breach of one of the parties has very little importance in light of the interest of the other.”)

<sup>14</sup> Section 2.05 of the RSPA provides:

The Seller unconditionally and irrevocably waives any rights it may claim to have under article 870 of the Colombian Code of Commerce and under articles 1546 and 1609 of the Colombian Civil Code or otherwise to rescind this Agreement or any other Transaction Document for any reason or to refrain from complying with its obligations hereunder (including as a result of the failure by the Purchaser to satisfy any of its obligations hereunder, including the making of any payment pursuant to Section 3.01(a)(ii)). As a result of such waiver, the Seller understands, acknowledges, and agrees that: (a) its remedies in the case of a failure by the Purchaser to make one or more payments of Additional Purchase Price hereunder shall be limited to the right to make a claim against the Purchaser for payment



***Under Colombian Law, in Order for a Contract Breach to be Considered Material, it must be of Great Magnitude (Gran Magnitud), Severity (Gravedad) and Intensity (Intensidad) such that the Breach Frustrates the Ends of the Contract***

15. Colombian law will not excuse a non-breaching party from a contract on the basis of any breach by the other party. Instead, in order for the non-breaching party to have a right to request from a Colombian court the termination of ongoing obligations under a contract such that the non-breaching party may be excused from further performance under the contract, the breach must be of great magnitude (*gran magnitud*), severity (*gravedad*) and intensity (*intensidad*).<sup>16</sup> In essence, a breach of great magnitude (*gran magnitud*), severity (*gravedad*) and intensity (*intensidad*) is one that frustrates the ends of the contract or undermines its very purpose.<sup>17</sup>

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of any Additional Purchase Price payments that are past due and unpaid, and (b) the Seller shall not be entitled to and shall not attempt to, under any circumstances, reclaim any right, title, or interest in, to or under any of the Contract Rights or the Receivables.

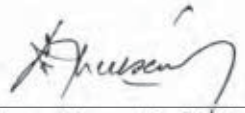
<sup>15</sup> See article 15 of the Colombian Civil Code (“All rights conferred by the law may be waived. . . .”). See also Colombian Council of State, Ruling of 20 March 2018, Issuing Justice: Danilo Rojas Betancourth (“. . . article 15 of the Civil Code provides that the parties, within a specific legal transaction, may renounce the rights conferred . . . . In accordance with the previous rule and in development of the postulate of the business autonomy, in principle, it can be stated that parties are allowed to stipulate in their legal transactions . . . a waiver to file any judicial or extrajudicial claim arising from those legal transactions, as long as such waiver is not specifically prohibited.”)

<sup>16</sup> See Colombian Supreme Court of Justice, Ruling of 14 January 2005, Issuing Justice: Edgardo Villamil Portilla (stating that the rescission of the contract is only possible when breach is of such a magnitude, severity or intensity that it renders such good absolutely improper for the purposes of the contract.)

<sup>17</sup> See *Jairo Gómez Rueda v. Prodain S.A.*, Final Award, 11 June 2008 (holding that, in order for a breach to give rise to the rescission of the contract, such breach must be essential, i.e., that the damage caused by the breach is such that the injured party is substantially deprived of what such party expected from the contract.)

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on July 22, 2020.

  
\_\_\_\_\_  
Jorge Suescún Melo

**EXHIBIT 17**

**CITIBANK, N.A.**  
388 Greenwich Street  
New York, NY 10013

March 31, 2020

**USAVflow Limited**  
c/o P.O. Box 1093  
Boundary Hall  
Cricket Square  
Grand Cayman  
KY1-1102  
Cayman Islands  
Telephone: (345) 945-7099  
Email: info@maplesfs.com

**Aerovías del Continente  
Americano S.A. Avianca**  
Centro Administrativo  
Avenida Calle 26 No.59-15 Piso  
10  
Bogotá, D.C.  
Colombia  
Attention: Vicepresidente  
Financiero  
Telephone: (571) 295-6765  
Email: lucia.avila@avianca.com

**Avianca Holdings S.A.,  
Taca International Airlines, S.A.,  
Avianca Costa Rica S.A. and  
Trans American Airlines, S.A.**  
c/o Aerovías del Continente  
Americano S.A. Avianca  
Centro Administrativo  
Avenida Calle 26 No.59-15 Piso 10  
Bogotá, D.C.  
Colombia  
Attention: Vicepresidente  
Financiero  
Telephone: (571) 295-6765  
Email: lucia.avila@avianca.com

Loan Agreement -- Notice of Defaults/Reservation of Rights  
RSPA – Notice of Trigger Events/Reservation of Rights

Ladies and Gentlemen:

Reference is made (i) to the Loan Agreement, dated as of December 12, 2017 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “*Loan Agreement*”), by and among USAVflow Limited, as borrower (the “*Borrower*”), the Guarantors referred to therein (the “*Guarantors*”), the Lenders referred to therein (the “*Lenders*”) and Citibank, N.A., as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the “*Administrative Agent*”) and as collateral agent and (ii) to the Contract Rights and Receivables Sale, Purchase and Servicing Agreement, dated as of December 12, 2017 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “*RSPA*”), between Aerovías del Continente Americano S.A. Avianca (the “*Seller*”) and the Borrower. Capitalized terms used but not defined in this letter shall have the meanings assigned thereto in the Loan Agreement or RSPA, as applicable.

The Administrative Agent has been informed by the Lenders (i) that the Borrower is in breach of certain terms and conditions of the Loan Agreement as specified on Schedule I hereto, which have caused Events of Default under Section 6.1 of the Loan Agreement (collectively, the “*Specified Events of Default*”) to occur and continue and (ii) that the Seller is in breach of certain terms and conditions of the RSPA as specified on Schedule II hereto, which have caused Trigger Events under Section 6.01 of the RSPA (collectively, the “*Specified RSPA Events*” and, together with the Specified Events of Default, the “*Specified Events*”) to occur and continue.

The Agents (acting at the direction of the Required Lenders) and the Lenders (collectively, the “Secured Parties”) continue to evaluate their response to the Specified Events. We hereby inform you that (a) the Secured Parties have not waived any Specified Events or any other existing or future default or Event of Default under the Loan Agreement or Trigger Event under the RSPA, and this letter is not, and shall not be deemed to be, and no action, inaction or acquiescence by the Secured Parties (including, without limitation, the acceptance of any payment under the Loan Agreement or the making of any payments to the Seller pursuant to the Cash Management Agreement), shall constitute a waiver, (b) the Secured Parties are not obligated in any way, and have not agreed, to forbear from individually or collectively enforcing rights or remedies under the Loan Agreement, the RSPA, the Security Documents, any other Credit Document or under all applicable law, all rights with respect to which are expressly reserved by the Secured Parties, (c) neither any Obligor nor the Seller should assume that any Obligor or the Seller or any of their Subsidiaries or Affiliates has a commitment from any of the Secured Parties to forbear or “stand still”, (d) no past or future forbearance on the part of any of the Secured Parties should be viewed as a limitation upon or waiver of the absolute right and privilege of the Secured Parties in exercising remedies that currently or may in the future exist and (e) any single or partial exercise of any right or remedy under the Credit Documents shall not preclude any other or further exercise thereof or the exercise of any other right or remedy. Until such time, if any, as the Administrative Agent (acting at the direction of the Required Lenders) and the Lenders agree in writing to a waiver of, or a consent to, any Specified Event or any other default, Event of Default, Adjustment Event or Trigger Event, no such waiver or consent shall exist or be implied.

Pursuant to Section 2.5.6 of the Loan Agreement, after the occurrence and during the continuance of an Event of Default, interest on all outstanding obligations under the Loan Agreement accrue at the rate of 2% per annum above (such additional interest, the “*Default Interest*”) the rate specified in Section 2.5.1 of the Loan Agreement, to the fullest extent permitted by the Law. The Secured Parties have not collected Default Interest. The Secured Parties reserve the right to demand the Default Interest become due and payable in their sole discretion. Any delay in the collection of such Default Interest, or any other action, inaction or acquiescence by the Secured Parties in relation thereto, is not and shall not be deemed to be a waiver or forbearance of the Default Interest.

Accordingly, this letter is without prejudice to, and the Secured Parties fully and specifically reserve, any and all rights, powers, privileges and remedies under the Loan Agreement and the other Credit Documents, at law or otherwise, regarding each Specified Event and each other default, Event of Default or Trigger Event. This letter does not attempt to summarize all of the existing defaults and Events of Default under the Loan Agreement and the other Loan Documents. This letter shall not entitle any Loan Party to any other or further notice or demand.

**THIS LETTER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

[Remainder of page intentionally left blank.]

Very truly yours,

**CITIBANK, N.A.,**  
as the Administrative Agent, acting pursuant to the  
direction of the Required Lenders

By:  \_\_\_\_\_

Name: Miriam Molina  
Title: Senior Trust Officer

cc:

Citibank, N.A., as Collateral Agent  
388 Greenwich Street  
New York, NY 10013  
United States  
Attention: Karen Abarca

Each of the Lenders under the Loan Agreement

[Signature page to Notice of Defaults/Reservation of Rights]

Specified Events of Default

1. An Event of Default has occurred under Section 6.1.15 of the Loan Agreement, as the capacity or ability of the Receivables Seller to operate international flights is materially impaired.
2. An Event of Default has occurred under Section 6.1.4 of the Loan Agreement, as a Trigger Event has occurred under the RSPA.



Specified RSPA Events

1. A Trigger Event has occurred under Section 6.01(i)(i) of the RSPA, as the capacity or ability of the Seller to operate international flights is materially impaired.

**EXHIBIT 18**

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 20-11133-mg

- - - - -x

In the Matter of:

AVIANCA HOLDINGS S.A., et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 27, 2020

3:30 PM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

1  
2 (Doc## 628, 617, 616, 306) Telephonic Status Conference (Using  
3 Court Solutions) with Counsel Concerning Debtors' Motion to  
4 Reject to USAV Agreements.  
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## P R O C E E D I N G S

THE COURT: Thank you very much, and good afternoon, everybody. We're here in Avianca, which is 20-11133. This hearing is being held pursuant to the order that was entered last week scheduling a status conference with counsel concerning the debtors' motion to reject the USAV agreements. The order was entered as ECF docket number 628.

As the order had recited, the Court received, obviously, the debtors' motion to reject the contract, which was filed as ECF docket number 306. And on July 23, 2020, objections were filed by USAVflow, Ltd. and USAV Secured Lender Group. The objections were filed as ECF docket numbers 616 and 617.

And I reviewed all of those pleadings. Obviously the debtors can still file a reply. But after reviewing the objections, the hearing currently is scheduled for this Wednesday. And as a telephone hearing, I was concerned and it's unclear to me whether the hearing will go forward as -- and it's not going forward on Wednesday. We're going to set another schedule -- but whether the hearing is going to go forward as an evidentiary hearing.

There were declarations filed, expert testimony for foreign law. I wanted to know whether there -- whether the debtors plan to file any expert declarations of their own or any other declarations; whether there are going to be any

1 depositions of witnesses, expert or otherwise; and to schedule  
2 any remaining briefing, and also to schedule the hearing.

3 Who is going to handle this call for the debtors? Mr.  
4 Milender, you had indicated -- I'm sorry, I didn't -- it wasn't  
5 clear to me.

6 MR. LEBLANC: Your Honor, this is Andrew Leblanc of  
7 Milbank --

8 THE COURT: Okay.

9 MR. LEBLANC: -- on behalf of the debtors.

10 THE COURT: All right, go ahead, Mr. Leblanc. Let me  
11 hear from you first.

12 MR. LEBLANC: Thank you, Your Honor. Yes, thank you,  
13 Your Honor. And we appreciate the Court scheduling a status  
14 conference so quickly after getting the replies -- or I should  
15 say the opposition.

16 Your Honor, to be -- to respond to your question, we  
17 do not believe -- we've talked with USAVflow's counsel and with  
18 White & Case, representing the secured lenders to USAVflow. I  
19 don't believe that anyone thinks that there is a factual  
20 hearing that is necessary. So we don't think there's a need  
21 for evidentiary depositions.

22 However, upon receiving the Colombian law declaration,  
23 we have been thinking over the course of the weekend -- and  
24 once we saw that the hearing -- your order suggested, where  
25 it's saying that the hearing would be moved from the Wednesday

1 date, we took the weekend to think through whether we're going  
2 to submit a competing Colombian law declaration. And we're  
3 going to continue to consider that, Your Honor. And it'll, I  
4 think, factor into some of the discussions --

5 THE COURT: Not for very much longer.

6 MR. LEBLANC: -- of scheduling. No, I understand,  
7 Your Honor. We really will come to a conclusion in the next  
8 couple of days. And just to explain to the Court why we're  
9 thinking about that.

10 We don't believe that the issues of Colombian law are  
11 relevant to the dispute that's before the Court. But we do  
12 take issue with certain of the statements, and only in the  
13 sense that we don't think they're complete statements of  
14 Colombian law.

15 And so the main reason for us to think through this is  
16 simply because we don't want Your Honor to be left with an  
17 incomplete impression of Colombian law, although -- and if Your  
18 Honor disagrees with us that the issues of Colombian law that  
19 are raised are not relevant to the rejection motion, we  
20 certainly don't want Your Honor to have a misperception or an  
21 incomplete picture on Colombian law.

22 And so that's why we're considering it. And we'll be  
23 prepared, in the next couple of days, to let Mr. Kurtz and the  
24 Kasowitz firm know if we intend to put on a witness. And we've  
25 even offered to them -- we talked with them about a proposed

1 schedule, but obviously subject to Your Honor's views, and  
2 offered to them to get them the declaration earlier so that if  
3 there was a need to take depositions, then we could do so.

4 My own view is I don't expect that there will be,  
5 because I think it'll just be us supplementing issues of  
6 Colombian law. And I'm not sure there will be disagreements as  
7 to the Colombian law issues. But that's the only place that we  
8 see there could be a need for depositions. And we've made a  
9 proposal to try to get them a declaration as early as  
10 possible -- make a decision whether we're going to put in a  
11 declaration, get them that declaration as early as possible,  
12 then we can all collectively make decisions if we're going to  
13 do remote depositions of these witnesses in advance of a  
14 hearing.

15 THE COURT: All right. Let me just say, with respect  
16 to expert testimony, whether it's by deposition or whether live  
17 cross-examination -- live by Zoom -- those are two choices --  
18 if the parties decide that -- if you submit a declaration on  
19 Colombian law and the other parties decide not to take a  
20 deposition, you should also discuss whether anyone wants live  
21 cross-examination by Zoom.

22 And I should say that after I receive -- if you put in  
23 a declaration and the parties decide not to cross-examine,  
24 there's still the possibility that when I review them I will  
25 decide there are questions I want to ask of the experts on

1 Colombian law, in which case they would have to participate by  
2 Zoom. But we're not there yet.

3 Let me hear from -- I don't know who's going to argue  
4 next -- Mr. Kurtz, or whether someone from Kasowitz wants to  
5 argue first. Mr. Kurtz or Mr. Greissman, let me hear from one  
6 of you.

7 MR. KURTZ: Thank you, Your Honor. Glenn Kurtz on  
8 behalf of the secured lenders. Let me just clarify a couple of  
9 the points that Mr. Leblanc made.

10 The first was whether there would need to be  
11 depositions. I don't think we got to the point where we agreed  
12 there wouldn't need to be depositions. We're trying to figure  
13 out whether the debtors intend to put in an expert declaration  
14 that would in any way conflict with our expert's declaration on  
15 anything that would have an impact on the resolution of the  
16 motion.

17 We note that the debtors had foreign counsel,  
18 Colombian counsel, in connection with the underlying  
19 transaction, and they have already rendered an opinion that was  
20 totally consistent with the opinion that we've now put before  
21 Your Honor, in an admissible fashion, that the sale was valid,  
22 that it transferred all of the seller's interests in the future  
23 proceeds of the contract rights that were sold to USAV, and  
24 that the sellers no longer have an interest in that property.

25 If, for some reason, there's going to be a declaration

1 that is different than what we've said and different from what  
2 the debtors said through their prior foreign law expert, then  
3 we may very well need a deposition or perhaps live Zoom cross.  
4 But we hadn't got to that point, because we don't know whether  
5 there's going to be such a declaration.

6 Two, in terms of timing, our real first trigger timing  
7 point is whether there's going to be a foreign law declaration.  
8 We think that decision should be made pretty soon. The  
9 opposition -- the reply, I should say -- the reply papers for  
10 the debtors were going to be due tomorrow. So by now, absent  
11 Your Honor having scheduled this conference, presumably they  
12 would have already put together what they needed to put  
13 together or decided they were going to forego it.

14 The only other issue I think I would comment in terms  
15 of a response to Mr. Leblanc is this idea of providing us a  
16 declaration ahead of the papers. As Mr. Leblanc knows, we have  
17 a contest on that issue. We've given them our objection. It  
18 included our foreign law declaration, and then it included a  
19 brief that demonstrated the way we are using and relying on the  
20 foreign law declaration. And we believe that the debtors owe  
21 reply papers. And if they intend to rely on a foreign law  
22 declaration, then they should put that in along with the brief,  
23 so that we too can analyze the declaration and how it's being  
24 used in the brief.

25 We've suggested that they do that as soon as they can,



1 so that the parties can assess whether or not there'll be a  
2 need for a deposition and then be able to schedule a deposition  
3 without too much delay. And I don't think we were able to  
4 reach an agreement on that. I think it was left that they  
5 would give us a declaration sometime ahead of the reply, but  
6 didn't want to give us the reply until two days before the  
7 hearing.

8 We don't think that's appropriate or fair. We don't  
9 think that -- if they want to join issue on foreign law, then I  
10 think we have to see how they tee that up in the brief and in  
11 the declaration. And if they want to have a hearing sooner  
12 rather than later, then we think they should get that to us as  
13 soon as they can, and we can schedule a hearing after we've --  
14 or at least leave ourselves some time between whenever a  
15 hearing is scheduled, so that we all know whether we need  
16 depositions, and we leave ourselves time to analyze it and then  
17 arrange a deposition or otherwise prepare for cross-  
18 examination.

19 So we don't know what the next hearing date will be,  
20 and we can work backwards from that, but we don't think that we  
21 should be getting, two days before a hearing date, the first  
22 notice of having intent to use their declaration.

23 THE COURT: I agree with that completely, Mr. Kurtz.  
24 That's one of the reasons that I scheduled the hearing today.  
25 Given the oppositions -- the objections that were filed, I also

1 consider this matter to be complicated from the Court's  
2 standpoint, and I don't want to have a hearing a day after or  
3 two days after reply papers are filed. I want to be sure that  
4 I have sufficient time to prepare for the hearing after  
5 receiving all the briefs and any other declarations.

6 Let me hear first from somebody from Kasowitz, whether  
7 they want to be heard.

8 MR. KORPUS: Yes, thank you, Your Honor. This is  
9 Sheron Korpus from Kasowitz. We agree with Mr. Kurtz. We did  
10 not submit a foreign law expert, so in some ways we're outside  
11 this particular issue, but we did submit the debtors' prior  
12 opinion in connection with the closing, which as Mr. Kurtz  
13 said, is consistent with their foreign law expert and is an  
14 admission binding on the debtors.

15 And if the debtors, for some reason, are now going to  
16 deviate from that in whatever they submit to the Court, we  
17 clearly believe that we should have a deposition to explore  
18 that. Thank you, Your Honor.

19 THE COURT: Okay, thank you.

20 Is there any other party-in-interest with respect to  
21 this rejection motion that wants to be heard?

22 All right, hearing none --

23 MR. LEBLANC: Your Honor, Andrew --

24 THE COURT: -- I have -- I'm sorry, go ahead.

25 MR. LEBLANC: I'm sorry, Your Honor. This is Andrew

1 Leblanc again from Milbank. I don't know if you wanted me to  
2 respond to any of that or to propose our --

3 THE COURT: I don't.

4 MR. LEBLANC: -- schedule, but -- okay.

5 THE COURT: I don't. Okay.

6 I have some issues that -- and certainly there needs  
7 to be a reply brief. I think that with respect to whether  
8 you're going to submit a foreign law -- a declaration of a  
9 foreign law expert, I want that decision by 5 p.m. Wednesday.  
10 Not the declaration itself, but the decision. You've got to  
11 make -- the hearing was supposed to be on Wednesday. Make the  
12 decision by 5 o'clock Wednesday. Advise other counsel either  
13 way.

14 If there is -- if your decision is to submit a  
15 declaration of a foreign law expert, confer with them about  
16 when you'll be able to provide that. That certainly will  
17 affect the schedule.

18 But I have some additional issues based on -- and I'm  
19 certainly not reaching any rulings at all, but after reading  
20 the papers, I do have some additional issues that I want  
21 addressed. It may require an additional brief from the  
22 objectors as well. Let me see if I can describe -- articulate  
23 what is on my mind. Okay?

24 I know the objections argue that the sale agreement is  
25 not executory. But assume for sake of argument that it is --

1 that the Court concludes it is an executory agreement, but that  
2 it concludes that the Supreme Court's Technology decision means  
3 that the sales of the -- any existing contract rights that  
4 existed pre-petition can't be unwound. My question is: what  
5 is the effect of -- what would be the effect of that ruling?

6 In other words, if I concluded it was executory, but  
7 that Technology teaches that the rights that were transferred  
8 aren't unwound, what is each side's view of the effect of the  
9 breach of the sale agreement, for argument's sake, say as of  
10 the petition date, or as of the date of the trigger event?

11 And so I understand that -- at least so far I  
12 understand that the sale agreement would have obligated the  
13 debtors to transfer future receivables to other parties, and so  
14 if rejection means that they don't have to do that, what is  
15 the -- what's the breach, and what would be the -- what's the  
16 theory of a rejection damage remedy?

17 So as I understand the teaching -- if I'm incorrect,  
18 you'll point that out -- the effect of rejection is rejection  
19 damages measured as of the time of the rejection, as --  
20 ordinarily it would be an unsecured claim; but as I understand  
21 the documents -- again, this may be inaccurate -- under  
22 paragraph 17 -- in paragraph 17 of the secured lenders'  
23 objection, which is at ECF 617, it states that, "USAV granted a  
24 security interest in all of its assets for the benefit of the  
25 lenders to secure obligations under the loan agreement, and

1 USAV maintains cash in a debt service reserve account to  
2 satisfy debt service requirements."

3 So if the RSPA is rejected, if it's an executory  
4 contract and it's rejected, would the ensuing rejection damages  
5 claim be a secured claim?

6 Let me see my other questions. Do the parties dispute  
7 that Colombia law would determine the effect of rejection,  
8 assuming it's an executory contract, of the RSPA and/or the  
9 undertaking agreement here? I think both of those, I think,  
10 had governing law clauses with Colombia law.

11 In thinking it through quickly, it -- so the issue of  
12 assumption or rejection, I think, is a U.S. bankruptcy law  
13 issue -- if you disagree, you'll tell me that in briefs -- but  
14 that any rejection damages would be determined by nonbankruptcy  
15 law. If Colombia law is the governing law of applicable  
16 contracts, what would that law indicate?

17 The next series of questions. Avianca's rejection  
18 motion, in paragraph 30, seems to argue that in determining  
19 whether the group of contracts are inextricably linked to one  
20 other is a question of New York law. But my question -- and I  
21 understand there are different governing law provisions in  
22 different contracts -- what law should the Court look at in  
23 determining whether the agreements are inextricably linked to  
24 each other?

25 The next question I have is -- so the parties

1 obviously disagree. Avianca argues that while only two of the  
2 agreements, by their terms, appear to be executory contracts,  
3 all of them should be viewed together -- they were all executed  
4 on the same date -- all should be viewed together as executory  
5 contracts which can be rejected. And I understand that the  
6 objectors argue at some length why, at most, two of the  
7 agreements are executory; the rest are non-executory.

8 What would be the effect if the Court were to permit  
9 rejection of two of the -- conclude that only two of the  
10 agreements are executory contracts that can be rejected, and  
11 others are not executory? Is the debtor still pressing -- if  
12 the Court were to conclude that only two of the agreements are  
13 executory, is the debtor still seeking to reject those  
14 agreements even though others would not be rejected?

15 Let me see if I have any other questions here.

16 If the Court concluded that the RSPA and the  
17 undertaking agreements were both executory contracts that could  
18 be rejected, do the parties dispute that Colombian law would  
19 apply to determine the effect of rejection? It's similar to a  
20 question I've already asked, I think.

21 Let me ask Mr. Leblanc now, if you don't have a  
22 position on it yet, you'll tell me that -- but the objectors  
23 argue that a triggering event occurred under the RSPA prior to  
24 the petition date, when the flights were grounded. Does  
25 Avianca agree with that position?

1 MR. LEBLANC: Your Honor, I do not believe --

2 THE COURT: You have to --

3 MR. LEBLANC: -- that we dispute that --

4 THE COURT: Okay, you have to identify yourself each  
5 time you speak, Mr. Leblanc.

6 MR. LEBLANC: I apologize, Your Honor. Andrew Leblanc  
7 of Milbank, on behalf of the debtors.

8 THE COURT: Okay.

9 MR. LEBLANC: Your Honor, I don't believe we dispute  
10 that position.

11 THE COURT: Okay.

12 MR. LEBLANC: I would also note that there was -- the  
13 bankruptcy itself is also a triggering event under the relevant  
14 contracts. It gives rise to a right to liquidated damages  
15 under the contract, which is what our argument will be in  
16 reply.

17 THE COURT: Okay. And actually you raised the issue  
18 of the liquidated damages. So if foreign law determines the  
19 effect of a rejection and the contract provides, for example,  
20 Colombian law applies and there's a liquidating damage clause,  
21 does Avianca agree that -- well, do you agree or dispute  
22 whether liquidated damages are permissible under the governing  
23 law of the contracts?

24 Anyway, I think those -- based on my review over the  
25 weekend of all of the papers, those are the questions that I



1 have as of now. It may be that particularly after I read any  
2 of your reply papers that Avianca files, that I may have other  
3 questions. I usually find it helpful to get my questions out  
4 to both sides, if possible, in advance of the hearing.

5 So it does seem to me that some of the questions I've  
6 asked -- and it may be that one side or the other that the  
7 briefs adequately address it, but I want to be sure that I have  
8 the parties positions with respect to those questions that I've  
9 raised.

10 And I think certainly the objectors, they take the  
11 position that only two of the contracts, at best, are executory  
12 and the others are not. But again, I'm trying to reason  
13 through, okay, what happens if I conclude yes, only two or one  
14 or whatever or less than all of the contracts are executory,  
15 what happens then?

16 So those are the questions I have as of now. And I  
17 thought -- what I would like you all to do is confer. As I've  
18 indicated, Milbank should decide whether they are going -- they  
19 should decide by 5 o'clock on Wednesday whether they're going  
20 to submit a foreign law expert declaration. And if they say  
21 yes, figure that into your discussion about scheduling.

22 I hope that you'll all be able to agree on the  
23 schedule. You should also discuss whether -- I'd like to  
24 avoid, if possible, multiple rounds of opposition. Certainly  
25 the debtor would be entitled, now, to file a reply. But some

1 of the questions that I've raised today aren't addressed in the  
2 objections that were filed.

3 So if Milbank goes ahead and files its reply, then I'm  
4 likely to hear that the objectors want to file a sur-reply. I  
5 want you all to try and work out what you all think is the most  
6 sensible schedule, what additional briefing will be required.

7 I would like, I think, a week after the briefing  
8 closes, before we schedule the argument. This is obviously --  
9 unless you're able to work it out, and I get that -- I was  
10 going to save that for last. But if you're not able to work  
11 this all out, I consider these issues to be important. And I  
12 think rather than going forward with a telephone hearing, I'd  
13 like to go forward with the hearing as a Zoom for Government  
14 hearing. In any extended arguments, I prefer to have them so I  
15 can see the lawyers who are arguing rather than just listen on  
16 the telephone.

17 If either side decides that it wants to use  
18 demonstratives for purposes of the hearing, certainly you could  
19 show those during. I'd like those -- I think if you look at  
20 the prior Zoom orders that I entered in Avianca, they generally  
21 provide for timing for exchanging those things. But you all  
22 ought to try and work that out.

23 I would like for all of you to all be on the same  
24 page. Here are whatever exhibits that are before the Court.  
25 If you're going to use demonstratives, each side's going to

1 have a chance to look at them in advance. And, as I say, I'd  
2 like a week after all briefing is closed before we actually  
3 have the argument.

4 Let me stop there. Mr. Leblanc, you wanted to say --  
5 MR. LEBLANC: Your Honor, yes. Yeah, this is Andrew  
6 Leblanc, again, Your Honor.

7 One issue -- all of that -- everything you said sounds  
8 perfectly fine to us, Your Honor, with one caveat to that, but  
9 also I very much appreciate the questions and I'm sure everyone  
10 appreciates the questions, so we can address the issues that  
11 Your Honor has. And we will certainly do so. And I also  
12 understand your concern.

13 To the extent that there are points that the objectors  
14 want to address, we certainly will try to work a schedule out  
15 where they can address those in some way and we can respond in  
16 an omnibus fashion, so Your Honor doesn't need to get multiple  
17 rounds of replies, sur-replies, sur-sur-replies, and things  
18 like that.

19 The one issue, from a timing perspective -- and we  
20 tried, in fairness to Mr. Kurtz and the Kasowitz firm -- we  
21 raised this with them just earlier today and just have -- they  
22 haven't had a chance to get with their clients on it. There is  
23 one timing issue, Your Honor, and that is that we're  
24 currently -- based upon the triggering event notice that was  
25 given on May 11th, we are currently in what's called a

1 retention event, or we're operating under a retention event.

2 After three months a retention event converts to an  
3 adjustment event, which gives the agent additional rights to  
4 apply amounts in the accounts to the outstanding balances.  
5 That would occur, therefore, on our -- by our calculations, on  
6 August 11th.

7 There obviously isn't a lot of money flowing through  
8 these accounts today, so it's not a huge issue. But we're all  
9 obviously hopeful that that changes.

10 And all -- what we've raised with Mr. Kurtz and he's  
11 considering it with his clients is, we just want to preserve  
12 the status quo. We obviously would believe that an effort to  
13 seize those assets while we're fighting over whose they are  
14 would obviously implicate automatic stay issues. But we've  
15 raised with Mr. Kurtz whether his clients would simply agree to  
16 preserve the status quo, notwithstanding the occurrence of that  
17 date. And we're awaiting a decision from him on that.

18 And that's the only thing --

19 THE COURT: All right, that's --

20 MR. LEBLANC: -- I would raise --

21 THE COURT: I'm not asking for a result -- I'm glad  
22 you raised it -- you pointed it out, but you and Mr. Kurtz  
23 should continue --

24 MR. LEBLANC: Yes.

25 THE COURT: -- to discuss it. See if you can reach an

1 agreement --

2 MR. LEBLANC: Right.

3 THE COURT: -- with respect to it.

4 MR. LEBLANC: Yes, Your Honor.

5 THE COURT: The August 11th deadline is looming, and  
6 given what I've asked for in terms of any further briefing, I  
7 certainly don't want to be boxed in by that deadline. But let  
8 me leave it to you to see whether you can come to an agreement  
9 about how to deal with that.

10 I guess the last thing -- well, let me -- Mr. Kurtz,  
11 do you want to respond?

12 MR. KURTZ: Yeah, that would --

13 THE COURT: I don't expect -- I don't expect an answer  
14 on that.

15 MR. KURTZ: No, I understand. Glenn Kurtz; thank you,  
16 Your Honor. I did want to make a couple of brief points on  
17 that.

18 One is, I did reach back out to the debtors, but I did  
19 so through Mr. Renenger instead of Mr. Leblanc to ask some  
20 follow-up questions, because the cash is already being swept,  
21 and there's not enough cash. And I know (sic) that anything  
22 relating to an adjustment period would make any kind of  
23 difference. So I came back and said I'm not really sure what  
24 the issue is, but talk to me about it, when you have a chance.

25 But as it is, I just don't want -- only because he

1 said status quo. The status quo is the cash gets swept daily  
2 and everybody knows that.

3 The second issue was just because I -- maybe it would  
4 save some time later. I don't think it works for us to kind of  
5 supplement our objection now and then have the debtors file an  
6 omnibus reply, because if the debtors -- for two reasons. One  
7 is if the debtors supply an expert law declaration, then that  
8 may be something that we have to address ourselves with our  
9 foreign law expert. So we sort of need to see that ahead of  
10 time.

11 And two, my understanding is the debtors are going to  
12 raise a new argument, an argument that wasn't made in their  
13 motion papers, it wasn't made in our objection, and so it's  
14 new. They hinted at it today, about liquidated damages.

15 I have some sense of what it is, but I certainly  
16 haven't seen it developed or written out. And I would think it  
17 would benefit the Court if Your Honor had the benefit of a  
18 response to that new argument. But I'll leave that to the  
19 Court to decide. We'll proceed any way you think appropriate.  
20 But I think it's most efficient if we see what this new  
21 argument is and we have an opportunity to join issue. And that  
22 may result in Your Honor having further questions.

23 If we try to anticipate it and we don't get it right,  
24 it may not be the most orderly way for Your Honor to look at  
25 the issue.

1 THE COURT: Well, I already -- Mr. Kurtz, the Court  
2 has already observed the liquidated damage provision, and so I  
3 had -- that was on my list of questions to ask today.

4 I agree with you, Mr. Kurtz, that I think that the  
5 ball is in the debtors' court with respect to whether they're  
6 coming forward with an expert declaration. I think that --  
7 look, in the first instance, I want to leave it to counsel to  
8 see if you can come to an agreement on how to proceed in an  
9 orderly fashion.

10 And I'm not a giant fan of multiple rounds of replies,  
11 sur-replies, sur-sur-replies, et cetera. To the extent it  
12 can't be avoided -- look, I want all of the issues addressed in  
13 paper -- on paper before we have the hearing. I think it would  
14 be unfair to the objectors to have them address additional  
15 issues that haven't been raised -- now I raised issues today,  
16 so I wanted everybody to start working on those right now.

17 You may not -- you may all think those are silly  
18 questions, but anyway, those were the questions I had after  
19 reading the papers.

20 Obviously the motion didn't deal with what I consider  
21 to be the tougher issues which have come forward now, with the  
22 objections.

23 So you all ought to confer. I've given the Wednesday  
24 deadline to -- for the debtors to decide whether they're going  
25 to put in an expert affidavit. If they are, I don't want a lot



1 of time to run. I mean, from my questions, when I asked the  
2 questions about let's assume that the sale agreement is an  
3 executory contract, but that under Technology whatever  
4 receivables were transferred so far can't be unwound, it  
5 strikes me about -- I mean, right now, the debtors may not be  
6 generating very much in the way of new receivables, since the  
7 flights are very limited. I guess, at least what I was told in  
8 the past, there's some cargo flights going and maybe some  
9 flights to Ecuador have resumed. I don't know.

10 But when they get back into operation, they will  
11 hopefully be generating a lot of receivables. And then as I  
12 understand the issues from so far, the position of the secured  
13 lenders is the debtor is obligated to transfer all of those new  
14 receivables, but in light of the triggering event, they don't  
15 get paid for them.

16 So and I think at least that's what it looked like was  
17 likely to happen. But whether that's correct or not, I don't  
18 know.

19 So why don't you all confer. If the debtors decide  
20 they're not going to put in an expert affidavit, see if you can  
21 work out an agreement for exchanging -- filing briefs. It may  
22 be that there has to be sur-reply, sur-sur-reply. I don't  
23 know. We'll see. See if you can come up with a rational way  
24 to do it.

25 That's why I wanted to have this telephone hearing

1 today, because it was clear to me, I'm not ready to go forward  
2 on Wednesday. I haven't seen what the debtors would come  
3 forward with a reply, but having done a fair amount of work on  
4 this already, I think the issues are complicated, and I want  
5 all the briefs, and I want to have argument. Okay?

6 So that's really as far as I can go today.

7 MR. KURTZ: Glenn Kurtz. Thank you very much, Your  
8 Honor.

9 THE COURT: All right, Mr. Korpus, anything you want  
10 to add?

11 MR. KORPUS: Nothing from me. Thank you, Your Honor.

12 THE COURT: Mr. Leblanc?

13 MR. LEBLANC: Andrew Leblanc, Your Honor. Nothing  
14 further.

15 THE COURT: All right. Keep me posted. We're  
16 adjourned.

17 IN UNISON: Thank you, Your Honor.

18 (Whereupon these proceedings were concluded at 2:38 PM)  
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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

*Penina Wolicki*

---

Penina Wolicki (CET-569)  
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Date: July 28, 2020

**EXHIBIT 19**

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*Counsel to the Official Committee of Unsecured Creditors*

**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
AVIANCA HOLDINGS S.A., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-11133 (MG)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	

**REPLY IN SUPPORT OF DEBTORS' MOTION FOR ENTRY OF AN  
 ORDER AUTHORIZING REJECTION OF CERTAIN EXECUTORY CONTRACTS**

<sup>1</sup> The Debtors in these chapter 11 cases, and each Debtor's federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int'l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Islaña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



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**TO THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE:**

The Official Committee of Unsecured Creditors (the “Committee”) of Avianca Holdings S.A., *et al.* (collectively, the “Debtors”) hereby submits this reply (the “Reply”) in support of the *Debtors’ Motion for Entry of an Order Authorizing Rejection of Certain Contracts* [Docket No. 306] (the “Motion”)<sup>2</sup> and in response to the objection [Docket No. 616] (the “USAV Objection”) filed by USAVflow Limited (“USAV”) and the objection [Docket No. 617] (the “Lender Group Objection”) filed by the ad hoc group of USAV’s lenders (the “Lender Group” and, together with USAV, the “USAV Parties”). In further support of this Reply, the Committee respectfully represents as follows:

**PRELIMINARY STATEMENT**

1. The Motion presents a simple, straightforward application of bankruptcy law. The transaction at issue is a “future flow” receivables transaction whereby the Debtors purported (a) to sell their existing right to receive the proceeds of airline ticket sales generated in the United States under two credit card processing agreements, and (b) to agree to sell in the future similar payment rights under any replacement credit card processing agreements. In an attempt to cloud the clear application of the Debtors’ rejection right in bankruptcy, the USAV Parties raise a host of issues that are not germane to the Motion. The narrow question before the Court is whether the Debtors should be allowed to reject all remaining executory obligations under the “future flow” transaction documents (*i.e.*, the USAV Agreements) in their reasonable business judgment. The answer, unequivocally, is yes.

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<sup>2</sup> Capitalized terms used but not defined herein are defined in the Motion.

2. The other issues raised by USAV Parties are for another day. As set forth in the Debtors' reply, which the Committee joins in, the Debtors are not seeking to rescind the USAV Agreements. Nor are the Debtors seeking a determination regarding the extent or validity of USAV's interests in the Debtors' receivables or contract rights following rejection of the USAV Agreements, or the nature of any rejection damages claim. Those issues must be resolved in the context of an adversary proceeding or the claims reconciliation process. The Court need not and should not address such issues here.

3. A fundamental principle of the Bankruptcy Code is that a chapter 11 debtor cannot be compelled to perform under its prepetition contracts if, in its reasonable business judgment, continued performance would not enhance the value of its estate. Where the performance is due under an executory contract, section 365(a) of the Bankruptcy Code requires the debtor-in-possession to seek a court order authorizing the rejection of the contract. If the contract is not executory, then no bankruptcy court authority is required. In either case, the debtor's performance is excused and the sole remedy of the contract counterparty is to assert an unsecured claim against the estate.

4. Here, the Debtors want certainty that the USAV Parties cannot compel any future performance by the Debtors under the USAV Agreements. That is the purpose of the Motion. This certainty is critical because, in the near future, the Debtors may seek to reject or terminate their existing credit card processing agreements and enter into new agreements with new processors on a go-forward basis. If the Debtors are bound to perform under the terms of the USAV Agreements, then the Debtors must sell their payment rights under these new processing agreements to USAV for no additional consideration. If the Debtors reject this quintessential



executory obligation, then the Debtors may retain all those payment rights and use the proceeds to fund their working capital needs and this chapter 11 reorganization.

5. Without question, the Debtors' decision to terminate all future performance under the USAV Agreements is a reasonable exercise of their business judgment. The USAV Agreements contain burdensome executory obligations and, in an effort to comply with section 365(a), the Debtors seek an order from the Court authorizing rejection. However, to the extent the Court finds that certain of the USAV Agreements are not executory, then the Debtors' obligations under those agreements are ordinary prepetition obligations and any act to compel the Debtors' performance would violate the automatic stay. In either scenario, the Debtors will have the certainty they require.

6. Accordingly, the Committee submits that the Court should grant the Motion and deny the objections filed by the USAV Parties.

### **REPLY**

#### **A. The Debtors Should Be Authorized to Reject the USAV Agreements**

7. As set forth below, the USAV Agreements are executory contracts, because they constitute a single integrated agreement with material unperformed obligations due from the Debtors and USAV. The Debtors should be authorized to reject the USAV Agreements because rejection is in the best interests of the Debtors' estates.

##### **1. The RSPA Is an Executory Contract**

8. The RSPA is, without a doubt, an executory contract. USAV takes the position that RSPA is not executory, because the Debtors "have no remaining material obligations." *See* USAV Objection § 23. But USAV ignores a series of clear and interrelated executory obligations owed by the Debtors to USAV under RSPA—each of which is absolutely critical for USAV to obtain the benefit of its bargain.

9. Specifically, the Debtors are obligated, upon the termination of either of their credit card processing agreements, to enter into replacement credit card processing agreements on substantially similar terms within 10 calendar days. *See* RSPA § 2.03(b). Upon entry into the replacement processing agreements, the Debtors are obligated to sell to USAV for no additional consideration the Debtors’ payment rights under the new agreements. *See* RSPA § 2.01(a)(ii). The Debtors are also obligated to enter into a variety of ancillary agreements with the credit card processors intended to perfect USAV’s interest in the new agreements and resulting proceeds. *See* RSPA §§ 2.01(b)(ii), (c)(ii); 2.03(b)(i)-(vii).

10. These obligations are both material and unperformed by the Debtors. They also go to the heart of the current dispute. In the absence of these covenants, the Debtors would be free to terminate and replace their credit card processing agreements without selling the payment rights associated with any replacement processing agreements to USAV. The result is that the flow of payments to USAV would permanently stop. Now that the Debtors are in chapter 11, they may seek to do exactly that for the benefit of their estates. The simple fact that USAV has objected to the Motion underscores the reality that these obligations are material and unperformed and are sufficient to form one-half of an executory contract.

11. The Lender Group takes a different approach. The Lender Group asserts that the RSPA is not an executory contract, because USAV has “no material unperformed obligations” under the RSPA. *See* Lender Group Objection ¶ 47. That statement, in turn, ignores an equally material unperformed obligation owed by USAV to the Debtors under the RSPA—an obligation that is essential to the Debtors’ side of the bargain.

12. Specifically, the RSPA imposes an ongoing obligation on USAV to pay the “Additional Purchase Price” (*i.e.*, the amounts collected by USAV from the Debtors’ credit card

processors that are in excess of the amounts then due from USAV under its loan agreement with the USAV Lenders) to the Debtors in the absence of the “continuance” of a Trigger Event. *See* RSPA § 3.01(a). This obligation is fundamental to the deal. Without it, the Debtors essentially would have agreed that, upon the occurrence of any one of eighteen different Trigger Events, *see* RSPA § 6.01(a)-(r), they would have *no recourse to any future payments generated by their credit card sales in the United States in perpetuity*, all of which would belong to USAV, *in an unlimited amount*. This reading is absurd and is contradicted by the plain text of the RSPA. *See* RSPA § 3.01(a)(ii) (“... no Additional Purchase Price shall be paid *during the continuance of* ... a Trigger Event ...”) (emphasis supplied).

13. The Lender Group asserts that USAV’s obligation to pay the Additional Purchase Price cannot render the RSPA executory, because the obligation was contingent as of the Petition Date. However, the fact that an obligation is contingent is irrelevant for the purposes of determining whether the underlying contract is executory. *See, e.g., In re RoomStore, Inc.*, 473 B.R. 107, 112-13 (Bankr. E.D. Va. 2012) (“In contrast, debtor’s position, which finds ample support in the case law, is that a contingent obligation, even though not yet triggered on a debtor’s petition date, is nevertheless executory until expiration of the contingency because [u]ntil the time has expired during which an event triggering a contingent duty may occur, the contingent obligation represents a continuing duty to stand ready to perform if the contingency occurs.”) (citations and internal quotations omitted) (collecting authorities). The fact that USAV’s obligation to pay the Additional Purchase Price was contingent on the Petition Date (*i.e.*, such payments would become due following the cessation of the Trigger Event in the future) does not change the legal reality that the obligation is material and unperformed for the purposes of determining the executory nature of the RSPA. *See* RSPA §§ 3.01(a), 6.01(i)(i).

14. Simply put, the RSPA is an executory contract with material, unperformed obligations on both sides. The agreement is therefore clearly subject to rejection by the Debtors in their reasonable business judgment.

## **2. The USAV Agreements Constitute a Single Integrated Contract**

15. The RSPA and the other USAV Agreements constitute a single integrated contract for the purposes of rejection. When determining whether multiple agreements should be viewed as one contract for the purposes of section 365(a), courts will consider, among other things: whether the agreements were executed at different times; whether the agreements relate to different subject matters; whether the agreements are between the same parties; whether the agreements contain an integration clause; whether the agreements continue even if one agreement is terminated; whether the agreements are consideration for one another; whether the agreements have different choice of law and dispute resolution provisions; and whether the agreements are designed to keep the economics of the agreements separate. *See In re AbitibiBowater Inc.*, 418 B.R. 815, 824-828 (Bankr. D. Del. 2009) (J. Carey) (collecting authorities).

16. Here, the vast majority of these factors weigh in favor of viewing the USAV Agreements as a single integrated agreement for the purposes of rejection. The USAV Agreements were executed on or about the same date and relate to the same subject matter. USAV and the Debtors are party to each USAV Agreement. Most significantly, the USAV Agreements are not supported by separate consideration and do not have separate economics. The only consideration the Debtors receive under the USAV Agreements is provided under the RSPA—*i.e.*, the upfront payment of \$150 million and the payment of the Additional Purchase Price.

17. Moreover, all of the USAV Agreements are interconnected and integral to the “future flow” transaction structure contemplated by the USAV Agreements. *See, e.g.*, Undertaking Agreement, Recitals (“Pursuant to the terms of the RSPA, the Parties have agreed to enter into this

[Undertaking] Agreement”); Assignment Agreement § 3 (“In exchange for the payment of the Advance Payment and the Additional Purchase Price (as defined in the RSPA), Avianca hereby irrevocably assigns to [USAV] . . . all the Avianca Contract Rights under the Assigned Agreements.”); Cash Management Agreement, Recitals (“Pursuant to the terms of the RSPA, the Seller, the Purchaser and the Servicer have agreed to enter into this [Cash Management] Agreement.”); Credomatic Notice §1(i) (“[The] Client, Avianca USA and the Company hereby give Credomatic written notice that, pursuant to, and subject to the terms and conditions of, the RSPA, . . . Avianca S.A. will sell to the Company, and the Company will buy . . . the Assigned Contract Rights and the Assigned Receivables;”);<sup>3</sup> AMEX Notice § 1(i) (“The Carriers, Avianca Inc. (“Avianca USA”) and the Company hereby give AMEX written notice that, pursuant to, and subject to the terms and conditions of, the RSPA, . . . Avianca S.A. will sell to the Company, and the Company will buy . . the Assigned Contract Rights and the Assigned Receivables;”); Expenses Agreement § A (“The Company has been established to purchase Receivables . . . under the terms of the RSPA . . . and to enter into ancillary documents and arrangements in respect thereof . . .”).

18. Accordingly, because the RSPA is executory and, together with the other USAV Agreements, constitutes a single integrated agreement, all of the USAV Agreements are subject to rejection in the Debtors’ reasonable business judgment.

**B. Alternatively, the Debtors Have No Obligation to Perform Under the USAV Agreements on a Postpetition Basis**

19. Alternatively, even if the Court determines that one or more of the USAV Agreements is not executory and therefore not subject to rejection under section 365(a), the fact remains that the automatic stay bars USAV from taking any act to compel the Debtors to perform

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<sup>3</sup> The Credomatic Consent and Agreement was attached as an exhibit to the Credomatic Notice.

under such agreement(s) after the Petition Date. The sole remedy of a party to a non-executory contract that is unperformed by the debtor is to assert a claim against its estate. *See, e.g., In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. 687, 705 (Bankr. S.D.N.Y. 1992) (“[A] contract under which the party has fully performed but the bankrupt has not, represents a claim against the estate.”) (quoting Countryman, *Executory Contracts in Bankruptcy* (pt. 1), 57 Minn. L. Rev. 439, 461 (1973)). Thus, regardless of whether the USAV Agreements are executory (and rejected) or non-executory, the Debtors will have no remaining performance obligations thereunder. From a practical perspective, this means that, upon a resolution of this Motion, the Debtors will have assurance that there is no scenario in which USAV could compel the sale of the Debtors’ payment rights under any replacement credit card agreements.

**C. The Claims Resolution Process, or a Corresponding Adversary Proceeding, Is the Appropriate Forum to Determine Any Remaining Issues Post-Rejection**

20. Post-rejection, the USAV Parties will be entitled to assert a claim for rejection damages or seek a determination regarding the extent and validity of USAV’s interest in the Debtors’ receivables and contract rights. Those issues must be resolved through the claims resolution process or an adversary proceeding,<sup>4</sup> and are irrelevant to the question of whether the Debtors should be permitted to reject the USAV Agreements.

21. That said, the Committee strongly disagrees with the USAV Parties’ characterization of the USAV Agreements. To be clear, the USAV Agreements do not purport to transfer the ordinary receivables generated by “operating flights and selling tickets.” *See* Lenders’ Objection ¶ 63. Rather, the RSPA *provides for the sale* of the Debtors existing rights to payment under their existing credit card processing agreements, and *obligates the Debtors to sell in the*

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<sup>4</sup> *See* Bankruptcy Rule 7001(2) (“The following are adversary proceedings . . . a proceeding to determine the validity, priority, or extent of a lien or other interest in property . . .”).

*future* their rights to payment under replacement credit card processing agreements to USAV for no additional consideration. *See* RSPA § 2.01(a)(i), (ii).

22. The only link between the profits generated by “operating flights and selling tickets” and the payment rights purportedly acquired by USAV is the fact that the Debtors have not yet terminated (or rejected) their the prepetition credit card agreements. If the Debtors replace those agreements with new agreements, but breach their covenant to sell the new payment rights to USAV, then the profits generated under the new agreements by operating flights and selling tickets will flow to the Debtors’ estates, instead of to USAV and its lenders.

23. Finally, as set forth in the Debtors’ reply, the Debtors are not seeking rescission of the USAV Agreements. However, to the extent rescission is an available remedy, that relief must be obtained in an adversary proceeding.<sup>5</sup> Of course, the Debtors have not sought rescission in the present adversary proceeding (nor is rescission necessary to achieve the desired results for the Debtors, as noted in the Debtors’ reply and in the prior two paragraphs) and seek no such relief pursuant to the instant Motion.

### **RESERVATION OF RIGHTS**

24. Notwithstanding anything to the contrary herein, the Committee expressly reserves all rights to challenge the validity of the USAV Agreements, including the right to seek to recharacterize the USAV Agreements as a disguised financing and to dispute the effect of any purported “true sale” transaction (including whether the Debtors could, as a legal matter, sell property interests that they did not own at the time they entered into the USAV Agreements or acquire after the Petition Date).

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<sup>5</sup> *See* Bankruptcy Rule 7001(7) (“The following are adversary proceedings . . . a proceeding to obtain an injunction or other equitable relief . . .”).



### **CONCLUSION**

25. For the foregoing reasons, the Committee respectfully requests that the Court approve the Motion, authorize the Debtors to reject the USAV Agreements, and grant such other relief as it deems appropriate.

Dated: August 7, 2020

Respectfully submitted,

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**Hearing Date and Time: August 26, 2020 10:00am ET**

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:	X	Chapter 11
	:	
AVIANCA HOLDINGS S.A., <i>et al.</i> ,	:	Case No. 20-11133 (MG)
	:	
Debtors. <sup>1</sup>	:	(Jointly Administered)
	X	

**DEBTORS' REPLY TO THE OBJECTIONS OF USAV AND THE USAV SECURED  
LENDER GROUP TO THE DEBTORS' MOTION FOR ENTRY OF AN ORDER  
AUTHORIZING REJECTION OF CERTAIN EXECUTORY CONTRACTS**

The Debtors in these chapter 11 cases, and each Debtor's federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int'l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Islaña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



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TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The Debtors<sup>2</sup> hereby submit this reply (the “Reply”) to the objections of USAV [Do. No. 616] (the “USAV Objection”) and the USAV Secured Lender Group [Do. No. 617] (the “Lender Group Objection”), (collectively, the “Objections”).

### **PRELIMINARY STATEMENT**

1. The Motion seeks ordinary course relief from this Court—to reject economically disadvantageous contracts, and to give the counterparty to the rejected contracts a pre-petition claim for rejection damages. USAV and the USAV Secured Lender Group (the “Lender Group” and, together with USAV, the “USAV Parties”) attempt to obscure the straightforward nature of the relief the Debtors seek, arguing that the Motion seeks rescission in violation of Supreme Court precedent governing the remedies available for rejection. But the Motion *does no such thing*.

2. The threshold issue before the Court is whether the USAV Agreements are executory contracts. They are. The Debtors and USAV each have substantial ongoing obligations thereunder, including USAV’s obligation to pay the Additional Purchase Price and the Debtors’ obligations to comply with myriad obligations, including ensuring various “Trigger Events” do not occur. The Trigger Events are not mere conditions, as contended by the USAV Parties, but are rather material obligations giving rise to a breach. Indeed, the reservation of rights letter that Citibank, as the Lender Group’s agent, sent to the Debtors on March 31, 2020 (the “March Notice”) (to which the USAV Parties repeatedly refer) expressly describes the events giving rise to the Trigger Event as a “breach” of the RSPA. Further, the USAV Agreements are so interrelated that they should be analyzed for purposes of rejection as one interrelated agreement.

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<sup>2</sup> Capitalized terms not defined herein have the meanings given them in the Motion.

3. The Debtors are seeking to exercise their ability under section 365 to reject these executory contracts and allow USAV to receive whatever remedy naturally flows from that breach. But the Objections misconstrue this simple relief and contend the Debtors are seeking something else entirely. The case the Objections present is this: Because the Debtors “sold” their interests in the Contract Rights and Receivables, they can have no interest *at all* in the cash generated from *any* future ticket sales sold and processed through the Card Processing Agreements. And as the Debtors can no longer hope to see the proceeds of *any* such future sales, the remedy the Debtors must be seeking is rescission, rather than rejection, of the RSPA.<sup>3</sup> This case is built on a series of false premises and wholly misconstrues the relief the Debtors seek.

4. *First*, the Debtors have a considerable interest in the property at issue: the Credit Card Receivables (the “Receivables”) collected under the Card Processing Agreements and the proceeds thereof. Under the RSPA, although USAV has bare legal title to proceeds of the Receivables, the Debtors are entitled to all cash generated from the Receivables in excess of the amount due on USAV’s loan from the Lender Group—the Additional Purchase Price.<sup>4</sup> This substantial interest is property of the Debtors’ estates. Were it otherwise, the RSPA would result in the absurdity of USAV owning the Debtors’ Receivables *in perpetuity*, with no obligation to return any amounts to the Debtors. This is manifestly not how the RSPA works, notwithstanding the USAV Parties’ arguments that a reservation of rights letter transmitted in March declaring a “Trigger Event” (the “March Notice”) eliminated the Debtors’ expectation of future payments and therefore the Debtors’ interest. This is simply not the case.

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<sup>3</sup> The RSPA, together with the other USAV Agreements, are attached to the *Declaration of Aaron L. Renenger in Support of Debtors’ Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts* [Do. No. 306-2].

<sup>4</sup> See RSPA § 3.01(a)(ii).

5. The March Notice cannot change the fundamental fact that while USAV may have bare legal title, its economic interest in the Receivables was, and is, limited to no more than the amount due under USAV's loan from the Lender Group. The remaining interests belong to the Debtors. The USAV Parties' conduct is consistent with this economic reality—USAV made Additional Purchase Price payments to the Debtors in *April* of 2020, after the March Notice was issued. Further, even if the March Notice did have the effect of suspending USAV's obligation to pay the Additional Purchase Price, such suspension was only *temporary*—until the Colombian government allowed the Debtors to fly again.

6. *Second*, the Debtors are not seeking to “rescind” the RSPA. In accordance with well-settled case law, the Debtors are seeking to *breach* the RSPA and the other USAV Agreements. The result of such breach is specified under the RSPA itself—the liquidated damages set forth in sections 6.02 and 6.03 of the RSPA (“Liquidated Damages”). USAV will have a pre-petition claim for Liquidated Damages against the Debtors and, once that amount is paid, 100% of the economic interest in the Receivables will revert to the Debtors.

7. *Third*, rejection—rather than rescission—will restore a full economic interest in proceeds from credit card receivables to the Debtors in one of two ways. First, the payment and discharge of USAV's claim against the Debtors for Liquidated Damages eliminates any economic interest USAV has in the Receivables, even if it retains bare legal title. Second, and at a minimum, rejection and breach of the USAV Agreements would give the Debtors the option of replacing the Card Processing Agreements. Entering into agreements with new credit card processors would undeniably allow receivables that would otherwise be subject to the RSPA to flow to the Debtors.

8. Rejection is therefore not only appropriate, but crucial. When the Debtors begin flying once more, the cash flow generated from the Receivables will be a vital component of the Debtors'

liquidity, and absent that cash flow, the Debtors will not be able to bear the cost related to producing the services that give rise to the Receivables. Restoring this critical cash flow to the Debtors is plainly beneficial to the estates and a sound exercise of business judgment. The Debtors respectfully submit that the Motion should be granted.

### **BACKGROUND**

9. From January 2020 through March 2020, between \$25.2 million and \$48.8 million in Credit Card Receivables were generated each month, with 92% to 95% of those Credit Card Receivables flowing back to the Debtors as Additional Purchase Price payments. *See* Second Declaration of Adrian Neuhauser (“Second Neuhauser Decl.”), attached to this Reply as Exhibit A, ¶ 3.

10. On March 31, 2020, Citibank, as Administrative Agent, sent the March Notice by email (subject line, “USAVFlow—Notice of Reservation of Rights”). That letter declared a Trigger Event had occurred as a result of the Debtors’ inability to fly and that as a result the Debtors were “in breach” of the RSPA. The letter did not invoke any remedies, but simply reserved Citibank’s rights to pursue available remedies under the RSPA. *See* Do. No. 619, Ex. A-B.

11. Thereafter, between April 1, 2020 to April 9, 2020, the Debtors received Additional Purchase Price payments in the aggregate amount of \$255,951.22. *See* Second Neuhauser Decl. ¶ 5.

12. On May 10, 2020, the Debtors filed their Bankruptcy Petition. Under the RSPA, the filing of the Bankruptcy Petition automatically made the Liquidated Damages immediately due and payable. *See* RSPA § 6.03.

13. On May 11, 2020, Citibank delivered to the Debtors a notice that a “Retention Event” under the RSPA had occurred as a result of the drop in the Collections Coverage Ratio (the “Retention Event Notice”). *See* Motion ¶ 22.

14. On May 15, 2020, Debtors’ counsel delivered a letter to Citibank’s counsel via email stating that the Retention Event Notice implicated the Debtors’ property and was likely a violation of the automatic stay (the “Automatic Stay Notice”). *See* Exhibit 1 to *Second Declaration of Aaron L. Renenger* (“*Second Renenger Decl.*”), attached to this Reply as Exhibit B.

15. On May 18, 2020—three days after delivery of the Automatic Stay Notice—Citibank, at the instruction of the Lender Group, transferred approximately \$13.5 million from the New York Pass-Thru Account, the Debt Service Reserve Account, and the Collection Account to the accounts of the Lender Group. *See* Second Neuhauser Decl. ¶ 7; Second Renenger Decl. Ex. 2.

16. On information and belief, from May 18, 2020, to the present, Citibank has been sweeping all funds received from the Credit Card Processors—over \$5 million—to the accounts of the Lender Group. *See* Second Neuhauser Decl. ¶ 8.

## **ARGUMENT**

### **I. THE USAV AGREEMENTS ARE EXECUTORY**

17. There is no dispute among the parties about the definition of an “executory” contract: all agree that “if both parties have substantial, unperformed obligations, the contract is executory even though the uncompleted obligation of one of the parties only involves the payment of money.” *In re Teligent, Inc.* 268 B.R. 723, 732 (Bankr. S.D.N.Y. 2001). *See* Motion ¶ 27; USAV Obj. ¶ 22 n.7; Lender Group Obj. ¶ 47. Because the parties to the USAV Agreements owe substantial, unperformed obligations, the USAV Agreements are executory contracts.

### **A. The Debtors Have Substantial Unperformed Obligations Under the RSPA**

18. The USAV Parties incorrectly claim that the Debtors have no material obligations remaining under the RSPA. *See* Lender Group Obj. ¶ 57; USAV Obj. ¶ 23. To the contrary, under the RSPA, the Debtors must perform numerous material obligations. Specifically, the Debtors must, among other things, (a) ensure the Collection Coverage Ratio does not drop below 1.75:1:00; (b) observe all obligations of the Undertaking Agreement; (c) keep all Card Processing Agreements in effect by adhering to all obligations under those agreements; and (d) maintain the capacity or ability to operate domestic and/or international flights (collectively, the “Trigger Event Obligations”). *See* RSPA § 6.01.

19. The failure to perform any of these obligations results in a Trigger Event, whereby USAV is entitled to terminate the agreement and demand, as damages, payment in full of its loan to the Lender Group, plus surcharged interest and administrative costs. *See* RSPA § 6.02. The law is clear that when the parties define a breach of one party’s obligations as a terminable breach, such obligations are material obligations. *See Gen. DataComm Indus., Inc. v. Arcara (In re Gen. DataComm Indus., Inc.)*, 407 F.3d 616, 624 (3d Cir. 2005) (a contract was executory because it specified that the failure to perform certain duties entitled the counterparty to terminate the contract, and “by contractual definition, therefore, such obligations were material”); *see also Jay Dee/Mole Joint Venture v. Mayor & City Council of Balt.*, 725 F. Supp. 2d 513, 526 (D. Md. 2010) (“[I]t is literally ‘hornbook law’ that ‘[w]here the contract itself is clear in making a certain event a material breach of that contract, a court must ordinarily respect that contractual provision.’” (quoting 23 Williston on Contracts § 63:3 (4th ed. 2002))).

20. While acknowledging this principle (as it must), USAV argues that the Trigger Event Obligations, such as the obligation to maintain the Collections Coverage Ratio above 1.75:1:00, are not “obligation[s] that can give rise to a ‘breach’ of the RSPA.” *See* USAV Obj. ¶ 24. The

Lender Group is even more extreme—claiming “all” Trigger Events are merely conditions and that failing to perform is “simply not a breach.” *See* Lender Group Obj. ¶ 57. This is wrong.

21. The March Notice, issued at the direction of the Lender Group, belies the Lender Group's current posturing before this Court. In the March Notice, the Administrative Agent states, at the Lender Group's direction, that "[Avianca] is *in breach* of certain terms and conditions of the RSPA as specified on Schedule II hereto, which have caused Trigger Events under Section 6.01 of the RSPA." *See* Do. No. 619, Ex. A at 1. (emphasis added). The Notice further identifies in Schedule II that Avianca no longer had "the capacity or ability . . . to operate domestic and/or international flights." *Id.* at 4.

22. In sum, the Lender Group has already claimed—in the March Notice—that a Trigger Event was a breach of the RSPA. That USAV or the Lender Group did not then elect to terminate the RSPA, as it was entitled to do, does not mean that the obligation was not one that gave rise to terminable breach. It is outlandish, given the language of the March Notice declaring that the Debtors are “in breach”—a letter the USAV Parties attached to their own pleadings and rely on for other arguments—to claim now the Trigger Event Obligations are “simply not a breach.” Lender Group Obj. ¶ 57.

23. The Objections also assert that the Debtors' Trigger Event Obligations "are conditions, not duties." Lender Group Obj. ¶ 57; *see also* USAV Obj. ¶ 25. But even the cases cited in the Objections make plain that the Trigger Event Obligations constitute ongoing duties of the Debtors under the USAV Agreements. *See In re Hawker Beechcraft, Inc.*, 486 B.R. 264, 278 (Bankr. S.D.N.Y. 2013) ("Where the parties contractually agree that some or all of the terms are sufficiently important to discharge any further obligations imposed on the party aggrieved by a breach, their intent will govern.") (cited at USAV Obj. ¶ 25; Lender Group Obj. ¶¶ 47, 50, 57);



*Gencor Indus., Inc. v. CMI Terex Corp. (In re Gencor Indus., Inc.)*, 298 B.R. 902, 911 (Bankr. M.D. Fla. 2003) (holding that an “affirmative duty to insure that the condition occurs” will be a material obligation) (cited at USAV Obj. ¶ 25; Lender Group Obj. ¶ 57 n.18); *In re Level Propane Gases, Inc.*, 297 B.R. 503, 508-09 (Bankr. N.D. Ohio 2003) (holding that the requirement to execute releases was material, and not conditional, where it was “specifically what the Debtors bargained for,” without the satisfaction of which, “there would be no sound reason” for the parties to have entered the agreement) (cited at USAV Obj. ¶ 25; Lender Group Obj. ¶ 57 n.18).

24. The “de minimis” and “immaterial” duties the USAV Parties attempt to analogize to the present circumstances—such as fiduciary duties incidental to the execution of a contract, or vague requirements to cooperate with an insurance agent upon the death of the insured—are clearly inapposite to the outstanding obligations remaining under the USAV Agreements. *See, e.g., In re Calpine Corp.*, No. 05-60200 (BRL), 2008 Bankr. LEXIS 2152, at \*17 (Bankr. S.D.N.Y. Aug. 4, 2008) (finding that fiduciary duties owed under a purchase option agreement could not be material obligations, where the underlying option to purchase had expired); *In re Conseco, Inc.*, No. 05 C 3170, 2005 U.S. Dist. LEXIS 24584, at \*17 (N.D. Ill. Oct. 18, 2005) (finding the requirement to “cooperate” with the insurance agent “merely administrative or ministerial”).

25. Here, substantial performance is required of the Debtors so as not to breach the Trigger Event Obligations. For example, there is no doubt that the Debtors are obligated to continue domestic and international flights, and to not enter into new credit card processing agreements that are not subject to the RSPA. *See* RSPA §§ 6.01(e-f), (i); 2.01(a)(ii). These obligations relate to the “root or essence of the contract.” *In re AbitibiBowater Inc.*, 418 B.R. 815, 830 (Bankr. D. Del. 2009). Indeed, a breach of the Credit Card Processing Agreements would render the Contract Rights at issue worthless, because no money would be generated under those Agreements. Thus,

by definition, the obligation to perform the Credit Card Processing Agreements are obligations of “great magnitude, severity, and intensity.” *See* Lender Group Obj. ¶ 50 (citing Colombian Supreme Court of Justice, Rule of 14 January 2005, Issuing Justice: Edgardo Villamil Portilla; *Jairo Gómez Rueda v. Prodaín S.A.*, Final Award, 11 June 2008). Thus, under the standard of Colombian law opined by the Lender Group’s own expert, the outstanding obligations of the Debtors are clearly material obligations, and not merely conditions.<sup>5</sup>

**B. USAV’s Obligation Under the RSPA to Deliver Amounts in Excess of Current Loan Obligations to the Debtors Is a Substantial Ongoing Obligation**

26. USAV, too, has ongoing obligations. The RSPA requires USAV to remit amounts in excess of currently-due loan obligations to the Debtors. In the ordinary course—absent any breach—this takes the form of the Additional Purchase Price paid to the Debtors by USAV after a sufficient amount is reserved each month to satisfy the loan obligations then-due to the Lender Group. *See* RSPA § 3.01(a)(ii). But even in the event where alternative payment priorities are triggered, USAV is never entitled to permanently retain amounts in excess of currently-due loan obligations; once the event triggering an alternate payment priority is cured, USAV’s obligation to pay the Additional Purchase Price resumes. *See* Cash Management Agreement § 2.02 (noting that the Standard Payment Date Priority of Payments does not apply in cases in which a Trigger Event or Adjustment Event has been declared, and the Collateral Agent “has not received written

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<sup>5</sup> Even if the outstanding obligations are considered conditions, they do not render the USAV Agreements non-executory. As several of the cases relied on heavily by the Lender Group make clear, while “a condition that remains unperformed . . . will not render an agreement executory,” contingent obligations are distinguishable. *See, e.g., In re AbitibiBowater Inc.*, 418 B.R. at 830 n.11, 831 (an option agreement was executory where it contained “layers of material obligations by both [parties] that change depending on the particular contingency that occurs”); *In re Hawker Beechcraft, Inc.*, 486 B.R. at 276 (a promise “to use reasonable efforts to cause the condition to occur” constitutes a duty above and beyond a mere condition); *Enter. Energy Corp. v. United States (In re Columbia Gas Sys. Inc.)*, 50 F.3d 233, 240 (3d Cir. 1995) (a duty to complete administrative work necessary to authorize distributions from escrow to class members, contingent on their execution of necessary supplemental contracts, is “clearly executory”).

notice from the Administrative Agent . . . that such written notice has been revoked or is otherwise no longer of further force or effect.”)

27. The obligation to pay the Additional Purchase Price, which was part of the consideration that the Debtors received for the alleged sale, is a material obligation. *See In re WorldCom, Inc.*, 343 B.R. 486, 496-97 (Bankr. S.D.N.Y. 2006) (noting that material performance is “the essence of what the other party sought and expected when he entered into the . . . Agreement, and without it, the party will lose the benefit of the bargain that he thought he had struck.”).

28. The Objections claim that pursuant to the March Notice, USAV was permanently relieved of its obligation to pay the Additional Purchase Price on March 31, 2020. *See* Lender Group Obj. ¶ 15; USAV Obj. ¶ 20; *Declaration of Jorge Suescún Melo in Support of [Lender Group Objection]* [Do. No. 618] (“Suescún Decl.”) ¶ 12. This is flatly wrong. For one, even if the March Notice had the effect the USAV Parties claim, that reservation of rights would not **permanently** relieve USAV from payment of the Additional Purchase Price. Section 3.01(a)(ii) of the RPSA provides that “that no Additional Purchase Price shall be paid **during** the continuance of a Retention Event, an Adjustment Event or a Trigger Event.” (emphasis added). The text is unambiguous. The declaration of a Trigger Event only **temporarily** relieves USAV’s obligation to pay the Advance Purchase Price. Further, the Cash Management Agreement calls for the resumption of payment of the Advance Purchase Agreement once the Collateral Agent revokes any Trigger Event notice. *See* Cash Management Agreement § 2.02.<sup>6</sup>

29. The Lender Group claims that USAV’s obligation to pay the Additional Purchase Price was “cut off” by the March Notice. *See* Lender Group Obj. ¶ 48. This is wrong. Rather than

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<sup>6</sup> Indeed, Trigger Events have been declared previously under the RSPA. *See* Lender Obj. ¶ 48 n.14. Yet USAV resumed paying the Additional Purchase Price once those events subsided.

asserting that USAV's Additional Purchase Price obligations were "cut off," the March Notice merely stated that the Lender Group "continue[d] to evaluate their response to" the closing of the Colombian airspace. *See* Do. No. 619, Ex. A. at 2. And instead of declaring that the Additional Purchase Price would no longer be paid, the March Notice stated that further payment of the Additional Purchase Price was not a waiver of any remedies available under the RSPA. *See id.* ("no action, inaction or acquiescence by the [Lender Group and Citibank] (including, without limitation, the acceptance of any payment under the Loan Agreement or the ***making of any payments to [Avianca] pursuant to the Cash Management Agreement***), shall constitute a waiver") (emphasis added). Indeed, Citibank continued to send Additional Purchase Price payments to the Debtors in April 2020. *See* Second Neuhauser Decl. ¶ 5. This fact alone shows that the USAV Parties recognized the March Notice did not "cut off" USAV's obligations to pay the Additional Purchase Price. Rather, the March Notice merely reserved the Lender Group's rights, notwithstanding the continued payment of the Additional Purchase Price.

### **C. Case Law Confirms that the Sale of Contract Rights for Future Benefits Is Executory**

30. The Objections contend that the sale of a contract right for future benefits is non-executory. *See* USAV Obj. ¶ 18; Lender Group Obj. ¶ 58. Case law instructs precisely the opposite.

31. Sales contracts for the purchase of assets are executory when one side still has obligations to pay installments of the sale price and the counterparty has substantial continuing obligations. *See Terrell v. Albaugh (In re Terrell)*, 892 F.2d 469 (6th Cir. 1989) (land sale contract was executory where debtors are obligated to make installment payments for several more years and sellers have yet to surrender legal title); *Bebvides v. Alexander (In re Alexander)*, 670 F.2d 885 (9th Cir. 1982) (deposit receipt sales contract to sell house was executory where seller has not conveyed title or surrendered possession and buyer has not paid the full purchase price); *Record*

*Co. v. Bummbusiness, Inc. (In re Record Co.)*, 8 B.R. 57 (Bankr. S.D. Ind. 1980) (purchase of all assets and inventory of non-debtor company held to be executory where debtor had made only one of two payment installments, and counterparty had unperformed obligations).

32. Factoring agreements, which, similar to the transaction at hand, involve the sale of future accounts receivables, have been held to be executory contracts. *See, e.g., Capital Factors, Inc. v. Empire For Him, Inc. (In re Empire For Him, Inc.)*, 1 F.3d 1156, 1158 (11th Cir. 1993) (noting that the bankruptcy court authorized rejection of a factoring agreement as an executory contract and adjudicating whether the factor could retain property of the estate after rejection); *In re Packaging Sys., LLC*, 559 B.R. 123, 124 (Bankr. D.N.J. 2016) (noting that the court authorized debtor to assume pre-petition factoring agreements); *In re Double D Transport, LLC*, No. 07-14113-GHB, 2008 WL 891366 (Bankr. W.D. Tenn. Jan. 22, 2008) (order granting motion to assume factoring agreement pursuant to 11 U.S.C. § 365); *see also* BNA, *American Factoring Law*, Ch. 12.II.K (“[C]ourts have treated a pre-petition factoring agreement as eligible for assumption (or rejection) under § 365[.]”).

33. These cases are largely absent from the Objections. Instead, the USAV Parties cite a series of cases wholly inapposite to the case at hand. For example, both Objections cite *In re DMR Fin. Servs., Inc.*, 274 B.R. 465, 466 (Bankr. E.D. Mich. 2002), in which a debtor was forced by one of its largest creditors to sell its servicing rights to certain mortgages because certain mortgagees had become dissatisfied with the debtor’s work and were about to revoke those rights. The forced sale of the servicing rights in that case thus prevented the Debtor from performing anything further, thereby rendering the contract non-executory. *See id.* By contrast, here, far from seeking to prevent the Debtors from performing, the purported “sale” of the Receivables

*assumes*—in fact, *requires*—the Debtors’ continued performance by, for example, continuing to fly planes so that those Receivables have value.

34. Additionally, both USAV and the Lender Group rely in large part on case law in which a contract was held to be non-executory because one party had fully performed the contract. *See* Lender Group Obj. ¶¶ 47, 58; USAV Obj. ¶ 22. That is not the case here, where both parties have substantial, unperformed obligations.

**D. The Undertaking Agreement is An Executory Contract**

35. The USAV Parties do not seriously contest that the Undertaking Agreement imposes obligations on the Debtors. The Lender Group half-heartedly argues that the purported March Notice automatically terminated the Debtors’ obligations under the Undertaking Agreement (although, as discussed *supra* ¶ 29, that letter failed to declare a termination)—but then immediately concedes in a footnote that it failed to comply with technical requirements to name a new servicer as would have been required under the Undertaking Agreement. *See* Lender Group Obj. ¶ 56; Undertaking Agreement § 3.12(c).<sup>7</sup> There is no doubt that the Debtors continued to perform, and are presently still obligated to perform, those servicing obligations.

**E. The USAV Agreements Should be Construed as One Transaction**

36. In addition to the RSPA and the Undertaking Agreements constituting executory contracts independently, all of the USAV Agreements may be considered executory as the agreements are indivisible. Courts look to state law to determine whether contracts are so inextricably related to one another as to be considered indivisible. *In re Adelphia Bus. Sols., Inc.*, 322 B.R. 51, 55 (Bankr. S.D.N.Y. 2005) (applying state law to determine that two agreements in

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<sup>7</sup> Seeking to brush aside this requirement, the Lender Group advances the flimsy excuse that it would not appoint such a servicer without an order from this Court. *See* Lender Group Obj. ¶ 56 n.17. But the Lender Group fails to mention that the March Notice was delivered approximately 40 days prior to Petition Date, and thus, court permission to appoint such a servicer was not at that time necessary.



issue should be interpreted as a single contract for purposes of rejection); *In re Teligent, Inc.*, 268 B.R. at 728 (same). Where there is a central question affecting a group of related contracts with conflicting choice of law provisions, the Court should apply the law of the operative agreements (Colombia), or alternatively, of the greatest number of agreements (New York).<sup>8</sup>

37. Under Colombian law—the law governing the RSPA and the Undertaking Agreement—agreements that are “related between themselves in regard to their overall economic purpose, so that each of them has repercussions on the others, and may be based on a single cause or shared economic objective . . . must not be understood in an isolated manner, but instead, they should be interpreted according to the ‘supra-contractual’ economic function of the entire operation as a whole.” *See Declaration of Jaime Alberto Arreubla-Paucar in Support of Debtors’ Motion for Entry of an Order Authorizing Rejection of Certain Contracts* (“Arrubla Decl.,” filed contemporaneously herewith) ¶ 14. Such interrelated contracts may be read together “even when in different contracts the parties only coincide partially or when they are regulated by different rules, whenever they seek the same overall economic goal.” *Id.* Accordingly, under Colombian law, the USAV Agreements should be evaluated together for purposes of rejection under section 365.

<sup>8</sup> In the present case, the same result would apply under a New York conflicts of law analysis: the “center of gravity” of the USAV Transaction would either be New York or Colombia. *Bianco v. Erkins (In re Gaston & Snow)*, 243 F.3d 599, 601-02 (2d Cir. 2001) (bankruptcy courts apply the choice of law rules of the forum in which they sit); *Zurich Ins. Co. v. Shearson Lehman Hutton, Inc.*, 84 N.Y.2d 309, 317, 642 N.E.2d 1065, 618 N.Y.S.2d 609 (1994) (citing Restatement (Second) of Conflicts of Laws § 188(1)) (the “center of gravity” test applies the law of the state with the “most significant relationship to the transaction and the parties,” looking to (i) the place of contracting, negotiation and performance; (ii) the location of the subject matter; (iii) and the place of business of contracting parties). A party’s explicit choice of law “‘may be disregarded . . . where [a] strong countervailing public policy’ demands that the court apply a jurisdiction’s laws other than that to which the parties have consented.” *Schwartz v. Twin City Fire Ins. Co.*, 492 F. Supp. 2d 308, 325 (S.D.N.Y. 2007) (quoting *Walter E. Heller & Co. v. Video Innovations Inc.*, 730 F.2d 50, 52 (2d Cir. 1984)). .



38. The Court would also be justified in applying New York law—the law governing the majority of the USAV Agreements—to this issue.<sup>9</sup> See *Krumme v. WestPoint Stevens Inc.*, 238 F.3d 133, 138 (2d Cir. 2000) (holding that where the “parties’ briefs assume that New York law controls, . . . such implied consent . . . is sufficient to establish choice of law”). Thereunder, the same result applies. Factors New York courts will consider include simultaneous execution of the agreements; a shared purpose or subject matter; whether the parties are the same across the agreements; the presence of integration clauses; whether the termination of one agreement will result in the termination of others; cross-referencing and the adoption of mutual terms and definitions; and varying choice of law provisions. See, e.g., *In re AbitibiBowater Inc.*, 418 B.R. at 823-24 (analyzing the parties’ intent by reviewing each of these factors); *Carvel Corp. v. Diversified Mgmt. Grp., Inc.*, 930 F.2d 228, 233 (2d Cir. 1991) (contemporaneously executed promissory notes and distributorship agreement treated as a single contract because the notes were executed for the sole purpose of making payments under the distributorship, and “[u]nder New York law, instruments executed at the same time, by the same parties, for the same purpose and in the course of the same transaction will be read and interpreted together”); *In re Atl. Comput. Sys., Inc.*, 173 B.R. 844, 852 n.10 (S.D.N.Y. 1994) (considering the adoption of mutual terms and definitions as evidence in favor of holding multiple contracts to be one agreement); *Empire State Bldg. Co., L.L.C. v. N.Y. Skyline, Inc. (In re N.Y. Skyline, Inc.)*, 432 B.R. 66, 78-79 (Bankr. S.D.N.Y. 2010) (concluding that lease and subsequent agreement were inseparable because parties’ rights under one agreement were altered by the other).

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<sup>9</sup> The USAV Parties do not appear to disagree, as the Objections each address the application of New York law to this issue. Lender Group Obj. ¶¶ 34-43 (applying only New York law to the issue); USAV Obj. ¶ 27-29 (applying New York, Florida, and Tennessee law to the issue, without advocating for selection of any one).

39. While “no single item here may be determinative of the issue,” *In re AbitibiBowater Inc.*, 418 B.R. at 828, these factors largely weigh in favor of holding the USAV Agreements to be indivisible:

- Each of the relevant agreements was executed on the same day (December 12, 2017) and for the same purpose: accomplishing the Debtors’ “sale” of the Contract Rights and Receivables under the RSPA. *E.g.*, Cash Management Agreement (Recitals) (“Pursuant to the terms of the RSPA, the Seller, the Purchaser and the Servicer have agreed to enter into this Agreement.”).
- The agreements heavily cross-reference one another, each often adopting terms defined in the other agreements. *E.g.*, Expenses Agreement (“Terms defined in the Loan Agreement shall have the same meanings in this Agreement.”); Cash Management Agreement § 1.01 (“‘Liquidated Damages’ shall have the meaning specified in Section 602 of the RSPA.”).
- All agreements were executed for the sole purpose of giving effect to the RSPA. For example, the Cash Management Agreement and the Expenses Agreement each recite the obligations undertaken by the parties *under the other USAV Agreements* as the impetus, and therefore lack independent value when considered separately.
- The parties’ relative rights under each agreement are altered by provisions of the other agreements. *E.g.*, Second Renenger Decl. Ex. 3 (Loan Agreement) § 6.1.4 (stating that the occurrence of certain events under or termination of the RSPA constitutes an event of default under the Loan Agreement); Cash Management Agreement § 2.04 (describing how the priority of parties’ rights to payment under the agreement are altered as a result of the occurrence of certain events described under the RSPA).

40. A review of the circumstances of the USAV Transaction can only lead to a conclusion that without execution of the RSPA and the Undertaking Agreement, the parties would never have entered the Cash Management Agreement, the Expenses Agreement, and the Assignment Agreements. *See, e.g.*, RSPA § 1.01 (defining “Transaction Documents” as including all USAV Agreements); Cash Management Agreement (Recitals) (“Pursuant to the terms of the RSPA, the Seller, the Purchaser and the Servicer have agreed to enter this agreement.”) (emphasis added); RSPA § 2.01(b)(1) (noting that the Credomatic Notice, Credomatic Consent and Agreement, and AMEX Notice were executed “for the purpose of perfecting the Transfer to the Purchaser of the existing Contract Rights arising under the AMEX Contract and the Credomatic Contract”). That

the agreements were executed by various combinations of the same parties does not change this conclusion. *See Kopel v. Campanile (In re Kopel)*, 232 B.R. 57, 67 (Bankr. E.D.N.Y. 1999) (holding simultaneously executed notes and lease to be inseparable, because “the fact that nominally distinct parties executed the agreements will not preclude” this result where economic interests of the parties are identical).

41. The Lender Group points to language in the RSPA and the Undertaking Agreement—which it incorrectly characterizes as merger clauses—as evidence that this Court should ignore the context of the transaction in which they were executed.<sup>10</sup> *See* Lender Group Obj. ¶ 36-38 (quoting RSPA (*Recitals*) (“The Parties have separately agreed that the Servicer will provide servicing duties in respect of the Contract Rights and the Receivables solely pursuant to the Undertaking Agreement as set forth therein.”)). This clause is hardly comparable to a merger clause, as it simply declares that the parties have entered into a contemporaneous agreement reflecting the Debtors’ servicing duties. Not coincidentally, the failure to perform these “servicing duties” under the Undertaking Agreement is a terminable breach of the RSPA. *See* RSPA § 6.01(c)(i).

## **II. THE DEBTORS SEEK REJECTION—I.E., BREACH—OF THE USAV AGREEMENTS, NOT RESCISSION**

42. Contrary to the Objections’ contentions, the Debtors seek to breach the executory USAV Agreements, not to rescind them. The result of this breach, accomplished through rejection, will be USAV’s claim for rejection damages against the Debtors—specifically, a pre-petition claim in the amount of the Liquidated Damages provision contained within the RSPA. This Liquidated Damages amount is equal to the unpaid principal remaining on USAV’s loan, plus surcharged interest on that principal until paid in full, and other miscellaneous costs related to the unwinding

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<sup>10</sup> A standard merger or integration clause “provides that the parties to a contract agree that they are only bound by the contract and that all conditions, promises or representations are contained in the contract.” *In re Am. Home. Mortg., Holdings, Inc.*, 390 B.R. at 136.

of the transaction. That breach of the RSPA would lead to this result is apparent from the RSPA itself—for under Colombian law, as under U.S. law, the remedy for breach of contract is determined in the first instance by reference to the contract itself. *See* Arrubla Decl. ¶ 18. Rescission is nowhere implicated.

43. Rejection alone will enable the Debtors to realize the proceeds of future Receivables. First, contrary to the USAV Parties’ assertions, the Debtors have substantial remaining interests in the Receivables. Second, rejection is not only available, it provides USAV with a pre-petition claim for rejection damages, which results in return of the economic interest in the Receivables to the Debtors.

**A. The Debtors Have Substantial Property Interests in the Receivables**

44. The Objections assert that the Debtors have “no interests in the Proceeds of the Contract Rights and Receivables” because the March Notice purportedly terminated that interest. Lender Group Obj. ¶ 32; *see* Suescún Decl. ¶ 12 (“the obligation of USAV to pay Additional Purchase Price does not exist”). Not so. The reality is that the Debtors have always had, and continue to have, an interest in the Receivables and proceeds thereof—including when the Debtors are in breach of the RSPA. Conversely, USAV has (at most) bare legal title, and little or no economic interest, in the Receivables.

45. When the Debtors are not in breach of the RSPA, the RSPA specifies that the Debtors are entitled to an Additional Purchase Price, payable daily once sufficient money has been reserved each month to make the upcoming debt service payments due on USAV’s loan. *See* RSPA § 3.01(a)(ii); Cash Management Agreement § 2.01(c). Under the RSPA and Cash Management Agreement, the Additional Purchase Price is defined as any excess funds remaining after Citibank has deducted the appropriate administrative costs, principal, and interest due under USAV’s loan from the Lender Group. *See* RSPA § 1.01; Cash Management Agreement § 2.02. Once the

principal and interest due under USAV's loan are paid off, one hundred percent of the proceeds of the Receivables would then flow to the Debtors because there would be no principal or interest to deduct from the Receivables. *See* Cash Management Agreement § 2.02. Even if USAV remained the titular "owner" of the Contract Rights and Receivables, by virtue of the contract mechanics, USAV would be entitled to retain **nothing** once its loan is paid off. *Id.* USAV's monetary interest is inexorably limited to the balance of its loan.

46. Even when the Debtors breach the RSPA, USAV's monetary interest in the Receivables still extends no further than the unsettled balance on its loan. For example, when a "Trigger Event" occurs (*see* RSPA §§ 6.01-6.03), USAV may terminate the RSPA and seek a claim for "Liquidated Damages," which is defined in RSPA § 6.02 as an amount equal to the unpaid principal on USAV's loan plus surcharged interest and administrative costs related to the unwinding of the transaction. *See* RSPA § 6.02. Once the Liquidated Damages are satisfied, all Receivables must then flow back to the Debtors. *See* Cash Management Agreement § 2.11. Thus, the remedy for breach available to USAV—the Liquidated Damages—is no more than the unsettled balance of its loan, plus administrative costs.

47. The Objections ignore these facts, focusing instead on USAV's purported ownership of the Contract Rights. *See* Lender Group Obj. ¶ 30.<sup>11</sup> But whether USAV has bare legal title to Receivables does not end the inquiry. USAV is a pass-through vehicle that serves to apportion the Receivables between the Debtors and the Lender Group until such time as the outstanding amount due on USAV's loan is paid. In contrast, the Debtors have at all times had, and continue to have, all economic interests in the Receivables that exceed whatever the outstanding balance is on

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<sup>11</sup> While the Debtors do not agree that the RSPA was a sale of the Receivables and Contract Rights (it was a disguised financing—*see* Do. No. 307), the issue of whether the RSPA was a "true sale" is not at issue in this Motion, nor necessary to its resolution.

USAV's loan. Thus, the Debtors' interest in the Receivables is property of the estate. *See, e.g., Banner v. Bagen (In re Bagen)*, 186 B.R. 824, 828 (Bankr. S.D.N.Y. 1995) ("property of the estate under the Code includes a debtor's contingent, contractual right to postpetition property"); *Official Comm. of Unsecured Creditors of HMKR, Inc. v. Homemaker Indus., Inc. (In re HMKR, Inc.)*, No. 99-10968, 2003 WL 21696521, at \*5 (Bankr. S.D.N.Y. July 18, 2003) (debtor's contingent, contractual right to obtain payment of excess proceeds is property of the estate); *In re Constable Plaza Assocs., L.P.*, 125 B.R. 98, 103 (Bankr. S.D.N.Y. 1991) (debtors' residual interest in rents assigned to a creditor as "additional security" is property of the estate).

**B. Rejection of the USAV Agreements Will Restore the Flow of Receivables to the Debtors by Eliminating USAV's Interests Therein**

48. Because they ignore the Debtors' interest in the Receivables, the Objections contend that "the only way for the Debtors to get back the Proceeds of the Contract Rights and Receivables they sold in 2017 would be through rescission." Lender Group Obj. ¶ 26. This, too, is incorrect. Breaching the RSPA, providing USAV a rejection damages claim (calculated under the RSPA itself), and then discharging the resulting claim will restore the flow of Receivables to the Debtors.

*i. Breach of the RSPA Results in a Claim for the "Liquidated Damages"*

49. Rejection of an executory contract is a breach of that contract, which gives the contractual counterparty the ability to seek damages as a result of the Debtors' breach. *See* 11 U.S.C. § 365(g); *Med. Malpractice Ins. Ass'n v. Hirsch (In re Lavigne)*, 114 F.3d 379, 387 (2d Cir. 1997) ("Rejection gives rise to a remedy for breach of contract in the non-debtor party. The claim is treated as a pre-petition claim, affording creditors their proper priority.").

50. Nonbankruptcy law—the law governing the contract and any specialized clauses in the contract—determines the damages for such a breach. *See Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1662 (2019) ("the first place to go in divining the effects of



rejection is to non-bankruptcy contract law, which can tell us the effects of breach.”); *In re Yasin*, 179 B.R. 43, 50 (Bankr. S.D.N.Y. 1995) (“Under section 365, rejection constitutes a statutory breach, but does not repudiate or terminate the [contract]. The parties must, therefore, resort to state law to determine their rights as a result of the breach[.]”).

51. Here, the RSPA has a specific provision regarding the damages resulting from a breach—the USAV Parties may terminate the Agreement and claim for Liquidated Damages. *See* RSPA § 6.02. And in the case of the Debtor filing for bankruptcy, Liquidated Damages are automatic, and immediately due and payable. *See* RSPA § 6.03.

52. Colombian law, which governs the RSPA, would enforce this contractual calculation of the damages for breach. Colombian law will first look to the remedies spelled out by the parties in the contract and when a contract specifies the parties’ pre-determined liquidated damages, the courts will enforce that provision unless it is contrary to public policy. *See* Arrubla Decl. ¶¶ 22-23. As Mr. Arrubla affirms in his expert report, the Liquidated Damages provision in the RSPA is enforceable under Colombian law. *See* Arrubla Decl. ¶ 24.

53. To be sure, the RSPA allows USAV to exercise alternative rights or remedies exercisable under any other of the transaction documents or under Colombian law. *See* RSPA § 6.02 (“The exercise of any one or more of the rights under this Section 6.02 shall not preclude the subsequent exercise of any other rights or remedies exercisable hereunder, under any other Transaction Documents or under Applicable Law.”). But this clause notwithstanding, USAV’s remedy is in any event limited to a damages claim.

54. This is because the overwhelming majority of courts—including the Southern District of New York—have held that if a counterparty to a rejected executory contract has both a claim for money damages and a claim for equitable relief, it will be forced to accept a claim for money



damages in bankruptcy. *See, e.g., Route 21 Assocs. of Belleville, Inc. v. MHC, Inc.*, 486 B.R. 75, 85-87 (S.D.N.Y. 2012) (specific performance, although available as a remedy under state law for breach of contract, is unavailable to a counterparty to a rejected executory contract because “a claimant’s right to certain equitable remedies constitutes a ‘claim’ if an award of monetary damages is a ‘viable alternative’”); *In re Spoverlook, LLC*, 560 B.R. 358, 363 (Bankr. D.N.M. 2016) (rejection under § 365 did not give rise to a claim for specific performance, even though specific performance was available under applicable law, because remedy of damages was available); *Nickels Midway Pier, LLC v. Wild Waves, LLC (In re Nickels Midway Pier, LLC)*, 341 B.R. 486, 500 (D.N.J. 2006) (although specific performance available as remedy under local law for rejection of sale contract, specific performance cannot be pursued if monetary damages is available as an alternative).<sup>12</sup> Accordingly, USAV will have, after rejection, a dischargeable, pre-petition claim for damages and nothing more.

*ii. Payment and Discharge of USAV’s Rejection Damages Claim Will Permanently Extinguish Any Economic Interest the USAV Parties Have in the Receivables*

55. Through the Debtors’ eventual plan of reorganization, the Debtors will provide treatment for and discharge USAV’s claim—which claim, as discussed above, will be in the amount of the Liquidated Damages<sup>13</sup> provided for under section 6.03 the RSPA.

<sup>12</sup> A *minority* of courts has found that equitable remedies, such as specific performance, are non-dischargeable through rejection of the contract under section 365. *See, e.g., In re Walnut Assocs.*, 145 B.R. 489, 494 (Bankr. E.D. Pa. 1992); *In re W. Chestnut Realty of Haverford, Inc.*, 177 B.R. 501, 506 (E.D. Pa. 1995); *Abboud v. The Ground Round, Inc. (In re The Ground Round, Inc.)*, 335 B.R. 253, 261 (B.A.P. 1st Cir. 2005). These minority decisions have been criticized by other district courts for failing to “acknowledge § 101(5)(B) or the impact of the bankruptcy discharge on a creditor’s ordinary state law equitable remedies.” *In re Spoverlook, LLC*, 560 B.R. at 364.

<sup>13</sup> Technically, section 6.02 of the RSPA does allow the USAV to pursue additional damages beyond the Liquidated Damages. It is unclear what damages USAV might be able to claim beyond Liquidated Damages. Even if USAV was able to prove additional damages, however, this will only result in a larger pre-petition claim and have no effect on the turnover of Receivables to the estate.

56. Once the Liquidated Damages claim is discharged, USAV will be obligated to send all Receivables it receives to the Debtors. *See* Cash Management Agreement § 2.11. Accordingly, even if the Lender Group is correct that USAV will still hold legal title to the Receivables following rejection, those Receivables must necessarily flow, in their entirety, from the New York Pass-Thru Account back to the Debtors. The end result is that rejection of the RSPA will extinguish the economic interest of USAV in the Receivables and restore vital cash flow to the Debtors.

**C. Rejection of the USAV Agreements Would Give the Debtors the Option to Replace the Card Processing Agreements with Different Processors**

57. In addition, even if the Receivables arising from the Credomatic and AMEX processing agreements did not return to the Debtors following rejection, rejecting the RSPA gives the Debtors the option of replacing the Card Processing Agreements with new agreements that would not be subject to the USAV Agreements. Any such replacement agreements would set up alternative streams of credit card receivables that would not flow to USAV but would flow directly to the Debtors. Rejection therefore enables the Debtors to recoup the economic value of their future ticket sales via credit card in another way.

**D. Mission Product Affirms that the Debtors' Rejection of the USAV Agreements Is Proper**

58. Both Objections cite *Mission Product* extensively for the proposition that the Debtors cannot rescind the USAV Agreements. *Mission Product*'s ruling that a debtor cannot rescind a conveyance of property through section 365 is not at odds with what has long been Second Circuit law, nor with what the Debtors seek to accomplish here. *See In re Lavigne*, 114 F.3d at 386-87 (“While rejection is treated as a breach, it does not completely terminate the contract.”).

59. *First*—and as no party disputes—*Mission Product* affirms that the Debtors may use section 365 as a tool to reduce onerous contractual obligations to a pre-petition claim for damages.

The Debtors desire to do exactly—but no more than—this: to use the “powerful tool” of section 365 to transform USAV’s economic interest in the Debtors’ post-petition Receivables to a pre-petition claim for the Liquidated Damages provided in the RSPA. *Mission Product*, 139 S. Ct. at 1665-66 (“Section 365 provides a debtor like Tempnology with a powerful tool: Through rejection, the debtor can escape all of its future contract obligations, without having to pay much of anything in return.”) (citation omitted).

60. *Second*, *Mission Product* notes that the specialized terms of a contract, or applicable state law, may limit the remedies available to a counterparty in the event of a debtor’s breach. The Supreme Court noted that in a prototypical breach of contract case—say, the conveyance of a trademark license agreement or a copier lease arrangement—the nonbreaching party has the option of either continuing to use the property that was transferred (while continuing to pay for use of that property) and receiving a claim for any damages they have incurred, or returning the property and getting a claim for the full amount of damages. *See id.* at 1662. But as Justice Sotomayor emphasized in her concurrence, specialized terms in a contract may limit what rights the nonbreaching counterparty might have. *See id.* at 1666 (“[T]he baseline inquiry remains whether the licensee’s rights would survive a breach under applicable nonbankruptcy law. Special terms in a licensing contract or state law could bear on that question in individual cases.”) (Sotomayor, J., concurring).

61. Here, there are specialized terms in the RSPA which limit the remedy available to USAV in the event of the Debtors’ breach. The RSPA provides that USAV receives a damages claim, and thereafter must return all economic interest in the Receivables to the Debtors. By the express terms of the RSPA, rejection results in certain damages—the “Liquidated Damages”

amount—becoming due as of the Petition Date. *See* RSPA § 6.03. As Justice Sotomayor foresaw, the specialized terms of the RSPA dictate what remedy is available to USAV.

62. *Mission Product*, properly applied, confirms that the rejection will result in USAV's claim in the amount of Liquidated Damages. And as discussed above, this result is highly beneficial to the Debtors' estates—returning the Debtors a complete interest in the Receivables and extinguishing, through discharge, any economic interest of USAV therein—and is therefore well within the Debtors' business judgment.

### III. *NUNC PRO TUNC* RELIEF IS WARRANTED

63. The Lender Group contends that *nunc pro tunc* rejection is not appropriate because rejection cannot transform the proceeds of the Receivables into property of the estates. *See* Lender Obj. ¶ 66. This argument demonstrates the Lender Group's failure to acknowledge the significant interests the Debtors hold today, and have always held, in the Receivables.

64. On the Petition Date, the Debtors' interest in the Receivables became the property of the estates. Granting rejection *nunc pro tunc* to the Petition Date is therefore appropriate, as estate property should be preserved for the estates' benefit.

### CONCLUSION

For these reasons and those set forth in the Debtors' Motion, the Court should grant the Motion and overrule the Objections.

Dated: New York, New York  
August 7, 2020

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X	:	
In re:	:	Chapter 11
	:	
AVIANCA HOLDINGS S.A., <i>et al.</i> , <sup>1</sup>	:	Case No. 20-11133 (MG)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----X		

**SECOND DECLARATION OF ADRIAN NEUHAUSER IN SUPPORT OF  
DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
REJECTION OF CERTAIN EXECUTORY CONTRACTS**

The Debtors in these chapter 11 cases, and each Debtor's federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int'l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Islaña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



Adrian Neuhauser, pursuant to section 1746 of title 28 of the United States Code, hereby declares under penalty of perjury as follows:

1. I am the Chief Financial Officer of Avianca Holdings S.A. (“Avianca”) and have served in this position since June 2019. I have more than twenty (20) years of experience in the financial sector and was most recently a Managing Director at Credit Suisse, based in Chile and covering airlines throughout Latin America from 2016 to 2019. I submit this Second Declaration in support of the *Reply In Support of the Debtors’ Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts* (the “Reply”),<sup>1</sup> which was filed concurrently herewith by the above-captioned debtors and debtors-in-possession (the “Debtors”). I have also submitted a declaration in support of the *Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts* [Do. No. 306-1] (the “First Declaration”).

2. As described in the First Declaration, as Chief Financial Officer at Avianca, I oversee Avianca’s finance department and manage Avianca’s relationships with investors and funded debtholders. I also oversee, in coordination with Avianca’s treasury department and other Avianca employees, various matters related to the Debtors’ chapter 11 cases, including the matters described herein. I have knowledge of the matters discussed herein based on my employment at Avianca.

3. According to statements that Avianca has received from Citibank, approximately \$48.3 million, \$48.8 million, and \$25.2 million in Credit Card Receivables were generated under the relevant Card Processing Agreements in the months of January, February, and March 2020,

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<sup>1</sup> Capitalized terms not defined herein have the meanings given them in the Reply.

respectively, and were deposited in the Collections Account.<sup>2</sup> These Receivables have been more than enough to cover the debt service payments due under USAV's loan, and the Debtors have received Additional Purchase Price payments in the amount of \$45.9 million, \$45.2 million, and \$23.3 million for the months of January, February, and March 2020, respectively. Thus, between 92% and 95% of Credit Card Receivables for these three months flowed back to the Debtors as Additional Purchase Price payments.

4. On or about March 31, 2020, Citibank attached to an email (subject line, "USAV— Notice of Reservation of Rights") a reservation of rights letter addressed to the Debtors (the "March Notice"). The March Notice stated that an Event of Default had occurred under USAV's Loan and that a Trigger Event had occurred and was occurring under the RSPA as a result of the Debtors' inability to fly due to the closure of Colombian airspace. That letter stated that the Debtors were "in breach" of the RSPA, but that the Lender Group and its agents "continue to evaluate their response" to the impairment of Avianca's ability to fly internationally.

5. After sending the March Notice, USAV, through Citibank, continued in April 2020 to perform its obligation under the RSPA to pay the Additional Purchase Price. Between April 1, 2020, and April 9, 2020, the Debtors received daily Additional Purchase Price payments in the aggregate amount of \$255,951.22. A new monthly period began on April 12; Avianca did not receive Additional Purchase Price payments during that monthly period, as the volume of Credit Card Receivables deposited in the Collections Account did not reach a level sufficient to cover amounts due on USAV's loan.

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<sup>2</sup> Capitalized account names used herein have the meanings given them in the Cash Management Agreement, attached as Exhibit to 4 the *Declaration of Aaron L. Renenger in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts* [Do. No. 306-2].

6. On May 11, 2020, one day after the Petition Date, Citibank attached to an email a notice that a Retention Event had occurred. From that notice, Avianca understood that Citibank would no longer pay the Additional Purchase Price, but rather retain all Receivables, including any excess Receivables, until the Retention Event was cured.

7. On May 18, 2020, over a week following the Petition Date, a total of \$13,456,014.20 was transferred from the Debt Service Reserve Account to the accounts of the Lender Group. One of Avianca's employees under my management inquired about this transfer of funds in a June 5, 2020 email to Citibank. Citibank responded in a June 8, 2020 email that it had received instruction from the Lender Group to make such transfers because a Trigger Event had occurred under the RSPA.

8. Accordingly, it is my understanding that from May 18 to the present, Citibank, at the direction of the Lender Group, has swept all Receivables paid by the Credit Card Processors into the Collection Account to the accounts of the Lender Group—over \$5 million. The Debtors have received none of these post-petition Receivables. Further, the Debtors have never received legal notice that the remedies for a Trigger Event were being pursued or that the Receivables were being swept to the accounts of the Lender Group.

9. If the Debtors are unable to reject the USAV Agreements, they will be left in a situation in which they are selling air travel tickets and incurring the costs of providing services under those tickets, yet receiving nothing in return, until the outstanding balance on USAV's loan is paid. Such a situation is not sustainable for the Debtors.

10. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 7th day of August, 2020  
in New York, New York

/s/ Adrian Neuhauser  
Adrian Neuhauser

**EXHIBIT 22**

**From:** [Molina, Miriam](#)  
**To:** [Guillermo Pena Velandia](#)  
**Cc:** [Natalia Garcia Castro](#)  
**Subject:** RE: Collections Account  
**Date:** Monday, June 8, 2020 5:05:04 PM  
**Attachments:** [image003.png](#)

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Dear Guillermo,

In follow up below and to give more detail, please note as a result of certain Events of Default under the Loan Agreement and Trigger Events under the Contract Rights and Receivables Sale, Purchase and Servicing Agreement, Citi has, in accordance with the direction of the Required Lenders and the Credit Documents, disbursed the cash in the Debt Service Reserve Account as required by Section 3.1 of the Security Trust Deed.

Regards,

Miriam Y. Molina  
Vice President and Senior Trust Officer  
Citi | Transaction Services  
388 Greenwich Street  
New York, NY 10013  
(212) 816-5576 Direct  
(212) 816-5530 Fax Direct  
[miriam.molina@citi.com](mailto:miriam.molina@citi.com)



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**From:** Molina, Miriam [ICG-BCMA]  
**Sent:** Monday, June 8, 2020 4:35 PM  
**To:** '[[avianca.com](mailto:avianca.com)] Guillermo Pena Velandia'  
**Cc:** Natalia Garcia Castro  
**Subject:** RE: Collections Account

The debits from the account are actions taken at the direction of the Lenders. Please inquire further with the lenders for additional information.

Regards,

Miriam Y. Molina  
Vice President and Senior Trust Officer  
Citi | Transaction Services  
388 Greenwich Street  
New York, NY 10013  
(212) 816-5576 Direct  
(212) 816-5530 Fax Direct  
[miriam.molina@citi.com](mailto:miriam.molina@citi.com)



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**From:** [avianca.com] Guillermo Pena Velandia <[guillermo.velandia@avianca.com](mailto:guillermo.velandia@avianca.com)>

**Sent:** Friday, June 5, 2020 5:09 PM

**To:** Molina, Miriam [ICG-BCMA]

**Cc:** Natalia Garcia Castro

**Subject:** Collections Account

Hi Miriam,

Hope You are well.

I received the following inquiry from the treasury area in regards to the following movements in the collections account.

These debits are regarding to what concept?

As I understand the debits are not flowing to DSRA account.



Transaction Description	CCY Code	Debit Amount	Credit Amount	Ledger Balance
Opening Balance as of 01 Jun 2020	USD	0.00	0.00	0.00
CCY RECD	USD	0.00	25,065.17	25,065.17
CCY RECD	USD	0.00	2,395.05	27,460.22
ISSUE CCY TT	USD	-6,500.00	0.00	20,960.22
ISSUE CCY TT	USD	-20,960.22	0.00	0.00
CCY RECD	USD	0.00	155,742.78	155,742.78
CCY RECD	USD	0.00	24,804.55	180,547.33
ISSUE CCY TT	USD	-180,547.33	0.00	0.00
Closing Balance as of 04 Jun 2020	USD	0.00	0.00	0.00

Kind Regards,



**Guillermo Peña** | Corporate Finance Manager  
Avenida Calle 26 # 59 - 15  
Bogotá, Colombia  
T: (571) - 5877700 ext. 1321  
[guillermo.velandia@avianca.com](mailto:guillermo.velandia@avianca.com)

**EXHIBIT 23**

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 Evan R. Fleck  
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 Facsimile: (202) 263-7586

*Counsel for Debtors and  
 Debtors-in-Possession*

**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

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In re:	:	
	:	Chapter 11
	:	
AVIANCA HOLDINGS S.A., <i>et al.</i> ,	:	Case No. 20-11133 (MG)
	:	
Debtors.	:	(Jointly Administered)
	:	

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**DECLARATION OF JAIME ALBERTO ARRUBLA-PAUCAR IN SUPPORT OF  
 THE  
 "MOTION FOR ENTRY OF AN ORDER AUTHORIZING REJECTION OF  
 CERTAIN EXECUTORY CONTRACTS"**

I, Jaime Alberto Arrubla-Paucar, declare the following:

### **I. Qualifications**

1. My practice is centered around commercial and contractual law advising, as well as on arbitration and civil, commercial and administrative litigation. I am specialized in contract law, contractual and extra-contractual civil liability and in commercial disputes in general.
2. I am a law professor at the principal universities in the country and I have published at the national and international levels about commercial law, extra-contractual civil liability and contracts.
3. My academic and professional credentials are summarized below.

#### **A. PROFESSIONAL BACKGROUND**

4. I obtained the title of attorney from Universidad Pontificia Bolivariana in the city of Medellín, in 1976. Upon graduation, I immediately began my practice in Colombia. Later, I obtained **(a)** four specialization titles (in Colombia, these are graduate programs of one year with part-time dedication, focused on a specific area of law) in canon law, civil law, commercial law and labor law, between 1978 and 1996; **(b)** a Master's in private law (e.g. civil liability, commercial contracts and law) in 1998; **(c)** a Master's in advanced studies in private law at Universidad de Salamanca, Spain; and **(d)** a doctorate in law from Universidad de Salamanca in 2014, graduating *cum laude*.

#### **B. PROFESSIONAL EXPERIENCE**

5. I have practiced law for more than 40 years. As I will present in detail below, in my career, I have combined private practice with public service. Specifically, from 1988 until today, I have been the founding partner at my own law firm, today Arrubla

Devis, whose practice is centered on consulting and resolution of contractual conflicts, on civil liability and on commercial disputes in general.

6. On three occasions I left private practice for public service, specifically: **(a)** in 1982, I worked for a year as the Head of the Office of the Governor of Antioquia; **(b)** from 1998 to 2000, I was the Legal Secretary of the Presidency; and **(c)** from 2004 to 2012, I was a Justice in the Civil Division of the Supreme Court of Justice, the most important judicial body for civil and commercial matters. In addition, I was its President in 2010.
7. In addition, since 1980 I have been an arbitrator at the Chamber of Commerce of Medellín and since 2000, at the Chamber of Commerce of Bogotá, the two largest arbitration centers in Colombia, and I have acted as an arbitrator in more than 50 cases. I have been an agent in many arbitration cases at the principal Arbitration Centers of the country and I have acted as an expert in Colombian law in at least 7 judicial and arbitration proceedings, principally in the United States and Europe.

### C. ACADEMIC EXPERIENCE

8. I have been a professor in commercial law and contracts at several universities in the country, in both undergraduate and graduate law courses, including the law school at Pontificia Universidad Javeriana de Bogotá, Universidad de los Andes, Universidad Externado de Colombia and Universidad Pontificia Bolivariana de Medellín, and I am a professor emeritus at Universidad Pontificia Bolivariana in Medellín (the highest distinction that a professor can receive at that university).
9. I am the author of several publications on civil liability, commercial law and contracts, including a treatise entitled *Contratos Mercantiles* (Commercial Contracts), in four (4) volumes, which is used in the principal law schools in the country for classes on contracts and similar matters and is regularly cited in academic articles, judgments at the different court levels and arbitration awards. In addition, I have published dozens of articles on the same topics in specialized journals and publications in Colombia,

Latin America and Europe. In addition, I frequently give presentations at Colombian and international conferences regarding these topics.

#### **D. OTHER CREDENTIALS**

10. Currently I am **(a)** a numbered member of the Colombian Academy of Jurisprudence, one of the most prestigious centers for legal study in Colombia, formed principally by former members of the Supreme Court and other high courts, as well as distinguished professors; **(b)** a member of the Special Committee of Legal and Academic Investigation of the Corporation for Excellence in Justice, the largest public interest group for legal reform in Colombia; and; **(c)** Honorary President of the Bar Association of Medellín.

#### **II. Development of the presentation**

11. According to the information I have been given, under the laws of the United States of America, among the effects of the rejection of the RSPA executed between certain affiliates of Avianca Holding S.A. ("Avianca" and jointly with its affiliate debtors [*debtors-in- possession*] the "Debtors") and USAVflow Limited ("USAV"), would be that the latter would be given the same treatment as if there had been a breach by Avianca, according to Colombian law, which is the law applicable to this contract. Therefore, I have been asked to analyze the effects of a failure to comply with the RSPA by Avianca and the contractual remedies available to USAV, all in light of Colombian law. Now, in order to understand the effects of the breach of a contract governed by Colombian law, it must first be determined what the nature of the contract is, and the effects that result from it.
12. In addition, I have read the Declaration given by Dr. Jorge Suescún Melo presented to support the objection to the rejection presented by the group of lenders of USAV (the "Declaration of Suescún"), which will also be referred to in this legal opinion.
13. In this declaration I will refer: **(i)** to those points in regard to which I find that the Declaration of Suescún offers an incomplete explanation of

Colombian law, as well as to those conclusions that it states are applicable to this specific case, with which I disagree, and (ii) to the effects of breach of the contract and the remedies available to the parties, in attention to the contract itself and to Colombian law.

### **III. The RSPA and the *USAV Agreements* should be interpreted together and as successive performance contracts**

14. According to the figure of contractual linkage, recognized by the Supreme Court of Justice, when there are a number of contracts related between themselves in regard to their overall economic purpose, so that each of them has repercussions on the others, and may be based on a single cause or shared economic objective, they must not be understood in an isolated manner, but instead, they should be interpreted according to the "supra-contractual" economic function of the entire operation as a whole<sup>1</sup>. In this regard, according to the Colombian Civil Code, the clauses of a contract may also be interpreted according to the other contracts between the same parties and on the same subject, as well as by the practical application of the contract<sup>2</sup>. Therefore, when there is a contractual link, from a legal standpoint, the contracts cannot be treated or interpreted as absolutely independent legal transactions<sup>3</sup>. In order to establish a link, the emphasis of the interpretation should not be on the contract, but rather on the overall deal as an economic reality and this can be present even when in different contracts the parties only coincide

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<sup>1</sup> Supreme Court of Justice, Civil Division, judgment of December 19, 2018, Case no. 11001-31-03-032-2008-00635-01.

<sup>2</sup> Civil Code, article 1622: "The clauses of a contract will be interpreted by each other, giving each of them the meaning that best applies to the contract in its totality. They may also be interpreted by those of another contract between the same parties and on the same subject, or through the practical application that both parties have made of them, or one of the parties with the approval of the other party." See Supreme Court of Justice, Civil Division, judgment of October 1, 2004, Case No. 7560, which analyzes the scope of article 1622 of the Civil Code: "(.) as a result, the work of the interpreter of a contract will consist of examining the entire content of the contractual fabric, composed of a plurality of transactions or agreements executed by the parties (.) the interpreter shall, in context, analyze the integrity of the manifestations of will, which, once articulated, configure a network of transactions, the object of study. Therefore, these aggregations or additions must not be interpreted as insular agreements".

<sup>3</sup> Supreme Court of Justice, Civil Division, judgment of September 25, 2007, Case No. 2000-000528-01.



partially or when they are regulated by different rules, whenever they seek the same overall economic goal<sup>4</sup>. Based on the foregoing, the RSPA and the *USAV Agreements* are linked contracts, which, under the Colombian legal system, should be interpreted together.

15. I was informed that the purpose of this opinion is not to determine whether or not RSPA constitutes a guarantee contract under Colombian law; therefore, that analysis will not be made. However, it should be noted that under Colombian law, those contracts that cover a sale or assignment of economic rights and credits may have, over time, a guarantee function. In these events, while full compliance with the guaranteed obligation is pending, the guarantee will be in effect and being executed. As a result, contrary to what is affirmed in the Suescún Declaration, I believe the RSPA is not an instantaneous performance contract (§10-11). What is certain is that the nature of the RSPA and the interpretation of the affiliated contracts as a whole, lead us to affirm that the RSPA actually constitutes a successive performance contract.

**IV. In response to an event of contractual breach, Colombian law refers to the contractual provisions relative to the indemnification of losses due to breach**

16. In response to an event of contractual breach, we must turn to the first measure of contractual provisions that regulate the indemnification of losses. The Colombian legal expressly establishes the principle of "*lex contractus, pacta sunt servanda*," according to which all contracts legally executed are considered to create law for the parties<sup>5</sup>. In addition, contracts are not only binding in regard to what is expressly established therein, but instead, all the obligations and duties that emanate from its nature and the

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<sup>4</sup> Supreme Court of Justice, Civil Division, judgment of November 15, 2017, Case No. 68001- 31-001-1998-00181-02.

<sup>5</sup> Civil Code, article 1602: "All contracts legally executed represent the law for the contracting parties, and cannot be invalidated except through mutual consent or for legal reasons."

principle of good faith<sup>6</sup>. The law may fill in for the will of the parties, in the event of gaps, ambiguity or express reference, or prevail over it, when agreements are made in violation of norms of an imperative nature. In any event, contractual agreements prevail over supplementary rules; that is, over those that allow agreement to the contrary<sup>7</sup>.

17. Colombian law regulates the general effects resulting from contractual breach, as well as the remedies available for the non-breaching party<sup>8</sup>. The termination of a successive execution contract does not have retroactive effects on what has already been performed, but it does imply the immediate cessation of the future effects of the contract<sup>9</sup>. For example, as the result of the termination of lease contracts, the lessor should not return the monthly lease payment already paid to the lessee, but its immediate effect is the return of the asset to the lessor, after which additional payments will no longer be made.

18. Now, as the result of the principle of the autonomy of private will, the parties can modulate the effects and regulate the applicability of the aforementioned supplementary norms. In this regard, they may waive the rights established in these norms, whenever such waiver has been previously agreed upon. In this case, they must comply with what is agreed upon in the contract, which is law for the parties<sup>10</sup>.

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<sup>6</sup> Civil Code, article 1603: "Contracts shall be executed in good faith, and as a result, are binding not only in regard to what is expressed in them, but to all things that emanate precisely from the nature of the obligation, or that belong to it under the law."; Commercial Code, article 871: "Contracts shall be executed and enforced in good faith, and as a result, will be binding not only in regard to what is expressly established in them, but in regard to everything that corresponds to their nature, according to the law, customs, or natural fairness"; Law 153 of 1887, article 38: "In all contracts, the laws in effect at the time of its execution will be understood to have been incorporated in it."

<sup>7</sup> Commercial Code, article 4: "The stipulations of contracts validly executed will be given preference over secondary legal rules and commercial customs."

<sup>8</sup> Articles 870 of the Commercial Code and 1546 of the Civil Code states that bilateral contracts are understood to include a "tacit termination condition." According to this, in light of breach by one of the parties, the non-breaching party may, if it so chooses, require that the contract be terminated or demand forced compliance, and in both cases, the corresponding indemnification for losses. This is applicable even in contracts in which this possibility is not established. Therefore, under Colombian law, a claim for contractual breach is based on the tacit termination condition, which allows the non-breaching party to request termination for instantaneous performance contracts or for successive performance contracts of the contract.

<sup>9</sup> Supreme Court of Justice. Civil Division. Judgment of August 26, 2011. Case 05001-3103-016-2002- 00007-01. "(.) given the enforcement of obligations in a timely manner and their use by the creditor, it is not possible to undue them in regard to the past, but only for what will come - *ex nunc* effects- (.)".

<sup>10</sup> Civil Code, article 1602.

19. In this case, the contractual provisions of the RSPA determine the remedies available to the parties. Sections 6.02 and 6.03 of the RSPA establishes the effects of the occurrence of the so-called *Trigger Events*. In accordance with section 6.03 of the RSPA, the bankruptcy declaration of Avianca automatically represents the occurrence of a "*Trigger Event*," therefore, as this section of the contract states, the liquidated damages clause as the advance estimate of losses becomes automatically due. Therefore, in light of the occurrence of the *Trigger Event* referred to in section 6.03 of the RSPA, USAV can immediately claim the liquidated damages clause as an advance estimate of losses, and request the termination of the contract, as the result of the reference made in section 6.02 to this provision. In turn, the terms of section 2.11 of the *Cash Management Agreement*, which are part of the contracts related to the RSPA, clearly state that once the liquidated damages clause has been paid as an advance estimate of losses, the rights of USAV over the economic rights and transferred credits disappear.
20. Now, even though I have been asked to not evaluate the nature of the RSPA as a guarantee contract in this declaration, the contractual provisions indicated above show that the real intention of the parties was not to transfer full domain of the economic and credit rights to USAV as in fact a "final sale" would be, but rather, to create a form of possession of these assets in the hands of the creditor, keeping for Avianca a direct economic interest in them<sup>11</sup>.
21. As a result, both the termination of the RSPA due to its breach, and the occurrence of the *Trigger Event* of section 6.03 mean, among other effects, that the credits and economic rights assigned to USAV must be returned to Avianca, not as a benefit for its breach, but instead, due to the effect that was contractually agreed upon by

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<sup>11</sup> A similar situation was recognized in the Arbitration Award of May 4, 1999. Banco Standard Chartered Colombia S.A. v. Leasing Capital S.A. and Fondo de Garantías de Instituciones Financieras "Fogafin". In this case, one of the parties made an assignment of economic rights in favor of the other, so that the latter would use the revenues to pay the guaranteed obligations, returning the excess to the debtor/seller. After analyzing the true intention of the contracting parties, the Court ruled that" (.) the intention that the parties had at the moment they made the assignments, which was not different than creating a type of possession in the hands of the creditor; never a type of ownership."

the parties, and because this is the effect of the termination of successive performance contracts under Colombian law, as we previously analyzed.

**V. The application of sections 6.02 and 6.03 of the RSPA is correct, in light of Colombian law**

22. The indemnification for the losses resulting from a contractual breach includes both the actual losses and the lost profits<sup>12</sup>. The parties can validly agree to payment of a liquidated damages clause in the event of breach by one of them<sup>13</sup>. The liquidated damages clause in Colombia can be one of two types: a) a premium: which is established as a penalty independent of the harm caused, due to the breach itself, seeking to discourage it; and b) as an advance estimate of losses: the liquidated damages clause is not established as an additional penalty to the losses, but instead is understood to indemnify the losses caused, at an amount previously agreed upon by the parties, without the need to prove the amount of those losses. It will only be possible to claim both payment of the penalty and the losses that are proven when this possibility has been expressly agreed upon<sup>14</sup>.
23. The liquidated damages clause has limitations established in the law<sup>15</sup>. When the principal obligation is determined or determinable in a certain sum of money, the penalty cannot exceed 100% of that obligation. When the principal obligation is an undetermined amount, the judge can fairly reduce the penalty, on his own initiative or upon request by the

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<sup>12</sup> Civil Code, articles 1613 and 1614.

<sup>13</sup> Civil Code, article 1592; Commercial Code, article 867.

<sup>14</sup> Civil Code, article 1600.

<sup>15</sup> Commercial Code, article 867: "When payment is stipulated of a certain amount in the event of breach, it will be understood that the parties may not retract this.

When the principal performance is determinable in a certain sum of money, the penalty must not be greater than that amount.

When the principal performance is not determined or determinable as a certain sum of money, the judge may fairly reduce the penalty, if he deems it to be excessive, taking into account the interest that the creditor has in carrying out the obligation. He will do the same when the principal obligation has been partially carried out."

interested party<sup>16</sup>, taking into account the interest of the non-breaching party in having the obligation performed and when the principal obligation has been partially performed.

24. In this case, in section 6.02 of the RSPA a liquidated damages clause was included as an advance estimate of losses and it was agreed that it would also be possible to collect other losses that exceeded the value of the estimate. Therefore, given the breach by Avianca, USAV can claim payment of the liquidated damages clause established in it, which may be reduced according to the aforementioned criteria, and in addition, it may claim the other **certain and direct** losses that have a causal nexus with the breach and that it is able to prove, for which the value exceeds that of the liquidated damages clause. Under these terms, Colombian judges will give full application to the liquidated damages clause as an advance estimate of losses covered in the contract.

**VI. Under Colombian law, the true nature of a contract is not determined by the name or title it has been given, but instead, by the real intention of the parties**

25. The cardinal rule for interpretation of contracts in Colombia is the one established in article 1618 of the Civil Code<sup>17</sup>, according to which an interpreter must always give preference to the true intention of the parties over the literal meaning of the words placed in the agreement. In addition, the clauses of a contract can also be interpreted in accordance with those of other contracts between the same parties and on the same matter, as well as by the practical application of the contract<sup>18</sup>. It is important

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<sup>16</sup> Supreme Court of Justice, Civil Division, judgment of June 23, 2000, reference to record no. C- 4823.

<sup>17</sup> Civil Code, article 1618: "Once the intention of the contracting parties is clearly known, it should be followed more than the literal words of the contract".

<sup>18</sup> Civil Code, article 1622: "The clauses of a contract will be interpreted by each other, giving each of them the meaning that best applies to the contract in its totality. They may also be interpreted by those of another contract between the same parties and on the same subject, or through the practical application that both parties have made of them, or one of the parties with the approval of the other party." See Supreme Court of Justice, Civil Division, judgment of October 1, 2004, Case No. 7560, which analyzes the scope of article 1622 of the Civil Code: "(.) as a result, the work of the interpreter of a contract will consist of examining the entire content of the contractual fabric, composed of a plurality of transactions or agreements executed by the parties (.) the interpreter shall, in context, analyze the integrity of the manifestations of will, which, once articulated, configure a network of transactions, the object of study. Therefore, these aggregations or additions must not be interpreted as insular agreements."

to note that in order to identify the true nature of the contract, the judge must not be limited by the name of title that the parties have given to its text, no matter how often it is repeated, but instead, should determine the true content of the contract to establish its type<sup>19</sup>.

26. Therefore, the RSPA is not only governed by what is expressly agreed upon in it, but also by all the other applicable rules, in accordance with its nature. In order to determine its nature and be able to interpret it, preference should be given to the real intention of the parties of the terms included in the agreement, in line with the nature of the overall economic operation intended.
27. While it is true that in several parts the RSPA establishes that it is a “true sale,” the true intention of the parties should be given preference, in light of the nature of the global economic operation, rather than the literal meaning of the words. It calls our attention that on page 5 of the RSPA it was established that for purposes of article 1618 of the Civil Code, the real intention of the parties was that it was a “real sale.” Nevertheless, this affirmation does not make sense and goes against the very spirit of this rule, since it seeks to have the literal meaning of these words prevail over the true intention of the parties. What the rule seeks is precisely that, independent of the clauses in the contract, the real intention should be given preference, which cannot be taken from the literal words, since the rule would no longer make any sense. In my experience as a former Justice of the Supreme Court of Justice, this type of clause is seen precisely as evidence against what is established in it, and tends to demonstrate the opposite of what it states. It would not have been necessary to include this clause if the true intention of the parties on the nature of the contract had not suggested something different from what a true sale is.
28. To the contrary, the true intention of the parties must be taken from an analysis of different factors, such as: (a) the intended purpose sought by the parties at the time of

<sup>19</sup> Supreme Court of Justice, Civil Division, judgment of December 19, 2011, Case No. 2000-01474- 01; Supreme Court of Justice, Civil Division, judgment of September 20, 2017, Case 08001-31-03-010-2010- 00254-01.



negotiation and execution of the contract<sup>20</sup>; (b) the nature of the economic operation as a whole, as indicated previously; (c) the practical application of the contract by the parties<sup>21</sup> and; (d) the context in which the contract was negotiated and executed<sup>22</sup>. These elements can be proven using the pre-contractual documents signed by the parties<sup>23</sup>, as well as other means of proof different from the contract itself. In fact, the true intention of the parties must prevail, even when the terms used in the contract reflect “clarity and precision”<sup>24</sup>. Therefore, the affirmation contained in the contract should not be given a greater effect. Colombian judges should determine the real intention of the parties, and for this purpose will value the aforementioned elements, in order to identify that intention.

29. I have not conducted a detailed analysis of whether the RSPA, together with its linked contracts, is a true sale or an operation of guaranteed financing, since

<sup>20</sup> Supreme Court of Justice, Civil Division, judgment of February 18, 2003, Case No. 6806. The Court recognized that the objective of contractual interpretation consists of establishing “the genuine and real will that motivated the contracting parties to execute the contract and to identify the objectives sought in signing it. (.)”. In the Arbitral Award dated May 13, 2005, Teleconsorcio S.A. et al v. Empresa Nacional de Telecomunicaciones, the Court ruled that the real and genuine will of the parties is “[t]hat which presided over the formation and execution of the contract; that is, the will of a historical nature, and not that which the parties may come to have at a moment after the execution of the act (.) The search for the true will of the parties must take into account the circumstances at the time of the negotiation, the economic base on which the contract is founded, the game of interests that underlies it, the regulation that the parties have sought for these interests through the contract, as well as motivations and intentions that led them to negotiate and the objectives sought by them through the agreements they reached.”

<sup>21</sup> Supreme Court of Justice, Civil Division, judgment of February 28, 2005, Case No. 7504.

<sup>22</sup> Supreme Court of Justice, Civil Division, judgment of July 31, 2018, Case No. 2013-00162- 01:

"interpretation (.) consists of establishing and indicating the normative relevance of its meaning in accordance with the 'reciprocal intention of the parties' (art. 1618 C.C.), which seeks to comply with a "a retrospective and prospective perspective; that is, also considering the execution, performance and practical conduct of the business, the initial phase of creation or formation, taking into account that '[.] the preliminary acts, dealings or conversations designed to prepare the production of contractual consent are not irrelevant; to the contrary, once consent has been formed, they are an integral part of it, and their importance is that they serve as auxiliary means to interpret the true intention of the parties, crystalized in the contract clauses' (civ. case June 28/1989)".

<sup>23</sup> Supreme Court of Justice, Civil Division, judgment of October 3, 2013, Case No. 2004-0413-01. Upon conducting an analysis to identify the true intention of the parties, the Court indicated that "evoking in the first place, the events prior to the agreement, one of the possible elements to illustrate the criteria of the parties, could be the document that preceded it [the contract]".

<sup>24</sup> Supreme Court of Justice, Civil Division, judgment of February 28, 2005, Case No. 7504. "That search - the *ex post* examination of the shared intention - must also not be eradicated due to the fact that the words used by the contracting parties reflect, *prima facie*, clarity and precision, since we must not forget that if the shared will of the parties is different and is known, it must be followed more than the literal meaning which, *in radice*, under certain circumstances, may come to eclipse, and thereby disfigure, the true *voluntas* of the contracting parties (.)".



I was indicated that this matter is not the object of discussion in this motion. Nevertheless, I consider that an appropriate analysis has not been made in the Suescún Declaration, an appropriate analysis, which would enable me to conclude that the RSPA and the *USAV Agreements* constitute a true sale, and therefore, the RSPA corresponds to an instantaneous performance contract.

I hereby declare under the penalty of perjury that the foregoing is true and correct in accordance with my knowledge and information.

Signed on August 6, 2020.

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Jaime Alberto Arrubla-Paucar

**EXHIBIT 24**

**MORRISON & FOERSTER LLP**

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*Counsel to the Official Committee  
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**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
AVIANCA HOLDINGS S.A., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-11133 (MG)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	

**SUPPLEMENTAL RESPONSE OF THE OFFICIAL COMMITTEE OF  
 UNSECURED CREDITORS TO THE COURT'S QUESTIONS POSED  
AT THE JULY 27, 2020 STATUS CONFERENCE**

<sup>1</sup> Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers (to the extent applicable) is not provided herein. Such information may be obtained on the website of the Debtors' claims and noticing agent at <https://www.kccllc.net/avianca>. The Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



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**TO THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE:**

The Official Committee of Unsecured Creditors (the “Committee”) of Avianca Holdings S.A., *et al.* (collectively, the “Debtors”) hereby submits this supplemental response (the “Supplemental Response”)<sup>2</sup> with respect to the questions raised by the Court at the status conference held on July 27, 2020 (the “Status Conference”) regarding the *Debtors’ Motion for Entry of an Order Authorizing Rejection of Certain Contracts* [Docket No. 306] (the “Motion”).

**SUPPLEMENTAL RESPONSE**

1. As the Committee noted in its Reply, the Motion raises a simple question that has an equally simple answer. Are the Debtors obligated to perform under the USAV Agreements in chapter 11? The answer is no. The Bankruptcy Code relieves a debtor-in-possession of its obligation to perform under burdensome executory contracts. The RSPA is clearly executory and is burdensome because it obligates the Debtors to sell payment rights acquired in the future under replacement credit card processing agreements to USAV for no additional consideration. Following rejection, the Debtors will have no such burden.<sup>3</sup> The other USAV Agreements are integrated with the RSPA and should likewise be rejected.

2. Although the Committee joins in the Debtors’ arguments regarding the integrated nature of the USAV Agreements, a favorable ruling on this issue is not necessary for the Debtors

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Committee’s *Reply in Support of Debtors’ Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts* [Docket No. 681] (the “Reply”).

<sup>3</sup> To be clear, the RSPA did not purport to sell future payment rights to be acquired by the Debtors under replacement processing agreements. Rather, the Debtors covenanted to sell rights acquired under replacement processing agreements on the date those replacement agreements become effective. *See* RSPA § 2.01(a)(ii) (“[E]ffective on each applicable Contract Rights and Receivables Addition Date, and subject to the conditions precedent set forth in Section 2.03 herein, the Seller shall sell to the Purchaser, and the Purchaser shall buy from the Seller, finally, definitively, and irrevocably, the Contract Rights arising under and the Receivables accrued under the applicable Additional Card Processing Agreement.”) (emphasis supplied).

to achieve the results they seek. If the Court finds that one or more of the USAV Agreements is not subject to rejection, because it is not integrated with the RSPA and is not executory, then the automatic stay will continue to enjoin any attempt by the USAV Parties to enforce that agreement. Moreover, the RSPA is the sole source of the Debtors' obligation to sell payment rights generated under replacement credit card agreements. If the Debtors are permitted to reject the RSPA, then the fact that the other USAV Agreements are not integrated or rejected ultimately will have no impact on the Debtors' ability to retain their future payment rights.

3. The other questions raised at the Status Conference may be relevant post-rejection but do not need to be decided at this time for the Court to grant the Motion. The occurrence (or non-occurrence) of a Trigger Event, the effects of rejection under local law, the enforceability of the liquidated damages provision in the RSPA, and the nature of any ensuing rejection damages claim may be highly germane to claims reconciliation or an adversary proceeding, including a proceeding to avoid prepetition or postpetition transfers and obtain turnover of estate property. However, it is also possible that, if the Debtors terminate their existing credit card processing agreements and enter into new agreements following rejection of the RSPA, or if the Court recharacterizes the transaction as a financing, then some of these questions may be mooted or largely irrelevant. Accordingly, the Committee believes that any decision on these issues would be premature and unnecessary.

4. With respect to all other issues posed by the Court at the Status Conference, the Committee joins in the Debtors' supplemental briefing filed contemporaneously herewith.<sup>4</sup> The

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<sup>4</sup> Notwithstanding anything to the contrary herein, the Committee expressly reserves all rights to challenge the validity of the USAV Agreements, including the right to seek to recharacterize the USAV Agreements as a disguised financing and to dispute the effect of any purported "true sale" transaction (including whether the Debtors could, as a legal matter, sell property interests that they did not own at the time they entered into the USAV Agreements or acquire after the Petition Date).

Committee remains highly supportive of the Debtors' efforts to preserve the value of their estates and to ensure that all general unsecured creditors (including counterparties to rejected executory contracts) receive equal treatment in chapter 11.

Dated: August 18, 2020

Respectfully submitted,

**MORRISON & FOERSTER LLP**

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**EXHIBIT 25**



**Hearing Date and Time: August 26, 2020 10:00am ET**

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*Counsel for Debtors and  
Debtors-in-Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X	
In re:	: Chapter 11
	: :
AVIANCA HOLDINGS S.A., <i>et al.</i> ,	: Case No. 20-11133 (MG)
	: :
Debtors. <sup>1</sup>	: (Jointly Administered)
	: :
-----X	

**DEBTORS' RESPONSE TO THE COURT'S QUESTIONS POSED  
AT THE JULY 27, 2020 STATUS CONFERENCE**

The Debtors in these chapter 11 cases, and each Debtor's federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int'l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Islaña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



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TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Pursuant to the Court's Order dated August 4, 2020 (Do. No. 659), the Debtors submit this response to the Court's questions posed at the July 27, 2020 status conference (the "Status Conference").

### **QUESTIONS PRESENTED**

1. The Court raised the following six questions at the Status Conference:
  - I. Do the parties dispute that Colombian law would determine the effect of rejection, assuming an executory contract, of the RSPA and/or the Undertaking Agreement?<sup>2</sup> What is the outcome of breach by rejection under Colombian law?<sup>3</sup> Is the liquidated damages clause valid thereunder?<sup>4</sup>
  - II. If the Court concludes that the RSPA is executory but also concludes that the *Mission Product* opinion means sales of contract rights that existed pre-petition cannot be unwound, what is the effect of the breach by rejection as of the petition date or as of the date of a trigger event? What is the theory of a rejection damage remedy?<sup>5</sup>
  - III. Would the ensuing rejection damages claim be a secured claim, as ordinarily the claim would be an unsecured claim?<sup>6</sup>
  - IV. What would be the effect if the court were to permit rejection of only the RSPA and the Undertaking Agreement, but hold that the other contracts are not executory? Would the Debtors still seek to reject those two if the others were not also rejected?<sup>7</sup>
  - V. Do the Debtors agree that a Trigger Event occurred on March 31, 2020?<sup>8</sup>

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<sup>2</sup> See *Transcript of July 27, 2020 Telephonic Status Conference on the Debtor's Motion to Reject Certain Executory Contracts* at 17:6-10.

<sup>3</sup> *Id.* at 17:15-16.

<sup>4</sup> *Id.* at 19:15-16.

<sup>5</sup> *Id.* at 15:25-16:16.

<sup>6</sup> *Id.* at 16:17-17:5.

<sup>7</sup> *Id.* at 18:8-14.

<sup>8</sup> *Id.* at 18:21-25.

- VI. What law should the court look at in determining whether the contracts are inextricably linked to each other, especially given the contracts have differing governing law provisions (Colombia, Cayman Islands, New York, Costa Rica)?<sup>9</sup>

The Debtors' answers to the foregoing questions are addressed in turn below.

2. The Debtors note at the outset, however, that while many of the issues discussed herein are relevant to the *effect* of rejection of the USAV Agreements, the central question before the Court is whether the USAV Agreements are executory, and whether it is an appropriate exercise of the Debtors' business judgment to reject them. For the reasons set forth in the Motion<sup>10</sup> and in the *Debtors' Reply to the Objections of USAV and the USAV Secured Lender Group to the Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts* (Do. No. 683) (the "Reply"), the Debtors submit that the USAV Agreements are executory and may be rejected, and that it is the Debtors' business judgment that rejection will benefit the estates by restoring a vital source of liquidity: proceeds of future ticket sales.<sup>11</sup>

## **RESPONSES**

### **I. Colombian Law Determines the Effect of Rejection of the RSPA and the Undertaking Agreement**

3. "Rejection gives rise to a remedy for breach of contract in the non-debtor party. The claim is treated as a pre-petition claim, affording creditors their proper priority. . . . However, the Code does not determine parties' rights regarding the contract and subsequent breach. To determine these rights, we must turn to state law." *Med. Malpractice Ins. Ass'n v. Hirsch* (*In re*

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<sup>9</sup> *Id.* at 17:17-24.

<sup>10</sup> Capitalized terms not defined herein have the meanings given them in the *Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts* (Do. No. 306) (the "Motion").

<sup>11</sup> In addition to securing the flow of ticket sale proceeds generated in the future to the Debtors, which the Debtors seek to accomplish through the Motion, the Debtors reserve the right to argue that all proceeds of the Contract Rights and Receivables generated *post-petition* are property of the estate. *See* Reply ¶ 47.

*Lavigne*), 114 F.3d 379, 387 (2d Cir. 1997) (citing *In re Yasin*, 179 B.R. 43, 50 (Bankr. S.D.N.Y. 1995)). See Reply ¶ 49.

4. Because the RSPA and the Undertaking Agreement are governed by the law of Colombia, Colombian law determines the parties' rights in the event of breach. See, e.g., *In re Sima Int'l, Inc.*, No. 17-21761 (JJT), 2018 Bankr. LEXIS 1455, at \*21 n.27 (Bankr. D. Conn. May 17, 2018) (applying the law of the contract to determine the rights of the parties as a result of the breach by rejection); *In re Rock & Republic Enters.*, No. 10-11728 (AJG), 2011 Bankr. LEXIS 2401, at \*62 n.26 (Bankr. S.D.N.Y. June 20, 2011) (noting that following rejection, parties are "generally left with the rights and remedies available outside of bankruptcy law"); *In re Barbieri*, No. 00-22274-478, 2010 Bankr. LEXIS 2183, at \*5 (Bankr. E.D.N.Y. July 1, 2010) (same).

**A. USAV Will Have a Claim for Damages Under Colombian Law**

5. Colombian law dictates that the parties' agreement in the contract controls the result of a breach. See *Declaration of Jaime Alberto Arrubla-Paucar in Support of the Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts* (the "Arrubla Decl.") ¶¶ 17-18 ("what is agreed upon in the contract . . . is law for the parties"). The RSPA indicates that in the event of breach, USAV has a claim for the "Liquidated Damages" amount specified therein.

6. As Dr. Arrubla opined, "[i]n this case, the contractual provisions of the RSPA determine the remedies available to the parties. Sections 6.02 and 6.03 of the RSPA establishes the effects of the occurrence of the so-called *Trigger Events*." *Id.* As a result of the Debtors' filing for bankruptcy under chapter 11, the "Liquidated Damages" amount set forth in the RSPA became immediately due and payable as a claim against the Debtors that will be resolved through the



Debtors' chapter 11 cases.<sup>12</sup> See RSPA § 6.03. The Liquidated Damages provision in the RSPA specifies the damages USAV may receive for breach: the unpaid principal due on USAV's loan, interest on that principal until the loan is paid off, and administrative costs related to the unwinding of the transaction. See Reply ¶ 51; RSPA § 1.01.

7. Although section 6.02 of the RSPA does allow USAV to pursue additional remedies beyond Liquidated Damages, USAV will be limited to its claim for money damages in bankruptcy. See Reply ¶¶ 53-54 (citing *Route 21 Assocs. of Belleville, Inc. v. MHC, Inc.*, 486 B.R. 75, 85-87 (S.D.N.Y. 2012) (specific performance, although available as a remedy under state law for breach of contract, is unavailable to a counterparty to a rejected executory contract because "a claimant's right to certain equitable remedies constitutes a 'claim' if an award of monetary damages is a 'viable alternative'")). At best, USAV can pursue a larger damages award, but only if it is able to prove that its direct economic losses for the Debtors' breach of contract exceed the Liquidated Damages amount. See Reply ¶ 55 n.13.

#### **B. The Liquidated Damages Clause Is Enforceable Under Colombian Law**

8. Under Colombian law, "parties can validly agree to payment of a liquidated damages clause in the event of breach by one of them." Arrubla Decl. ¶ 22. A liquidated damages clause will be enforced so long as it does not exceed certain established limits under Colombian law. See *id.* ¶¶ 22-24. The Liquidated Damages clause here is "an advance estimate of losses," to which "Colombian judges will give full application." *Id.* The Liquidated Damages clause is therefore enforceable under Colombian law.

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<sup>12</sup> For the avoidance of doubt, the automatic stay prohibits any efforts to enforce or to collect payment on the Liquidated Damages outside of these chapter 11 cases.

## II. The Effect of Breach Will Be the Restoration of Vital Cash Flow to the Debtors

9. The effect of rejecting the USAV Agreements will be to restore to the Debtors a vital source of liquidity—the proceeds of certain ticket sales purchased via credit card. Rejection will accomplish this in one of several ways.

10. *First*, rejection will eliminate any interest USAV has in the Receivables beyond bare legal title. The result of breach of the RSPA, as described above, is a claim against the Debtors for the Liquidated Damages amount—the total balance outstanding on USAV’s loan plus certain interest charges and costs. The Debtors will discharge the Liquidated Damages claim, or any other damages claim, through the Debtors’ plan of reorganization. *See* Reply ¶¶ 55-56; *Century Indem. Co. v. Nat’l Gypsum Co. Settlement Tr. (In re Nat’l Gypsum Co.)*, 208 F.3d 498, 505 (5th Cir. 2000) (“The ‘claim’ created by the rejection of the contract or lease is then afforded treatment similar to all other unsecured claims that are either provided for in the plan or are discharged through § 1141(d).”).

11. Once USAV’s claim for damages against the Debtors is thus satisfied, although USAV retains bare legal title to the Contract Rights and Receivables and proceeds thereof, it has *no further interest* in that property and must remit everything it receives to the Debtors. Indeed, the RSPA contemplates that “[o]nce the Liquidated Damages is paid in full as provided for hereunder, the Purchaser [USAV] may proceed to unwind the purchase and sale by transferring back to the Seller [Avianca] the Contract Rights, the Receivables, and all Collections derived therefrom.” RSPA § 6.02. While this language is permissive, it illustrates the extremely limited interest that USAV has in the Contract Rights and Receivables following the satisfaction of the Liquidated Damages—and the correspondingly great interest that the Debtors have in that property.

12. *Second*, as an alternative method of enabling the proceeds of credit card receivables to flow to the Debtors, rejecting the RSPA will give the Debtors the option of entering into new card

processing agreements without being required to assign to USAV the benefits of such new agreements, as the Debtors are presently required to do. *Only* by breaching the RSPA may the Debtors enter into new card processing agreements without agreeing to send the benefits thereunder to USAV. Rejection will therefore enable the Debtors to enter into new card processing agreements, should they desire to do so, with 100% of any proceeds collected under those new agreements flowing to the Debtors and bypassing USAV entirely. *See* Reply ¶ 57; *Reply in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts* (Do. No. 681) (the “Committee Reply”) ¶¶ 9, 22.

### **III. USAV’s Rejection Damages Claim Will Be an Unsecured Claim**

13. Supreme Court precedent is clear that the default rule for rejection of an executory contract is that “[d]amages on the contract that result from the rejection of an executory contract . . . must be administered through bankruptcy and receive the priority provided general unsecured creditors.” *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984); *Mission Product Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1659 (2019) (“By thus giving the counterparty a pre-petition claim, Section 365(g) places that party in the same boat as the debtor’s unsecured creditors, who in a typical bankruptcy may receive only cents on the dollar.”); *see also In re Child World, Inc.*, 147 B.R. 847, 852 (Bankr. S.D.N.Y. 1992) (“[R]ejection under 11 U.S.C. § 365(a) simply means that the court will permit the debtor to breach the contract, with the result that the contractual obligations will be reduced to general unsecured claims for prepetition damages pursuant to 11 U.S.C. § 365(g)(1).”).

14. To overcome this general rule and argue for a secured rejection damages claim, first, USAV must concede that the Debtors have a property interest in the Receivables or their proceeds—the Debtors could not pledge collateral to USAV without a property interest in which to grant a security interest. But the USAV Parties are emphatic that the Debtors have *no* property

interest in the Receivables.<sup>13</sup> Second, USAV must establish that the RSPA or related agreements granted USAV a secured interest in those Receivables or their proceeds. But, as outlined below, the USAV Parties are also unable to establish that they held a security interest as of the Petition Date.<sup>14</sup>

15. At most, the Debtors granted USAV a *contingent* security interest in the Contract Rights and Receivables to USAV in two back-up security agreements: that certain Pledge over Contract Rights and Future Revenues between the Debtors and USAV dated December 12, 2017 (the “Colombian Back-Up Security Agreement”)<sup>15</sup> and that certain Costa Rican Back-Up Security Agreement dated December 12, 2017 (the “Costa Rican Back-Up Security Agreement”).<sup>16</sup> The contingent security interests granted in both of these security agreement were not in effect as of the Petition Date, and to date have not yet sprung into effect.

16. In the Colombian Back-Up Security Agreement, the Debtors granted a contingent security interest that would only take effect in the event that certain enumerated events occurred,

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<sup>13</sup> See, e.g., *USAVflow Limited's Objection and Reservation of Rights to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts* (Do. No. 616) ¶¶ 1 (“The Contract Rights and Receivables are not property of the Debtors’ Chapter 11 estates, and no provision of the Bankruptcy Code permits them to become property of the estates.”), 16 (“the Debtors irrevocably sold the Contract Rights and Receivables to USAV, and they are no longer the Debtors’ property”); *Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts* (Do. No. 617) ¶¶ 28 (“The Debtors have no right to the Proceeds of the Contract Rights and Receivables sold pre-petition, which are the USAV Secured Lender Group’s collateral and not property of the estate.”), 30 (“USAV is the sole owner of the Contract Rights and Receivables, and all of the Proceeds”), 32 (“the Debtors *have no interests* in the Proceeds of the Contract Rights and Receivables”) (emphasis added).

<sup>14</sup> This Court does not have to make a determination of whether the claim is secured or unsecured in order to offer the relief requested in the Motion because adjudication of the extent of USAV’s claim can be resolved in the context of adversary proceeding or the claims reconciliation process. See Committee Reply ¶ 2.

<sup>15</sup> A true and correct copy of the Colombian Back-Up Security Agreement is attached as Exhibit 1 to the Declaration of Aaron L. Renenger in Support of the Debtors’ Response to the Court’s Questions Posed at the July 27, 2020 Status Conference (“Third Renenger Decl.”), attached to this Statement as Exhibit A.

<sup>16</sup> See Third Renenger Decl. Ex. 2.



the right to transfer such property. If, as the USAV Parties contend, the Debtors have no property interest in the Contract Rights and Receivables (*see supra* n.13), then no Costa Rican security interest has been created.<sup>19</sup>

18. Although the RSPA permitted USAV to file, and USAV did file, a UCC-1 filing statement with the Washington, D.C. Recorder of Deeds (the “UCC-1 Statement”),<sup>20</sup> the UCC-1 Statement did not perfect a *security interest* in the Contract Rights but rather perfected the *sale* thereof. The RSPA provides that the UCC-1 filing may be made “for the purpose of perfecting the sale of the Contract Rights and Receivables” (RSPA § 2.01(g)), and the UCC-1 Statement reflects the parties’ intention to do exactly that: section 7 of the statement indicates that an alternative designation to debtor/secured party, that of “Seller/Buyer,” is reflected. *See* Third Renenger Decl. Ex. 3 (UCC-1 Statement) at 1. Accordingly, the UCC-1 Statement provides no basis for USAV to assert a secured rejection damages claim against the Debtors.<sup>21</sup>

19. In any event, even if this Court were to determine that USAV would have a secured rejection damages claim, section 552 of the Bankruptcy Code would cut off any such security interest with respect to post-petition Receivables. *See In re Photo Promotion Assocs., Inc.*, 53 B.R. 759, 763 (Bankr. S.D.N.Y. 1985) (“[T]he invalidation of prepetition security interests in post-petition accounts receivable . . . was designed to facilitate the debtor’s ‘fresh start’ by allowing the

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<sup>19</sup> Should the Court grant the Motion, the Debtors intend to submit an expert report from Costa Rican and Colombian law experts regarding the effect of these back-up security agreements at an appropriate time and in a subsequent procedural context.

<sup>20</sup> *See* Third Renenger Decl. Ex. 3.

<sup>21</sup> Article 9 of the Uniform Commercial Code governs the “sale of accounts [and] payment intangibles,” in addition to security interests in the same. UCC § 9-109(a)(3). When these kinds of property are sold, “a financing statement must be filed to perfect the buyer’s interest in them.” UCC § 9-102 cmt. 5(a) (regarding accounts); *see also id.* cmt. 5(d) (the same regarding payment intangibles).

That Article 9 uses the words “secured party” and “debtor” rather than “buyer” and “seller” “is intended solely as a drafting technique,” and “is not relevant to the sale or secured transaction determination.” UCC § 9-102 cmt. 2.



debtor to acquire post-petition assets free of prepetition liabilities. . . . 11 U.S.C. § 552(a) expressly declares that such after-acquired property is not subject to the bank's prepetition security agreement."); *see also Kraus-Thomson Org., Ltd. v. McCorhill Publ'g, Inc. (In re McCorhill Publ'g, Inc.)*, 92 B.R. 74, 82 (Bankr. S.D.N.Y. 1988) (same). Because post-petition Receivables are generated by the Debtors' post-petition operations and labor, those Receivables would no longer be subject to any security interest that the USAV parties claim to hold. *See In re Cafeteria Operators, L.P.*, 299 B.R. 400, 405 (Bankr. N.D. Tex. 2003) ("Revenue generated post-petition solely as a result of a debtor's labor is not subject to a creditor's pre-petition interest.").

**IV. Rejection of the RSPA and Undertaking Agreement Is All That Is Necessary to Restore the Receivables to the Debtors**

20. As discussed *supra* Section II, the result of rejection—breach—of the RSPA is that a damages claim is triggered, and once fulfilled, all funds to flow back to the Debtors. This result follows even without rejection of the other USAV Agreements, for rejecting the RSPA alone will extinguish USAV's economic interest in the Credit Card Receivables. Because all of the USAV Agreements are part of one interrelated transaction, however, the Court is empowered to allow the rejection of all the agreements, whether the court applies New York or Colombian law. *See infra* Section VI.

21. Alternatively, and as also discussed *supra* Section II, rejection—breach—of the RSPA is all that is required for the Debtors to enter into new card processing agreements that are not subject to the RSPA's requirement to transfer the benefits of such agreements to USAV. In this further and additional way, breach of the RSPA alone will restore vital cash flow to the Debtors.

**V. The March Notice Did Not Invoke Any Trigger Event Remedies Available Under the RSPA**

22. At the Status Conference, the Court asked if the Debtors agreed that a Trigger Event had occurred as a result of the March Notice. While the Debtors did not dispute that a Trigger



Event could have been declared at that time due to the restrictions on flight imposed by the Colombian government (*see Declaration of Adrian Neuhauser in Support of Chapter 11 Petitions and First Day Pleadings* (Do. No. 20) ¶ 7), the Lender Group did not elect to pursue the remedies for a Trigger Event, and instead elected only to reserve rights through the March Notice. The Trigger Event Priority of Payments was not put into place at that time; to the contrary, USAV continued to make Additional Purchase Price payments after the March Notice was delivered. *See* Second Neuhauser Decl. ¶ 5.

23. Although the Lender Group did not seek the remedies available to it following a Trigger Event prior to the Petition Date, the Lender Group took action *post-petition* against the Debtors. On or around May 18, 2020, Citibank received instructions from the Lender Group that a Trigger Event had occurred and that a Trigger Event Priority of Payments was being put into place. *See* Second Renenger Decl. Ex. 2. As a result, Citibank transferred more than \$13.5 million from the New York Pass-Through Account, the Debt Service Reserve Account, and the Collections Account (combined) to the accounts of the Lender Group on May 18, 2020. *See* Second Neuhauser Decl. ¶ 7. Following that date, Citibank has continued to transfer, on a daily basis, all additional funds deposited in the Collections Account—over \$5 million to date—to the accounts of the Lender Group.

#### **VI. New York or Colombian Law Should Apply to Determine Whether the USAV Agreements Are Inseparable**

24. While New York courts typically give effect to the parties' contractual choice of law, *Sabella v. Scantek Med., Inc.*, No. 08-453 (CM)(HBP), 2009 U.S. Dist. LEXIS 88170, at \*33-34 (S.D.N.Y. Sept. 21, 2009), the USAV Agreements have different choice of law provisions, and it would be inappropriate to apply a separate law to each agreement in order to determine whether

the group should be read as one contract.<sup>22</sup> As discussed in the Reply, where there is a central question affecting a group of related contracts with conflicting choice of law provisions, the Court should apply the law of the operative agreements (Colombian), or alternatively, of the greatest number of agreements (New York). *See* Reply ¶ 36.

25. The same result would apply here under a New York<sup>23</sup> conflict of law analysis: the “center of gravity” of the USAV Transaction would either be New York or Colombia.<sup>24</sup> *See* Reply ¶ 36 n.8. The USAV Agreements were negotiated, written, and executed by parties in New York and Colombia, and performance continues to occur in New York and Colombia.

26. New York is a “center of gravity” because it is the center of the parties’ performance, being the location of most of the accounts used to affect required payments under the agreements.<sup>25</sup> *See, e.g.*, RSPA § 1.01 (explaining that the New York Pass-Through Account is where the Credit Card Processors under the relevant agreements deposit all of the Receivables subject to the USAV Agreements). New York courts view the place of payment and the location of integral bank accounts as equivalent to the place of performance. *Sabella*, 2009 U.S. Dist. LEXIS 88170, at \*39 (finding the place of performance to be the location of a wire transfer receipt in a loan transaction); *Koreag, Controle et Revision S.A. v. Refco F/X Assocs., Inc. (In re Koreag, Controle et Revision S.A.)*, 961 F.2d 341, 351 (2d Cir. 1992) (holding the location of funds and accounts central to the

<sup>22</sup> The Debtors could not find a single case announcing a conflict of law principle applicable when a central question affects a group of related contracts with conflicting choice of law provisions.

<sup>23</sup> Though the Debtors are not seeking to reject them, three other relevant transaction documents are also governed by New York law: the USAV Loan Agreement, Account Control Agreement, and New York Pledge and Security Agreement.

<sup>24</sup> Neither the Cayman Islands nor Costa Rica would be considered a “center of gravity” in the USAV Transaction. Cayman Islands’ only connection to the transaction is that it is the place of business of USAV, an entity established *solely* to complete the sale of the receivables under the RSPA. Although Costa Rica arguably has more relevance than Cayman Islands—given that some Debtor entities operate out of Costa Rica—it likewise lacks any significant relationship to the USAV Transaction.

<sup>25</sup> As stated in the Debtors’ Reply, the USAV Parties do not appear to disagree that New York law should govern the issue. *See* Reply ¶ 38 n.9.

legal issue to have the most significant contact to the transaction). Additionally, New York is the principal place of business of Citibank, which serves as administrative and collateral agent under a number of the agreements.

27. Colombia, too, is a “center of gravity”: it is the principal place of business of Aerovías del Continente Americano S.A. Avianca, the primary airline entity of the Debtors, and the entity which entered into the USAV Transaction. As a result, the activities that result in production of the majority of Receivables—the property ultimately in issue in this matter—occur in Colombia. Colombia therefore has significant contacts with the parties and the USAV Transaction.

28. Accordingly, either New York or Colombian law should apply to determine whether the USAV Agreements are inseparable. As discussed in the Reply, under the law of either jurisdiction, the USAV Agreements are inseparable, and are capable of being evaluated as one interrelated agreement for purposes of this Court's rejection analysis. *See Reply* ¶¶ 37-40.

Dated: New York, New York  
August 18, 2020

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**EXHIBIT 26**

**Adjourned Hearing Date and Time: August 26, 2020 at 10:00 a.m. (ET)**  
**Agreed Supplemental Brief Deadline: August 18, 2020 before 11:59 p.m. (ET)**  
**Re: ECFs 306, 617, 681, 683, 684**

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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In re:

AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup>

Debtors.

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)  
) Chapter 11  
)  
) Case No. 20-11133 (MG)  
)  
) (Jointly Administered)  
)

**SUPPLEMENTAL BRIEF IN SUPPORT OF  
OBJECTION OF THE USAV SECURED LENDER GROUP TO  
DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
REJECTION OF CERTAIN EXECUTORY CONTRACTS**

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number (to the extent applicable) are as follows: Aero Transporte de Carga Unión, S.A. de C.V.; Aeroinversiones de Honduras, S.A.; Aerovias del Continente Americano S.A. Avianca; Airlease Holdings One Ltd.; Avianca Costa Rica S.A.; Avianca Holdings S.A.; Avianca, Inc. (13-1868575); Avianca Leasing, LLC (46-2586415); Avianca Perú S.A.; Avianca-Ecuador S.A.; Aviateca, S.A.; Avifreight Holding Mexico, S.A.P.I. de C.V.; Grupo Taca Holdings Limited; International Trade Marks Agency Inc.; Inversiones del Caribe, S.A.; Islaña de Inversiones, S.A. de C.V.; Latin Airways Corp.; Latin Logistics, LLC (00-0107425); Regional Express Américas S.A.S.; Ronair N.V.; Taca de Honduras, S.A. de C.V.; Taca International Airlines S.A.; Taca S.A.; Tampa Cargo S.A.S.; AV International Holdco S.A.; AV International Holdings S.A.; AV International Investments S.A.; AV International Ventures S.A.; AV Investments One Colombia S.A.S.; AV Investments Two Colombia S.A.S.; AV Taca International Holdco S.A.; Servicios Aeroportuarios Integrados SAI S.A.S. The address of the Debtors' principal offices is Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

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The USAV Secured Lender Group<sup>2</sup> hereby submits this supplemental brief (the “Supplemental Brief”)<sup>3</sup> in further support of its objection [ECF 617] (the “Objection”) to the *Debtors’ Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts* [ECF 306] (the “Motion”), and in response to the questions posed by the Court at the July 27 status conference concerning the Motion (the “Status Conference”).<sup>4</sup>

### **QUESTIONS PRESENTED**

1. The questions posed by the Court at the Status Conference together with summary short answers are set forth below:

- **FIRST QUESTION PRESENTED:** If the Court concludes that the RSPA is an executory contract, but *Mission Product Holdings v. Tempnology, LLC*, 139 S. Ct. 1652, 1663 (2019) prevents the Debtors from unwinding the prepetition sale of the Contract Rights, would *Mission Product* also apply to future Proceeds?
- **SHORT ANSWER:** Yes, future Proceeds of the Contract Rights are precisely the asset sold in 2017 for a \$150 million “Advance Payment” plus a contingent right to payment of “Additional Purchase Price,” which right was extinguished prepetition. As confirmed by the Debtors’ foreign law expert, the sale of the future Proceeds was valid, final, definitive, and irrevocable and the Debtors have no remaining direct interest in them. The fact that the Proceeds of the Contract Rights sold at closing are generated over time does not distinguish them from assets delivered at one time. *Mission Product* unambiguously holds that a debtor cannot unwind a sale, and that applies to purchased assets delivered in the future. Indeed, the Supreme Court specifically held that the Debtors could not take back future use of a sold or licensed asset.
- **SECOND QUESTION PRESENTED:** If the Court concludes that the RSPA and/or the Undertaking Agreement are executory contracts subject to rejection under Section 365, would the ensuing damages claim be a secured claim?
- **SHORT ANSWER:** Rejection would not allow the Debtors to take back the Proceeds they sold (while keeping the purchase price), because they are delivered by the non-Debtor

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<sup>2</sup> Capitalized terms not defined herein have the meanings provided in the Objection, the Motion, or the sur-reply of the USAV Secured Lender Group (the “Sur-Reply”) filed contemporaneously herewith, as the case may be.

<sup>3</sup> In support of this Supplemental Brief, the USAV Secured Lender Group relies on (i) the Second Declaration of Joshua D. Weedman (the “Second Weedman Decl.”), (ii) the Second Declaration of Jorge Suescún Melo (the “Second Suescún Decl.”), and (iii) the Declaration of Vicente Lines (the “Lines Decl.”), all filed contemporaneously herewith.

<sup>4</sup> Pursuant to Federal Rule of Civil Procedure 44.1, as made applicable by Bankruptcy Rule 9017, the USAV Secured Lender Group hereby gives notice that it intends to raise issues of Colombian and Costa Rican law as set forth in this Supplemental Brief and the Sur-Reply, the Second Suescún Decl., and the Lines Decl., respectively. This Supplemental Brief incorporates by this reference the statements and arguments set forth in the Objection, the Sur-Reply, the Prof. Suescún Decl. [ECF 618] (the “First Suescún Decl.”), Second Suescún Decl., and the Lines Decl.

credit card processors to a non-Debtor USAV account and then to the USAV Secured Lender Group. But if the Court were to permit the rescission of the 2017 sale or the Debtors otherwise did somehow gain access to the Proceeds, USAV would hold a security interest over the Contract Rights and the Proceeds. The USAV Secured Lender Group has security interests over all assets of USAV, including the Contract Rights, the Proceeds, and in all of USAV's deposit accounts into which such Proceeds flow. Consequently, the claims of USAV and the USAV Secured Lender Group would be paid from the Proceeds.

- **THIRD QUESTION PRESENTED:** As a matter of Colombian law, which is the governing law of the RSPA, would the Liquidated Damages clause in the RSPA be enforceable?
- **SHORT ANSWER:** Yes, the Liquidated Damages clause under the RSPA is valid and enforceable under Colombian law, and such Liquidated Damages are presently due and payable to USAV. Consequently, USAV is required to apply the Proceeds to satisfy the Liquidated Damages.
- **FOURTH QUESTION PRESENTED:** Should the Court apply New York law or a different governing law to determine if the USAV Agreements are inseparable?
- **SHORT ANSWER:** Colombian law should apply because the center of gravity with respect to the USAV Agreements is Colombia.

### **ARGUMENT**

- A. **FIRST QUESTION PRESENTED:** If the Court concludes that the RSPA is an executory contract, but the *Mission Product Holdings v. Tempnology, LLC*, 139 S. Ct. 1652, 1663 (2019) prevents the Debtors from unwinding the prepetition sale of the Contract Rights, would *Mission Product* also apply to future Proceeds?

2. Yes. The controlling Supreme Court precedent *Mission Product* “teaches that the rights that [have already been] transferred can’t be unwound” through rejection under Section 365 because rejection cannot rescind rights that the contract previously granted. Status Conf. Tr. 16:7-8. “Rejection breaches a contract but does not rescind it. And that means all the rights that would originally survive a contract breach remain in place.” *Mission Prod.*, 139 S. Ct. at 1666. Under *Mission Product*, after a breach by the Debtors, USAV would have “the choice to terminate the [RSPA] and send back [the Contract Rights],” but Aerovías “has no ability, based on its own breach, to terminate the [RSPA]” and “cannot get back the [Contract Rights] by refusing” to

perform any further obligations under the RSPA or otherwise. *Mission Prod.*, 139 S. Ct. 1652, 1662.<sup>5</sup>

3. Thus, there is no dispute that the Debtors cannot take back what they sold in 2017. The question is: what did they sell? The Debtors sold not just the Contract Rights, but also the Proceeds of those rights going forward. Indeed, there was very little value in existing receivables at the time of the sale. The \$150 million purchase price corresponded to the *future* Proceeds here at issue.

4. Section 2.01(a)(i) of the RSPA provides that “effective on the Effective Date, the Seller sells to the Purchaser, and the Purchaser buys from the Seller, finally, definitively and irrevocably, the existing (as of the date hereof) Contract Rights arising under...the AMEX Contract and the Credomatic Contract.” RSPA § 2.01(a)(i). The RSPA uses the defined term “Collections” to cover the *future* receivables and *Proceeds derived from the Contract Rights* under the card processing agreements with AMEX and Credomatic (the “Card Processors”). See RSPA § 1.01. Specifically, the RSPA defines “Collections” as “all cash collections and other cash proceeds *derived from the Contract Rights* or the Receivables,<sup>6</sup> whether received by the Seller, the Purchaser, or any other Person.” RSPA § 1.01 (emphasis added).<sup>7</sup> Thus, the future Proceeds

<sup>5</sup> *Mission Product* made no distinction between income producing assets and assets delivered at one time. Indeed, the license at issue there was fully paid for up front, but permitted the licensee to *commercially exploit* the subject intellectual property for the benefit of the licensee (i.e., to utilize the property to generate *future* income). *In re Tempnology, LLC*, 541 B.R. 1, 3 (Bankr. D. N.H. 2015) (“the Debtor granted Mission the following license: Excluding those elements of the CC Property consisting of Marks, Domain Names, [the Debtor] hereby grants to [Mission] and its agents and contractors a non-exclusive, irrevocable, royalty-free, *fully paid-up*, perpetual, worldwide, fully-transferrable license, with the right to sublicense (through multiple tiers), use, reproduce, modify, and create derivative work based on and otherwise freely exploit the CC Property in any manner for the benefit of [Mission], its licensees and other third parties) (emphasis added).

<sup>6</sup> The term “Receivables” refers to *accrued* rights to payment under the Card Processing Agreements as of the date of the 2017 purchase and sale. See RSPA §1.01 (definition thereof).

<sup>7</sup> For clarity, this Supplemental Brief and the Sur-Reply use the term “Contract Rights” to mean the *right to receive* all future Collections prior to their being liquidated into cash proceeds following a Specified Sale, and the term “Proceeds” to mean the *actual cash collections and other proceeds* generated from the Contract Rights that are owned by USAV, but the Court should note that Proceeds are captured by and subsumed within the concept of Contract Rights. See RSPA § 1.01 (defining “Contract Rights” to mean the “contract rights of the Seller under the Card Processing Agreements to (i) receive any kind of payments, indemnities or economic compensations derived therefrom on account of Specified Sales, including the right, among other things, to receive the Collections derived therefrom; and (ii) to enforce the rights referred to in (i) against the respective Card Processors thereunder.”)

at issue in the Motion were sold in 2017 for a \$150 million “Advance Payment” plus the contingent right to payment of “Additional Purchase Price” in 2017.<sup>8</sup> *See* RSPA § 3.01(a).

5. Pursuant to Section 4.01 of the RSPA, the Debtors expressly acknowledged and agreed that USAV is the owner of all Proceeds (*i.e.*, “Collections”) as a consequence of the sale and transfer of the Contract Rights from which they are derived:

[T]he Sale and Transfer made pursuant to this Agreement ***convey to the Purchaser good and valid title to all of the Contract Rights and Receivables (and the Collections derived therefrom) and vests the Purchaser with the definitive and indefeasible ownership*** (with all privileges set forth in the first paragraph of article 669 of the Colombian Civil Code), to (w) all of the Contract Rights and Receivables, (x) ***all funds collected or to be collected in respect of all of the Collections as well as all income and proceeds of the foregoing*** and (y) all performance rights of any nature whatsoever under the Card Processing Agreements (except those explicitly excluded from the Receivables pursuant to the definition thereof).

RSPA § 4.06(u)(ii) (emphasis added).

6. In connection with the USAV Transactions, the Debtors’ Colombian counsel, Gómez-Pinzón Abogados S.A.S. (“GPZ”), issued a legal opinion to USAV and Citibank, as Administrative Agent and Collateral Trustee for the USAV Secured Lender Group, upon which USAV and the USAV Secured Lender Group relied in agreeing to enter into the USAV Transactions. *See* Weedman Decl., Ex. F (GPZ Opinion). GPZ repeatedly opined that USAV owns the Contract Rights and Proceeds, and that the Debtors have no remaining interest in such

<sup>8</sup> As noted in the Objection, the Debtors’ contingent right to payment of Additional Purchase Price was cut off prepetition. On March 20, 2020, the Colombian government announced that it would close its airspace as a result of the COVID crisis, resulting in the Flight Impairment Trigger Event. *See Declaration of Adrian Neuhauser in Support of Chapter 11 Petitions and First Day Pleadings* [ECF 20] ¶ 7 (the “First Day Declaration”); Objection ¶ 15. Further, the failure of the Seller to provide notice to the Purchaser and the Administrative Agent of the foregoing Trigger Event pursuant to Section 2.01(f)(v) of the Undertaking Agreement also resulted in separate Trigger Event (a “Notification Trigger Event” and, together with the Flight Impairment Trigger Event, the “Unwaived Trigger Events”). RSPA § 6.01(c)(i). As a consequence of these Unwaived Trigger Events, the rights of the Debtors to any Additional Purchase Price were automatically cut off. *See* Section 3.01(a)(ii) of the RSPA (following a Trigger Event, “no Additional Purchase Price shall be paid . . . .”); *see also* First Suescún Decl. ¶ 12; Second Suescún Decl. ¶ 8. The occurrence of a Trigger Event cuts off the right to Additional Purchase Price automatically without any requirement of notice being delivered from USAV or any other person. RSPA § 3.01(a)(ii) (stating that following a Trigger Event, “no Additional Purchase Price shall be paid” without any requirement of notice and providing that “[t]he Seller acknowledges and irrevocably agrees to the payment of the Additional Purchase Price on such terms and conditions” (emphasis added)).



property: (i) the sale and transfer of the Contract Rights and all present and future Collections was a **“valid and irrevocable sale and transfer,”** (ii) as a consequence of such sale and transfer USAV **“has a right to receive all future Collections,”** (iv) the right to receive all present and future Collections **“will not constitute [a] right or property . . . of”** Aerovías, and, (iv) due to the **“true, definitive and final transfer of the Contract Rights”** the assignment **“should be not capable of being set aside or invalidated at the instigation of”** Aerovías. GPZ Opinion ¶¶ 8-9 (emphasis added).

7. *Mission Product* applies to all assets sold, including future collections. *Mission Product* does not distinguish among sales based on when the asset is delivered, nor is there any reasoned basis for doing so. Indeed, parties routinely sell income generating assets, including entities, annuities, and contract rights, and those sales are as final as all other sales.<sup>9</sup>

8. Additionally, rejection would not provide the Debtors with access to the future Proceeds at issue that they sold in 2017. Rejection of the RSPA and the Undertaking Agreement would only permit the Debtors to “repudiate[e] any further performance of [their] duties” under such contracts. *Mission Prod.*, 139 S. Ct. 1652, 1658. No “further performance” is required from the Debtors to cause the cash Proceeds to be delivered to USAV. In connection with the 2017

<sup>9</sup> See, e.g., *In re Walsh*, 2007 Bankr. LEXIS 3964, at \*2 (Bankr. W.D.N.Y. Aug. 10, 2007) (“It is not at all uncommon for investors to buy up residential homes that they wish to rent-out to produce an income stream”); *In re September 11 Litig.*, 802 F.3d 314, 335 (2d Cir. 2015) (noting that sales of leaseholds involve “generat[ing] an assessment of future income”); *King County v. IKB Deutsche Industriebank AG*, 708 F. Supp. 2d 334, 341 (S.D.N.Y. 2010) (noting the typical practice of structured investment vehicles to “acquire various income-producing assets, such as residential mortgage-backed securities (‘RMBS’), commercial mortgage-backed securities (‘CMBS’), and collateralized debt obligations (‘CDOs’)”); *In re Pipkins*, 2014 Bankr. LEXIS 2654, at \*20 (Bankr. N.D. Cal. June 16, 2014) (noting that an annuity could not be considered the property of debtor’s trust because the debtor had “s[old] and assign[ed] in 2007 . . . his entitlement to the 2011 annuity payment.”); *Lattera v. Commissioner*, 437 F.3d 399, 401 (3d Cir. 2006) (noting that plaintiffs received court approval for their sale of future lottery installment payments); *In re Terry*, 245 B.R. 422, 427-28 (Bankr. N.D. Ga. 2000) (“It is the inescapable conclusion of the Court that the Debtor sold his interest in the annuity to Wentworth . . . Wentworth owns that portion of the income stream which it purchased from the Debtor. As such, the payments due to Wentworth . . . are not property of the estate.”); *In re Potts*, 501 B.R. 711, 723 (Bankr. D. Colo. 2013) (noting that the purchaser of a commercial property would likely benefit “both in terms of the value of the property and the opportunity to produce future income.”); *Tsereteli v. Residential Asset Securitization Tr. 2006-A8*, 692 F. Supp. 2d 387, 389 (S.D.N.Y. 2010) (case involving the sale of certificates, which the court noted were “a form of mortgage backed security that entitle their owners to a portion of the income stream generated by an underlying pool of mortgage loans.”); *Artists Rights Enft Corp. v. Estate of King*, 370 F. Supp. 3d 371, 375 (S.D.N.Y. 2019) (noting that one “type of right[] that a composer . . . might be interested in selling” would be “writer’s royalties . . . that is, the worldwide royalty income stream for the [s]ongs”).

purchase and sale, Aerovías delivered to the Card Processors certain notices and consents (the “Notices and Consents”), which, among other things, directed the Card Processors to deliver all cash Proceeds to an account of USAV, to which direction the Card Processors agreed. *See* AMEX Notice §§ 3-4; Credomatic Notice § 3; Credomatic Consent and Agreement § (a)(ii).<sup>10</sup> As a consequence, the Debtors never possessed nor exercised any control whatsoever over the Contract Rights or Proceeds since the sale closed in 2017. The obligation to provide the Proceeds to USAV runs directly from AMEX and Credomatic (*not* the Debtors).<sup>11</sup> The Proceeds never pass through the Debtors’ hands, and the Debtors do nothing to cause USAV to receive Proceeds from the Card Processors. As a result, even if the Court relieved the Debtors of further performance obligations under the RSPA by granting the Motion, all Proceeds would continue to be delivered by the non-debtor Card Processors to the non-debtor USAV (which, in turn, would apply the Proceeds to the secured claims of the USAV Secured Lender Group).<sup>12</sup>

**B. SECOND QUESTION PRESENTED: If the Court concludes that the RSPA and/or the Undertaking Agreement is an executory contract subject to rejection under Section 365, would the ensuing damages claim be a secured claim?**

9. Yes, as explained below. But as explained above, under *Mission Product*, even if this Court grants the Motion, it would not unwind the transfer of legal and economic ownership of the Contract Rights and Proceeds to USAV. As a consequence, USAV holds more than a *security* interest in the Proceeds, it holds a *possessory* ownership interest in them and is entitled, and in fact

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<sup>10</sup> True and correct copies of the Notices and Consents were annexed to the Renenger Declaration [ECF 302-2] as Exs. 5, 6 and 7.

<sup>11</sup> The Debtors admit payments of Proceeds are automatically disbursed by the Card Processors (not the Debtors) directly into USAV’s bank accounts pursuant to the applicable Notices and Consents. *See* Motion ¶ 35 (“USAV directly collects all payments made by Credomatic and AMEX . . . .” (emphasis added)).

<sup>12</sup> Notwithstanding that all future Proceeds are the property of USAV, following the payment in full of USAV’s obligations to the USAV Secured Lender Group, the Debtors will have an option to purchase all of the outstanding shares of common stock of USAV by exercising its rights under the Option Agreement. A true and correct copy of the Option Agreement is annexed to the Second Weedman Decl. Thus, neither USAV nor its creditors would receive any inequitable benefit or windfall through the USAV Transactions.

required under the RSPA, to apply those Proceeds toward the Liquidated Damages,<sup>13</sup> which must be paid before USAV is permitted to take any steps to return the Proceeds in excess of the Liquidated Damages to the Debtors.<sup>14</sup>

10. Furthermore, all obligations of Aerovías as Seller under the RSPA and the Undertaking Agreement, including the obligation to “transfer the Collections to the [USAV] should they be received by [Aerovías] after the date of execution of the RSPA,” are “Secured Obligations” under (i) a Pledge over Contract Rights and Future Revenues (the “Colombian Purchaser Security Agreement”) between Aerovías, as grantor, and USAV, as secured party, and governed by Colombian law; and (ii) a Costa Rican Back-Up Security Agreement (the “Costa Rican Purchaser Security Agreement,” and together with the Colombian Purchaser Security Agreement, the “Purchaser Security Documents”) between Aerovías, as grantor, and USAV, as secured party, and governed by Costa Rican law.<sup>15</sup>

11. The security interests granted under the Colombian Purchaser Security Agreement expressly covers the Proceeds at issue, or “Collections.” Colombian Purchaser Security Agreement § 2.01 (Secured Obligations are secured by a first priority pledge over “[t]he Contract Rights under the Credit Card Processing Agreements, Future Revenues *and Collections derived therefrom*... and Proceeds of any or all of the foregoing (*bienes derivados y atribuibles*)” (emphasis added)). “Collections” is defined broadly by reference to the RSPA to mean “all cash collections and *other cash proceeds derived from the Contract Rights or the Receivables*, whether received by the Aerovías, as Seller, the Purchaser, or any other Person.” RSPA § 1.01 (emphasis

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<sup>13</sup> See RSPA §§ 6.02 and 6.03 (permitting and requiring, respectively, application of Collections in USAV’s accounts to Liquidated Damages); see also Cash Management Agreement § 2.04 (requiring the Collateral Agent with security for the benefit of the USAV Secured Lender Group over USAV’s accounts to so apply Collections).

<sup>14</sup> Notably, USAV is never *required* to return the Contract Rights and Proceeds to the Debtors. See Second Suescún Decl. ¶¶ 20-25 (opining that there is no obligation to unwind the purchase and sale). However, following payment in full of the Liquidated Damages, the Debtors are permitted to exercise their option on the USAV shares under the Option Agreement.

<sup>15</sup> True and correct copies of the Purchaser Security Documents are annexed to the Second Weedman Decl.

added).<sup>16</sup> Similarly, the Costa Rican Purchaser Security Agreement also grants a security interest in the “Collateral,” Contract Rights and Receivables (each as defined under the RSPA). *See* Costa Rican Purchaser Security Agreement § 2. The term “Collateral” means the Contract Rights and Receivables (and, as explained above, Contract Rights captures and includes current and future Proceeds). *See* RSPA § 1.01.<sup>17</sup> Each of the Colombian and Costa Rican Purchaser Security Interests create valid and enforceable liens on the Contract Rights and Proceeds under Colombian and Costa Rican law, respectively.<sup>18</sup>

12. Thus, if Aerovías does somehow receive Proceeds, it is obligated to deliver such Proceeds to USAV, and that obligation itself is secured by the Contract Rights and all Proceeds.<sup>19</sup> And regardless of rejection, USAV would be entitled under the Purchaser Security Agreements to priority rights against the Contract Rights and Proceeds. *In re Tousa, Inc.*, 598 Fed. Appx. 761, 763 (11th Cir. 2015) (claims resulting from rejected contracts were higher priority than general unsecured claims based on the terms of the underlying contracts); *Leasing Serv. Corp. v. First Tenn. Bank Nat’l Ass’n*, 826 F.2d 434, 437 (6th Cir. 1987) (“[t]he extent to which a claim is secured is wholly unaffected” by the rejection or assumption of an executory contract); *In re CM Systems, Inc.*, 87 B.R. 707, 708 (Bankr. M.D. Fla. 1988) (rejection of a lease did “not change [the] lessor’s

<sup>16</sup> The security interest under the Colombian Purchaser Security Agreement is perfected. USAV filed the Colombian Purchaser Security Agreement for registry with the unified registry of liens over moveable assets (*Registro de Garantías Mobiliarias*) in Colombia, and a true and correct copy of the document evidencing such registration is annexed to the Second Weedman Decl. In addition, USAV filed a financing statement in Washington D.C. to perfect the security interest under the Colombian Purchaser Security Agreement under Article 9 of the UCC, and a true and correct copy of that financing statement is annexed to the Second Weedman Decl.

<sup>17</sup> The security interest under the Costa Rican Purchaser Security Agreement is also perfected. USAV filed the Costa Rican Purchaser Security Agreement for registry with the unified registry of liens over moveable assets (*Registro de Garantías Mobiliarias*) in Costa Rica, and a true and correct copy of the document evidencing such registration is annexed to the Second Weedman Decl. In addition, USAV filed a financing statement in Washington D.C. to perfect the security interest under the Costa Rican Purchaser Security Agreement under Article 9 of the UCC, and a true and correct copy of that financing statement is annexed to the Second Weedman Decl.

<sup>18</sup> *See* Second Suescún Decl. ¶ 66 n. 38; Lines Decl. ¶ 11.

<sup>19</sup> *See* Undertaking Agreement § 2.01(t)(iv) (providing for such obligation). The Secured Obligations also include the obligation under section 2.03(b) of the RSPA to take whatever steps are necessary to transfer ownership of contract rights any new or replacement Card Processing Agreements, and the collateral under the Purchaser Security Documents includes the such rights. *See* RSPA § 2.03(b).

status from secured to unsecured”); *In re Ashley*, 41 B.R. 67, 71 (Bankr. E.D. Mich. 1984) (non-rejecting party had secured lien upon rejection); *In re Station Casinos, Inc.*, 2010 Bankr. LEXIS 5365, \*88 (Bankr. D. Nev. 2010) (confirming plan of reorganization in which “master lease rejection damage claim[s]” were classified as “other secured claim[s]”); *Banc One Capital Partners v. Addison Airport (In re H.B. Leasing Co.)*, 188 B.R. 810, 815 (Bankr. E.D. Tex. 1995) (creditor’s security interest was valid despite rejection of underlying lease).

13. USAV, in turn, granted security interests in all of its assets to the USAV Secured Lender Group to secure the obligations under the Loan Agreement, including the Contract Rights (and the current and future Proceeds), and all of USAV’s bank accounts into which the Proceeds are deposited, pursuant to (i) a New York Security Agreement governed by New York law; (ii) an Account Control Agreement governed by New York law; (iii) a Security Agreement governed by English law; and (iv) a Security Trust Deed governed by English law (collectively, the “Lender Security Documents”).<sup>20</sup> Thus, in the event that the Court grants the Motion, the USAV Secured Lender Group would have a first-priority lien on the Contract Rights and Proceeds “back-to-back” to the valid and enforceable security interests held by USAV under the Purchaser Security Agreements.

C. **THIRD QUESTION PRESENTED: As a matter of Colombian law, which is the governing law of the RSPA, would the Liquidated Damages clause in the RSPA be enforceable?**

14. Yes, the Liquidated Damages clause is enforceable as a matter of Colombian law, and such Liquidated Damages are presently due and payable. As noted above, however, USAV is not required to terminate the RSPA and has not done so (nor would the USAV Secured Lender Group ever consent to such a termination).

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<sup>20</sup> True and correct copies of the Lender Security Documents are annexed to the Second Weedman Decl.

15. The fact that the Liquidated Damages are presently due and payable to USAV means only that USAV must apply the Proceeds to reduce the Liquidated Damages, which is just a terminology issue. The Debtors owe the same amount (the amount equal to the Liquidated Damages) to the same party (USAV) from the same Proceeds, whether called “Liquidated Damages” or not. The fact that Liquidated Damages are due does not mean that USAV somehow must return the Contract Rights or Proceeds to Aerovías, or that upon rejection USAV somehow is limited to a claim for Liquidated Damages that is not paid in full.

**D. FOURTH QUESTION PRESENTED: Should the Court apply New York law or a different governing law to determine if the USAV Agreements are inseparable?**

16. Yes, the Court should apply Colombian law. “State law [i.e., applicable nonbankruptcy law] governs the question whether an agreement is divisible or indivisible for the purposes of assumption and rejection under Bankruptcy Code § 365.” *In re Hawker Beechcraft, Inc.*, 2013 Bankr. LEXIS 2409, at \*8 (Bankr. S.D.N.Y. June 13, 2013). Both the RSPA and the Undertaking Agreement—the only contracts that the Debtors claim are executory in their own right—are governed by Colombian law. RSPA § 9.09; Undertaking Agreement § 4.09. Despite this, the Motion discussed only New York law in addressing the issue. *See* Motion ¶ 30. In their Reply, the Debtors take the position that “the Court should apply the law of the operative agreements (Colombia), or alternatively, of the greatest number of agreements (New York),” without citing any legal authority for their proposed standard. Debtors’ Reply ¶ 36.

17. New York’s choice of law rules determine which jurisdiction’s law applies to the question of whether the USAV Agreements are separate and independent contracts. *See In re Gaston & Snow*, 243 F.3d 599, 601-02 (2d Cir. 2001). Courts first determine whether there is a conflict among potentially applicable law. *See Forest Park Pictures v. Universal TV Network, Inc.*, 683 F.3d 424, 433 (2d Cir. 2012); *see also In re Hellas Telecomms. (Lux.) II SCA*, 535 B.R.



543, 573 (Bankr. S.D.N.Y. 2015); *In re Refco Inc.*, No. 05-60006 (RDD), Hr’g Tr. (Jan. 31, 2006), 71:12-24 (Bankr. S.D.N.Y. Jan. 31, 2006), ECF 1473 (“Refco Jan. 31, 2006 Hr’g Tr.”). If there is a conflict, then “under New York’s choice of law rules, courts use a ‘center of gravity’ test (also called a ‘significant relation’ or ‘grouping of contacts’ test) to determine the law governing a contract.” *Sabella v. Scantek Med., Inc.*, 2009 U.S. Dist. LEXIS 88170, at \*33 (S.D.N.Y. Sep. 21, 2009); see *Aboutaam v. Assaad*, 2020 U.S. Dist. LEXIS 57123, at \*36-7 (S.D.N.Y. Mar. 31, 2020) (same).

**1. There is an Actual Conflict Because Colombian Law Does Not Permit Multiple Agreements to be Treated as a Single Contract**

18. Here, there is an actual conflict between Colombian law and New York law regarding whether multiple agreements may be treated as a single contract. Under New York law, multiple writings may be treated as a single, integrated contract if the relevant factors weigh in favor of such result. See, e.g., *Cargill, Inc. v. Refco, Inc.*, 2006 U.S. Dist. LEXIS 66686, at \*6 (S.D.N.Y. Sep. 13, 2006) (considering if multiple instruments were “part and parcel of one single agreement . . . executory in nature”); *In re Abitibowater Inc.*, 418 B.R. 815, 819, 828 (Bankr. D. Del. 2009) (assessing whether two agreements were “a single, integrated agreement and would have to be rejected (or assumed) together under Bankruptcy Code § 365” or “separate agreements”); *Refco Jan. 31, 2006 Hr’g Tr.* at 70:16-19 (describing the issue as “whether the parties intended to enter into two or more separate agreements or, to the contrary, one integrated agreement”). However, “the fact that the agreements are *related* and ought to be construed in light of one another *does not necessarily make them a single contract.*” *Cargill v. Refco*, 2006 U.S. Dist. LEXIS 66686, at \*11-12 (emphasis added); *In re Abitibowater Inc.*, 418 B.R. at 828 (“Many transactions involve the simultaneous negotiation and execution of multiple agreements embodied in multiple documents, which are *almost always related*, but relatedness alone does not



warrant the undoing of a structure purposefully chosen by the parties.” (emphasis in original)). Thus, New York law recognizes a distinction between (i) construing related contracts in light of one another, and (ii) treating multiple contracts as a single, inseparable contract.

19. Under Colombian law, however, the doctrine of “colligated contracts” (*contratos coligados*) does not permit multiple agreements to be treated as one integrated contract. See Second Suescún Decl. ¶¶ 9-19. Rather, the *contratos coligados* doctrine is used by Colombian courts and arbitration tribunals applying Colombian law as a tool for interpreting one contract within a suite of linked contracts or understanding links among a series of contracts toward a common business objective. *Id.* As such, contracts that are deemed “colligated” or linked for such purposes **remain separate contracts** that **do not lose their own nature or independence**. *Id.* As explained by Professor Suescún:

The *contratos coligados* doctrine has nothing to do with whether, and to my knowledge has never been used (and in my view cannot be used) in a manner that would result in, the colligated contracts being treated as a single contract. I am aware of no Colombian case law or arbitral awards applying Colombian law holding that *contratos coligados* are “inseparable” or inextricably linked such that they would be treated by a Colombian court or arbitral panel as a single contract. In fact, the case law says that the opposite is true: if parties wished for a suite of contracts to be treated as one contract, they must combine all terms and conditions of the proposed transaction into a single writing and separate writings will never be considered a single contract for purposes of Colombian law. Furthermore, I am aware of no Colombian case law or arbitral awards applying Colombian law holding that a breach of one contract in a suite of colligated contracts that would give the non-breaching party a right to rescind or terminate that contract, also gave that non-breaching party the right to rescind or terminate another contract within the suite of colligated contracts. Once again, in fact, the case law says that the opposite is true: the right to rescind or terminate is always a question determined on a contract by contract basis, i.e., whether the breach is of sufficient severity, intensity and magnitude to give rise to a rescission or termination right under each particular contract.

*Id.* ¶ 11 (emphasis added).

20. Thus, under Colombian law, each of the USAV Agreements would be treated as a separate and independent contract, regardless of whether they would be considered linked or related. *Id.* ¶¶ 9-19. Because Colombian law does not permit multiple contracts to be treated as a single, inseparable contract, there is a conflict of law.

## **2. The Center Of Gravity Of The USAV Agreements Is Colombia**

21. Under the center of gravity test, courts “consider a spectrum of significant contacts, including the place of contracting, the places of negotiation and performance, the location of the subject matter, and the domicile or place of business of the contracting parties. But the place of contracting and place of performance are given the greatest weight.” *AEI Life LLC v. Lincoln Ben. Life Co.*, 892 F.3d 126, 135 (2d Cir. 2018) (cleaned up); *see also RLI Ins. Co. v. AST Eng’g Corp.*, 2019 U.S. Dist. LEXIS 220582, at \*9 (S.D.N.Y. Dec. 20, 2019) (purpose of center of gravity test is to determine jurisdiction with most significant relationship to the transaction and parties).

22. Colombia has the most significant contacts to the USAV Agreements. In connection with the closing of the 2017 sale, the Debtors’ New York counsel, Smith, Gambrell & Russell, LLP, delivered a legal opinion (the “SGR Opinion”) confirming that (i) “the Seller’s . . . principal place of business and chief executive office [are] in Colombia”; (ii) the Seller is “organized and conduct[s] its business in Colombia”; (iii) “the Seller intends to perform its obligations under the Undertaking Agreement in Colombia”; and (iv) “the Seller negotiated the terms and conditions of, and executed, the RSPA and the other Transaction Documents to which it is a party in Colombia.” SGR Opinion at 9-10.<sup>21</sup> In addition, the Sale and Transfer (each as defined in the RSPA) of the Contract Rights and Receivables was completed in accordance with Colombian law and the central documents governing the USAV Transactions are governed by

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<sup>21</sup> A true and correct copy of the SGR Opinion is annexed to the Second Weedman Decl.

Colombian law. *See* First Suescún Decl. ¶¶ 7-9. The Purchaser is incorporated in the Cayman Islands. *See* RSPA § 4.02(a).

23. In contrast, the contacts with New York are minimal: the one-time “Advance Payment” of \$150 million was deposited into the Seller’s bank account in New York, a portion of the third party U.S. travel agencies which sell the tickets that generate the Proceeds are located in New York, and AMEX and Credomatic disburse the Proceeds to USAV’s New York Pass-Through Account which are then swept on a daily basis to USAV’s Collection Account located in London, England. *See* SGR Opinion at 8; Loan Agreement § 2.3.2. These relatively limited contacts with New York are largely incidental to the USAV Transactions.

24. The center of gravity of the USAV Agreements is Colombia. Under Colombian law, for the reasons described above, the USAV Agreements would not be considered one inseparable contract subject to rejection. However, even if the Court were to find that New York law applies, the USAV Agreements are not a single, inseparable contract for the reasons set forth in the Objection.

### **CONCLUSION**

25. For the reasons set forth in this Supplemental Brief, the Objection and the Sur-Reply, the Motion should be denied.

August 18, 2020  
New York, New York

Respectfully submitted,

**WHITE & CASE LLP**

By: /s/ Glenn M. Kurtz

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:	)	
	)	Chapter 11
AVIANCA HOLDINGS S.A., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 20-11133 (MG)
	)	
Debtors.	)	Jointly Administered
	)	
	)	Re: D.I. 306, 616, 617, 683, 684

**USAVFLOW LIMITED'S COMBINED RESPONSE TO (A) DEBTORS' REPLY IN  
SUPPORT OF DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
REJECTION OF CERTAIN EXECUTORY CONTRACTS AND (B) QUESTIONS  
POSED BY THE COURT AT THE JULY 27, 2020 STATUS CONFERENCE**

<sup>1</sup> The Debtors in these chapter 11 cases, and each Debtor's federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int'l Enterprises, Inc. (59- 2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Islaña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



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**A805**

USAVflow Limited (“USAV”), as its combined response (the “Combined Response”) to (a) *Debtors’ Reply to the Objections of USAV and the USAV Secured Lender Group to the Debtors’ Motion for Entry of an Order Authorizing Rejection of Certain Contracts* [D.I. 683] (the “Reply”), and (b) the questions posed by the Court at the July 27, 2020 Status Conference, respectfully states as follows:

### **PRELIMINARY STATEMENT**

1. The Debtors’ Reply once again misconstrues multiple provisions of the RSPA in another failed attempt to suggest that the RSPA and other USAV Agreements are executory, and, as such, the Debtors may reject them pursuant to section 365 of the Bankruptcy Code. The Debtors further assert without foundation that rejection would result in immediate termination of the RSPA and USAV receiving, as its sole remedy, a claim against the estates in the amount of the Liquidated Damages provided by the RSPA.

2. No provision of the RSPA imposes any duties on the Debtors or permits them to reacquire the economic interests in the Receivables and Contract Rights by “rejecting” the RSPA. This is because the Debtors “finally, definitively, and irrevocably” sold the Contract Rights and Receivables to USAV, and USAV has both legal and equitable title to the Contract Rights and Receivables that Debtors conveyed in consideration for the \$150 million payment and other payments made and to be made under the RSPA. *See RSPA*, §2.01.

3. The Debtors’ primary error is their argument that the RSPA requires further performance by the Debtors. It does not. The Debtors then compound this error by contending that, if the RSPA was nevertheless rejected, USAV would be compelled to accept a claim, in the amount of its “Liquidated Damages” in lieu of the property rights it already has paid for and acquired under the RSPA. It is true that USAV is entitled under Section 6.03 of the RSPA to Liquidated Damages (being now due and payable) but nowhere does the RSPA state that it



automatically terminates on the Debtors' failure to satisfy the conditions described in Section 6.01 or that the Liquidated Damages are USAV's sole remedy. And again, the Debtors mistakenly argue that these conditions to USAV's performance of certain of its obligations, such as payment of the Additional Purchase Price, are in fact "obligations" whose nonperformance results in a material breach.

4. Moreover, the "Trigger Events" in RSPA Section 6.01 do not result in the rescission of the Contract Rights and the Receivables sold by the Debtors pursuant to the RSPA. This is true even if USAV were *to elect* to receive "Liquidated Damages," as it may do under Sections 6.02 and 6.03, because Section 6.02 explicitly gives USAV the option but not the obligation "[o]nce the Liquidated Damages is paid in full" to unwind the purchase and sale by transferring back the assets it acquired under the RSPA. Whether or not the Debtors have the responsibility to pay the Liquidated Damages pursuant to Section 6.03 (they currently do) has nothing to do with whether USAV must terminate the RSPA.

5. Accordingly, for the reasons set forth in USAV's initial objection [D.I. 616] (the "Objection") and herein, USAV respectfully maintains that the Court must deny the *Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Contracts* [D.I. 306] (the "Motion").<sup>2</sup>

### **COMBINED RESPONSE**

#### **A. The Debtors Cannot Reject the RSPA and other USAV Agreements.**

6. The Debtors incorrectly assert that the USAV Agreements, including the RSPA, are executory contracts on the ground that both parties to these agreements, USAV and the Debtors, have material unperformed obligations pursuant to the RSPA and other USAV

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<sup>2</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Objection and Reply.

Agreements. However, as stated in the Objection, only USAV potentially has continuing, material unperformed obligations,<sup>3</sup> and furthermore, the sale of the Contract Rights and Receivables was fully consummated prepetition, and the Debtors received \$150 million for that sale, resulting in the Contract Rights and Receivables no longer being a part of or recoverable by the estates. *See Objection*, ¶¶ 2, 5. In asserting that the Debtors have material unperformed obligations, the Debtors misread the language of the RSPA.

7. The Debtors now argue, *Reply* ¶ 21, that because the March Notice stated the Debtors were “in breach” of certain terms and conditions of the RSPA, the use of the word “breach” indicates (i) the Debtors had a material obligation that they failed to perform, and (ii) therefore, like USAV, they have ongoing unperformed obligations under the RSPA, indicating the RSPA is an executory contract. *See Reply*, ¶¶ 22-23. However, the use of the word “breach” in a notice sent years after the RSPA was executed cannot modify the unambiguous provisions of the RSPA. *See RSPA*, § 6.01. Here, as discussed in the Objection, the occurrence of certain “Trigger Events” including the failure to maintain the Collections Coverage Ratio at 1.75:1:00 or above, the failure to operate domestic and/or international flights, the failure to observe the obligations of the Undertaking Agreement, and the failure to keep the Card Processing Agreements in effect (the “Conditions”), are not breaches because they do not result in defaults but merely give USAV the right to alter its performance of the RSPA. *See RSPA*, §§ 6.01, 6.02.

***a. The Debtors Misread RSPA Section 6.02 to Arrive at an Unsupported Purported Effect of Rejection***

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<sup>3</sup> USAV does not believe that the Debtors are owed the Additional Purchase Price, but, even if this obligation still existed, the RSPA would not be executory. *See Reply*, ¶¶ 26-9 and *Objection*, ¶ 20. And, in any event, the Sale Agreements are not executory because *the Debtors* have no further material underperformed obligations under the Sale Agreements. *See Objection*, ¶¶ 22-6.

8. The Debtors' new contention, *Reply*, ¶ 19, that, due to their failure to satisfy certain of the conditions of Section 6.01 of the RSPA, the Debtors may compel the termination of the RSPA, is without any basis in the text of the agreement. No provision in the RSPA grants the Debtors the unilateral right to compel termination and require USAV to surrender the Contract Rights and Receivables that the Debtors sold to USAV. In particular, Liquidated Damages under Sections 6.02 and 6.03 are not USAV's sole remedy, and nor do the Contract Rights, Receivables and the cash generated therefrom somehow revert back to the Debtors, while the Debtors keep the money paid prepetition by USAV to acquire these rights. *See Reply*, ¶¶ 48-52. To the contrary, Section 6.02 clearly states that termination of the agreement is solely at the option of the *Purchaser*, USAV (and is one of several remedies from which the Purchaser may choose):

Upon the occurrence of a Trigger Event, the Purchaser may ... prematurely terminate...this Agreement...As a consequence of the early termination...of this Agreement, the Parties agree that the Seller shall pay to the Purchaser liquidated damages...(the "Liquidated Damages") in an amount equal to the Unwind Amount... **The exercise of any one or more of the rights under this Section 6.02 shall not preclude the subsequent exercise of any other rights or remedies exercisable hereunder**...Once the Liquidated Damages is paid in full as provided for hereunder, the Purchaser may proceed to unwind the purchase and sale by transferring back to the Seller the Contract Rights, the Receivables, and all Collections derived therefrom. *See RSPA*, § 6.02 (emphasis added).

Based on the explicit language of section 6.02, the Debtors are clearly asserting powers they do not have and that they were never granted under the RSPA. Although pursuant to Section 6.03 the Liquidated Damages become due and payable by the Seller (the Debtors) in the event of the occurrence of the Trigger Event described under 6.01(h) of the RSPA (the "Insolvency Trigger Event"), it is the *Purchaser* (USAV) that has the power to terminate the RSPA. Moreover, only after the Liquidated Damages have been "paid in full," **may** the *Purchaser* take steps to unwind the agreement.

9. Although the Debtors acknowledge that the RSPA provides alternative remedies other than the payment of Liquidated Damages, *see Reply*, ¶ 53, RSPA § 6.02, the Debtors nevertheless leap to the conclusion that USAV *solely* has a claim for money damages upon rejection, and therefore, USAV has no choice but to accept Liquidated Damages as its sole remedy. *Reply, id.* The Debtors ignore that the Contract Rights and Receivables have *already been sold to USAV*, the Debtors received an Advance Payment of \$150 million, and no provision of the RSPA, the Bankruptcy Code, or applicable nonbankruptcy law bar USAV from (i) retaining its ownership of these assets following a breach and (ii) seeking any other remedy that may be available to it under applicable Colombian law. The Debtors’ attempt otherwise is directly contrary to *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652 (2019).

10. Similarly, the Debtors’ suggestion in *Reply* ¶47 that USAV has merely “bare legal title” to the Receivables and the Contract Rights is wrong. USAV has not only ownership of that property but also the economic rights as consideration for its \$150 million Advance Payment and subsequent payments. While the Debtors are correct that, under certain specific circumstances, they have a contractual right to additional consideration, those contract rights do not give the Debtors a property interest to the assets they have already sold to USAV. *See* RSPA, §§ 1.01 (definition of Additional Purchase Price), 3.01. In particular, the Debtors cannot invoke rejection under section 365 to recover property that they no longer own. *See Reply*, ¶¶ 55, 56, 59; *see Objection*, ¶¶ 31, 32. USAV furthermore has no need to seek “specific performance” from the Debtors because the assets generating the “performance” (i.e., the Contract Rights and Receivables) are now the property of USAV, not of the Debtors’ estates. *See Reply*, ¶ 54.

***b. The Cases the Debtors Cite do not Support that the Failure to Satisfy Contractual Conditions Constitutes a Material Breach***

11. The Debtors' asserted authority is inapposite. For example in *Jay Dee/Mole Joint Venture v. Mayor & City Council of Baltimore*, 725 F. Supp. 2d 513, 526 (D. Md. 2010), the agreement at issue expressly stated: "...any unjustified failure to comply with MBE and WBE participation requirements is a **material breach of contract.**" (emphasis added). Here, there the RSPA contains no such language.

12. Similarly in *In re Gen. DataComm Indus., Inc.*, 407 F.3d 616, 623–24 (3d Cir. 2005), the concurring opinion observed that because violation of the supposed obligations did not necessarily subject the violating party to liability for damages, the obligations were mere conditions. The majority held that a benefits plan was executory because the non-debtor counterparty's failure to perform would result in a material breach and allow for the plan's termination, Judge Pollack, in his concurring opinion correctly recognized the conditional rather than obligatory nature of the performance:

Paragraph 6 permits [Debtor] DataComm to terminate an executive's benefits should that executive have been found to have violated one of the listed restrictions. In other words, a breach by one of the appellees would excuse continued performance by DataComm. **However, such a breach would not, by itself, subject the "nonfulfilling" executive to liability for damages. Accordingly, the appellees' obligations should be seen as conditions, and not duties.** And, "if the remaining obligations in the contract are mere conditions, not duties, then the contract cannot be executory for purposes of § 365 because no material breach could occur." *Id.* at 630 (J. Pollack concurring)(citing *In re Columbia Gas Sys. Inc.*, 50 F.3d 233, 241 (3d Cir. 1995)(emphasis added)

The same is true here: the so-called "obligations" are mere conditions – the failure of the Debtors to carry them out is not a breach of the RSPA. *See Objection*, ¶ 9.

**c. Rejection does not Benefit the Debtors' Estates**

13. The Debtors urge a potential estate benefit by erroneously asserting that this Court can compel USAV to accept Liquidated Damages as the only remedy, and "[o]nce the Liquidated Damages are satisfied, all Receivables must then flow back to the Debtors" and that "estate

property should be preserved for the estates' benefit." *See Reply*, ¶¶ 46, 64. However neither the Debtors nor this Court can compel this outcome. It is solely up to USAV's election to terminate the RSPA under section 6.02, to collect the Liquidated Damages under that section or to pursue another or additional remedies under that section.

14. Notably, even if the Debtors were correct in their assertion that they could reject the RSPA and thereby deprive USAV of any of the rights it has purchased, USAV would have a *secured claim* for any damages arising from the breach. The Colombian Purchaser Security Agreement grants USAV a first priority security interest in the Contract Rights and future revenues and collections arising therefrom, including any cash proceeds, while the Costa Rican Purchaser Security Agreement grants a security interest in the "Collateral." *See Colombian Purchaser Security Agreement* § 2.01, attached hereto as **Exhibit A**; *Costa Rican Purchaser Security Agreement* § 2, attached hereto as **Exhibit B**. The term "Collateral" means the Contract Rights and Receivables, including future proceedings arising therefrom. *See RSPA* §§ 1.01, 2.01. As such, USAV is a secured creditor whose lien claim must be satisfied before any unsecured creditors receive estate proceeds, and any Liquidated Damages payments to satisfy the breach damages would come from USAV's cash collateral. That rejection results in a secured claim raises significant questions as to what, if anything, can be accomplished via rejection – indeed, per the RSPA, the Colombian Purchaser Security Agreement and Costa Rican Purchaser Security Agreement, USAV will be paid what it is due one way or another – either pursuant to its lien claim, or, by directly receiving collections on the Receivables it already owns.

15. A damages claim for breach of a contract (resulting from rejection) may be secured by a preexisting lien and courts have strongly encouraged debtors, in those circumstances to consider whether rejection will in fact benefit the estate: *In re Drexel Burnham Lambert Grp.*,

*Inc.*, 138 B.R. 687, 708-9 (Bankr. S.D.N.Y. 1992)(where state law determines whether security interest exists, and, if such interest exists, Debtor must determine whether it makes economic sense to reject contract given that non-Debtors maintain lien on property subject to the contract). Here, if the Debtors could reject the RSPA, USAV would be awarded a secured claim in the amount of any remaining Liquidated Damages, which is the equivalent of what USAV would have received from the Receivables that it already purchased – rejection does not benefit the estate, but instead just changes the mechanism by which USAV recoups the value of the property it already paid for.

16. In addition, the Debtors (and the Committee) also speculate that if the RSPA were rejected the Debtors could then reject their credit card processing agreements and enter into replacement agreements. *See Reply*, ¶ 57; *Committee's Reply in Support of Rejection* [D.I. 681]. ¶

4. Whether that course of action would be beneficial to the Debtors' estates is not before the Court, but it is by no means clear how rejection of the USAV agreements would contribute to that goal. Indeed, by the plain wording of the RSPA Section 2.01, the Contract Rights associated with the Credit Card Agreements, and all Receivables that arise therefrom, whether they exist now or in the future, belong to USAV. Accordingly, entering into any replacement credit card processing agreements following rejection would not be of any benefit to the estates.

**B. There is no Default Rule that Sale Agreements for Future Contract Rights are Executory.**

17. Contrary to the incorrect contention that any sale of future assets is executory (*Reply* ¶ 30), USAV has previously demonstrated the sale portion of a receivables assignment agreement, already consummated prepetition, is non-executory. *See Objection*, ¶ 28. The Debtors do not cite any case, and USAV is not aware of any, holding that merely because a debtor sold future receivables the contract *must be* executory.



18. Instead, the cases the Debtors do cite are readily distinguishable. In the land sale case cited by the Debtors, *Reply* ¶31, the contracts were executory because both parties had material remaining obligations. In particular, those cases involved installment sale contracts whereby the buyer needed to make a series of installment payments and title is transferred only after the final payment is made. *See id.* Here, per the RSPA, the Debtors have already transferred title to USAV.<sup>4</sup>

19. The Debtors also cite cases involving factoring agreements, which, according to the Debtors “are similar to the transaction at hand.” *See Reply*, ¶32. However, factoring agreements are also not analogous to the RSPA in that they typically provide for the future sale of receivables that meet certain eligibility criteria. In particular, the agreement in *In re Empire for Him, Inc.*, relied upon by the Debtors, is very different from the RSPA. There, the Court described the factoring contract as an agreement where, although the debtor did agree to “sell and assign its [receivable] accounts” to the factor, the factor only agreed to “service the accounts and return advances on those accounts to [the debtor]” in exchange for a certain percentage of each factored receivable as a commission. *See Capital Factors, Inc. v. Empire For Him, Inc. (In re Empire For Him, Inc.)*, 1 F.3d 1156, 1158 (11th Cir. 1993). The Court held that, as result, the receivables remained property of the estate because they were never owned by the factor. In so holding, the Court recharacterized the agreement and determined that a true sale did not take place. Unlike in *Capital Factors*, here, under the RSPA, USAV owns the Debtors’ Receivables and Contract Rights

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<sup>4</sup> In addition, many courts have found that the mere existence of an installment payment plan does not indicate the agreement is executory. *See In re Sjoquist*, 484 B.R. 207, 216 (Bankr. C.D. Cal. 2012) (Court finds an employment agreement to be non-executory where employee receives a series of payments over several years and questions whether the series of payments is just “a clever allocation of the purchase price done for tax purposes or other structuring issues.”).

outright.<sup>5</sup> Also, in making the Motion, the Debtors have expressly disclaimed any attempt to recharacterize the sale of the Contract Rights and Receivables. *See Motion*, ¶ 1, n. 2.

**C. Both Governing Law and New York Law Provide that the Sale Agreements are Separate and Distinct from other USAV Agreements.**

20. The Debtors continue to assert the USAV Agreements should be construed as one transaction (and, by extension, as all executory and rejectable), broadly claiming that because these agreements allegedly have a “shared economic objective” or were contemporaneously executed for a single overriding purpose, they are inseparable. Both of these contentions are incorrect.

21. First, as a preliminary matter, the Debtors are incorrect that those USAV Agreements governed by foreign law should be interpreted pursuant to New York law. For those USAV Agreements governed by foreign law, under prevailing conflict of laws decisions, a court should apply the foreign law to the agreement. *See In re Irish Bank Resolution Corp. Ltd.*, No. 13-12159 (CSS), 2014 WL 9953792, at \*21 (Bankr. D. Del. Apr. 30, 2014), *aff’d*, 538 B.R. 692 (D. Del. 2015) (citing *In re Schimmelpenninck*, 183 F.3d 347, 365 (5th Cir. 1999)) (“[T]he foreign laws need not be identical to their counterparts under the laws of the United States; they merely must not be repugnant to our laws and policies.”). As further explained by the USAV Secured Lender Group’s Colombian law expert, Professor Jorge Suescún Melo, in contrast to New York law, Colombian law provides that even if a series of contracts or agreements are linked by a common business purpose or objective, they must still be interpreted as separate agreements. However, even if the Court did apply New York law, the same result would follow: the RSPA

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<sup>5</sup> Debtors also cite *In re Packaging Systems, LLC*. There, the Court allowed the Debtors to assume a prepetition factoring agreement. Although the rationale for the assumption is not discussed, it is apparent that the agreement at issue provided for the future purchase of the Debtors’ accounts (in contrast with the RSPA, where the Receivables were sold prepetition upon execution of the RSPA) and was therefore executory. *See In re Packaging Sys., LLC*, 559 B.R. 123, 125 (Bankr. D.N.J. 2016).

and those USAV Agreements related to the true sale of the Contract Rights and Receivables are separate and distinct from the remaining USAV Agreements.

22. The *AbitibiBowater* (418 B.R. 815 (Bankr. D. Del. 2009)) factors do not support an integrated review. For example, here, the Cash Management Agreement, Loan Agreement, and RSPA merely cross-reference each other and are not so interconnected that the consummation one agreement is conditioned upon the consummation of another. Indeed, courts have found that a single document may contain multiple divisible agreements. *See Objection*, ¶ 28; *In re Cutters, Inc.*, 104 B.R. 886, 889 (Bankr. M.D. Tenn. 1989)(Court finds that a single document contained separate agreements regarding sale of assets and future mutual obligations to market certain inventory; the sale portion of the contract was substantially performed and non-executory while the marketing agreement was executory and rejectable); *see also In re Am. Home Mortg. Holdings, Inc.*, 402 B.R. 87, 93 (Bankr. D. Del. 2009). It is also uncontroversial that several related but divisible contracts may be executed contemporaneously. *See In re Cutters, Inc.*, 104 B.R. 886, 889 (Bankr. M.D. Tenn. 1989). Here, the Undertaking Agreement, which the Debtors seek to link to the RSPA, has a distinct purpose apart from the RSPA – the RSPA is a sale agreement concerning the purchase of property interests, the Receivables and Contract Rights, while the Undertaking Agreement addresses rights and responsibilities between the Debtors and USAV regarding Receivable collections and maintenance. The parties actually separated the RSPA as the sale portion from the servicing portion, the Undertaking Agreement, so there can be no doubt that the RSPA’s sale is non-executory and as separate and divisible from other agreements that have ongoing obligations. *See USAV Secured Lender Group Objection*, [D.I. 617], ¶¶ 36-8.

23. Second, there is no support for the interpretation suggested by the Debtors, that a material breach of one USAV Agreement causes a domino effect leading to the effective breach

of all the USAV Agreements, including the RSPA. Indeed, the RSPA stands apart from the other USAV Agreements as it memorializes a true sale. And, nowhere does it state that the Trigger Event Obligations listed in 6.01 cause a termination of the RSPA or other USAV Agreements. Instead, a plain reading of sections 6.01 and 6.02 makes clear the signatories' intent: the inability to satisfy one of the listed Trigger Event Obligations is a not a material breach but a failure of condition. It was not the intent of the RSPA signatories that a default would lead to termination of the RSPA or a ripple effect terminating all USAV Agreements. If the Debtors and USAV had desired that outcome, they could have written the RSPA to provide as much. Instead, the RSPA clearly states that, even if a breach of a Trigger Event Obligation occurs, the consequence of the purported breach could very well be nothing at all.

### **CONCLUSION**

24. For the reasons discussed herein, USAV respectfully requests that the Court enter an order denying the Motion and granting USAV such other and further relief as is just and proper.

Dated: August 18, 2020  
New York, New York

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**EXHIBIT 28**

**Adjourned Hearing Date and Time: August 26, 2020 at 10:00 a.m. (ET)**

**Agreed Sur-Reply Deadline: August 18, 2020 before 11:59 p.m. (ET)**

**Re: ECFs 306, 617, 681, 683, 684**

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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In re:

AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup>

Debtors.

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) Chapter 11  
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) Case No. 20-11133 (MG)  
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) (Jointly Administered)  
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**SUR-REPLY OF THE USAV SECURED LENDER GROUP TO  
DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
REJECTION OF CERTAIN EXECUTORY CONTRACTS**

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number (to the extent applicable) are as follows: Aero Transporte de Carga Unión, S.A. de C.V.; Aeroinversiones de Honduras, S.A.; Aerovías del Continente Americano S.A. Avianca; Airlease Holdings One Ltd.; Avianca Costa Rica S.A.; Avianca Holdings S.A.; Avianca, Inc. (13-1868575); Avianca Leasing, LLC (46-2586415); Avianca Perú S.A.; Avianca-Ecuador S.A.; Aviateca, S.A.; Avifreight Holding Mexico, S.A.P.I. de C.V.; Grupo Taca Holdings Limited; International Trade Marks Agency Inc.; Inversiones del Caribe, S.A.; Islaña de Inversiones, S.A. de C.V.; Latin Airways Corp.; Latin Logistics, LLC (00-0107425); Regional Express Américas S.A.S.; Ronair N.V.; Taca de Honduras, S.A. de C.V.; Taca International Airlines S.A.; Taca S.A.; Tampa Cargo S.A.S.; AV International Holdco S.A.; AV International Holdings S.A.; AV International Investments S.A.; AV International Ventures S.A.; AV Investments One Colombia S.A.S.; AV Investments Two Colombia S.A.S.; AV Taca International Holdco S.A.; Servicios Aeroportuarios Integrados SAI S.A.S. The address of the Debtors' principal offices is Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

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The USAV Secured Lender Group<sup>2</sup> hereby submits this sur-reply (the “Sur-Reply”)<sup>3</sup> in response to the replies of the Debtors [ECF 683] and the Official Committee of Unsecured Creditors (the “UCC”) [ECF 681] (together with the Debtors’ reply, the “Replies”), and the declaration of Jaime Alberto Arrubla-Paucar [ECF 684] (the “Arrubla Decl.”), and in further support of the USAV Secured Lender Group’s objection [ECF 617] (the “Objection”) to the Debtors’ Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts [ECF 306] (the “Motion”).<sup>4</sup>

### **PRELIMINARY STATEMENT**

1. As addressed in the Objection, the Debtors seek to unwind the sale of the Contract Rights and Proceeds (while keeping the purchase price), which is prohibited by *Mission Product Holdings v. Tempnology, LLC*, 139 S. Ct. 1652 (2019), a recent and controlling case that the Debtors failed to cite in their motion. The Debtors offer the conclusory assertion that they do not seek to unwind the transaction, but taking back the Contract Rights and Proceeds that they sold in 2017 is exactly unwinding the transaction. *Mission Product* prohibits the relief sought, regardless of the terminology the Debtors employ.

2. Additionally, the Debtors are not entitled to reject the RSPA or the Undertaking Agreement because there are no material, unperformed obligations of both parties. What the Debtors characterize as their outstanding obligations are merely conditions, which cannot render

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<sup>2</sup> Capitalized terms not defined herein have the meanings provided in the Objection, the Motion, or the supplemental brief of the USAV Secured Lender Group (the “Supplemental Brief”) filed contemporaneously herewith as the case may be. The factual and legal statements and arguments set forth in the Objection and Supplemental Brief are incorporated herein by this reference.

<sup>3</sup> In support of this Sur-Reply, the USAV Secured Lender Group relies on (i) the Second Declaration of Joshua D. Weedman (the “Second Weedman Decl.”), (ii) the Second Declaration of Jorge Suescún Melo (the “Second Suescún Decl.”), and (iii) the Declaration of Vicente Lines (the “Lines Decl.”), all filed contemporaneously herewith.

<sup>4</sup> Pursuant to Federal Rule of Civil Procedure 44.1, as made applicable by Bankruptcy Rule 9017, the USAV Secured Lender Group hereby gives notice that it intends to raise issues of Colombian and Costa Rican law as set forth in this Sur-Reply and the Supplemental Brief, the Second Suescún Decl., and the Lines Decl., respectively. This Sur-Reply incorporates by this reference the statements and arguments set forth in the Objection, the Supplemental Brief, the Prof. Suescún Decl. [ECF 618] (the “First Suescún Decl.”), Second Suescún Decl., and the Lines Decl.

a contract executory. And the Debtors' argument that USAV is obligated to pay it Additional Purchase Price it is simply wrong.

3. The Proceeds of the Contract Rights here at issue can be separated into two buckets as is relevant here: (i) the proceeds that correspond to the \$150 million purchase price and loans (the "Non-Excess Proceeds"), and (ii) the proceeds in excess of that amount that correspond to the Additional Purchase Price (the "Excess Proceeds"). The Debtors' first flawed factual premise is their incorrect contention that they have a contingent interest in any Excess Proceeds in the form Additional Purchase Price. The Debtors have no interest in the Excess Proceeds because they are no longer entitled to any Additional Purchase Price. Upon the pre-petition Trigger Events, the Debtors' right to Additional Purchase Payments was extinguished.

4. Additionally, the Debtors' prior contingent, and now extinguished, interest in any Excess Proceeds is irrelevant to the Non-Excess Proceeds at issue because the Debtors have never had an interest in those Proceeds. As the Debtors repeatedly acknowledge, their contingent, and now extinguished, interest in any Excess Proceeds could arise, if at all, only after the Non-Excess Proceeds are used to fully repay the loans from the Lenders. Debtors' Reply ¶ 4 ("The Debtors are entitled to all cash generated from the receivables *in excess* of the amount due on USAV's loan from the Lender Group."); ¶ 46 ("Once Liquidated Damages are satisfied, all Receivables must then go back to the Debtors."); ¶ 47 ("In contrast, the Debtors have at all times had, and continue to have, all economic interest in Receivables that *exceed* whatever the outstanding balance is on USAV's loan."); ¶ 45 ("USAV would be entitled to retain nothing *once its loan is paid off*"); ¶ 47 (USAV "serves to apportion the Receivables between Debtors and the Lender Group until such time as the outstanding amount due on USAV loan is paid."). The Debtors cannot use a contingent interest in Excess Proceeds, which could arise only after the loan amount is satisfied through the

Non-Excess Proceeds, to take back the Non-Excess Proceeds sold in 2017. *See In re Atl. Gulf Communities Corp.*, 369 B.R. 156, 164-165 (Bankr. D. Del. 2007) (debtor's contingent interest in property does not divest other' interests in same property); *In re Royal Bus. Sch.*, 157 B.R. 932, 942 (Bankr. E.D.N.Y. 1993) (agreements providing contingent interest outside of bankruptcy are to have same effect in bankruptcy).

5. The Debtors' second flawed factual premise is that the RSPA limits USAV to Liquidated Damages, and allows the Debtors to unwind the sale and recover the Contract Rights and Proceeds. The RSPA (i) does not limit USAV's ownership and remedies to Liquidated Damages, (ii) provides USAV, not the Debtors, with a potential right to unwind the transaction, and (iii) allows that potential unwind (by USAV, not the Debtors) only if and after the Liquidated Damages are paid in full, the very condition the Debtors seek to prevent.

6. The Debtors' third flawed premise is that providing USAV with an impaired claim under a plan of reorganization is "payment in full" of the Liquidated Damages. The Debtors do not even try to explain how a payment of the Liquidated Damages not in full could somehow constitute "payment in full." Moreover, even if the plan of reorganization provided for payment in full, USAV would not be able to unwind the transaction until after that payment was made, satisfying the condition for USAV's, not the Debtors', right to elect to unwind the sale. Here, there is no plan of reorganization, and the Debtors do not intend to pay the Liquidated Damages in full.

7. Further, relieving the Debtors of any future obligations would not divert the sold Proceeds to them. The Debtors have no control over the Proceeds they sold. Those Proceeds are delivered by non-debtor credit card processors to an account controlled by non-debtors USAV and the Lenders. The UCC tries to evade this fact by arguing that the "the automatic stay bars USAV



from taking any act to compel the Debtors to perform” the agreements.” UCC Reply ¶ 19. No one is seeking to have the Debtors compelled to perform any obligation. The Debtors do operate a business that generates the receivables that they sold, but the Debtors are not seeking to eliminate those obligations. To the contrary, the Debtors will continue to discharge those obligations regardless of rejection by flying planes and having sales processed through the very same credit card processors. The Debtors simply seek to take back the Proceeds they sold years ago under a false pretext of rejecting obligations that the Debtors, in fact, are going to continue performing. Rejection would not be to relieve the Debtors of any work.

8. Lastly, the Debtors’ argument that the contracts are “economically disadvantageous” is without merit. Admittedly, a contract would be more advantageous if one could sell the asset and then take it back while retaining the purchase price, but the contracts here are not “economically disadvantageous” because USAV, financed by the Lenders, paid full value for the Proceeds here at issue. *See Mission Prod.*, 139 S. Ct. at 1665-66 (“Section 365 does not grant the debtor an exemption from all the burdens that generally applicable law—whether involving contracts or trademarks—imposes on property owners....In thus delineating the burdens that a debtor may and may not escape, Congress also weighed (among other things) the legitimate interests and expectations of the debtor’s counterparties.”); *id.* at 1666 (“The resulting balance may indeed impede some reorganizations, of trademark, licensors and others. But that is only saying that Section 365’s edict that rejection is breach expresses a more complex set of aims than [the debtor] acknowledges.”).

## **ARGUMENT**

### **I. THE RELIEF SOUGHT IN THE MOTION IS AVAILABLE ONLY THROUGH AN ADVERSARY PROCEEDING**

9. The Debtors initially argued that “[t]he RSPA is structured as a sale agreement,

pursuant to which Avianca purportedly ‘sold’ certain of its Contract Rights and Receivables under a credit card processing agreement between Avianca and Credomatic and a credit card processing agreement between Avianca and AMEX . . . .” Motion ¶ 12. But in their Reply, the Debtors now claim that USAV does not actually own the Contract Rights and the Proceeds of those rights. Rather, the Debtors now argue that “USAV has (at most) bare legal title, and little or no economic interest, in the Receivables,” and thus the future receivables and Proceeds are “property of the estate.” Debtors’ Reply ¶ 44, 47; *see also* Arrubla Decl. ¶ 20 (claiming “the real intention of the parties was not to transfer full domain of the economic and credit rights to USAV as in fact a ‘final sale’”). The Debtors also allege in their parallel adversary proceeding that there was no true sale. *See Complaint* [ECF 307] ¶ 2 (alleging that the USAV Transactions are a “disguised secured financing” rather than a “sale”). The Debtors thereby argue themselves out of a claim for rejection. *See In re Penn Traffic Co.*, 466 F.3d 75, 77 (2d Cir. 2006) (noting that a disguised financing arrangement is ineligible for treatment as an executory contract).

10. Additionally, the Debtors’ rejection motion is premised on divesting USAV’s ownership of the Proceeds of the Contract Rights that USAV purchased in 2017, “transforming” “what little or no economic interest” USAV may have in the Contract Rights and Proceeds into a pre-petition claim for Liquidated Damages. Debtors’ Reply ¶¶ 43, 44, 59. “The end result is that rejection of the RSPA will extinguish the economic interest of USAV in the Receivables and restore vital cash flow to the Debtors.” *Id.* ¶ 56; *see also* ¶ 48 (same).

11. Bankruptcy Rule 7001(2) provides that “a proceeding to determine the validity, priority, or extent of a lien or other interest in property” must be pursued in an adversary proceeding. Fed. R. Bankr. P. 7001(2); *see In re MF Glob., Inc.*, 531 B.R. 424, 430 (Bankr. S.D.N.Y. 2015) (“Rule 7001 identifies matters that constitute adversary proceedings governed by

the rules of Part VII of the Bankruptcy Rules.”); *In re Castillo*, 2009 Bankr. LEXIS 3745 \*8-9 (Bankr. S.D. Tex. 2009) (same); *In re Haedo*, 211 B.R. 149, 153 (Bankr. S.D.N.Y. 1997) (extent of interest in refund requires adversary); *In re Motors Liquidation Co.*, 576 B.R. 325, 393 (Bankr. S.D.N.Y. 2017) (validity, priority or extent of lien requires adversary). The UCC agrees that “a determination regarding the extent and validity of USAV’s interest in the Debtors’ receivables and contract rights” can only be resolved through an adversary proceeding, not a rejection motion.<sup>5</sup> UCC Reply ¶ 20. The Debtors’ Motion should be denied.

## II. MISSION PRODUCT PROHIBITS THE DEBTORS FROM TAKING BACK THE PROCEEDS AT ISSUE

### A. USAV Owns The Proceeds Here At Issue

12. It is not clear what Debtors hope to gain by mischaracterizing a sale for more than \$150 million as having conveyed “bare legal title.” Aerovías sold to USAV “*good and valid title*” to the Contract Rights and Proceeds and the “*indefeasible*” ownership thereof, including the rights to “*all funds collected or to be collected in respect of all Collections as well as all income and proceeds of the foregoing.*” Supp. Brief ¶ 5. Moreover, the RSPA provides that Aerovías “*shall not be entitled to, and shall not attempt to, under any circumstances, reclaim any right, title, or interest in, to or under any of the Contract Rights or the Receivables.*” RSPA §2.05(b).

13. The Debtors’ Colombian transaction counsel, GPZ, has opined that (i) the 2017 purchase and sale was “*valid and irrevocable*” and “*true, definitive and final,*” (ii) as “*a consequence of such sale and transfer, the Purchaser has the right to receive all future collections derived from the exercise of such Contract Rights,*” (iii) such Proceeds “*will not constitute right or property, as the case may be, of [Aerovías],*” and (iv) the purchase and sale

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<sup>5</sup> In addition, the Debtors continue to make statements regarding “the turnover of Receivables to the estate,” despite failing to provide any explanation to the other litigants or the Court as to how the Motion allows the Debtors to seek turnover. Again, any turnover that the Debtors seek would also require a separate adversary proceeding. See Obj. ¶ 27 n. 11.

***“should not be capable of being set aside or invalidated at the instigation”*** of Aerovías. Supp. Brief ¶ 6. The Debtors cannot avoid their prior opinions and admissions that are now adverse to their positions in this dispute by producing a new conflicting opinion. *See SEC v. Softpoint, Inc.*, 958 F. Supp. 846,860 (S.D.N.Y. 1997) (holding that a party is “bound by [its] prior admissions even in the absence of a preclusion order”); *Gangi v. Fradus*, 227 N.Y. 452, 456 (1920) (“[E]xtra-judicial admissions, by a party to the action, adverse to his claim, are evidence against him that the facts they state are true.”). The original opinions of the Debtors’ counsel and adopted by the Debtors were rendered for purely business purposes, and as such are far more reliable than the litigation arguments that the Debtors advance for the first time in the reply papers. This is particularly the case where the Debtors’ new, conflicting arguments are based on an expert declaration which purports to opine on the nature of the RSPA while admitting to having done no underlying analysis of the issues, *see, e.g.*, Arrubla Decl. ¶ 29 (admitting that he had “not conducted a detailed analysis of whether the RSPA, together with its linked contracts, is a true sale or an operation of guaranteed financing”), and which otherwise ignores the stated intent of the parties in entering the RSPA, in violation of binding Colombian law. *See* Second Suescún Decl. ¶¶ 45-53 (explaining the legal deficiencies in Mr. Arrubla’s analysis). Ignoring and contradicting GPZ’s opinion is considered bad faith under Colombian law. *Id.*

14. As Professor Seuscún explains in his supplemental declaration, “the *only* way to recharacterize as something other than what is expressly provided for in the terms of the contract is through a judicial declaration,” which requires that the party seeking such recharacterization “to prove the existence of a simulated accord (*acuerdo simulatorio*) which intends to hide the real agreement.” Second Suescún Decl. ¶¶ 40, 43. To prove the existence of a simulated accord, the moving party must prove that the parties had an agreement to conceal the real nature of their

arrangement. *See id.* ¶ 43. Professor Suescún provides a detailed analysis of why the Debtors have failed to carry their burden of proof, *see generally id.* ¶ 38-55, but, in summary, there is no evidence of any such agreement to conceal.

15. Additionally, Aerovías agreed that it only had a right to seek payment against USAV for any available Excess Proceeds, and waived all remedies other than money damages to the extent USAV breached its promise to pay any such excess amounts. *See* RSPA §§ 2.05(a); 3.01(e). Professor Suescún opined that Aerovías’ agreement to limit its rights to a claim for payment in section 2.05 of the RSPA is enforceable. *See* First Suescún Decl. ¶ 14 n. 14 & 15.<sup>6</sup> The Debtors do not contest that the contract provision is enforceable.

**B. The Debtors Cannot Evade *Mission Product* By Avoiding The Words “Unwind” and “Rescission”**

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16. There is no dispute that the Supreme Court in *Mission Product* held that rejection does not permit a debtor to “get back” rights that they sold or “unwind” or “rescind” a transaction. *Mission Prod.*, 139 S. Ct. at 1662, 1663. The Debtors offer the conclusory assertion that they do not seek to unwind or rescind the transaction, but that is exactly what they seek to do because there is no other way that the Debtors could get back the Proceeds that they sold in 2017. In fact, in other places in their Reply, the Debtors are more candid about seeking to unwind the transaction, repeatedly arguing that rejection will “*extinguish*” USAV’s interest in the Proceeds (Debtors’ Reply ¶ 56), “*restore*” to them the Proceeds sold in 2017 (¶ 7), “*revert* the proceeds” to them (¶ 6), allow the Debtors to “*recoup*” the proceeds (¶ 57), and that USAV would “*return* all economic interest” in the Proceeds to them (¶ 61), terms that are each synonymous with rescission.<sup>7</sup>

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<sup>6</sup> In his supplemental report, Professor Suescún opines that Section 3.01(e) of the RSPA is also fully enforceable. Second Suescún Decl. ¶ 8. The Debtors’ lawyers at GPZ would have agreed with Professor Suescún on all counts. *See* GPZ Opinion ¶ 5 (“The Opinion Documents are legal, valid and binding obligations enforceable against the Seller in accordance with their terms.”).

<sup>7</sup> *Extinguish*, MERRIAM-WEBSTER DICTIONARY (Aug 18, 2020) (“to cause to be void: nullify”); *Restore*, MERRIAM-WEBSTER DICTIONARY (Aug 18, 2020) (“to give back, return” or “to put again in possession of something”); *Recoup*, MERRIAM-WEBSTER

17. The Debtors also cannot avoid *Mission Product* by saying they seek only “to transform USAV’s economic interest in post-petition Receivables to a pre-petition claim for the Liquidated Damages provided in the RSPA.” Debtors’ Reply ¶ 59. Again, using the word “transform,” instead of “unwind,” does not change the fact that the Debtors are seeking to take back the Proceeds they sold in 2017. *Mission Product* does not allow a debtor to take back rights sold by “transforming” a party’s ownership interest into an allowed claim. See Obj. ¶¶ 18-26.

18. The Debtors’ also try to evade *Mission Product* by noting that the decision allows the parties to include specialized contract provisions to establish the damages available through breach. Debtors’ Reply ¶ 42 (“The remedy for breach of contract is determined in the first instance by reference to the contract itself.”); ¶ 50 (“Non-bankruptcy law – the law governing the contract and any specialized clauses in the contract – determines the damages for such agreements.”). The Debtors then argue that the RSPA provides them with a right to recover the Contract Rights if they provide USAV a pre-petition claim for rejection damages. *Id.* ¶ 61. The Debtors cite nothing to support their statement, and they are wrong.

19. *First*, it is USAV, not the Debtors, that has an option to unwind the transaction. *Second*, that option is available only where USAV terminates the RSPA. See RSPA § 6.02. USAV has not terminated the RSPA. *Third*, USAV’s option to unwind the transaction is available—at USAV’s election, not the Debtors’—only if and after the Liquidated Damages are paid in full from the Proceeds.<sup>8</sup> See RSPA § 6.02 (“*Once the Liquidated Damages is paid in full as provided for hereunder, the Purchaser may proceed to unwind the purchase and sale.*”) (emphasis added); see

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DICTIONARY (Aug 18, 2020) (“regain”); *Revert*, MERRIAM-WEBSTER DICTIONARY (Aug 18, 2020) (“to return to the proprietor . . . at the end of a reversion”); *Return*, MERRIAM-WEBSTER DICTIONARY (Aug 18, 2020) (“to pass back to an earlier possessor”).

<sup>8</sup> See *First Nat’l Bancshares v. Geisel*, 853 F. Supp. 1337, 1341, 1994 U.S. Dist. LEXIS 6886, \*11 (D. Kan. 1994) (option held by entity not a right of its shareholders); *Bear Creek Dev. Corp. v. Genesee Found.*, 919 P.2d 948, 952 (Ct. App. Colo. 1996) (party with no right to exercise option held by option holder can claim no right in respect of the benefits such party may obtain upon exercise of that option so long as not exercised by option holder).



*id.* § 1.02(f) (“The terms ‘may’ and ‘might’ and similar terms used with respect to the taking of an action by any Person *shall reflect that such action is optional and not required* to be taken by such Person.” (emphasis added)).<sup>9</sup> The Debtors admit that their potential interest in Excess Proceeds arises only after the Liquidated Damages are paid in full.<sup>10</sup> *See* Debtors’ Reply ¶ 42 (stating the Liquidated Damages is to be “paid in full”); *supra* ¶ 4. Thus, Debtors’ acknowledgment that specialized contract terms control further demonstrates that they can gain no interest in the Proceeds, directly or indirectly, until the Liquidated Damages are paid in full from the Proceeds here at issue.

20. The Debtors argue that allowing and impairing a claim under some plan of reorganization will somehow trigger the right (of USAV) to unwind the transaction. Putting aside that USAV has not, does not intend to, unwind the transaction, payment in full of the Liquidated Damages is a condition precedent to any right to unwind the sale. Allowing a claim under some future plan of reorganization that does not pay the Liquidated Damages in full is not “payment in full.” Second Suescún Decl. ¶ 30 & n.20. Further, speculating about a future plan of reorganization that does not exist is not “payment in full.” Additionally, discharging an impaired *in personam* claim under a plan does not constitute “payment in full” of an *in rem* claim against the Proceeds of the Contract Rights. *Johnson v. Home State Bank*, 501 U.S. 78, 84 (1991) (“[A] bankruptcy discharge extinguishes only one mode of enforcing a claim—namely, an action against the debtor in personam—while leaving intact another—namely, an action against the debtor in rem.”); *see, e.g., In re Turner*, 558 B.R. 269, 278 (Bankr. N.D. Ill. 2016) (bankruptcy discharge does not terminate a lien); *In re Carlisle Court, Inc.*, 36 B.R. 209, 213 (Bankr. D.D.C. 1983)

<sup>9</sup> *See also* Second Suescún Decl. ¶¶ 22-24 (explaining that section 6.03 of the RSPA similarly requires that the Liquidated Damages be paid in full in order for USAV to be permitted to unwind the 2017 purchase and sale).

<sup>10</sup> The Debtors have no potential interest in the Excess Proceeds, but they do have an option to buy the stock of USAV after the Liquidated Damages are paid in full. *See* Supp. Brief n.13, 15. A true and correct copy of the Option Agreement is attached to the Second Weedman Decl.



("[b]ased on [the liens'] *in rem* status, they remain as liens until satisfied by payment in full."); *see also In re House of Wines, Inc.*, 2007 Bankr. LEXIS 1455849, at \*4–5 (Bankr. D.D.C. May 15, 2007) (explaining that postpetition, partial payment of a bankruptcy claim by third parties does not reduce the claim "until such claim is satisfied in full.").

**C. Rejection Would Not Provide The Debtors With The Contract Rights And Proceeds They Sold in 2017**

21. If the Court were to permit rejection, the only effect would be to relieve the Debtors of their future performance obligations to USAV. *See* Supp. Brief ¶¶ 2-9. The Debtors however, have no control over the Proceeds here at issue. The Proceeds are delivered by non-debtor credit card processors to an account controlled by non-debtors USAV and the Lenders. *See* Supp. Brief ¶¶ 8, 13. Thus, relieving the Debtors of any future obligations under the Agreements would not divert the Proceeds from USAV and the Lenders to the Debtors.

**D. The Debtors Cannot Evade *Mission Product* By Transferring The Contract Value Into New Contracts**

22. Unable to evade *Mission Product* directly, the Debtors have now constructed a new theory—which the Debtors relegate to a single paragraph of three sentences, with no factual or legal support whatsoever—that they could take back the Proceeds of the Contract Rights they sold in 2017 by rejecting the Card Processing Agreements and replacing them with new agreements. Debtors' Reply ¶¶ 7, 57. The contracts would be with the same credit card processors, cover the same subject matter, and have the same terms. Those contracts are not part of this Motion, nor could the Debtors take back the Proceeds they sold in 2017 through their new proposed tactic of transferring them into a new contract.

23. *One*, the Debtors have no right to exercise control over the Contract Rights and Proceeds so as to move them into new agreements because the Contract Rights and Proceeds were sold to USAV. *See supra* ¶¶ 12-15.

24. *Two*, the parties agreed that USAV would continue to own the Contract Rights and Proceeds that they purchased in 2017 even if they were moved to new agreements. *See* RSPA §§ RSPA §§ 2.01(a)(ii), (b)(ii), (c)(ii); 2.03(b).

25. *Three*, rejection would not relieve those non-debtors of their obligation to continue depositing the Proceeds purchased by USAV into the USAV account. *See Mission Prod.*, 139 S. Ct. at 1662 (“A rejection does not terminate the contract.”). Rejection of the Debtors’ obligations would not divest USAV and the Lenders of the Proceeds at issue because the Credit Card Processing Agreements require the credit card processors to deposit the proceeds of ticket sales under *any contract* into an account controlled by USAV and the Lenders. *See* AMEX Notice §§ 3-4; Credomatic Notice § 3; Credomatic Consent and Agreement § (a)(ii). The rejection of Debtors’ obligations would not impact those ongoing obligations of the non-debtors. *Mission Prod.*, 139 S. Ct. at 1662; *Fraunhofer-Gesellschaft Zur Förderung Der Angewandten Forschung E.V. v. Sirius XM Radio Inc.*, 940 F.3d 1372, 1379-80 (Fed. Cir. 2019) (rights of non-debtor parties not unilaterally terminated by a debtor’s rejection of a license agreement; instead, status of non-debtor parties’ rights among themselves depended on non-bankruptcy law); *see Rubin v. Whitney*, 295 N.Y.S. 255, 267 (Sup. Ct. 1937) (“A breach by one of the parties to a tripartite agreement is not a basis for rescission as to the other parties.”); *Lawry v. Palm*, 192 P.3d 550, 568 (Ct. App. Co. 2008) (“Plaintiffs have cited no case, and we have found none, standing for the proposition that, in a three-party contract, one party’s breach of obligations owed to a second excuses performance by the third.”).

26. *Four*, any transfer of the Contract Rights and Proceeds to the Debtors would be a transparent unwinding of the sale of the Contract Rights. The Debtors would receive back the Contract Rights and Proceeds they sold in 2017, which is rescission regardless of the words the

Debtors chose to describe the recovery of the assets sold. *See, e.g., Griggs v. E. I. DuPont de Nemours & Co.*, 385 F.3d 440, 446 (4th Cir. 2004) (rescission “is an avoidance of a transaction” and “[o]nce the plaintiff has rescinded, he is entitled to recover back what he gave under the contract”); *Scarangella v. Group Health, Inc.*, 2009 U.S. Dist. LEXIS 23457, \*51 (S.D.N.Y. Mar. 24, 2009) (same); *Curtis v. Curtis*, 1992 U.S. Dist. LEXIS 12695, at \*13 (S.D.N.Y. Aug. 24, 1992) (“In order to rescind the contract [plaintiff] must return the funds received pursuant to the contract.”); *Hatteras Enters. v. Forsythe Cosmetic Grp., Ltd.*, 2018 U.S. Dist. LEXIS 68792, \*21 (E.D.N.Y. Apr. 23, 2018) (under New York law, rescission means that the rescinding party offers “what [they] received” and the counterparty “give[s] [] back that which [they] received”); *In re Artis*, 27 B.R. 863, 865 (Bankr. E.D.N.Y. 1983) (stating that “if a debtor seeks to disaffirm or rescind an agreement it must return any consideration received in exchange for its promise to pay”). Indeed, the Debtors effectively admit that they seek to unwind the sale when they argue, in their single paragraph, that rejection would enable the Debtors “to *recoup* the economic value of their future tickets sales via credit card. . . .” *See supra* ¶ 16 & n.7. The Debtors’ tactic, in fact, goes even farther than rescission because to obtain recession a party must return when it received. *See supra* ¶ 26. Here, the Debtors intend to keep the \$150 million and Additional Purchase Price paid for the Contract Rights and Proceeds, and transfer the Contract Rights and Proceeds back to themselves, leaving USAV and the Lenders with what the Debtors call “worthless” rights. Debtors’ Reply ¶ 25.

27. According to the Debtors’ own foreign law experts, the Debtors sold that economic value in 2017 in a final and valid sale that eliminated all of the Debtors’ interest in those Contract Rights and the Proceeds thereof. *See GPZ Opinion* ¶¶ 8-9. The Debtors cannot evade the Supreme Court’s holding that rejection does not allow a debtor to take back the rights they sold through

rescission by taking back the rights they sold by moving them to a new contract to cause exactly the same unwinding of the sale.

28. *Mission Product* directs the Court to non-bankruptcy contract law, and so do the Debtors. See Obj. ¶ 22; Debtors’ Reply ¶ 50. There is no non-bankruptcy law that would allow the Debtors somehow to transfer the value of USAV’s contract to another to take back the asset they sold in 2017. The Debtors’ new argument would be tantamount to the debtor in *Mission Product* transferring the trademarks to a new contract to terminate the counterparty’s right to use it, a result that *Mission Product* prohibited. See Obj. ¶¶ 18-26. The Debtors’ new argument would likewise run afoul of the illustration provided in *Mission Product* that a breaching party cannot take back leased copier. Here, the Debtors’ tactic would be tantamount to the breaching party transferring the copier, other than a “worthless” shell, to itself. *Mission Product* does not allow a debtor to unwind a transaction through rejection as a direct consequence or through an indirect tactic of allowing a debtor to move the subject and value of the assets sold for \$150 million into a new contract.

29. Indeed, allowing the Debtors to “recoup” the assets they sold “would subvert everything the Code does to keep avoidance [actions] cabined—so they do not threaten the rule that the estate can take only what the debtor possessed before filing.” *Mission Prod.*, 139 S. Ct. at 1663. *Mission Product*’s teaching is unequivocal: “a debtor’s property does not shrink by happenstance of bankruptcy, but it does not expand, either” and the rejection power cannot be used to “recapture interests . . . given up” prepetition. *Id.*

### **III. THE USAV AGREEMENTS ARE NOT EXECUTORY CONTRACTS**

30. A contract can be executory only where both parties have unperformed material obligations that are so essential that a failure to perform them would excuse the counterparty’s performance. Obj. ¶ 46. Neither party has any such material unperformed obligations.

Additionally, the Debtors do not contest that the parties to the RSPA agreed that a breach by USAV would not excuse the Seller's performance. *See infra* ¶¶ 41-43; Obj. ¶¶ 54-55.

**A. The Undertaking Agreement is Not Executory**

31. Neither the Motion nor the Replies identify *any* unperformed obligations of USAV under the Undertaking Agreement. Thus, the Undertaking Agreement is not an executory contract, and the Debtors seek to treat seven of eight contracts as executory based on just the RSPA.<sup>11</sup> In any case, the RSPA also is not executory.

**B. The RSPA Is Not Executory**

**1. USAV Has No Material Unperformed Obligations under the RSPA**

32. The Debtors do not contest that the ongoing ministerial obligations of USAV that the Debtors relied on in their Motion are not material unperformed obligations that would render the RSPA executory. Rather, the Debtors now rely solely on USAV's potential obligation to remit any Excess Proceeds in the future in the form of Additional Purchase Payments. Motion ¶ 27; *see* Debtors' Reply ¶¶ 26-29; UCC Reply ¶¶ 11-13. There is no such unperformed obligation.

33. *One*, there never was any future performance owed with respect to the Non-Excess Proceeds here at issue. The contingent obligation to make Additional Purchase Payments related only to Excess Proceeds. The Debtors have never had any right to the Non-Excess Proceeds at issue, and USAV has never had any obligation, unperformed or otherwise, to pay any Non-Excess Proceeds to the Debtors.

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<sup>11</sup> The Debtors also have no material unperformed duties under the Undertaking Agreement. The Debtors rely on alleged outstanding obligations as a servicer, but those obligations terminated automatically pre-petition. *See* Undertaking Agreement § 3.12(b). As noted in the Objection, the USAV Secured Lender Group has not appointed a replacement Servicer. *See* Obj. ¶ 56 & n.17. The Debtor's Reply claims incorrectly that the USAV Secured Lender Group could have appointed a replacement Servicer at any time after the Flight Impairment Trigger Event. Debtors' Reply n.7. The Undertaking Agreement does not permit the USAV Secured Lender Group to direct the Administrative Agent to appoint a replacement Servicer until "sixty (60) days after . . . automatic termination of the Servicer under Section 3.12(b)." Undertaking Agreement § 3.12(d). This sixty day-period expired after the Petition Date, so USAV could not unilaterally appoint a servicer.

34. Two, USAV also has no unperformed obligation to make any Additional Purchase Payments from the Excess Proceeds. The prepetition Trigger Events extinguished any obligation of USAV to make Additional Purchase Price payments. *See infra* ¶ 37.

35. Disregarding the unambiguous governing contract provision, the Debtors argue that there is an inference that a right to Additional Purchase Payments was only temporarily suspended, quoting the following language in the RSPA: “no Additional Purchase Price shall be paid *during* the continuance of . . . a Trigger Event.” Debtors’ Reply ¶ 28 (emphasis added by Debtors). There is no dispute that the Trigger Event is continuing, so the Debtors admit that USAV has no obligation to make Additional Purchase Payments.<sup>12</sup> The Debtors’ and the UCC’s assertion without citation to the RSPA that any Trigger Event can be—but has not been—“cured” unilaterally by the Debtor is wrong. *See* Debtors’ Reply ¶¶ 5, 28 & n.6; UCC Reply ¶ 13. Upon the occurrence of any Trigger Event, the Debtors’ rights to Additional Purchase Price can be restored only through a written waiver granted by both USAV and the Agents (with the consent of the USAV Secured Lender Group). *See infra* ¶ 37 and accompanying notes. Indeed, the Debtors themselves admit that Trigger Events can be revoked only by the Collateral Agent. *See* Debtors’ Reply ¶¶ 26, 28.<sup>13</sup> Neither USAV nor the Agents has revoked the Trigger Event or will do so. Thus, USAV has no unperformed obligation to make Additional Purchase Payments.

36. The Debtors likewise acknowledged prepetition that Trigger Events require written waivers, even if the circumstances giving rise to them have been resolved. *See* Letter dated

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<sup>12</sup> *See* Status Conf. Tr. at 18:21-19:11 (“THE COURT: Does Avianca agree with” [the objectors’ position] “that a triggering event occurred under the RSPA prior to the petition date? . . . MR. LEBLANC: Your Honor, I don’t believe we dispute that position.”)

<sup>13</sup> To be clear, however, the fact that USAV is permanently relieved from paying Additional Purchase Price will not, as the Debtors and the UCC claim, result in the Debtors having “no recourse to any future payments generated by their credit card sales in the United States in perpetuity, all of which would belong to USAV, in an unlimited amount.” UCC Reply ¶ 12 (emphasis in original); *see* Debtors’ Reply ¶ 4 (claiming that USAV having no further payment obligations would result in the absurdity of USAV owning the . . . Receivables in perpetuity” (emphasis in original)). After USAV has repaid the USAV Secured Lender Group’s loans in full from its Proceeds, thereby reducing (and, potentially, eliminating) any claim that USAV would otherwise have against the Debtors for Liquidated Damages, the Debtors may acquire the outstanding shares of USAV by exercising their option on such shares pursuant to the Option Agreement. *See supra* n.10.



February 19, 2018 from Aerovías to the USAV Secured Lender Group, the Agents, and the Purchaser (“As noted above, the underlying difficulties have been resolved but these Events of Default and Trigger Events are still outstanding, and we hereby respectfully requested your consent to certain related waivers and [sic] amendments.”).<sup>14</sup> The Debtors requested and obtained waivers for no fewer than six Trigger Events, which waivers were granted by USAV and the Agents (with the consent of the USAV Secured Lender Group).<sup>15</sup> But the Debtors never requested, and neither USAV nor the Agents ever provided (or will provide) a waiver for the Trigger Events.<sup>16</sup>

37. Section 3.01(a)(ii) of the RSPA also provides that any Additional Purchase Price is only “due and payable” under the priority of payment provisions set forth in Sections 2.01, 2.02, or 2.03 of the Cash Management Agreement. *See* RSPA § 3.01(a)(ii). Upon the occurrence of a Trigger Event, the Additional Purchase Price is not “due and payable.” Each of those provisions of the Cash Management Agreement, like the RSPA, explicitly provides that the Seller’s interest in the Additional Purchase Price cannot be restored following a Trigger Event absent written notice from the Administrative Agent (at the direction of the USAV Secured Lender Group) to the Collateral Agent that written notice of a Trigger Event has been “revoked or is otherwise of no further force or effect.” *See* Cash Management Agreement §§ 2.01, 2.02, 2.03.

38. The Debtors also contend that Citibank sent a notice in March that did not “declar[e] that the Additional Purchase Price would no longer be paid.” Debtor’s Reply ¶ 29. Section 3.01(a)(ii) does not require the delivery of notice to “declare that the Additional Purchase Price would no longer be paid.” *See* RSPA § 3.01(a)(ii). The consequence of any Trigger Event

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<sup>14</sup> A true and correct copy is attached to the Second Weedman Decl.

<sup>15</sup> True and correct copies are attached to the Second Weedman Decl.

<sup>16</sup> The Debtors’ assertion that some Trigger Events can simply “subside” does not even apply to the Notification Trigger Event, which occurred upon the failure of the Seller to provide notice to the Purchaser and the Administrative Agent of the Flight Impairment Trigger Event within one Business Day of its occurrence pursuant to Section 2.01(f)(v) of the Undertaking Agreement. RSPA § 6.01(c)(i); *see* Supp. Brief n.10. The Notification Trigger Event is incapable of being “cured” or “subsiding.”



cutting off Additional Purchase Price is automatic and self-effectuating: “No Additional Purchase Price shall be paid” following a Trigger Event. *Id.* Indeed, the Debtors specifically admit that “pursuant to the terms of the USAV Agreements, **USAV currently has no obligation** to pass the proceeds of any credit card receivables to Avianca.” *Declaration of Adrian Neuhauser in Support of Debtors’ Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts* [ECF 306-1] ¶ 6 (the “First Neuhauser Decl.”) (emphasis added).

39. The Debtors also rely on the fact that small Additional Purchase Payments were made after the Trigger Event. The fact that the Collateral Agent made a clerical error within ten days of the March 31 Notice (before stopping all payments for a full month prior to the Debtors’ bankruptcy filing) cannot vary the unambiguous contract terms. *See infra* ¶ 48 (parol evidence rule bars extrinsic evidence if contractual terms are unambiguous). Moreover, the March 31 Notice explicitly stated that “the making of any payments to the Seller” would not constitute a waiver, and the RSPA contains a no waiver provision. *See* March 31 Notice at 2; RSPA § 9.02 (“Any provision of this Agreement may be amended or waived *only* with the written consent of each of the Seller, the Purchaser and the Administrative Agent. . . .”). Thus, as noted, the Debtors admit that “pursuant to the terms of the USAV Agreements, USAV currently has no obligation to pass the proceeds of any credit card receivables to Avianca.” *First Neuhauser Decl.* ¶ 6.

40. *Four*, the Debtors ignore that the unperformed obligation has to be so essential so as to excuse the other party’s performance. *Obj.* ¶ 51. Again, USAV’s alleged (and non-existent) obligation to use Excess Proceeds to make Additional Purchase Price payments would not somehow allow the Debtors to take back the Non-Excess Proceeds they sold in 2017 for \$150 million. Because the sale was completed, there is no performance to excuse. But even if the Debtors were holding the Proceeds, and they are not, then a failure to pay Excess Proceeds would

not excuse the Debtors' obligation to deliver the Non-Excess Proceeds sold in exchange for the \$150 million purchase price paid in 2017. USAV has performed its obligations, and the Debtors have accepted the benefits thereof. As such, the Debtors would be estopped from retaining possession of the asset. *Bank Itec N.V. v. J. Henry Schroder Bank & Trust Co.*, 612 F. Supp. 134, 140 (S.D.N.Y. 1985) ("party who accepts benefits under a contract is estopped from seeking rescission or other relief from the terms of that contract").

41. Moreover, the Debtors agree, indeed advocate, that specialized terms should dictate the consequences of rejection. *See* Debtors' Reply ¶¶ 60-61. In fact, the Debtors argue that: "Where the parties contractually agree that some or all of the terms are sufficiently important to discharge any further obligations imposed on the party aggrieved by a breach, their intent will govern." 486 B.R. at 278. The contracts at issue do not include any such provision discharging any further obligations. To the contrary, the RSPA is not executory because the parties contractually agreed that a failure by the purchaser to pay Additional Purchase Price would "[not] discharge any further obligations upon the party aggrieved by a breach" (*i.e.*, the Seller):

*The Seller unconditionally and irrevocably waives any rights it may claim to have under article 870 of the Colombian Code of Commerce and under articles 1546 and 1609 of the Colombian Civil Code or otherwise to rescind this Agreement or any other Transaction Document for any reason or to refrain from complying with its obligations hereunder (including as a result of the failure by the Purchaser to satisfy any of its obligations hereunder, including the making of any payment pursuant to Section 3.01(a)(ii)). As a result of such waiver, the Seller understands, acknowledges, and agrees that: (a) its remedies in the case of a failure by the Purchaser to make one or more payments of Additional Purchase Price hereunder shall be limited to the right to make a claim against the Purchaser for payment of any Additional Purchase Price payments that are past due and unpaid, and (b) the Seller shall not be entitled to and shall not attempt to, under any circumstances, reclaim any right, title, or interest in, to or under any of the Contract Rights or the Receivables.*

RSPA § 2.05 (emphasis added).

42. The RSPA also provides that:

The Seller hereby irrevocably waives its right to request the resolution of the Agreement, pursuant to article 1546 of the Colombian Civil Code and article 870 of the Colombian Code of Commerce, upon any failure of the Purchaser to pay when due the Additional Purchase Price. As a consequence, upon any such breach, the Seller irrevocably consent and agrees that its sole remedy shall be a claim for monetary damages hereunder.

*Id.* § 3.01(e).

43. The Debtors' Colombian counsel, GPZ, confirmed in 2017 that these provisions of the RSPA are "legal, valid and binding obligations enforceable against the Seller in accordance with their terms." GPZ Opinion ¶ 5. Professor Suescún also confirms, consistent with the GPZ Opinion, that the foregoing waivers are enforceable under Colombian law. First Suescún Decl. ¶ 14; Second Suescún Decl. ¶ 8. Neither the Debtors nor Mr. Arrubla have disputed the validity of these waivers. Thus, the parties expressly agreed that a failure by USAV to pay an Additional Purchase Price would not be essential enough to excuse the Debtors' performance and the RSPA, therefore, is not executory.

44. The Debtors rely on cases that installment payments may be executory, but title had not been transferred under those contracts, so those cases have nothing to do with the current dispute.<sup>17</sup> Debtors' Reply ¶ 31. Moreover, the RSPA is not an installment contract. To the contrary, full payment for the proceeds at issue was made in 2017. The additional payments are merely contingent, not installments, and are not owed until after the loans have been fully repaid. Again, the Debtors cannot transform USAV's potential right to receive future Excess Proceeds, if any, to take back the Non-Excess Proceeds sold for full value in 2017.

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<sup>17</sup> The Debtors also rely on *In re Alexander*, which involved a contract for the sale of real property which provided for payment in full of the purchase price *at closing* and which *had not closed* on the petition date. 670 F.2d 885 (9th Cir. 1982). In that case, the debtor refused to convey title, surrender possession of the property, or accept the purchase money from the buyer on the agreed closing date. *Id.* Here, unlike in *Alexander*, the Debtors sold and transferred the Contract Rights in exchange for the required purchase price amounts at closing.

45. The Debtors also cite to three cases that discuss factoring agreements, but these are inapposite and reflect the Debtors' fundamental mischaracterization of the RSPA. In each of the factoring case cited by the Debtors, there was a continuing obligation to service the accounts and pay periodic fees to the debtors. *See Capital Factors, Inc. v. Empire For Him, Inc. (In re Empire For Him, Inc.)*, 1 F.3d 1156, 1157 (11th Cir. 1993); *In re Packaging Sys., LLC*, 559 B.R. 123, 124 (Bankr. D.N.J. 2016); *In re Double D Transport, LLC*, No. 07-14113-GHB, ECF 3-1 at 1 (Bankr. W.D. Tenn. Jan. 22, 2008). The RSPA is a final sale of Contract Rights and Proceeds in which USAV already paid for the full amount of such Proceeds and has no ongoing material obligations to the Debtors. Moreover, these cases all pre-date *Mission Product*, which prohibits a debtor from unwinding a transaction through rejection.

**2. The Debtors Have No Material Unperformed Obligations Under the RSPA**

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**a. Trigger Events Are Conditions, Not Obligations**

46. Any extant obligation of the Debtors is irrelevant because USAV has no essential unperformed obligation. And neither do the Debtors. The "obligations" that Debtors rely on to argue that the RSPA is executory are certain Trigger Events, specifically the failure to fly planes, maintain a minimum Collection Coverage Ratio, observe all obligations under the Undertaking Agreement, and keeping the Card Processing Agreements in effect. Debtors' Reply ¶ 18. These Trigger Events are not obligations, but rather conditions the non-occurrence of which trigger certain consequences. The Debtors agree that "a condition that remains unperformed. . . will not render an agreement executory. . ." (Reply ¶ 25, n. 5) (quoting in *Re Abitibi Bowater Inc.*, 418 B.R. at 830, n. 11).

47. Here, as its name indicates, the Trigger Event is an event that grants contractual rights. Specifically, the contractual right is that upon the failure of certain conditions, the loan

amount accelerates. That is a contractual right, not a contractual breach. Thus, the purported “obligation” here—the Trigger Event—is the opposite of a breach, it is the *compliance* with the contractual terms, not a failure to comply with a contractual term. *See* 8 Corbin on Contracts § 30.12 (2020) (noting that “it is obvious that promise and condition are very clearly different in character,” and that “a condition is a fact or an event and is not an expression of intention or an assurance”; accordingly “[a] promise in a contract creates a legal duty in the promisor and a right in the promisee; the fact or event constituting a condition creates no right or duty and is merely a limiting or modifying factor.”); *see also* Restat 2d of Contracts, §§ 224, 235 (noting that “[a] condition is an event, not certain to occur, which must occur, unless its non-occurrence is excused, before performance under a contract becomes due,” whereas a duty is a right that when due “any non-performance is a breach”); *In re Peanut Crop Ins. Litig.*, 524 F.3d 458, 474 (4th Cir. 2008) (noting that “[a] condition precedent is either an act of a party that must be performed or a certain event that must happen before a contractual right accrues or contractual duty arises”) (citing 13 Williston on Contracts § 38:7 (4th ed. 2006)). A simple way to demonstrate this fact is that USAV could not sue the Debtors for failing to fly planes or to sell tickets because no provision requires the Debtors to fly planes or sell tickets.

48. The Debtors rely solely on a notice provided by Citibank that uses the word “breach” to describe the Trigger Event. A careless statement in a communication is not admissible and cannot modify an unambiguous contract provision. *In re Delta Air Lines, Inc.*, 381 B.R. 57, 82 (Bankr. S.D.N.Y. 2008) “[c]ourts are barred under the parol evidence rule from considering extrinsic evidence to vary or change the unambiguous terms of a written agreement.”; *In re Unity Corp.*, 191 B.R. 595, 597 (Bankr. S.D.N.Y. 1996) (“Where the parties have reduced their agreement to writing, the parol evidence rule excludes evidence of any prior oral or written

agreement when offered to contradict, vary, add to, or subtract from the terms of the writing.”); *see also In re Calpine Corp.*, 2008 Bankr. LEXIS 2152, at \*14 (Bankr. S.D.N.Y. Aug. 4, 2008) (“The executoriness analysis examines an agreement *on its face* to determine whether there are material obligations that require substantial performance from the parties.” (cleaned up and emphasis in original)); *In re Exide Technologies*, 378 B.R. 762, 766 (Bankr. D. Del. 2007) (courts look to “four corners” of agreement to determine “whether both parties have unperformed material obligations under the Agreement.”).

**b.     The Debtors New Scheme To Try To Transfer The Contract Rights And Proceeds Does Not Render The RSPA Executory**

49.     The UCC has created a new argument in its Reply (barely mentioned by the Debtors) that certain terms relating to Contract Rights under potential future replacement Card Processing Agreements (“Replacement Contract Rights”) renders the RSPA executory. The UCC is wrong. *One*, the Debtors have not sought to reject the Card Processing Agreements, so there is no relief sought with respect to them. *Two*, the parties agreed that USAV would continue to own the Contract Rights and Proceeds that they purchased in 2017 even if they were moved to new agreements. *See* RSPA §§ RSPA §§ 2.01(a)(ii), (b)(ii), (c)(ii); 2.03(b).

50.     *Three*, the RSPA cannot be executory based on Replacement Contract Rights because USAV has no unperformed material obligation under the RSPA, as required to render an agreement executory. To the contrary, UCC repeatedly acknowledges that USAV has fully performed its payment obligations in respect of any Replacement Contract Rights.<sup>18</sup> *See* UCC

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<sup>18</sup> The purpose of provisions relating to the Replacement Contract Rights is to ensure that USAV keeps the benefit of its bargain with Aerovías—USAV’s ownership of the Contract Rights, Future Receivables and Proceeds. For example, Section 2.03(b) of the RSPA provides that in the event the asset that USAV purchased from the Seller is “impaired,” the Seller will take steps to provide USAV with a replacement within 10 days at no additional cost to USAV. RSPA § 2.03(b). Essentially, the Seller gave the Purchaser a warranty for the purchased asset. Several courts have found that a warranty obligation included in a purchase and sale agreement is too insubstantial to render the contract executory. *See, e.g., In re GEC Industries, Inc.*, 107 B.R. 491, 492 (Bankr. D. Del. 1989) (holding seller’s unperformed warranty obligations “issued in connection with a sale of [a] product” insufficient to make contract executory; buyer’s administrative steps to submit claims for breach of warranty are merely procedural and do not make contract executory); *In re Shada Truck Leasing, Inc.*, 31 B.R. 97, 100 (Bankr. D. Neb. 1983) (holding seller’s warranty obligation



Reply 4, 9, 21 (recognizing that USAV owes “no additional consideration” for any Replacement Contract Rights). The reason “no additional consideration” is owed is because USAV already paid \$150 million, plus Additional Purchase Price, for those rights. Moving them to a different contract does not bring additional value or support additional consideration. Thus, the RSPA is unambiguous that USAV’s payment of the purchase price served as consideration for *both* the Contract Rights as they existed on the Effective Date, and any Replacement Contract Rights. RSPA § 3.01(d) (“The Purchase price shall be consideration for the Sale and Transfer ... with respect to each Additional Card Processing Agreement.”).

51. The Debtors also have no material unperformed obligations. The RSPA provides for purely ministerial action by the Debtors to formalize USAV’s continued ownership of the Replacement Contract Rights, such as notifying new card processors of USAV’s ownership and rectifying or entering into new agreements as necessary to effectuate that continued ownership, the consideration for which was accepted in 2017. *See* RSPA §§ 2.01(a)(ii), (b)(ii), (c)(ii); 2.03(b). None of these steps are material. *See* Obj., *passim*; First Suescún Decl. ¶¶ 7-11. Courts have routinely found that delivery of title and similar ministerial steps are mere formalities where the debtor has agreed to do them. *See, e.g., In re RLR Celestial Homes, Inc.*, 108 B.R. 36, 44 (Bankr. S.D.N.Y. 1989) (unperformed delivery of legal title from seller to purchaser is a formality and does not form the basis for determining that a contract was executory); *Enter. Energy Corp. v. United States (In re Columbia Gas Sys.)*, 50 F.3d 233, 243-44 (3d Cir. 1995) (same); *In re Curry*, 526 B.R. 276, 281-82 (Bankr. C.D. Ill. 2015) (same); *In re S’holders Funding*, 188 B.R. 150, 161-

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too insubstantial to make sale contract executory); *see also In re Johnson*, 501 F.3d 1163, 1174 (10th Cir. 2007) (citing with approval *Shada Truck’s* holding that a warranty obligation is insufficient to render a sale contract executory); *In re Columbia Gas Sys.*, 50 F.3d 233, 243 (3d Cir. 1995) (citing with approval *GEC’s* holding that a warranty obligation is insufficient to render a sale contract executory and analogizing it to other “ministerial acts”); *In re Glob. Envtl. Servs. Grp., LLC*, 2006 Bankr. LEXIS 4926, at \*13 (Bankr. D. Haw. Mar. 16, 2006) (“The inclusion of ancillary provisions having to do with the purchased assets, such as warranties, do not make the contract executory.”).



62 (Bankr. E.D. Pa. 1995) (same). The Debtors themselves cite to *In re Atl. Comput. Sys.*, which acknowledges that delivery of legal title is a formality and will not render a contract executory. 173 B.R. 844, 856 (S.D.N.Y. 1994) (citing *In re RLR Celestial Homes*, 108 B.R. at 44).

#### IV. THE DEBTORS CANNOT NOW SEEK REJECTION *NUNC PRO TUNC* TO THE PETITION DATE

52. When the Debtors filed the Motion, they sought to reject the USAV Agreements effective as of June 23, 2020. Motion ¶¶ 39-42. In their Reply, the Debtors now seek substantively different relief by requesting rejection “*nunc pro tunc* to the **Petition Date**”—i.e., May 10, 2020. Debtors’ Reply ¶ 64 (emphasis added).<sup>19</sup> Neither version of retroactive relief is appropriate.

53. Even assuming this Court adopted the minority view that a court may modify the effective date of rejection—i.e., from the date of the bankruptcy court’s order approving rejection to the date of unequivocal notice of a debtor’s intent to reject—the Debtors’ new “request for *nunc pro tunc* rejection to the Petition Date *seeks relief that would extend beyond even the minority view . . .*” *In re KP Fashion Co.*, 2011 U.S. Dist. LEXIS 96466, at \*9-10 (S.D.N.Y. Aug. 26, 2011) (quoting *In re Jamesway Corp.*, 179 B.R. 33, 37 (S.D.N.Y. 1995)) (emphasis added). As for the Debtors’ original relief requested (i.e., retroactive effect as of the date of the Motion), the Debtors’ argument fails for the reasons set forth in the Objection. *See* Obj. ¶¶ 64-66.

#### CONCLUSION

54. For these reasons and those set forth in the Supplemental Brief and the Objection, the Motion should be denied.

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<sup>19</sup> This change in requested relief on reply is both unfair to the litigants and procedurally improper. *See Travelers Casualty & Sur. Co. v. J.D. Elliot & Co., P.C.*, 2004 U.S. Dist. LEXIS 20712 (S.D.N.Y. Oct. 5, 2004) (“To the extent [a party] seeks new relief in reply, its application is procedurally defective.”) (citing *Booking v. Gen. Star Mgmt. Co.*, 254 F.3d 414, 418 (2d Cir. 2001)).

August 18, 2020  
New York, New York

Respectfully submitted,

**WHITE & CASE LLP**

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**EXHIBIT 29**

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 20-11133 (MG)  
)  
) (Jointly Administered)  
)

**DECLARATION OF VICENTE LINES IN SUPPORT OF THE USAV SECURED  
LENDER GROUP'S SUPPLEMENTAL BRIEF AND SUR-REPLY IN SUPPORT OF  
OBJECTION TO DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
REJECTION OF CERTAIN EXECUTORY CONTRACTS**

I, Vicente Lines, hereby declare as follows:

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number (to the extent applicable) are as follows: Aero Transporte de Carga Unión, S.A. de C.V.; Aeroinversiones de Honduras, S.A.; Aerovias del Continente Americano S.A. Avianca; Airlease Holdings One Ltd.; Avianca Costa Rica S.A.; Avianca Holdings S.A.; Avianca, Inc. (13-1868575); Avianca Leasing, LLC (46-2586415); Avianca Perú S.A.; Avianca-Ecuador S.A.; Aviateca, S.A.; Avifreight Holding Mexico, S.A.P.I. de C.V.; Grupo Taca Holdings Limited; International Trade Marks Agency Inc.; Inversiones del Caribe, S.A.; Isleña de Inversiones, S.A. de C.V.; Latin Airways Corp.; Latin Logistics, LLC (00-0107425); Regional Express Américas S.A.S.; Ronair N.V.; Taca de Honduras, S.A. de C.V.; Taca International Airlines S.A.; Taca S.A.; Tampa Cargo S.A.S.; AV International Holdco S.A.; AV International Holdings S.A.; AV International Investments S.A.; AV International Ventures S.A.; AV Investments One Colombia S.A.S.; AV Investments Two Colombia S.A.S.; AV Taca International Holdco S.A.; Servicios Aeroportuarios Integrados SAI S.A.S. The address of the Debtors' principal offices is Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



**A. Qualifications**

1. I am a partner at the law firm of Arias, Costa Rica, counsel for the USAV Secured Lender Group<sup>2</sup> in the above-captioned proceedings.

2. I submit this declaration in support of the USAV Secured Lender Group's Supplemental Brief and Sur-Reply<sup>3</sup> in support of their Objection to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts.

3. I obtained my law degree at the University of Costa Rica in 1997 and my LL.M at Georgetown University Law School in 1999. I am a member of the Costa Rican bar in good standing and have been a member since 1997. I am also a member of the New York state bar in good standing and have been since 2000. I have worked at Arias for twenty years. My experience covers a wide range of legal areas, including commercial law, transactional law, and banking and financial law experience.

4. I have been ranked as a leading practitioner in the banking and finance field by Chambers and Partners for seventeen years. My experience includes participating in numerous secured transaction deals and publications on the subject including "*Costa Rica: Creditor Rights and Insolvency Systems.*"<sup>4</sup>

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<sup>2</sup> The USAV Secured Lender Group is composed of the following members: Deutsche Bank AG, London Branch; Bank United N.A.; Banco de Credito del Peru, Miami Agency; First Citizens Bank Limited; Metrobank S.A.; Prival Bank S.A.; Moneda Latinoamerica Deuda Local Fondo de Inversion; and Moneda Deuda Latinoamericana Fondo de Inversion.

<sup>3</sup> Capitalized terms not defined herein have the meanings provided in the Objection, Supplemental Brief and Sur-Reply, as the case may be.

<sup>4</sup> Vicente Lines –F.A. Arias & Muñoz. Presented to the Latin American Insolvency Forum in Rio de Janeiro, Brazil –World Bank 2004, available at: <http://www4.worldbank.org/legal/fila/fila2004Papers/Costa%20Rica%20-%20English.pdf>.

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**B. Under Costa Rican Law, the Security Interest Granted to USAV under the Costa Rican Purchaser Security Agreement is Valid and Perfected**

5. The Costa Rican Purchaser Security Agreement establishes a security interest in favor of USAVFlow Limited over the Contract Rights and Receivables (as defined in RSPA). The basis for my opinion is as follows:

6. Under Costa Rican law, a security over a moveable asset (*garantía mobiliaria*) such as the one granted over the Contract Rights and Receivables requires a written agreement establishing such security interest among the grantor (*in Spanish: "deudor garante"*) and the secured party (*in Spanish: "acreedor garantizado"*).<sup>5</sup>

7. Such written agreement must include the following content (i) language establishing the creation of the security interest, (ii) information on the signatories that allow for the identification of the contracting parties, (iii) the maximum claim amount to be secured (or the mechanism to establish such amount), (iv) addresses of the contracting parties to receive future notices, (v) an express statement that the assets described will serve as security for the secured obligations, (vi) a description, specific or generic, of the collateral, (vii) the authorization from the grantor to the secured party to file the initial registration form and other required forms before the Moveable Asset Security System, (viii) date and place of execution.<sup>6</sup> Additionally, for the security interest to be perfected and opposable to third parties, it must be granted publicity through the Moveable Asset Security System.<sup>7</sup>

<sup>5</sup> Law N°9246, Ley de Garantías Mobiliarias (Law of Security over Moveable Assets), Art. 2 and Art. 6 (Costa Rica, 2014).

<sup>6</sup> *Id.* Art. 11.

<sup>7</sup> *Id.* Art. 17.

Uf-f

8. Here, the Costa Rican Purchaser Security Agreement satisfies the requirements described above, and is a valid agreement creating a first-priority security over the Contract Rights<sup>8</sup> and Receivables under Costa Rican law and is perfected and enforceable against third parties by virtue of the registration of the security interest that occurred on December 12, 2017 per the registration number GM-10224-2017. Therefore, The Costa Rican Purchaser Security Agreement creates legal, valid, binding and enforceable security interests over the Contract Rights and Receivables and is recognized as a first priority lien enforceable against third parties.

**C. Under Costa Rican Law, USAV Would Have a Secured Claim under the Costa Rican Purchaser Security Agreement Even if the Sale of the Contract Rights and Receivables Under the Undertaking Agreement and the RSPA Were Rescinded or Unwound**

9. Under Costa Rican law, the security interest over a moveable asset is enforceable over the secured assets, independent of who owns or holds legal title over such asset.<sup>9</sup> The validity and perfection of the security granted under the Costa Rican Purchaser Security Agreement is not conditioned on the purchase and sale under the RSPA remaining undisturbed. The security interest under the Costa Rican Purchaser Security Agreement is valid and enforceable against the Seller even if the sale of the Contract Rights and Receivables under the RSPA is rescinded and unwound and the Contract Rights are returned to the Seller.

10. Furthermore, the Costa Rican Purchaser Security Agreement was executed and delivered when Seller, not USAV, owned the Contract Rights and Receivables and specifically contemplates that enforcement will occur in a scenario where the sale of Contract Rights and Receivables under the RSPA and the Undertakings Agreement is not upheld and the Contract

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<sup>8</sup> The term “Contract Rights” as I use it in this declaration includes “Future Receivables” and “Proceeds” as such terms are defined in the Supplemental Brief.

The security granted under the Costa Rican Purchaser Security Agreement also extends to “Future Receivables” and “Proceeds,” as explained below in paragraph 9 of this Declaration and accompanying footnotes.

<sup>9</sup> *Id.*, Art. 2, Art. 56.



Rights are returned to the Seller. Therefore, under such agreement, and under Costa Rican law, the secured party is USAV (*acreedor garantizado*) and the grantor or debtor is Seller (*deudor garante*).

11. Under Costa Rican Law, the Security Granted under the Costa Rican Purchaser Security Agreement Covers all Contract Rights and Receivables as well as any Proceeds or Derived Assets. The Costa Rican Purchaser Security Agreement creates a valid and enforceable security interest under Costa Rican law over the Contract Rights and Proceeds as security for all obligations under the RSPA and the Undertaking Agreement, including the obligation to deliver any Proceeds to USAV that the Debtors receive after the Effective Date of the RSPA.

12. Under Costa Rican law, security granted over a moveable asset, such as the one granted over the Contract Rights and Receivables in the Costa Rican Purchaser Security Agreement will automatically cover any proceeds or attributable assets stemming from such movable asset.<sup>10</sup> Proceeds are defined as property derived from the originally pledged asset and attributable assets as those resulting from the sale or pledge of the collateral.<sup>11</sup> For contract rights, this term would include any cash flows, income or other revenue that results or is derived from such pledged contract rights. Therefore, under Costa Rican law, the security interest created under the Costa Rican Purchaser Security Agreement will automatically cover all proceeds and attributable assets of the Contract Rights and Receivables.<sup>12</sup>

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<sup>10</sup> *Id.* Art. 10. The “Future Receivables,” i.e., the right to receive the all future Collections (as defined in the RSPA) prior to their being liquidated into cash proceeds following a Specified Sale (as defined in the RSPA) are attributable assets stemming from the Contract Rights.

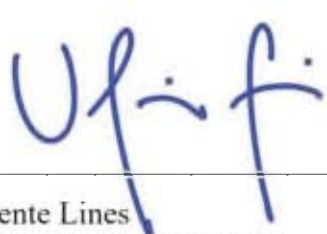
<sup>11</sup> *Id.* Art. 5.4.; Alvaro Hernandez Aguilar, *Garantias Mobiliarias* 46 (2016).

<sup>12</sup> The “Proceeds,” i.e., the actual cash proceeds and other proceeds on account of Future Receivables payable under the card processing agreements to the owner of the Contract Rights are therefore included in the security granted under the Costa Rican Purchaser Security Agreement.

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I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true  
and correct.

Executed on August 18, 2020.

  
\_\_\_\_\_  
Vicente Lines  
Partner, Arias Costa Rica  
Costa Rican Attorney License number 8087

**VICENTE  
AURELIO  
LINES  
FOURNIER  
(FIRMA)**

Digitally signed  
by VICENTE  
AURELIO LINES  
FOURNIER  
(FIRMA)  
Date:  
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**EXHIBIT 30**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 20-11133 (MG)  
)  
) (Jointly Administered)  
)

**SECOND DECLARATION OF JORGE SUESCÚN MELO IN SUPPORT OF  
OBJECTION OF THE USAV SECURED LENDER GROUP TO  
DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
REJECTION OF CERTAIN EXECUTORY CONTRACTS**

I, Jorge Suescún Melo, hereby declare as follows:

1. I submit this declaration in response to the reply of the Debtors (the "Debtors' Reply") to the objections of USAV<sup>2</sup> and the USAV Secured Lenders Group<sup>3</sup> to the Debtor's motion for entry of an order authorizing rejection of certain executory contracts (the "Debtors' Motion") and the declaration of Mr. Jaime Arrubla-Paucar in support thereof (the "Arrubla's Declaration").

2. I have reviewed the Debtors' Reply and Arrubla's Declaration. After careful review, I disagree with certain statements included therein by both the Debtors and Mr. Arrubla.

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number (to the extent applicable) are as follows: Aero Transporte de Carga Unión, S.A. de C.V.; Aeroinversiones de Honduras, S.A.; Aerovias del Continente Americano S.A. Avianca; Airlease Holdings One Ltd.; Avianca Costa Rica S.A.; Avianca Holdings S.A.; Avianca, Inc. (13-1868575); Avianca Leasing, LLC (46-2586415); Avianca Perú S.A.; Avianca-Ecuador S.A.; Aviateca, S.A.; Avifreight Holding Mexico, S.A.P.I. de C.V.; Grupo Taca Holdings Limited; International Trade Marks Agency Inc.; Inversiones del Caribe, S.A.; Isleña de Inversiones, S.A. de C.V.; Latin Airways Corp.; Latin Logistics, LLC (00-0107425); Regional Express Américas S.A.S.; Ronair N.V.; Taca de Honduras, S.A. de C.V.; Taca International Airlines S.A.; Taca S.A.; Tampa Cargo S.A.S.; AV International Holdco S.A.; AV International Holdings S.A.; AV International Investments S.A.; AV International Ventures S.A.; AV Investments One Colombia S.A.S.; AV Investments Two Colombia S.A.S.; AV Taca International Holdco S.A.; Servicios Aeroportuarios Integrados SAI S.A.S. The address of the Debtors' principal offices is Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

<sup>2</sup> Capitalized terms not defined herein have the meanings provided in the Objection, the Supplemental Brief or the Sur-Reply, as the case may be.

<sup>3</sup> The USAV Secured Lender Group is composed of the following members: Deutsche Bank AG, London Branch; Bank United N.A.; Banco de Credito del Peru, Miami Agency; First Citizens Bank Limited; Metrobank S.A.; Prival Bank S.A.; Moneda Latinoamerica Deuda Local Fondo de Inversion; and Moneda Deuda Latinoamericana Fondo de Inversion.



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Such statements, in my opinion, do not constitute an accurate and correct application of Colombian law and the provisions of the RSPA, as I will explain in detail below. The Colombian legal authority, on which I rely in providing this opinion, is annexed hereto as Exhibit A. Certified translations of the Spanish language authority will be filed by White & Case as soon as practicable.

**1. Under Colombian Law, the RSPA is a “single execution contract” (contrato de ejecución instantánea)**

3. In his declaration, Mr. Arrubla states that, when considered together with the Undertaking Agreement as a “colligated” contracts (*contratos coligados*), the RSPA would constitute a successive performance contract and not a single execution agreement. (“I believe the RSPA is not an instantaneous performance contract (...) What is certain is that the nature of the RSPA and the interpretation of the affiliated contracts as a whole, lead us to affirm that the RSPA actually constitutes a successive performance contract”. See Arrubla’s Declaration ¶ 15).

4. This is incorrect because, as a matter of Colombian law, the RSPA, as a sale and purchase agreement, is a single execution contract since its essential obligations are performed instantaneously. See *Superior Tribunal of the Judicial District of Pasto, Decision 2015 - 00214 – 01, July 18, 2018*.<sup>4</sup> Indeed, there is consensus within Colombian courts in recognizing that, when the purchaser covenants to pay the price in one or more instalments, obligations can still be executed in a single act. See *Colombian Council of State, Decision 1995-01005, April 26, 2012*.<sup>5</sup>

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<sup>4</sup> Holding that in purchase and sale agreements the payment and transfer of the property are obligations performed only one time upon the effectiveness of a sale and purchase; thus, being *contratos de ejecución instantánea*.

<sup>5</sup> Holding that sale and purchase agreements are *contratos de ejecución de instantánea* (this is, contracts of instantaneous performance, as opposed to ongoing contracts or contracts of continual performance), insofar as, following their execution and perfection, sale and purchase agreements are performed by each party on a one-time basis and the obligations of each party are created instantaneously. Additionally, sale and purchase agreements are deemed to be *contratos de ejecución de instantánea* even when (i) the assets are not transferred to the purchaser by the date of perfection of the agreement; (ii) the seller covenants to transfer the assets in several installments; or (iii) the purchaser covenants to pay the price in one or more installments. In all of the foregoing cases, the purchase and sale agreement remains as a *contrato de ejecución instantánea* and cannot be considered as a *contrato de ejecución sucesiva* (contract of continual performance).

5. In fact, in his own scholarly writings on this matter, Mr. Arrubla himself has expressly recognized, the single-execution nature of a sale and purchase agreement stating:

“...the purchase and sale agreement is an instantaneous contract ... In the purchase and sale agreement, a single act must be executed, even if there is a payment period or the goods are transferred by instalments. In the purchase and sale agreement the detachment of the object would be an arrangement in the order of the execution not in the constitution of the contract.” See Jaime Arrubla, *Contratos Mercantiles*.<sup>6</sup>

6. In addition, the Colombian Council of State has expressly adopted this position and cited Mr. Arrubla in order to support its ruling that sale and purchase agreements are single-execution contracts. *See Colombian Council of State, Decision 20001-23-31-000-1996-02988-01, February 28, 2013*.<sup>7</sup>

7. Contrary to what is stated by Mr. Arrubla in his declaration (*See Arrubla's Declaration ¶ 21*), contracts such as the RSPA, as single execution contracts, can be rescinded (*resueltos*) but not terminated (*terminados*), upon the occurrence of a significant breach. Only executory contracts are the ones that might be terminated. The termination extinguishes the unperformed obligations as from the moment when the termination occurs, i.e., there is no retroactive effect. However, in the event of rescission, there would be a judicial declaration with a

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<sup>6</sup> See Jaime Arrubla, *Contratos Mercantiles*, Editorial Temis, Tomo I, Ed. 1998. Pg. 229. The original in Spanish reads: (“*La compraventa es un contrato instantáneo (...) en la compraventa debe cumplirse una prestación única, así haya plazo para el pago o se permita la entrega de la cosa por instalamentos. El fraccionamiento del objeto en la compraventa sería una modalidad en orden de la ejecución no a la formación del contrato.*”)

<sup>7</sup> Holding that that sale and purchase agreements are *contratos de ejecución instantánea*, because this type of agreements comprises obligations that can be performed on a one-time basis. Its treatment as *contratos de ejecución instantánea* remains the same even in the events that the purchaser is allowed to pay the price in several payment dates or the seller is allowed to transfer the assets in several installments.

retroactive effect, returning the party's condition to the state before the subscription of the agreement. *See Colombian Supreme Court of Justice, Decision, August 26, 2011.*<sup>8</sup>

8. In Sections 2.05 and 3.01(e), Aerovías, the Seller, expressly waived its right to seek rescission or any other remedy other than a claim for payment from USAV for failure to pay Additional Purchase Price (the right to which was cut off due to the Unwaived Trigger Events). As a result, the Debtors have *no right* to terminate or rescind the RSPA. If they reject the RSPA, which we understand would constitute the equivalent of a breach, USAV, and not the Debtors, would have the right seek rescission, but that would be entirely up to USAV. If USAV does not seek rescission, the RSPA (and the sale and purchase thereunder), cannot be rescinded.

**2. Under Colombian Law, the RSPA is a “single execution contract” (contrato de ejecución instantánea) as colligated contracts do not lose their own nature or independence**

9. In his declaration, Mr. Arrubla states that the RSPA should be viewed as a successive performance contract because the RSPA and the other USAV Agreements are linked contracts (*contratos coligados*), and they should therefore be interpreted as a whole. *See* Arrubla's Declaration ¶ 15. The Debtors have also stated that “under Colombian law, the USAV Agreement should be evaluated together for purposes of rejection under section 365” (*See* Debtors' Reply ¶ 37) and “the Court should deem these agreements to be inseparable from the RSPA and Undertaking Agreement for purposes of rejection” (*See* Debtors' Motion ¶ 29).

10. In my opinion, this is an incorrect application under Colombian law of the effect of so-called *contratos coligados*. When two or more contracts are linked or “colligated,”<sup>9</sup> they do not

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<sup>8</sup> The effects have been recognized by the Colombian Court of Justice stating “decisions and scholarly sources have considered that the rescission is for contracts which have effects that can be destroyed retroactively to the point that the parties return to the condition they had before the rescinded agreement (...) *See* Colombian Supreme Court of Justice, Ruling of August 26, 2011, Issuing Justice: Arturo Solarte.

<sup>9</sup> In Colombian law, the terms “linked” and “colligated” are used interchangeably.



lose their individual nature or independence. The RSPA and the other USAV Agreements are separate contracts despite being linked; the parties agreed to independent contracts, providing *inter alia* different applicable laws and jurisdictions to these agreements. Although these contracts are linked, they still are ***separated contracts that do not lose their own nature or independence.***

11. The *contratos coligados* doctrine has nothing to do with whether, and to my knowledge has never been used (and in my view cannot be used) in a manner that would result in, the colligated contracts being treated as a single contract. I am aware of no Colombian case law or arbitral awards applying Colombian law holding that *contratos coligados* are “inseparable” or inextricably linked such that they would be treated by a Colombian court or arbitral panel as a single contract. In fact, the case law says that the opposite is true: if parties wished for a suite of contracts to be treated as one contract, they must combine all terms and conditions of the proposed transaction into a single writing and separate writings will never be considered a single contract for purposes of Colombian law.<sup>10</sup> Furthermore, I am aware of no Colombian case law or arbitral awards applying Colombian law holding that a breach of one contract in a suite of colligated contracts that would give the non-breaching party a right to rescind or terminate that contract, also gave that non-breaching party the right to rescind or terminate another contract within the suite of colligated contracts. Once again, in fact, the case law says that the opposite is true: the right to rescind or terminate is always a question determined on a contract by contract basis, i.e., whether the breach is of sufficient severity, intensity and magnitude to give rise to a rescission or termination right under each particular contract.<sup>11</sup>

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<sup>10</sup> Colombian Supreme Court of Justice, Decision, November 15, 2017.

<sup>11</sup> Colombian Supreme Court of Justice, Ruling of 14 January 2005,

12. Under Colombian law, for various contracts to be considered *contratos coligados* three distinct elements must be satisfied: (a) the same parties execute a multiple of agreements; (b) the agreements have linking features of various nature or purpose; (c) the mentioned link creates an interdependent relationship between the subscribed agreements. *See Fiduciaria Integral S.A. v. Luis Eduardo Herrera Pulido, Final Award, June 17, 2005.*<sup>12</sup>

13. In other words, for two or more agreements to be considered linked, they must have an element of colligation with such legal relevance that the validity or enforcement of one agreement is contingent upon the validity or enforcement of its co-related agreement. *See Colombian Supreme Court of Justice, Decision, September 25, 2007.*

14. Moreover, under Colombian law, interrelated agreements are commonly used to facilitate complex business transactions which, for different reasons, the parties cannot consummate in a single document. *Id.* Consequently, through related agreements, it is possible to “(...) effectively execute a business transaction that could be obtained only in this manner”. *See Colombian Supreme Court of Justice, Decision, November 15, 2017.*<sup>13</sup>

15. Therefore, each of the agreements that are linked or colligated constitutes a separate component that enables the occurrence of a broader business transaction. But, notwithstanding this link, each agreement remains a *separate* and *autonomous* agreement with its *own nature* and *regulation*. *See Colombian Supreme Court of Justice, Decision, March 7, 1963; Decision, August*

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<sup>12</sup> The original in Spanish reads: “(...) la celebración de un número plural de contratos, acordados por las mismas partes, que se encuentran conectados por elementos de variada índole y propósito, lo cual hace que se presente, con determinados alcances, relación de dependencia entre los diferentes contratos, relación que tendrá manifestaciones en distintos campos como lo son, por ejemplo, la ejecución o cumplimiento, la interpretación o la eficacia de los contratos”

<sup>13</sup> The original in Spanish reads: “(...) la efectiva realización de una operación económica, que sólo de esta manera puede obtenerse.”

12, 1976; *Decision, October 6, 1999*.<sup>14</sup> For instance, the Colombian Superintendence of Corporations has recognized that assignment agreements “are independent and autonomous agreements with respect to the original agreement from which the assignment is derived”. *See Colombian Superintendence of Corporations, Decision 44738, October 3, 2015*.<sup>15</sup>

16. The Colombian Supreme Court of Justice has also recognized this principle, stating that “(...) the parties subscribe agreements that, while ***retaining their identity*** and ***having their own regulation***, are nonetheless bound with each other, functionally and in a relationship of reciprocal dependence”. *See Colombian Supreme Court of Justice, Decision, November 15, 2017*.<sup>16</sup>

17. A simple example used by Colombian courts to explain colligated agreements is a sale and purchase agreement where the buyer pays the purchase price with a loan. This situation implies the execution of two contracts that are linked to each other, as, because the loan agreement only has a reason to exist if the sale and purchase agreement is executed and, correspondingly, only when the money has been transferred to the seller can the sale and purchase be fulfilled. Hence, it is evident that there is an interdependent relationship between the mentioned agreements. Nonetheless, this relationship does not mean that the sale and purchase loses its nature as a single executive contract, even where the loan agreement is a successive performance contract (*See Colombian Supreme Court of Justice, Decision, February 21, 2012*)<sup>17</sup>, or that the rules of the sale

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<sup>14</sup> See Supreme Court of Justice of Colombia, Ruling of March 7, 1963; Supreme Court of Justice of Colombia, Ruling of August 12, 1976; Supreme Court of Justice of Colombia, Ruling of October 6, 1999.

<sup>15</sup> Quoting Acevedo Rehbein, Alberto, *La cesión de créditos y las cláusulas de mejores esfuerzos en el derecho comparado*, Bogotá, Universidad del Rosario, 2006, p. 55.

<sup>16</sup> The original in Spanish reads: “(...), las partes le dan vida a diversos contratos que, aun conservando su identidad típica y por ende quedando sometidos a la regulación que les es propia, quedan sin embargo coligados entre sí, funcionalmente y con relación de reciproca dependencia.”

<sup>17</sup> Stating that loan agreements are successive performance contracts.

and purchase agreement can be applied to the loan agreement and *vice versa*. See *Colombian Supreme Court of Justice, Decision, November 15, 2017*.<sup>18</sup>

18. Indeed, Colombian courts and arbitration tribunals applying Colombian law have repeatedly affirmed that related agreements cannot be understood as *one atypical agreement with mixed purpose*, but as *various agreements* that have an “(...) *independent cause, even though [as colligated agreements] they carry out a complex and unitary business transaction (...)*”. *Id.*

19. Additionally, Mr. Arrubla states that “the RSPA and the *USAV Agreements* are linked contracts, which, under the Colombian legal system, should be interpreted together.” See Arrubla’s Declaration ¶ 14. While colligated agreements may certainly be interpreted at the same time, it is a substantially different thing altogether to argue that the nature of those agreements can be changed because of the linkage to each other, which, as discussed above, is not a consequence of the colligated contracts regime under Colombian law. In summary, the purpose of the *contratos coligados* doctrine is not to treat separate contracts as a single contract, but simply as an aid to courts when considering how to interpret one contract within a suite of linked contracts, or as a framework for understanding links among a series contracts toward a common business objective.

**3. Under Colombian Law, the rescission of the RSPA and the unwinding of the sale and purchase is an option for USAV which may be exercised at its sole discretion**

20. The Debtors state that “the Debtors are seeking to breach the RSPA and the other USAV Agreements. The result of such breach is specified under the RSPA itself—the liquidated damages set forth in § 6.02 and § 6.03 of the RSPA (...). USAV will have a pre-petition claim for

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<sup>18</sup> The original in Spanish reads: “(...), las partes le dan vida a diversos contratos que, aun conservando su identidad típica y por ende quedando sometidos a la regulación que les es propia, quedan sin embargo coligados entre sí, funcionalmente y con relación de recíproca dependencia.”

Liquidated Damages against the Debtors and, once that amount is paid, 100% of the economic interest in the Receivables will revert to the Debtors”. *See* Debtors’ Reply ¶ 6.

21. As a matter of Colombian law, the Debtors are wrong. Under the facts of this case and the express terms of the RSPA, which are valid and enforceable under Colombian law and determine the outcome of this question. The RSPA sets forth that “upon the occurrence of a Trigger Event, the Purchaser *may* (...) prematurely terminate (*resolver*) this Agreement”. *See* RSPA § 6.02. If USAV elects to prematurely terminate the RSPA, an obligation on the part of the Seller to pay the Liquidated Damages (“as a consequence of the early termination (*resolución*) of this Agreement, the Parties agree that the Seller shall pay to the Purchaser liquidated damages”. *See* RSPA § 6.02. Furthermore, “once the Liquidated Damages is paid in full as provided for hereunder, the Purchaser *may* proceed to unwind the purchase and sale by transferring back to the Seller the Contract Rights, the Receivables, and all Collections derived therefrom”. *See* RSPA § 6.02. In other words, again, the option to unwind the sale and purchase under the RSPA is entirely at the election of USAV. Under the express terms of § 6.02, in no case can Aerovías force USAV to return the Contract Rights and Proceeds to Aerovías.

22. In the declaration submitted by Mr. Arrubla, he states that “both the termination of the RSPA due to its breach, and the occurrence of the Trigger Event of § 6.03 mean, among other effects, that the credits and economic rights assigned to USAV must be returned to Avianca” *See* Arrubla’s Declaration ¶ 21.

23. This interpretation of § 6.03 made by Mr. Arrubla is wrong as it contradicts and goes against the express wording of § 6.03 of the RSPA. The occurrence of the Trigger Event mentioned under § 6.03 does not result in the automatic unwinding of the sale and purchase and, therefore, does not cause by itself the return of the credits and economic rights to the Seller. In the

case of the Flight Impairment Trigger Event (or any other Trigger Event), USAV must elect to unwind the sale and purchase. As such, just like under § 6.02, under the express terms of § 6.03, in no case can Avianca force USAV to return the Contract Rights and Proceeds to Avianca.

24. Under § 6.03 of the RSPA, in the event of the occurrence of the Trigger Event regulated pursuant to § 6.01(h) of the RSPA (the “Insolvency Trigger Event”), the Liquidated Damages “automatically become and be forthwith due and payable”. *See* RPSA § 6.03. Under §6.01(h) of the RSPA there is a Trigger Event if “any Insolvency Event occurs with respect to the Seller”. The definition of an Insolvency Event under the RSPA includes “the filing of a voluntary petition in bankruptcy”. *See* §1.01 of the RSPA. Thus, for the Seller to be obliged to pay the Liquidated Damages in case of the Insolvency Trigger Event when an Insolvency Event (as defined in the RSPA) is verified, it is not required that the Purchaser resorts to the early termination of the RSPA, as this requirement is not expressly included under § 6.03. That is to say, the Purchaser has the right to receive the Liquidated Damages without terminating the RSPA. Mr. Arrubla himself recognizes that the termination is not automatically applicable in this scenario when he states that “in light of the occurrence of the Trigger Event referred to in section 6.03 of the RSPA, USAV **can** immediately claim the liquidated damages clause as an advance estimate of losses, and **request** the termination of the contract, as the result of the reference made in section 6.02”. *See* Arrubla’s Declaration ¶ 19. Accordingly, Mr. Arrubla recognizes that such termination (and any unwinding the sale and purchase following payment in full of the Liquidated Damages) in all cases is subject to USAV’s election in its sole discretion.

25. In short, under the valid and enforceable terms of the RSPA, which govern this question, the unwinding of the sale and purchase is not automatic once a Trigger Event has occurred under § 6.02 or § 6.03, considering that both provisions require the election of the

Purchaser to terminate the RSPA. Furthermore, the treatment under the RSPA is aligned with the general provisions under Colombian law pursuant to which (a) the termination remedy is not applicable in all cases<sup>19</sup>; and (b) when applicable, the Colombian law defers the exercise of the termination or rescission of the agreement to the sole election of the non-breaching party.

**4. Under Colombian Law, the Liquidated Damages provision is enforceable and shall be deemed to be performed when paid in full as provided under the RSPA**

26. Both the Debtors (*See Debtors' Reply*, ¶ 52) and Mr. Arrubla (*See Arrubla's Declaration*, ¶ 24) have acknowledged the enforceability of the Liquidated Damages provision set forth in §6.02 of the RSPA under Colombian law. I *agree* with him. The Liquidated Damages provision is valid, binding and enforceable under Colombian law.

27. However, the Debtors assert that “through the Debtors’ eventual plan of reorganization, the Debtors will provide treatment for and discharge USAV’s claim”. *See Debtors' Reply*, ¶ 55. And that “once the Liquidated Damages claim is discharged, USAV will be obligated to send all Receivables it receives to the Debtors”. *See Debtors' Reply*, ¶ 56.

28. These statements by the Debtors are *wrong*. Payment of Liquidated Damages has different treatments in §6.02 and §6.03 of the RSPA.

29. Indeed, under §6.02 of the RSPA “the Purchaser may prematurely terminate (*resolver*) this Agreement (...) As a consequence of the early termination (*resolución*) of this Agreement, the Parties agree that the Seller shall pay to the Purchaser liquidated damages (*clausula penal como estimación minima y anticipada de perjuicios*) (the “Liquidated Damages”)”.

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<sup>19</sup> *See Jairo Gómez Rueda v. Prodain S.A., Final Award June 11, 2008*. (...) not any breach can be cause of termination of a contract, to the extent that total and definite breach of an obligation does not have the same effect as partial, imperfect or late execution thereof. (...). It is thus clear that with respect to this matter, the serious breach of an essential obligation is sufficient cause to achieve termination of the contract.



30. Under § 6.02 of the RSPA, then, payment of Liquidated Damages is the *consequence* of the early termination of the RSPA, should USAV decide to exercise this right. “[O]nce the Liquidated Damages is *paid in full as provided for hereunder*, the Purchaser may proceed to unwind the purchase and sale by transferring back to the Seller the Contract Rights, the Receivables, and all Collections derived therefrom”. See RSPA § 6.02. As a result, the unwinding of the sale and purchase, if USAV elects to do so, will take place only after the Seller pays in full the Unwind Amount calculated in the corresponding date of determination, as this is the amount provided under the RSPA as Liquidated Damages.<sup>20</sup>

31. In turn, as previously noted (as noted above), pursuant to § 6.03 in the case of a Insolvency Trigger Event “the Liquidated Damages shall automatically become and be forthwith due and payable and all amounts deposited in the New York Pass-Through Account, the Collections Account and the Debt Service Account shall be disbursed to pay such amounts”, without the need to terminate or unwind (*resolver*) the RSPA.

32. Pursuant to Colombian law, liquidated damages may be reduced under very specific circumstances. Firstly, when a judge determines that it constitutes a *cláusula penal enorme*. This is, when the amount of the liquidated damages exceeds twice the value of the breached obligation, in which case the judge may reduce the liquidated damages up to the double of the value of the corresponding obligation.<sup>21</sup> See Colombian Civil Code Article 1601. The liquidated damages may also be reduced when the breaching-party evidences that its breach was partial. In such a case, the

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<sup>20</sup> “Payment in full as provided hereunder” requires that the Liquidated Damages in fact be paid in full as required under the RSPA. Impairment and discharge of USAV’s claim for Liquidated Damages would therefore not constitute “payment in full” as provided under the RSPA.

<sup>21</sup> Colombian Civil Code, Article 1601. “Where, by the main agreement, one of the parties has undertaken to pay a specified amount, as equivalent to what the other party is required to perform, and the liquidated damages also consists in the payment of a specified amount, the non-breaching party may be required to reduce the amount up to twice the amount of the first obligation, including its value”. In Spanish reads “cuando por el pacto principal, una de las partes se obligó a pagar una cantidad determinada, como equivalente a lo que por la otra parte debe prestarse, y la pena consiste asimismo en el pago de una cantidad determinada, podrá pedirse que se rebaje de la segunda todo lo que exceda al duplo de la primera, incluyéndose ésta en él.”

judge may reduce the liquidated damages in proportion to its performance. *See Biomax Biocombustibles S.A. v. José Agustín Rodríguez Silva. Final Award November 13, 2016.*

33. The Liquidated Damages provision under the RSPA is structured in such a way that the amount payable by the Seller is reduced over time as the Proceeds are effectively transferred to the Purchaser. Indeed, the Unwind Amount (that is to say, the amount payable when the Liquidated Damages are triggered) is calculated based mainly on the Unsettled Balance, which is its key component. The Unsettled Balance, in turn, is an amount determinable based on the difference between the Advance Payment and the aggregate Monthly Settlement Amounts effectively transferred to the Purchaser. *See RSPA § 1.01.* Consequently, at any time the Unwind Amount is calculated, it will reflect the value of Proceeds which USAV expended to purchase the Contract Rights, less any amount of prior Proceeds that it has already received (plus certain other amounts accrued as a consequence of the occurrence of a Trigger Event). Based on the foregoing, the Unwind Amount is within the limits set forth pursuant to Colombian laws in order for it not to be considered as a *cláusula penal enorme*.

34. By contrast, as a matter of Colombian law, it has been expressly recognized that the financial situation of the breaching-party is not a criteria to determine whether a liquidated damages provision under Colombian law would need to be reduced. “[I]t is also clear that in determining the amount of the liquidated damages it is not appropriate to take into consideration the conduct of the debtor himself or his financial situation”. *See Luis Alexander Prieto Chaparro v. Construcciones Benavides Ingenieros Contratistas LTDA, Final Award June 21, 2006.*

35. Based on the foregoing, it is my consideration that, under Colombian laws, there are no grounds to support the reduction of the Liquidated Damages. Therefore, when due and

payable, the Seller would have to pay to the Purchaser the **full** value of the Unwind Amount, as provided under the RSPA.

5. ***Under Colombian Law, RSPA is clear in determining “the real intent” of the parties as a final and definitive sale***

36. In his declaration, Mr. Arrubla states that the “real intent” of the parties, through the RSPA, was to create a form of possession of the Contract Rights but not to transfer them to the USAV. *See* Arrubla’s Declaration. ¶ 20.

37. This is **incorrect** because, as a matter of Colombian Law, the only way to recharacterize an agreement as something other than what is expressly provided for in the terms of the contract is through a judicial declaration. Thus, in this scenario, only a judge can determine the real “*nomen juris*” of the contract. In this case, the recharacterization would have to be through a simulation action (*acción de simulación*) as explained below.

38. Such a judicial qualification is made considering the nature and content of the agreement and following the legal reality desired by the contractual parties, which was designed to achieve the economic and social purpose pursued through the subscription of the contract. *See Manuel García, Teoría General de las Obligaciones y Contratos.*<sup>22</sup> In order to achieve the mentioned purpose, the judge must mainly consider the essential obligations of the agreement, that is to say, those obligations that enable its existence, and not those obligations that are secondary or ministerial.

39. In the case of the RSPA, it is clear that the *nomen juris*, or “real intent,” of the parties was to execute a true and definite sale, as the essential obligations of the RSPA are the ones of a sale and purchase agreement. *See Colombian Council of State, Decision, April 26, 2012;*

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<sup>22</sup> Manuel García Amigo. *Teoría General de las Obligaciones y Contratos*. McGraw-Hill. Madrid. 1995. Pág. 352

*Decision, April 1, 2016.* There is a clear and unequivocal consent between the parties that through the RSPA, acting as a transfer agreement (*título*), and the Notice and Consents, acting as an act of transfer (*modo*) the Seller transferred the Contract Rights (including the rights to all future Collections that are the Proceeds of those rights) and accrued Receivables to the Purchaser in consideration for the Purchase Price.

40. In short, the wording of the RSPA is clear and without any ambiguity, and the RSPA contains all of the essential elements of a sale and purchase agreement. But under Colombian law, the party that considers that the agreement does not reflect “the real intent” has the burden to prove the existence of a simulated accord (*acuerdo simulatorio*) which intends to hide the real agreement.

41. As a matter of Colombian law, parties can create a simulated transaction, that is to say “(...) a simulated business which seems to be different from reality as it does not exist at all or it is different from the one it appears”. See Francisco Ferrara. *La Simulación de los Negocios Jurídicos*.<sup>23</sup> In these cases, the existence of an accord between the parties that seek to hide the real agreement from third parties is mandatory. In other words, the “essential issue is the agreement of the contracting parties to simulate, since it is not conceivable that only one of the [parties] has that objective when the other one ignores it”. See *Colombian Supreme Court of Justice, Decision, February 15, 2000*.<sup>24</sup>

42. The above has been continuously analyzed by the Colombian Supreme Court of Justice. For example, in a 1985 case (as noted below), the seller claimed the sale and purchase

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<sup>23</sup> Francisco Ferrara. *La simulación de los negocios jurídicos*. Editorial Revista Derecho Privado. Madrid. 1960. Pag. 43 The original in Spanish reads: (“(...) *negocio simulado es el que tiene por aspecto contrario a la realidad, o porque no existe en absoluto, o porque es distinto de como aparece*”)

<sup>24</sup> The original in Spanish reads (“*lo esencial es el acuerdo de las partes contratantes en simular, pues no se concibe que solo una de ellas tenga ese propósito cuando la otra lo ignora*”)

agreement with a repurchase option subscribed between the parties was a simulated transaction, as the real intention between the parties supposedly was for the assets to be transferred as a guarantee of the loan, not as means of a true sale. Thus, the seller requested the recharacterization of the agreement.

43. Nonetheless, the Colombian Supreme Court of Justice was clear in determining that the clear intention of the seller was to sell because of “(...) the special circumstance of being able to reacquire the asset with the agreed payment or the consigned sale price. It is not possible, then, for the seller to later say that he did not want to sell the good but that he just simply wanted to receive the money and deliver the goods as security”. *See Colombian Supreme Court of Justice, Decision, January 29, 1985.*<sup>25</sup> Hence, in this case, the claim for recharacterization was denied as the seller did not prove the existence of the simulated accord.

44. Consequently, for the RSPA not to be considered a true sale and purchase agreement, the Seller would have to prove through a simulation action (*acción de simulación*) (a) that the parties agreed to structure the operation as a loan, and (b) that both parties had the intention to hide the true nature of the loan and disguise it as a sale and purchase agreement. *Neither element exists in the present case.*

**6. Under Colombian Law, ex post facto allegations of the Seller denying the RSPA as a true sale and purchase agreement breach the principle of non venire contra factum proprium**

45. In his declaration, Mr. Arrubla states that, in order to determine the “real intent” of the parties, the judge must take into consideration various factors, among others, the circumstances that surrounded the negotiation and execution of the contract. *See Arrubla’s Declaration.* ¶ 28.

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<sup>25</sup> The original in Spanish reads (“(...) *La voluntad cuando se expresa en sentido de vender si es real o, mejor, querida, bajo la especial circunstancia de poder readquirir el bien con el pago de lo pactado o de o consignado como precio de la venta. No le es dable, entonces, al vendedor decir, luego, que no deseaba enajenar la cosa sino de manera simple recibir el dinero y entregar la cosa en garantía (...)*”)

46. This is true, but actually disproves the Debtors' point. Indeed, in 2017, the Seller's Colombian counsel stated that "[t]he sale and transfer of the Receivables and the Contract Rights under the RSPA (and the right to receive all present and future Collections as a consequence of the exercise of such Contract Rights under the Card Processing Agreements) constitutes a **valid** and **irrevocable sale** and **transfer** of the Receivables and the Contract Rights existing on the date of execution of the RSPA" See legal opinion by Gómez Pinzón, 2017.<sup>26</sup>

47. Taking into consideration the context in which the RSPA was negotiated and executed to determine the real intent of the parties, the above constitutes clear evidence that both parties realized that the RSPA was, in fact, a sale and purchase agreement. The clear and objective legal opinion rendered by the Seller's Colombian counsel created on USAV a legitimate expectation that both parties consider the transaction as "a **valid** and **irrevocable sale**", that is, a true sale.

48. However, both the Debtors' (See Debtors' Reply. ¶ 47; Debtors' complaint against the Purchaser. ¶ 23) and Mr. Arrubla's (See Arrubla's Declaration. ¶ 20) interpretation, according to which the RSPA does not constitute a true sale, would mean that the Seller is completely going against its own previous acts, thus breaching the principle of *non venire contra factum proprium*.

49. The doctrine of *non venire contra factum proprium* has been recognized under Colombian law as a development of the objective good faith principle. The Colombian Constitutional Court has described it as "A legal issue based on the principle of good faith (...) pursuant to which, the individuals and the public authorities must abide by the tenets of good faith. [A] constitutional principle, which punishes as inadmissible all licit claims that go against the behavior [previously] executed by the individual." See Colombian Constitutional Court, Decision

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<sup>26</sup> See legal opinion of Gomez Pinzon Abogados, November 2017. Pg. 3.

T-295, 1999.<sup>27</sup> Therefore, the principle of good faith is breached when “Someone in a specific situation attempts to win a dispute going against its previous behaviors, [as] this constitutes a disloyal and unfair conduct.” See Luis Díez Picazo, *La Doctrina de los Actos Propios*.<sup>28</sup>

50. In this regard, the Colombian Supreme Court of Justice has stated that such theory underlines “the coherence required in the behavior of persons in such a way that what has been done in the past, which has served, in turn, as a determinant or referent of the behavior of others or that has, objectively, nourished certain expectations, cannot be contradicted in a surprising, capricious or arbitrary way if this transcends the personal sphere and causes harm to others.” See *Colombian Supreme Court of Justice, Decision, January 24, 2001*.<sup>29</sup> Consequently, the doctrine of *non venire contra factum proprium* constitutes a “limitation to the development of a subjective right, [as this principle] intends to obtain in persons a consistent behavior and their respect of the constitutional principle of good faith.” See Mariana Bernal, *El Deber de Coherencia en los Contratos y la Regla del Venire Contra Factum Proprium*.<sup>30</sup>

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<sup>27</sup>Constitutional Court, Ruling T-295/99, May 4, 1999, Issuing Justice. Alejandro Martínez Caballero. Self-translation. The original in Spanish reads: “Un tema jurídico que tiene como sustento el principio de la buena fe es el del respeto al acto propio, en virtud del cual, las actuaciones de los particulares y de las autoridades públicas deberán ceñirse a los postulados de la buena fe. Principio constitucional, que sanciona como inadmisibles toda pretensión lícita, pero objetivamente contradictoria, con respecto al propio comportamiento efectuado por el sujeto.”

<sup>28</sup> Luis Díez- Picazo. *La Doctrina de los Actos Propios*, 1963, Barcelona, Pg. 143. Self-translation. The original in Spanish reads: “La conducta contradictoria es una contravención o una infracción al deber de buena fe. Ya antes hemos señalado que el hecho de que una persona trate, en una determinada situación jurídica, de obtener la victoria en un litigio, poniéndose en contradicción con su conducta anterior, constituye un proceder injusto y falto de lealtad.”

<sup>29</sup> Self-translation. The original in Spanish reads: “(...) la teoría de los actos propios o “venire contra factum proprium non valet”, que en definitiva conclusión, puede anunciarse que es la coherencia exigida en el comportamiento de las personas, de tal forma que lo realizado en el pasado, que ha servido, a su vez, como determinante o referente del proceder de otras o que ha alimentado, objetivamente, ciertas expectativas, no pueden ser contrariadas de manera sorpresiva, caprichosa o arbitraria, si con ello trasciende la esfera personal y genera perjuicio a los demás.”

<sup>30</sup> Mariana Bernal Fandiño. *El Deber de Coherencia en los Contratos y la Regla del Venire Contra Factum Proprium*, 2008, Bogotá D.C., Pg. 309. Self-translation. The original in Spanish reads: “Un límite al ejercicio de un derecho subjetivo con el fin de obtener, en las relaciones jurídicas, un comportamiento consecuente de las personas y el respeto del principio constitucional de la buena fe”.



51. In the end, this doctrine, which has its equivalent in common law in the doctrine of estoppel, aims to protect, the interests of parties who have reasonably trusted or relied on the manner in which their counterparty acted in connection with a given matter so as to give effect to the good faith expectations of the relying party. In other words, “*prior behaviors create legal situations that become referents when evaluating actual and future actions which are factually and legally similar, [so it is] not possible [for the person] to capriciously depart from such effects.*” See Colombian Supreme Court of Justice, Decision, January 24, 2011.<sup>31</sup>

52. Thus, for the doctrine of *non venire contra factum proprium* to be applicable, certain requirements must be met which, according to the Colombian Supreme Court of Justice, are the following: “(i) a relevant behavior that creates, on the other person, a degree of legitimate expectation on the materialization, in the future, of some particular consequences; (ii) that, afterwards, there is another behavior (perhaps a claim) that, evidently and objectively, contradicts the previous one; (iii) that the new situation has legal significance and the capacity to affect an existing situation; and, (iv) that there is an identity between the parties involved in one and in the other situation”. See Colombian Supreme Court of Justice, Decision, August 29 of 2014.<sup>32</sup>

53. Certainly, in the case at hand, the assurance given by the Seller, through its Colombian Counsel, that the RSPA constituted “a valid and irrevocable sale and transfer”<sup>33</sup> created a legitimate expectation of USAV. Thus, as a matter of Colombian law, it would be impermissible

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<sup>31</sup> Self-translation. The original in Spanish reads: “(...) *Los antecedentes conductuales crean situaciones jurídicas que devienen como referentes a observar frente a actuaciones presentes y futuras, de similar textura fáctica y jurídica, no pudiendo sustraerse caprichosamente de sus efectos, génesis esta de la llamada “Teoría de los Actos Propios.”*”

<sup>32</sup> Self-translation. The original in Spanish reads: “(...) *i) una conducta relevante que genere en la otra persona un grado de confianza legítima sobre la realización o concreción, en el futuro, de unas consecuencias en particular; ii) que, con posterioridad, emerja otra conducta (quizás una pretensión) que contradiga con evidente y objetiva incoherencia, los antecedentes plantados; iii) que la nueva situación presentada tenga trascendencia en lo jurídico y la virtualidad para afectar lo existente; y, iv) que haya identidad entre quienes resultaron involucrados en uno y otro episodio.*”

<sup>33</sup> Declaration of Gomez Pinzon Abogados, November 2017. Pg. 3.

for the Seller to go against its own previous acts by affirming *ex post facto* that the RSPA is not a sale and purchase agreement. The *non venire contra factum proprium* –an established principle under Colombian law– prohibits the Seller from doing so.

**7. Under Colombian Law, the Seller has the obligation to act in good faith when replacing the Card Processing Agreements**

54. The Debtors have stated that “rejecting the RSPA gives the Debtors the option of replacing the Card Processing Agreements with new agreements that would not be subject to the USAV Agreements”. *See* Debtors’ Reply. ¶ 57.

55. Under § 2.03(b) of RSPA, which is a valid and enforceable provision under Colombian law, any Card Processing Agreement may only be replaced *pursuant to* a Permitted Termination (as defined in the RSPA). To my knowledge, a Permitted Termination has not occurred yet. In turn, Card Processing Agreements must be replaced if “any of them is declared illegal or invalid or, for any reason whatsoever, if the Card Processing Agreements cease to exist”. *See* RSPA § 2.03(b). To my knowledge, the Card Processing Agreements have not been declared illegal or invalid or have ceased to exist.

56. As a matter of Colombian law, good faith constitutes a principle provided under Article 83 of the Colombian Constitution. Such an article enforces private and public authorities to execute the sum of their acts with good faith. *See Colombian Constitution, Article 83*.<sup>34</sup> In other words, “this article, contemplates the principle of good faith which intends to protect a right and establish a directive for the state’s administration. (...) the right which the presumption of good faith seeks to protect, guarantees individuals that their word is believed by others ... this is essential

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<sup>34</sup> Self-translation. In Spanish reads: “*Las actuaciones de los particulares y de las autoridades públicas deberán ceñirse a los postulados de la buena fe, la cual se presumirá en todas las gestiones que aquellos adelanten ante éstas*”.

for the protection of trust both in ethics and in the security of the legal system.” *See Colombian Constitutional Court, Decision C-575 de 1992, October 29, 1992.*<sup>35</sup>

57. Both the Colombian Civil Code and the Colombian Code of Commerce proclaim that contracts must be executed in good faith. Under Article 871 of the Colombian Code of Commerce, “Contracts must be entered into and be performed in good faith and, in consequence, they oblige [the parties thereto] not only to the express agreements between them, but also to all other matters corresponding to their nature according to the law, customs and equity”. Further, according to Article 1603 of the Colombian Civil Code, “Contracts must be performed in good faith and, therefore, they oblige not only to what they expressly provide for, but also to all other matters that stem from the nature of the obligation or that, by law, belong to them.”. If a party to a contract breaches this obligation to perform a contract in good faith, this will trigger its “obligation to indemnify the damages that may cause”. *See Colombian Constitutional Court, Decision C-790 of 2011, October 20, 2011.*

58. Consequently, certain “obligations such as the duty to inform, the binding effect of what has been negotiated, the prevalence of the interest of the parties over the written content [of the contract], [the duties of] loyalty, diligence, cooperation, disclosure, solidarity, and [the principle] of *non venire contra factum proprium*, are included in the contract in accordance with the principle of good faith (...) even if they were not expressly agreed by the parties.” *See Marta Neme, El Principio de Buena Fe en Materia Contractual en el Sistema Jurídico Colombiano.*<sup>36</sup>

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<sup>35</sup> Self-translation. The original in Spanish reads: “Este artículo consagra el principio general de la buena fe, el cual pretende simultáneamente proteger un derecho y trazar una directiva para toda la gestión institucional. El destinatario de lo primero es la persona y el de lo segundo el Estado. El derecho que se busca garantizar con la presunción de la buena fe es el derecho de las personas a que los demás crean en su palabra, lo cual se inscribe en la dignidad humana, al tenor del artículo primero de la Carta. Ello es esencial para la protección de la confianza tanto en la ética como en materia de seguridad del tráfico jurídico.”

<sup>36</sup> Marta Neme Villarreal, El principio de Buena Fe en Materia Contractual en el Sistema Jurídico Colombiano, Revista de Derecho Privado, Universidad Externado de Colombia, Pg. 90-91. Self-translation. The original in Spanish reads: “(...)obligaciones de información, de vinculación al pacto celebrado, no a la letra sino al verdadero interés de las partes, de lealtad, de diligencia, de

59. Additionally, the principle of good faith is applicable in all “in all the phases that constituted a contract, *in extenso*”, i.e., from contract formation and the establishment of legal relations among the parties, through the performance of the parties obligations toward effectuating the purpose of the contract, to the end or consummation of the contract. *See Colombian Supreme Court of Justice of Colombia, Decision, August 2, 2001.* <sup>37</sup>

60. In my opinion, if Aerovías del Continente Americano – Avianca, in its capacity as Seller under the RSPA, replaces the Card Processing Agreements in the absence of a Permitted Termination, it is breaching its express obligations under the contract and also the duties to perform the RSPA in good faith, as provided for under Colombian law, and, therefore, must indemnify the damages that may be caused as a consequence therefrom.

61. Terminating or rejecting the Card Processing Agreements and entering into new replacement contracts in order to defeat the RSPA as the Debtors suggested would clearly go against the principle of good faith, as it would disregard the intentions of the parties and prevent them from relying on the legitimate assurances offered by the other party during the course of both the pre-contractual and contractual phases of the RSPA.

**8. In any event, the Purchaser will have a security interest under Colombian law over the replacement Card Processing Agreements executed by the Seller**

62. If the Seller does not comply with the provisions of § 2.03(b) of the RSPA, the corresponding replacement Card Processing Agreement will be subject to a security interest under the Colombian Purchaser Security Agreement (as defined in the Supplemental Brief), pursuant to

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*cooperación, de transparencia de solidaridad, de no contrariar los actos propios, etc., todas las cuales por virtud de la fuerza integradora de la buena fe y de su carácter normativo se entienden incorporadas al contrato, atendiendo a la naturaleza del mismo y de las particulares circunstancias del caso, sin necesidad de que hayan sido expresamente pactadas por las partes.”*

<sup>37</sup> “(...) como quiera que se proyecta a lo largo de las diferentes fases que, articuladas, conforman el plexo contractual —en un sentido amplio—: la atinente a la formación del negocio jurídico, lato sensu (fase formativa o genética), la relativa a su celebración (fase de concreción o de perfeccionamiento) y la referente a su desenvolvimiento, una vez perfeccionado (fase ejecutiva; de consumación o post contractual).”

the provisions of § 2.01 of the same: “the Grantor hereby grants to the Secured Party a movable guarantee (*garantía mobiliaria*) in the form of a first priority pledge (the “Pledge”) on the following future assets and rights, should they belong to the Grantor in the following circumstances: (...) the Contract Rights under any Additional Card Processing Agreement, and the Future Revenues and Collections derived therefrom, should any such Contract Rights, Future Revenues and Collections not be transferred to the Secured Party pursuant to the provisions of the RSPA.”

63. In my opinion, even if a new Card Processing Agreement is entered into by the Seller in breach of its express duties under the contract and the good faith obligation not to enter into such agreement in the absence of a Permitted Termination, under Colombian law, the contract rights, future revenues and collections derived from such agreement should be considered as a Pledged Right and Asset under the Colombian Purchaser Security Agreement. Indeed, according to § 2.01(d) of the Colombian Purchaser Security Agreement, the Pledged Rights and Assets include “To the extent not otherwise included, all substitutions, *replacements*, accessions, products, and Proceeds of any or all of the foregoing (*bienes derivados y atribuibles*).”

64. The Debtors agree with this concept: “although the Colombian Back-Up Security Agreement grants a security interest in “Proceeds” of the collateral listed therein, “Proceeds” is not defined therein. Therefore, *what constitutes “Proceeds” is determined by Colombian law*. Under Colombian Law 1676 of 2013, which regulates guarantees over moveable assets in Colombia, a grantor can pledge any assets or money received from the substitution, transformation, or transfer of the assets that are pledged as collateral (*bienes derivados y atribuibles*)”. See Debtors’ Complaint. ¶ 30.

65. According to Law 1676 of 2013, *bienes derivados y atribuibles* are “those that can be identified *as coming from the originally assets subject to a lien, including new assets*, among others, cash and deposits in bank accounts and investment accounts, *resulting from* the sale, transformation or *substitution of the movable assets given as security*, regardless of the number and sequence of these sales, transformations or replacements (...)”. See Colombian Law 1676 of 2013, Article 8.

66. Therefore, it is my consideration that the contract rights, future revenues and Collections derived from the replacement Card Processing Agreements would be covered by the Pledge created pursuant to the Colombian Purchaser Security Agreement.<sup>38</sup>

**9. Under Colombian Law, the Purchaser holds full title and interest in property over the Contract Rights and the Proceeds**

67. The Debtors *incorrectly claim* that “the Debtors have a considerable interest in the property at issue: The Credit Card Receivables (...) collected under the Card Processing Agreements and the proceeds thereof”. See Debtors’ Reply. ¶ 4. In addition, the Debtors bring into question that the Purchaser has the full interest in the property of the Contractual Rights by stating that “the Objections ignore these facts, focusing instead on USAV’s *purported ownership* of the Contract Rights.” See Debtors’ Reply. ¶ 47. Under Colombian law, this is *wrong*.

68. Under Colombian law, upon the perfection of the sale and purchase agreement (*título*) and the perfection of the notices and consents required thereunder (*modo*), the Purchaser became the sole owner of the Contract Rights (and Proceeds thereof) and the accrued Receivables by the time of perfection of both the *título* and the *modo*. See Suescún Declaration. ¶ 5.

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<sup>38</sup> The Purchaser Security Agreement also creates a valid and enforceable security interest on existing Contract Rights and Proceeds and it secures *all obligations* under the RSPA and the Undertaking Agreement, including the obligation to deliver any Proceeds to USAV that the Debtors receive after the Effective Date of the RSPA. If the Debtors failed to comply with any such obligations, USAV would be entitled to enforce against the existing Contract Rights and Proceeds. As is evident from this, as a matter of Colombian law, the Purchaser Security Agreement gives USAV a secured claim against the Debtors for any breaches of the RSPA or Undertaking Agreement.

69. Based on the foregoing, the Purchaser holds the full interest in property (*derecho real de propiedad*) over the Contract Rights (and Proceeds thereof) and the accrued Receivables.

70. Under the RSPA the Seller only has the contractual right (*derecho personal*) to receive the Additional Purchase Price, among other rights. None of these rights amount to an interest in property in favor of the Seller over the Contract Rights and the Proceeds derived therefrom.

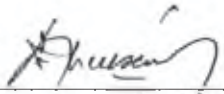
71. Solely when the unwinding of the sale and purchase is perfected at the discretion of the Purchaser pursuant to the provisions of § 6.02 of the RSPA, the Contract Rights and Proceeds at that time will be transferred back to the Seller, as part of the mutual restitutions (*restituciones mutuas*) that take place in a scenario of termination or rescission, in which case the Seller will gain back its interest in property (*derecho real*) over the same, provided that an act of transfer (*modo*) is duly perfected pursuant to Colombian law. ***But not before.***

72. It is noteworthy that, for purposes of the exercise of any rights whatsoever in favor of the Seller, the Seller would be deemed to be an unsecured creditor (*acreedor quirografario*) with respect to the Purchaser and, therefore, its claim will rank subordinated and junior in right of payment to the secured creditors (*acreedores prendarios*), such as the USAV Secured Lenders, of the Purchaser.



I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on August 18, 2020.

  
\_\_\_\_\_  
Jorge Suescún Melo

**EXHIBIT IV**

ORAL ARGUMENT REQUESTED

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**Case Nos. 1:20-cv-08008-LTS; 1:20-cv-08364-LTS**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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IN RE AVIANCA HOLDINGS S.A., ET AL.,  
*DEBTORS.*

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USAV SECURED LENDER GROUP,  
USAVFLOW LIMITED,  
*APPELLANTS,*

V.

AVIANCA HOLDINGS S.A., ET AL.,  
*APPELLEES.*

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APPEAL FROM THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
BANKR. CASE No. 20-11133 (MG)

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**APPENDIX TO OPENING BRIEF FOR  
APPELLANT USAV SECURED LENDER GROUP  
VOLUME 3 OF 5 (PAGES A885-A1001)**

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*Attorneys for the USAV Secured Lender Group*

Pursuant to Fed. R. Bankr. P. 8018(b)(1), in support of its brief filed concurrently herewith, Appellant USAV Secured Lender Group<sup>1</sup> submits this Appendix comprised of the following documents:

AX <sup>2</sup>	Document Description (Date of Entry)	Docket No.	App'x Page Range
<b>VOLUME 1</b>			
1	Docket entries from Main Chapter 11 Bankruptcy Case, <i>In re Avianca Holdings S.A.</i> , Case No. 20-11133 (MG) (Bankr. S.D.N.Y.)	N/A	A1-A106
2	Docket entries from Adversary Proceeding, <i>Avianca Holdings S.A. v. USAVflow Limited</i> , Case No. 20-01189 (MG) (Bankr. S.D.N.Y.)	N/A	A107-A111
3	Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts <sup>3</sup> (6/23/2020)	Bk.Dkt.306 <sup>4</sup>	A112-A131
4	Declaration of Adrian Neuhauser in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (6/23/2020)	Bk.Dkt.306-1	A132-A136
5	Contract Rights and Receivables Sale, Purchase and Servicing Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 1	A137-A270

<sup>1</sup> Capitalized terms used but not defined in this Appendix have the meanings provided in the USAV Secured Lender Group's opening brief.

<sup>2</sup> "AX" refers to the Appendix Exhibit Number, as cited in the USAV Secured Lender Group's opening brief.

<sup>3</sup> The cover notice to the Rejection Motion has been omitted.

<sup>4</sup> "Bk.Dkt." refers to docket entries from the main Chapter 11 bankruptcy case captioned *In re Avianca Holdings S.A.*, Case No. 20-11133 (MG) (Bankr. S.D.N.Y.).

6	Receivables Maintenance Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 2	A271-A303
7	Cash Management Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 4	A304-A336
8	Credomatic Notice of Transfer, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 5	A337-A374
9	Credomatic Consent and Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 6	A375-A381
10	AMEX Notice and Consent, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 7	A382-A409
11	Loan Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 9	A410-A569
<b>VOLUME 2</b>			
12	Complaint <sup>5</sup> (6/23/2020)	Ap.Dkt.1, <sup>6</sup> Bk.Dkt.307	A570-A581
13	USAVflow Limited's Objection and Reservation of Rights to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (7/22/2020)	Bk.Dkt.616	A582-A600
14	Legal Opinion of Gómez-Pinzón Abogados S.A.S., Dated December 12, 2017 (7/22/2020)	Bk.Dkt.616-1	A601-A611
15	Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (7/22/2020)	Bk.Dkt.617	A612-A645
16	Declaration of Jorge Suescún Melo in Support of Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order	Bk.Dkt.618	A646-A654

<sup>5</sup> Exhibits to the Complaint have been omitted. The USAV Secured Lender Group can provide all the exhibits upon the Court's request.

<sup>6</sup> "Ap.Dkt." refers to docket entries from the adversary proceeding captioned *Avianca Holdings S.A. v. USAVflow Limited*, Case No. 20-01189 (MG) (Bankr. S.D.N.Y.).

	Authorizing Rejection of Certain Executory Contracts (7/22/2020)		
17	Notice of Trigger Event, Dated March 31, 2020 (7/23/2020)	Bk.Dkt.619-1	A655-A660
18	Transcript of Telephonic Status Conference Held on July 27, 2020 <sup>7</sup> (7/28/2020)	Bk.Dkt.647	A661-A690
19	Official Committee of Unsecured Creditors' Reply in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/07/2020)	Bk.Dkt.681	A691-A702
20	Debtors' Reply to the Objections of USAV and the USAV Secured Lender Group to the Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/07/2020)	Bk.Dkt.683	A703-A734
21	Second Declaration of Adrian Neuhauser in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/07/2020)	Bk.Dkt.683-1	A735-A740
22	Email Communication amongst Avianca and Citibank, N.A., Between July 5, 2020 and July 8, 2020 (8/07/2020)	Bk.Dkt.683-4	A741-A744
23	Certified English Translation of Declaration of Jaime Alberto Arrubla-Paucar in Support of the "Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts" (8/07/2020)	Bk.Dkt.684-1	A745-A758
24	Supplemental Response of the Official Committee of Unsecured Creditors to the Court's Questions Posed at the July 27, 2020 Status Conference (8/18/2020)	Bk.Dkt.714	A759-A763

<sup>7</sup> All transcript indexes in this Appendix have been omitted. The USAV Secured Lender Group can provide the full index upon the Court's request.

25	Debtors' Response to the Court's Questions Posed at the July 27, 2020 Status Conference (8/18/2020)	Bk.Dkt.715	A764-A782
26	USAV Secured Lender Group's Supplemental Brief in Support of Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/18/2020)	Bk.Dkt.716	A783-A803
27	USAVflow Limited's Combined Response to (A) Debtors' Reply in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts and (B) Questions Posed by the Court at the July 27, 2020 Status Conference (8/18/2020)	Bk.Dkt.717	A804-A817
28	Sur-Reply of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/18/2020)	Bk.Dkt.718	A818-A850
29	Declaration of Vicente Lines in Support of the USAV Secured Lender Group's Supplemental Brief and Sur-Reply in Support of Objection to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/19/2020)	Bk.Dkt.719	A851-A857
30	Second Declaration of Jorge Suescún Melo in Support of Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/19/2020)	Bk.Dkt.720	A858-A884
<b>VOLUME 3</b>			
31	Option Agreement, Dated December 12, 2017 (8/19/2020)	Bk.Dkt.721-1	A885-A896
32	Waiver Request Letter from Avianca to the Lenders, the Agents, and USAV, Dated February 19, 2018 (8/19/2020)	Bk.Dkt.721-11	A897-A900



33	Waivers of Trigger Events, Dated on or about April 13, 2018 and November 27, 2019 (8/19/2020)	Bk.Dkt.721-12	A901-A956
34	Transcript of Hearing Held on August 19, 2020 (8/20/2020)	Bk.Dkt.743	A957-A980
35	Transcript of Hearing Held on August 18, 2020 (8/21/2020)	Bk.Dkt.742	A981-A998
36	Order with Questions that Counsel for the Parties Should Address During the Hearing of the Rejection Motion (8/25/2020)	Bk.Dkt.757	A999-A1001
<b>VOLUME 4</b>			
37	Avianca's August 26, 2020 Hearing Demonstrative (8/26/2020)	N/A	A1002-A1030
38	USAV Secured Lender Group's August 26, 2020 Hearing Demonstrative (8/26/2020)	N/A	A1031-A1067
<b>VOLUME 5</b>			
39	Transcript of Hearing Held on August 26, 2020 (8/27/2020)	Bk.Dkt.788	A1068-A1204
40	Memorandum Opinion Granting in Part and Denying in Part Debtors' Motion to Reject the USAV Agreements (9/04/2020)	Bk.Dkt.850	A1205-A1245
41	USAV Secured Lender Group's Notice of Appeal <sup>8</sup> (9/18/2020)	Bk.Dkt.959	A1246-A1251
42	USAVflow Limited's Notice of Appeal <sup>9</sup> (9/18/2020)	Bk.Dkt.960	A1252-A1257

<sup>8</sup> Exhibits to the USAV Secured Lender Group's Notice of Appeal have been omitted. Exhibit A to the Notice of Appeal, the Order, is included in this Appendix as Exhibit 40.

<sup>9</sup> Exhibits to USAV's Notice of Appeal have been omitted. Exhibit A to the Notice of Appeal, the Order, is included in this Appendix as Exhibit 40.

October 14, 2020  
New York, New York

Respectfully submitted,

**WHITE & CASE LLP**

By: /s/ Glenn M. Kurtz

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*Attorneys for the USAV Secured  
Lender Group*

**EXHIBIT 31**

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# OPTION AGREEMENT IN RESPECT OF THE ISSUED SHARES IN USAVflow LIMITED

December 12, 2017

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**OPTION AGREEMENT IN RESPECT OF THE ISSUED  
SHARES IN USAVFLOW LIMITED**

**THIS OPTION AGREEMENT IN RESPECT OF THE ISSUED SHARES IN USAVFLOW LIMITED** (this “**Agreement**”) is made on December 12, 2017, between **MAPLESFS LIMITED**, a company incorporated in the Cayman Islands the registered office of which is at PO Box 1093, Queensgate House, South Church Street, George Town, Grand Cayman, KY1-1102, Cayman Islands, solely in its capacity as trustee of the Trust (as defined below) (the “**Share Trustee**”), and **AVIANCA HOLDINGS S.A.**, a Panamanian company (“**Holdings**”), **TACA INTERNATIONAL AIRLINES S.A.**, a Salvadorian company (“**TACA**”), **AVIANCA COSTA RICA S.A.** (formerly known as Lineas Aéreas Costarricenses S.A.), a Coast Rican company (“**ACR**”), and **TRANS AMERICAN AIRLINES, S.A.**, a Peruvian company (“**TAA**” and, together with Holdings, TACA, and LAC, the “**Option Holders**”).

**RECITALS:**

The Share Trustee is duly licensed to carry on business as a trust company under the laws of the Cayman Islands and is the registered holder of 250 shares (the “**Shares**”) of US\$1.00 par value in USAVflow Limited (the “**Company**”). The Share Trustee holds the Shares subject to the terms of a trust (the “**Trust**”) formed pursuant to a declaration of trust dated December 12, 2017 (the “**Declaration of Trust**”).

The Company, as borrower, and the Option Holders, as guarantors, have entered into that certain Loan Agreement (the “**Loan Agreement**”), dated the date hereof, with the Lenders, Citibank, N.A., as the administrative agent for the Lenders (in such capacity, together with its successors in such capacity, the “**Administrative Agent**”), and Citibank, N.A., as the Collateral Agent for the Lenders (in such capacity, together with its successors in such capacity, the “**Collateral Agent**”).

Pursuant to the Loan Agreement, the Lenders have required that, as a condition to their making a US\$150,000,000 loan to the Company, the Option Holders shall have executed and delivered the Loan Agreement, including the unconditional guaranty of payment and performance contained as Section 8.19 thereof, to and in favor of the Secured Parties (the “**Guaranty**”), providing for the Option Holders to guaranty the Company’s full and prompt payment at maturity (whether by acceleration or otherwise) of all obligations of the Company arising under the Loan Agreement and the other Credit Documents.

To induce the Option Holders to execute and deliver the Guaranty, and as required under the Declaration of Trust, the Share Trustee is granting the Option contained herein to each of the Option Holders, jointly and severally.

**NOW, THEREFORE**, in consideration of the foregoing Recitals, **IT IS HEREBY AGREED** as follows:

**I. DEFINITIONS**

Terms defined in the Loan Agreement shall have the same meanings when used herein (including in the foregoing Recitals), unless a contrary intention shall be stated herein.

As used herein, the term “**Prepayment Amount**” shall mean the prepayment price at which the Borrower is entitled, as provided in Section 2.6 of the Loan Agreement, to prepay all, but not part, of the outstanding Loan on any Payment Date occurring at least 18 months after the Closing Date.

## 2. OPTION

- 2.1 The Share Trustee grants to each of the Option Holders, jointly and severally, an irrevocable option to purchase the Shares (the “**Option**”), subject to the terms and conditions hereof, for a price of: (i) in the case of the Loan Termination Option Exercise (as defined below) US\$750, payable to the Share Trustee, and (ii) in the case of the Prepayment Option Exercise (as defined below) US\$750, payable to the Share Trustee, plus the amount of the Prepayment Amount, calculated as if the Prepayment Date were the Exercise Date (as defined below) and payable, on behalf of the Share Trustee, for the account of the Company, directly to the Collateral Agent, for the benefit of the Secured Parties.
- 2.2 The Option shall be exercisable by any one or more of the Option Holders (i) at any time after payment in full of all amounts owing under the Credit Documents to the Secured Parties (the date of such payment being referred to herein as the “**Loan Termination Date**” and the exercise of the Option on or after the Loan Termination Date being referred to herein as the “**Loan Termination Option Exercise**” as applicable) or (ii) on any Payment Date occurring at least 18 months after the Closing Date and prior to the Loan Termination Date, but after payment in full of the Prepayment Amount directly by the Option Holders, on behalf of the Share Trustee, for the account of the Company, to the Collateral Agent, for the benefit of the Secured Parties (the exercise of the Option before the Loan Termination Date being referred to herein as the “**Prepayment Option Exercise**”).
- 2.3 The Option Holders (or any of them) shall exercise the Option by giving to the Share Trustee (and, in the case of a Prepayment Option Exercise, to the Administrative Agent) at least 30 days’ prior written notice. The written notice shall specify (i) the date on which the Option shall be exercised (the “**Exercise Date**”), (ii) the persons to whom the Shares are to be transferred (the “**Transferees**”), and (iii) if the Shares are to be transferred to different persons, the number of shares (not exceeding 250 in the aggregate) which each Transferee is to receive.
- 2.4 In the case of a Loan Termination Option Exercise, subject to receipt by the Share Trustee of US\$750 on or before the Exercise Date, the Share Trustee on the Exercise Date shall deliver the certificate(s) in respect of the Shares to the Option Holder exercising the Option (or, if more than one Option Holder, then as they jointly direct the Share Trustee in writing), together with duly completed and executed share transfer(s) in favour of the Transferees in the form attached as a schedule to this Agreement. All costs and expenses in connection with such transfer shall be borne by the exercising Option Holder(s).
- 2.5 In the case of the Prepayment Option Exercise, subject to receipt by the Share Trustee of (i) US\$750 on or before the Exercise Date and (ii) confirmation from the Collateral Agent that the Prepayment Amount has been received by the Collateral Agent, for the benefit of the Secured Parties, the Share Trustee on the Exercise Date shall deliver the

certificate(s) in respect of the Shares to the Option Holder exercising the Option (or, if more than one Option Holder, then as they jointly direct the Share Trustee in writing), together with duly completed and executed share transfer(s) in favour of the Transferees in the form attached as a schedule to this Agreement. All costs and expenses in connection with such transfer shall be borne by the exercising Option Holder(s).

### 3. UNDERTAKINGS

The Share Trustee undertakes and confirms that:

- 3.1 it will not sell, charge, mortgage, pledge, or in any other fashion dispose of or encumber its interest in the Shares, other than in accordance with the terms of the Declaration of Trust and this Agreement; and
- 3.2 it will require, as a condition to the appointment of any replacement trustee pursuant to Clause 16.1 of the Declaration of Trust that the replacement trustee enter into an option agreement on identical terms to this Agreement.

### 4. NOTICES

All notices under this Agreement shall be given in writing:

In the case of the **Share Trustee** to:

Address: PO Box 1093, Boundary Hall, Cricket Square,  
Grand Cayman, KY1-1102, Cayman Islands

Fax Number: (345) 945 7100

Attention: Peter Lundin

In the case of the Option Holders to:

#### **Avianca Holdings S.A.**

Address: Avenida Calle 26 # 59 – 15 P5, Bogota, Colombia

Fax Number:

Attention: The Directors

#### **TACA International Airlines S.A.**

Address: Avenida Calle 26 # 59 – 15 P5, Bogota, Colombia

Fax Number:

Attention: The Directors



**Avianca Costa Rica S.A.**  
(formerly known as Lineas Aéreas  
Costarricenses S.A.)

Address: Avenida Calle 26 # 59 – 15 P5, Bogota, Colombia

Fax Number:

Attention: The Directors

**Trans American Airlines, S.A.**

Address: Avenida Calle 26 # 59 – 15 P5, Bogota, Colombia

Fax Number:

Attention: The Directors

## **5. TRUSTEE LIMITED RECOURSE**

For the avoidance of doubt the Share Trustee has executed this Agreement solely in its capacity as trustee and with the intention of binding the Trust, and not in its personal capacity. Notwithstanding any other provisions of this Agreement: (i) the aggregate of all liabilities of the Share Trustee under this Agreement shall at all times and for all purposes be limited to the assets of the Trust; (ii) in no circumstances shall any liability attach to or be enforced or enforceable against any assets of the Share Trustee other than the assets which comprise the Trust (including without limitation any assets held in its personal capacity, in its capacity as trustee of any other trust, or in any other capacity whatsoever); (iii) all representations, warranties, undertakings, obligations and covenants in this Agreement are made, given, owed, or agreed by or in relation to the Trust and in the Share Trustee's capacity as trustee of the Trust, and for the avoidance of doubt shall not be construed to be made, given, owed, or agreed by or in relation to the Share Trustee in its capacity as trustee of any other trust or in its personal capacity or in any other capacity whatsoever; and (iv) the Share Trustee's obligations under this Agreement will be solely the corporate obligations of the Share Trustee, and there shall be no recourse against the shareholders, directors, officers, or employees of the Share Trustee for any claims, losses, damages, liabilities or other obligations whatsoever in connection with any of the transactions contemplated by the provisions of this Agreement.

## **6. COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same agreement.

## **7. GOVERNING LAW**

This Agreement is governed by and shall be construed in accordance with Cayman Islands law.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as a deed the day and year first above written.

**EXECUTED AS A DEED**

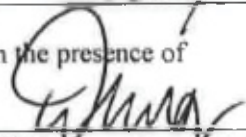
for and on behalf of

**MAPLESFS LIMITED**, solely in its capacity as trustee of the Trust

by:

  
\_\_\_\_\_  
**Phillip Hinds**  
Authorised Signatory

In the presence of

  
\_\_\_\_\_  
Witness **David Hogan**

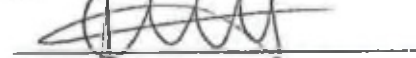
(Signature Page to Option Agreement in Respect of the Issued Shares in USAVflow Limited)

**EXECUTED AS A DEED**

for and on behalf of

**AVIANCA HOLDINGS S.A.**

by:



In the presence of



Witness

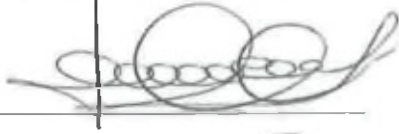
(Signature Page to Option Agreement in Respect of the Issued Shares in USAVflow Limited)

**EXECUTED AS A DEED**

for and on behalf of

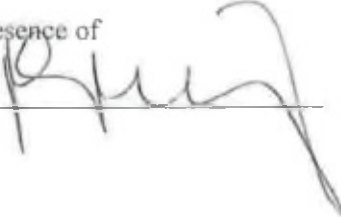
**TACA INTERNATIONAL AIRLINES S.A.**

by:



In the presence of

Witness



(Signature Page to Option Agreement in Respect of the Issued Shares in USAVflow Limited)

**EXECUTED AS A DEED**

for and on behalf of

**AVIANCA COSTA RICA S.A.**

(formerly known as Lineas Aéreas Costarricenses S.A.)

by:

Viviana Morúa

In the presence of

Carlos Serrano

Witness

[Signature]

(Signature Page to Option Agreement in Respect of the Issued Shares in USAVflow Limited)

**EXECUTED AS A DEED**

for and on behalf of

**TRANS AMERICAN AIRLINES S.A.**

by:



In the presence of



Witness

(Signature Page to Option Agreement in Respect of the Issued Shares in USAVflow Limited)

**SCHEDULE**

**SHARE TRANSFER**

We, [ ] (the “Transferor”), in consideration of the payment of [US\$ ] do hereby transfer to [ ] (the “Transferee”), the 250 Shares standing in our name in the undertaking called:

**USAVflow Limited**

to hold the same unto the Transferee.

Signed by the Transferor:

\_\_\_\_\_  
[Transferor]

In the presence of:

\_\_\_\_\_  
Witness

DATED this \_\_\_\_\_, 20\_\_\_\_.



**EXHIBIT 32**

Aerovías del Continente Americano S.A. Avianca  
Centro Administrativo, Avenida Calle 26  
No. 59-15 Piso 10, Bogotá, D.C.  
Colombia

Lenders, Administrative Agent,  
Collateral Agent and the Borrower  
(each as defined below)

February 1<sup>st</sup>, 2018

Ladies and Gentlemen,

Reference is made to that certain (i) Loan Agreement dated as of December 12, 2017 (the "Loan Agreement"), by and among USAVFLOW LIMITED, an exempted company incorporated with limited liability under the laws of the Cayman Islands with registered number 324668 and having its registered office at the offices of MaplesFS Limited, PO Box 1093, Queensgate House, Grand Cayman, KY1-1102, as borrower (the "Borrower"), each Person party thereto as a lender from time to time (the "Lenders"). AVIANCA HOLDINGS S.A., a company organized under the laws of Panama, TACA INTERNATIONAL AIRLINES, S.A., a company organized under the laws of El Salvador, AVIANCA COSTA RICA S.A. (formerly known as LINEAS AÉREAS COSTARRICENSES S.A.), a company organized under the laws of Costa Rica, and TRANS AMERICAN AIRLINES, S.A., a company organized under the laws of Peru, as guarantors, Citibank, N.A., as Administrative Agent (the "Administrative Agent"), and Citibank, N.A., as Collateral Agent (the "Collateral Agent") and (ii) Contract Rights and Receivables Sales, Purchase and Servicing Agreement dated as of December 12, 2017 (the "RSPA"), by and between AEROVÍAS DEL CONTINENTE AMERICANO S.A. AVIANCA, a Colombian *sociedad anónima* ("Avianca"), as the Seller and as the Servicer and the Borrower, as the Purchaser. Capitalized terms not otherwise defined herein have the same meanings as specified in the Loan Agreement and RSPA.

We are writing (a) to satisfy the obligation of the Obligors under Section 5.6.4(a) of the Loan Agreement to notify the Administrative Agent of technical Events of Default that have occurred thereunder and the obligation of the Seller under Section 2.01(f)(v)(A) of the Undertakings Agreement to notify the Borrower and the Administrative Agent of technical Trigger Events that have occurred under the RSPA and (b) to request (i) that you accept this notice as notice in compliance with said section of the Loan Agreement and said section of the Undertakings Agreement, respectively, notwithstanding, in the case of the Loan Agreement, its having been originated by Avianca rather than the Obligors, and, in the case of the Loan Agreement and the Undertaking Agreement, its tardiness, and (ii) that you waive such technical Events of Default and Trigger Events.

Due to back-office processing difficulties of Credomatic and AMEX, certain payments of Collections by Credomatic and AMEX were unable to be deposited in the New York Pass Through Account, as required pursuant to the Loan Agreement and the RSPA. These difficulties have now been

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resolved, the Collections Account and Debt Service Reserve Account are both now funded and the Collections are being deposited on an ongoing basis, in each case as required by the Loan Agreement and the RSPA. As of the date hereof the balance in the Collections Account is U.S.\$2,375,588.09, the balance in the Debt Service Reserve Account is U.S.\$2,954,359.72 and the Monthly Amortization (as defined in the Cash Management Agreement) with respect to the current Interest Period is U.S.\$738,589.93.

These back-office difficulties did result in two payments being made to Avianca and various payments by Credomatic and AMEX to the Collections Account being delayed, however, which caused certain technical defaults to occur – the Events of Default under the Loan Agreement and Trigger Events under the RSPA are outlined on Exhibit A attached hereto. As noted above, the underlying difficulties have been resolved but these Events of Default and Trigger Events are still outstanding, and we hereby respectfully request your consent to certain related waivers and amendments. White & Case LLP is preparing waivers for these, drafts of which will be shared with you shortly, and a minor amendment to the Cash Management Agreement to increase the frequency of the reporting of the cash flows into the New York Pass-Through Account in order to provide notice to the Lenders in connection with Collections deposited into the New York Pass Through Account.

If you wish to discuss this further or have any questions, please contact any of the people listed on Exhibit B attached hereto.

Yours faithfully,

Aerovías del Continente Americano S.A.  
Avianca

  
Name: Roberto Held  
Title

La

Exhibit B

Name	Institution	Telephone	Email
Lucia Avila	Avianca	+572 5877700 Ext. 1386	lucia.avila@avianca.com
Ronald Barab	Smith, Gambrell & Russell, LLP	(404) 815-3573	rbarab@sgrlaw.com

**EXHIBIT 33**

WAIVER TO LOAN AGREEMENT AND CONSENT TO WAIVER OF RSPA

This WAIVER TO LOAN AGREEMENT AND CONSENT TO WAIVER OF RSPA (this “**Waiver**”), is dated as of April 13, 2018, and entered into by and among USAVFLOW, an exempted company incorporated under the laws of the Cayman Islands (the “**Borrower**”), AVIANCA HOLDINGS S.A., a company organized under the laws of Panama, TACA INTERNATIONAL AIRLINES, S.A., a company organized under the laws of El Salvador, AVIANCA COSTA RICA S.A., f/k/a LINEAS AÉREAS COSTARRICENSES S.A., a company organized under the laws of Costa Rica, and TRANS AMERICAN AIRLINES, S.A., a company organized under the laws of Peru, as guarantors (the collectively, the “**Guarantors**”), Citibank, N.A., as administrative agent for the Lenders (in such capacity, the “**Administrative Agent**”) Citibank, N.A., as collateral agent for the Lenders (in such capacity, the “**Collateral Agent**”) and each Person party hereto as a lender (each, a “**Lender**,” and collectively, the “**Lenders**”). Unless otherwise indicated, all capitalized terms used herein but not otherwise defined shall have the respective meanings provided to such terms in the Loan Agreement.

W I T N E S S E T H:

**WHEREAS**, (i) the Borrower, the Guarantors, the Administrative Agent, the Collateral Agent and the Lenders, are parties to that certain Loan Agreement, dated as of December 12, 2017 (as amended, restated, amended and restated, supplemented, waived or otherwise modified prior to the date hereof, the “**Loan Agreement**”), (ii) the Borrower and the Receivables Seller are parties to that certain Contract Rights and Receivables Sale, Purchase and Servicing Agreement, dated as of December 12, 2017 (as amended, restated, amended and restated, supplemented, waived or otherwise modified prior to the date hereof, the “**RSPA**”) and (iii) the Receivables Seller, the Borrower, the Administrative Agent and the Collateral Agent are parties to that certain Cash Management Agreement, dated as of December 12, 2017 (as amended, restated, amended and restated, supplemented, waived or otherwise modified prior to the date hereof, the “**Cash Management Agreement**”);

**WHEREAS**, under the Credomatic Notice and Consent, Credomatic is required from and including December 12, 2017 to make all payments of its Collections to the New York Pass Through Account, but Credomatic made a payment of Collections equal to U.S.\$1,706,511.01 to the Receivables Seller on December 12, 2017 and did not make a payment of its Collections to the New York Pass Through Account until December 21, 2017;

**WHEREAS**, under the AMEX Notice and Consent, AMEX is required from and including December 12, 2017 to make all payments of its Collections to the New York Pass Through Account but AMEX made a payment of Collections equal to U.S.\$1,443,573.76 to the Receivables Seller on December 26th, 2017, made no payment of Collections to the New York Pass Through Account on December 18, 2017, made a payment of its Collections equal to U.S.\$1,442,670.71 to the New York Pass Through Account on January 16, 2018 and since made payments of Collections in the amount of U.S.\$2,015,143.62 to the New York Pass Through Account;

**WHEREAS**, (i) as of March 26, 2018, the balance in the Collections Account is U.S.\$4,722,946.15, (ii) as of March 26, 2018, the balance in the Debt Service Reserve Account is U.S.\$3,352,944.52 and (iii) the Monthly Amortization (as defined in the Cash Management Agreement) with respect to the current Interest Period is U.S.\$838,236.13;

**WHEREAS**, the Borrower, the Receivables Seller, the Administrative Agent and the Collateral Agent desire to make certain amendments to the Cash Management Agreement, as provided in

the Amendment to Cash Management Agreement, dated as of the date hereof (the “**CMA Amendment**”), among the Borrower, the Receivables Seller, the Administrative Agent and the Collateral Agent;

**WHEREAS**, certain Events of Default and Trigger Events have occurred as of the date hereof, as more fully described below, and the Borrower has requested that such Events of Default and Trigger Events be waived, on the terms and conditions hereof; and

**WHEREAS**, subject to the satisfaction of the conditions set forth herein, the Lenders constituting Required Lenders are willing to (i) waive such Events of Default, (ii) consent to the waiver by the Borrower of, and direct the Administrative Agent to waive, such Trigger Events, (iii) consent to the amendments to the Cash Management Agreement, and (iv) direct the Administrative Agent and the Collateral Agent to enter into this Waiver and the CMA Amendment, in each case, on the terms set forth herein;

**NOW, THEREFORE**, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**SECTION 1. Lender Waivers and Consents.** Notwithstanding anything to the contrary contained in the Credit Documents and subject to the satisfaction of the conditions set forth in Section 3, each Lender party hereto (collectively, constituting the Requisite Lenders) hereby:

(a) waives the following Events of Default:

(i) Credomatic’s failure to deposit Collections into the New York Pass Through Account for the period from and including December 12, 2017 to and excluding December 21, 2017, constituting an Event of Default pursuant to Section 6.1.10 of the Loan Agreement, a Trigger Event pursuant to Section 6.01(g) of the RSPA and an Event of Default under Section 6.14 of the Loan Agreement;

(ii) Avianca’s failure to comply with Section 2.01(t)(iv) of the Undertaking Agreement and Section 4.01 of the Colombian Back-Up Security Agreement upon the Receivables Seller’s receipt of Credomatic’s payment of U.S.\$ 1,706,511.01 of Collections on December 12, 2017, resulting in Trigger Events pursuant to Sections 6.01(c)(i) and Section 6.01(g) of the RSPA and an Event of Default pursuant to Section 6.1.4 of the Loan Agreement;

(iii) AMEX’s failure to deposit Collections into the New York Pass Through Account for the period from and including December 12, 2017 to and excluding January 16, 2018, constituting an Event of Default pursuant to Section 6.1.10 of the Loan Agreement, a Trigger Event pursuant to Section 6.01(g) of the RSPA and an Event of Default under Section 6.14 of the Loan Agreement;

(iv) Avianca’s failure to comply with Section 2.01(t)(iv) of the Undertaking Agreement and Section 4.01 of the Colombian Back-Up Security Agreement upon the Receivables Seller’s receipt of AMEX’s payment of U.S.\$1,443,573.76 of Collections on December 26, 2017, resulting in Trigger Events pursuant to Sections 6.01(c)(0 and Section 6.01(g) of the RSPA and an Event of Default pursuant to Section 6.1.4 of the Loan Agreement; and



(v) the failure of the Obligors to notify the Administrative Agent for distribution to the Lenders of the foregoing Events of Default pursuant to Section 5.6.4(a) of the Loan Agreement, constituting an Event of Default pursuant to Section 6.1.3(a) of the Loan Agreement.

(b) consents to the waiver by the Borrower of, and directs the Administrative Agent to consent to the waiver of, the Trigger Events under the RSPA as provided herein and by the Waiver to RSPA, in substantially the form of Exhibit A hereto; and

(c) consents to the CMA Amendment, and directs the Administrative Agent to enter into the CMA Amendment, in substantially the form of Exhibit B hereto.

The consent, waivers, and direction contained in this Section 1 are limited and (w) shall only be relied upon and used for the specific purpose set forth herein, (x) shall not constitute nor be deemed to constitute a consent, waiver, or direction except as otherwise expressly set forth herein, with respect to (i) any Event of Default or (ii) any other term or condition of the Loan Agreement and the other Credit Documents, (y) shall not constitute nor be deemed to constitute a consent or waiver by Administrative Agent or any Lender for any purpose other than the specific purpose set forth herein and (z) shall not constitute a custom or course of dealing among the parties hereto.

**SECTION 2. Administrative Agent Consent.** Notwithstanding anything to the contrary contained in the Credit Documents and subject to the satisfaction of the conditions set forth in Section 3, the Administrative Agent (at the direction of the Required Lenders) hereby (x) consents to the waiver of the Trigger Events under the RSPA, in substantially the form of the Exhibit A hereto, and (y) consents to the amendment of the Cash Management Agreement, in substantially the form of Exhibit B hereto. The consent contained in this Section 2 is limited and (w) shall only be relied upon and used for the specific purpose set forth herein, (x) shall not constitute nor be deemed to constitute a consent or waiver, except as otherwise expressly set forth herein, of (i) any Event of Default or (ii) any other term or condition of the Loan Agreement and the other Credit Documents, (y) shall not constitute nor be deemed to constitute a consent or waiver by Administrative Agent or any Lender to anything other than the specific purpose set forth herein and (z) shall not constitute a custom or course of dealing among the parties hereto.

**SECTION 3. Conditions of Effectiveness of this Waiver.** This Waiver shall become effective on the date when the following conditions shall have been satisfied (or waived) (such date, the “**Waiver Effective Date**”):

(a) the Administrative Agent (or its counsel) shall have received an executed counterpart (or written evidence satisfactory to the Administrative Agent (which may include a facsimile or other electronic transmission) that such party has signed a counterpart) of this Waiver from the Borrower, the Guarantors and the Required Lenders; and

(b) no Event of Default or Trigger Event, except as described in Section 1 hereof, shall have occurred and be continuing.

**SECTION 4. Costs and Expenses.** The Borrower hereby reconfirms its obligations pursuant to Section 8.6 of the Loan Agreement to pay and reimburse the Administrative Agent, the Collateral Agent and the Bookrunner for all reasonable and documented costs and expenses (including, without limitation, reasonable fees of counsel) incurred in connection with the negotiation, preparation, execution and delivery of this Waiver and all other documents and instruments delivered in connection herewith, and hereby reconfirms that such amounts shall be disbursed by the Collateral Agent from the

Collections Account to the Administrative Agent, the Collateral Agent, the Bookrunner and the other Persons entitled thereto pursuant to Sections 2.02(a) and (b) of the Cash Management Agreement.

SECTION 5. Credit Documents. This Waiver shall constitute a "Credit Document" for all purposes of the Loan Agreement and the other Credit Documents.

SECTION 6. Representations and Warranties. To induce the Administrative Agent, the Collateral Agent and the Lenders to enter into this Waiver, each of the Obligors in respect of the matters in the following sub-paragraphs which relate to itself only, represents and warrants to the Administrative Agent and the Lenders on and as of the Waiver Effective Date that, in each case:

(a) the representations and warranties of the Borrower and the Guarantors contained in Section 4 of the Loan Agreement and in any other Credit Document, or which are contained in any other document furnished at any time under or in connection herewith or therewith, and the representations and warranties of the Borrower and the Receivables Seller contained in Article IV of the RSPA and in any other Credit Document, or which are contained in any other document furnished at any time under or in connection herewith or therewith, are true and correct on and as of the Waiver Effective Date, except to the extent that such representations and warranties refer specifically to an earlier date in which case they are true and correct as of such earlier date;

(b) this Waiver has been duly authorized, executed and delivered by it and this Waiver and the Loan Agreement constitute its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar laws of general applicability relating to or limiting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law; and

(c) after giving effect to this Waiver, no Event of Default or Trigger Event is continuing, or will result from this Waiver.

SECTION 7. Reference to and Effect on the Loan Agreement and the Credit Documents.

(a) The Loan Agreement and each of the other Credit Documents are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed.

(b) The execution, delivery and effectiveness of this Waiver shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Lender or the Administrative Agent under any of the Credit Documents, nor constitute a waiver of any provision of any of the Credit Documents.

#### SECTION 8. Law and Jurisdiction

(a) THIS WAIVER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (NOT INCLUDING SUCH STATE'S CONFLICT OF LAWS PROVISIONS OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

(b) Each of the parties hereto hereby irrevocably consents to the exclusive jurisdiction of any court of the State of New York or any United States federal court sitting in the Borough of Manhattan,

New York City, New York, United States, and any appellate court from any thereof in respect of any actions or proceedings brought against it hereunder, and hereby waives its rights to any other jurisdiction that may apply by virtue of its present or any other future domicile or for any other reason. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, any objection to any suit, action, or proceeding that may be brought in connection with the Credit Documents in such courts whether on the grounds of venue, residence or domicile or on the ground that any such suit, action or proceeding has been brought in an inconvenient forum. Additionally, each of the parties hereto hereby waives the right to assert counterclaims in any such proceedings and agrees that final judgment in any such suit, action or proceeding brought in such court shall be conclusive and binding upon such party and may be enforced in any court of the jurisdiction to which such party is subject by a suit upon such judgment.

(c) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION OR LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO ANY CREDIT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH OF THE PARTIES HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9. Successors and Assigns. The provisions of this Waiver shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Obligor may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender.

SECTION 10. Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

SECTION 11. Counterparts. This Waiver may be executed in any number of counterparts, each of which shall be deemed an original.

SECTION 12. Limited Recourse.

(a) Notwithstanding any other provision of this Waiver or the Credit Documents, each party hereto hereby agrees that the Borrower's obligations under this Waiver and the Credit Documents shall be limited recourse obligations of the Borrower, with recourse against the Borrower being limited to the Collateral and the actual amount derived from the Collateral (including the proceeds of any contingent claims that are included in the Collateral, other than the ordinary share capital and any transaction fee charged by the Borrower pursuant to the Administration Agreement) of the Borrower at such time available for application by or on behalf of the Borrower in making payments in accordance with this Waiver and the Credit Documents. The parties hereby acknowledge and agree that the Borrower's obligations under this Waiver and the Credit Documents are solely the corporate obligations of the Borrower, and that none of the officers, directors, shareholders or agents of the Borrower, any of its Affiliates or any other Person, other than the Guarantors, shall be personally liable to make any payments of principal, interest or any other sum now or hereafter owing by the Borrower hereunder. Without

limitation of the obligations of the other Obligors hereunder, after the Borrower's Collateral (including liquidation of any contingent claims that are included in the Collateral, other than the ordinary share capital and any transaction fee charged by the Borrower pursuant to the Administration Agreement) is realized and exhausted, all sums due but still unpaid in respect of the Borrower's obligations hereunder shall be extinguished and shall not thereafter revive with respect to the Borrower and its liability hereunder, and the parties hereto shall not have the right to proceed against the Borrower or any of its Affiliates or any of its officers, directors, shareholders or agents for the satisfaction of any monetary claim or for any deficiency judgment remaining after foreclosure of any of its assets, it being agreed that the Guarantors shall remain liable for all of such obligations.


(b) No party hereto shall take any steps for the purpose of procuring the appointment of any examiner, administrator, liquidator, provisional liquidator or bankruptcy trustee or the making of any administrative order or court order or application or for instituting any bankruptcy, examinership, reorganization, arrangement, insolvency, winding up, liquidation, composition or any like proceedings under applicable Law in respect of the Borrower or its Affiliates or in respect of any of their liabilities, including, without limitation, as a result of any claim or interest of such parties; provided that nothing in this Section 12(b) shall prohibit or restrict the appointment of a Receiver and/or Delegate under and/or in accordance with and/or as contemplated by any provisions of the U.K. Account Charge.

(c) The provisions of this Section 12 shall survive termination of this Agreement.

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the parties hereto have caused this Waiver to be duly executed as of the date first above written.

**USAVFLOW LIMITED,**  
as Borrower

By:   
Name: Peter Lundin  
Title: Director

AVIANCA HOLDINGS S.A.,  
as Guarantor

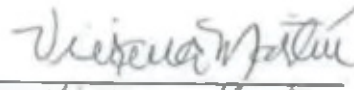
By: \_\_\_\_\_

Name: Renato Covelo

Title: \_\_\_\_\_

*Signature Page to Waiver to Loan Agreement and Consent to Waiver of RSPA*

AVIANCA COSTA RICA S.A.,  
as Guarantor

By:   
Name: Viviana Martin  
Title: President

*Signature Page to Waiver to Loan Agreement and Consent to Waiver of RSPA*




**TACA INTERNATIONAL AIRLINES, S.A.,**  
as Guarantor

By: \_\_\_\_\_  
Name: **DANILO CORREA SEPULVEDA**  
Title: **PRESIDENT**

Signature Page to Waiver to Loan Agreement and Consent to Waiver of RSPA

TRANS AMERICAN AIRLINES, S.A.,  
as Guarantor

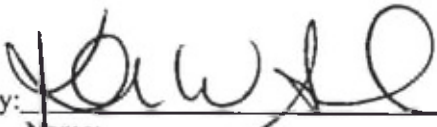
By:   
Name: Gloria Loza  
Title: Legal Representative

*Signature Page to Waiver to Loan Agreement and Consent to Waiver of RSPA*

**CITIBANK, N.A.,**  
as Administrative Agent

By:   
Name: **Miriam Molina**  
Title: **Senior Trust Officer**

**CITIBANK, N.A.,**  
as Collateral Agent

By:   
Name: **Karen Abarca**  
Title: **Senior Trust Officer**

**DEUTSCHE BANK AG, LONDON BRANCH,**  
as Lender

By:   
Name: \_\_\_\_\_  
Title: **Nicolas Ferrario**  
**Managing Director**

By:   
Name: \_\_\_\_\_  
Title: **Gonzalo Barbon**  
**Managing Director**

**BANK UNITED N.A.,**  
as Lender

By: 

Name: Hunter Garibay

Title: Vice President

By: 

Name: CHAR APONTE

Title: VICE PRESIDENT

**BANCO DE CREDITO DEL PERU, MIAMI  
AGENCY,**  
as Lender

By: 

Name: \_\_\_\_\_

**César Stuart**

Title: \_\_\_\_\_

**General Manager  
BCP Miami Agency**

By: 

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Luis Awaga  
VP of Corporate and  
Relationship Banking**

**FIRST CITIZENS BANK LIMITED,**  
as Lender

By: 

Name: LINDI BALLAH-TULL

Title: HEAD-LEGAL, COMPLIANCE &  
GOVERNANCE/CORPORATE SECRETARY

By: 


Name: STERLING FROST

Title: DEPUTY CEO-OPERATIONS AND  
ADMINISTRATION

*Signature Page to Waiver to Loan Agreement and Consent to Waiver of RSPA*



**METROBANK S.A.,**  
as Lender

By:   
Name: Ernesto A. Boyd, Jr.  
Title: Power of Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit A

*See attached.*

Exhibit A

WAIVER TO RSPA

This WAIVER TO RSPA (this “**Waiver**”), is dated as of April 11, 2018, and entered into by and between USAVFLOW, an exempted company incorporated under the laws of the Cayman Islands (the “**Purchaser**”) and Aerovías del Continente Americano S.A. Avianca, a Colombian *sociedad anónima* (the “**Seller**”). Unless otherwise indicated, all capitalized terms used herein but not otherwise defined shall have the respective meanings provided to such terms in the RSPA.

W I T N E S S E T H:

**WHEREAS**, (i) the Purchaser, the Guarantors party thereto, Citibank, N.A. as the Administrative Agent (in such capacity, the “**Administrative Agent**”) and the Collateral Agent (in such capacity, the “**Collateral Agent**”) and the Lenders party thereto, are parties to that certain Loan Agreement, dated as of December 12, 2017 (as amended, restated, amended and restated, supplemented, waived or otherwise modified prior to the date hereof, the “**Loan Agreement**”), (ii) the Purchaser and the Seller are parties to that certain Contract Rights and Receivables Sale, Purchase and Servicing Agreement, dated as of December 12, 2017 (as amended, restated, amended and restated, supplemented, waived or otherwise modified prior to the date hereof, the “**RSPA**”) and (iii) the Seller, the Borrower, the Administrative Agent and the Collateral Agent are parties to that certain Cash Management Agreement, dated as of December 12, 2017 (as amended, restated, amended and restated, supplemented, waived or otherwise modified prior to the date hereof, the “**Cash Management Agreement**”);

**WHEREAS**, under the Credomatic Notice and Consent, Credomatic is required from and including December 12, 2017 to make all payments of its Collections to the New York Pass Through Account, but Credomatic made a payment of Collections equal to U.S.\$1,706,511.01 to the Receivables Seller on December 12, 2017 and did not make a payment of its Collections to the New York Pass Through Account until December 21, 2017;

**WHEREAS**, under the AMEX Notice and Consent, AMEX is required from and including December 12, 2017 to make all payments of its Collections to the New York Pass Through Account but AMEX made a payment of Collections equal to U.S.\$1,443,573.76 to the Receivables Seller on December 26th, 2017, made no payment of Collections to the New York Pass Through Account on December 18, 2017, made a payment of its Collections equal to U.S.\$1,442,670.71 to the New York Pass Through Account on January 16, 2018 and since made payments of Collections in the amount of U.S.\$2,015,143.62 to the New York Pass Through Account;

**WHEREAS**, (i) as of March 26, 2018, the balance in the Collections Account is U.S.\$ 4,722,946.15, (ii) as of March 26, 2018, the balance in the Debt Service Reserve Account is U.S.\$ 3,352,944.52 and (iii) the Monthly Amortization (as defined in the Cash Management Agreement) with respect to the current Interest Period is U.S.\$ 838,236.13;

**WHEREAS**, certain Trigger Events have occurred as of the date hereof, as more fully described below, and the Seller has requested that such Trigger Events be waived, on the terms and conditions hereof; and

**WHEREAS**, subject to the satisfaction of the conditions set forth herein, the Lenders under the Loan Agreement constituting Required Lenders have separately consented to the waiver by the Purchaser of such Trigger Events.

**NOW, THEREFORE**, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**SECTION 1. Purchaser Waivers and Consents.** Notwithstanding anything to the contrary contained in the Transaction Documents and the Purchaser Finance Documents and subject to the satisfaction of the conditions set forth in Section 2, the Purchaser hereby waives the following Trigger Events:

(a) Credomatic's failure to deposit Collections into the New York Pass Through Account for the period from and including December 12, 2017 to and excluding December 21, 2017, constituting a Trigger Event pursuant to Section 6.01(g) of the RSPA;

(b) Avianca's failure to comply with Section 2.01(t)(iv) of the Undertaking Agreement and Section 4.01 of the Colombian Back-Up Security Agreement upon the Receivables Seller's receipt of Credomatic's payment of U.S.\$ 1,706,511.01 of Collections on December 12, 2017, resulting in a Trigger Event pursuant to Section 6.01(c)(i) of the RSPA;

(c) AMEX's failure to deposit Collections into the New York Pass Through Account for the period from and including December 12, 2017 to and excluding January 16, 2018, resulting in a Trigger Event pursuant to Section 6.01(g) of the RSPA;

(d) Avianca's failure to comply with Section 2.01(t)(iv) of the Undertaking Agreement and Section 4.01 of the Colombian Back-Up Security Agreement upon the Receivables Seller's receipt of AMEX's payment of U.S.\$1,443,573.76 of Collections on December 26, 2017, resulting in a Trigger Event pursuant to Section 6.01(c)(i) of the RSPA; and

(e) the failure of Avianca to notify the Purchaser and the Administrative Agent of the foregoing Trigger Events pursuant to Section 2.01(f)(v) of the Undertaking Agreement, constituting a Trigger Event pursuant to Section 6.01(c)(i) of the RSPA.

The consent and waivers contained in this Section 1 are limited and (w) shall only be relied upon and used for the specific purpose set forth herein, (x) shall not constitute nor be deemed to constitute a consent or waiver, except as otherwise expressly set forth herein, of (i) any Trigger Event or (ii) any other term or condition of the RSPA and the other Transaction Documents, (y) shall not constitute nor be deemed to constitute a consent or waiver by the Purchaser to anything other than the specific purpose set forth herein and (z) shall not constitute a custom or course of dealing among the parties hereto.

**SECTION 2. Conditions of Effectiveness of this Waiver.** This Waiver shall become effective on the date when the following conditions shall have been satisfied (or waived) (such date, the "**Waiver Effective Date**");

(a) the Purchaser and the Administrative Agent (or its counsel) shall have received an executed counterpart (or written evidence satisfactory to the Administrative Agent (which may include a facsimile or other electronic transmission) that such party has signed a counterpart) of this Waiver from the Seller and the Purchaser; and

(b) no Event of Default under the Loan Agreement or Trigger Event under the RSPA, except as described in Section 1 hereof, shall have occurred and be continuing.

SECTION 3. Costs and Expenses. The Purchaser hereby reconfirms its obligations pursuant to Section 8.6 of the Loan Agreement to pay and reimburse the Administrative Agent, the Collateral Agent and the Bookrunner for all reasonable and documented costs and expenses (including, without limitation, reasonable fees of counsel) incurred in connection with the negotiation, preparation, execution and delivery of this Waiver and all other documents and instruments delivered in connection herewith, and the Purchaser and the Seller hereby reconfirm that such amounts shall be disbursed by the Collateral Agent from the Collections Account to the Administrative Agent, the Collateral Agent, the Bookrunner and the other Persons entitled thereto pursuant to Sections 2.02(a) and (b) of the Cash Management Agreement.

SECTION 4. Transaction Documents. This Waiver shall constitute a "Transaction Document" for all purposes of the RSPA and the other Transaction Documents.

SECTION 5. Representations and Warranties. To induce the Administrative Agent, the Collateral Agent and the Lenders to consent to the Purchaser entering into this Waiver, each of the Seller and the Purchaser in respect of the matters in the following sub-paragraphs which relate to itself only, represents and warrants to the parties hereto on and as of the Waiver Effective Date that, in each case:

(a) the representations and warranties of the Purchaser contained in Section 4.02 of the RSPA and the Seller contained in Section 4.01 of the RSPA and in any other Transaction Document, or which are contained in any other document furnished at any time under or in connection herewith or therewith, are true and correct on and as of the Waiver Effective Date, except to the extent that such representations and warranties refer specifically to an earlier date in which case they are true and correct as of such earlier date;

(b) this Waiver has been duly authorized, executed and delivered by it and this Waiver and the RSPA constitute its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar laws of general applicability relating to or limiting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law; and

(c) after giving effect to this Waiver, no Trigger Event is continuing, or will result from this Waiver.

SECTION 6. Reference to and Effect on the RSPA and the Transaction Documents.

(a) The RSPA and each of the other Transaction Documents are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed.

(b) The execution, delivery and effectiveness of this Waiver shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of the Purchaser or the Administrative Agent under any of the Transaction Documents or the Purchaser Finance Documents, nor constitute a waiver of any provision of any of the Transaction Documents or the Purchaser Finance Documents.

SECTION 7. Law and Jurisdiction

(a) THE PROVISIONS OF THIS AGREEMENT, AND ALL THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER, SHALL BE GOVERNED BY AND

CONSTRUED IN ACCORDANCE WITH THE LAWS OF COLOMBIA, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

(b) All disputes arising out of or in connection with this Agreement shall be finally settled by arbitration under the Rules of Arbitration of the International Chamber of Commerce. There shall be three arbitrators. The language of arbitration shall be English. The seat of arbitration shall be Miami, Florida.

SECTION 8. Successors and Assigns. The provisions of this Waiver shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Purchaser nor the Seller may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent (acting at the directions of the Required Lenders pursuant to the Loan Agreement).

SECTION 9. Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

SECTION 10. Counterparts. This Waiver may be executed in any number of counterparts, each of which shall be deemed an original.

SECTION 11. Limited Recourse.

(a) Notwithstanding any other provision of this Waiver or the Transaction Documents, each party hereto hereby agrees that the Purchaser's obligations under this Waiver shall be limited recourse obligations of the Purchaser, with recourse against the Purchaser being limited to the assets (other than the ordinary share capital and any transaction fee charged by the Purchaser pursuant to the Administration Agreement) of the Purchaser at such time available for application by or on behalf of the Purchaser in making payments in accordance with this Waiver. The parties hereby acknowledge and agree that the Purchaser's obligations under this Waiver are solely the corporate obligations of the Purchaser, and that none of the officers, directors, shareholders or agents of the Purchaser, any of its Affiliates or any other Person, shall be personally liable to make any payments of principal, interest or any other sum now or hereafter owing by the Purchaser hereunder. After the Purchaser's assets (other than the ordinary share capital and any transaction fee charged by the Purchaser pursuant to the Administration Agreement) are realized and exhausted, all sums due but still unpaid in respect of the Purchaser's obligations hereunder shall be extinguished and shall not thereafter revive with respect to the Purchaser and its liability hereunder, and the Seller shall not have the right to proceed against the Purchaser or any of its Affiliates or any of its officers, directors, shareholders or agents for the satisfaction of any monetary claim or for any deficiency judgment remaining after foreclosure of any of its assets.

(b) No party hereto shall take any steps for the purpose of procuring the appointment of any examiner, administrator, receiver, liquidator, provisional liquidator, bankruptcy trustee or administrative receiver or the making of any administrative order or court order or application or for instituting any bankruptcy, examinership, reorganization, arrangement, insolvency, winding up, liquidation, composition or any like proceedings under Applicable Law in respect of the Purchaser or its Affiliates or in respect of any of their liabilities, including, without limitation, as a result of any claim or interest of such parties.


(c) The provisions of this Section 11 shall survive termination of this Agreement.

*[The remainder of this page is intentionally left blank.]*



IN WITNESS WHEREOF, the parties hereto have caused this Waiver to be duly executed as of the date first above written.

**USAVFLOW LIMITED,**  
as Purchaser

By:   
Name: Peter Lundin  
Title: Director

AEROVIAS DEL CONTINENTE AMERICANO  
S.A. AVIANCA,  
as Seller

By: 

Name: Roberto Held  
Title:

*Signature Page to Waiver to RSPA*

Exhibit B

*See attached.*

AMENDMENT TO CASH MANAGEMENT AGREEMENT

This AMENDMENT TO CASH MANAGEMENT AGREEMENT (this “**Amendment**”), is dated as of April 13, 2018, and entered into by and among USAVFLOW, an exempted company incorporated under the laws of the Cayman Islands (the “**Purchaser**”), Aerovías del Continente Americano S.A. Avianca, a Colombian *sociedad anónima* (the “**Seller**”) and Citibank, N.A., as administrative agent (in such capacity, the “**Administrative Agent**”) Citibank, N.A., as collateral agent (in such capacity, the “**Collateral Agent**”). Unless otherwise indicated, all capitalized terms used herein but not otherwise defined shall have the respective meanings provided to such terms in the Cash Management Agreement.

W I T N E S S E T H:

**WHEREAS**, the Seller, the Purchaser, the Administrative Agent and the Collateral Agent are parties to that certain Cash Management Agreement, dated as of December 12, 2017 (as amended, restated, amended and restated, supplemented, waived or otherwise modified prior to the date hereof, the “**Cash Management Agreement**”);

**WHEREAS**, the Purchaser, the Seller, the Administrative Agent and the Collateral Agent desire to make certain amendments to the Cash Management Agreement, as provided herein; and

**WHEREAS**, the Lenders constituting Required Lenders under the Purchaser Credit Agreement consent to the amendments to the Cash Management Agreement on the terms set forth herein;

**NOW, THEREFORE**, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

SECTION 1. Amendments to Cash Management Agreement. Subject solely to the satisfaction (or waiver) of the conditions set forth in Section 2 hereof:

(a) The heading of Section 2.09 is hereby amended and restated in its entirety as follows:

Section 2.09 **Notice of Retention Events, Adjustment Events, Trigger Events and Weekly Collections**

(b) The Cash Management Agreement is further amended by adding a new Section 2.09(d) thereto as follows:

(d) On each Monday, or if such day is not a Business Day upon the next succeeding Business Day, the Administrative Agent shall provide a report to the Seller, the Purchaser, the other Agent and the Lenders, by posting such report on the Platform in accordance with the terms of the Loan Agreement, detailing the amounts transferred to the New York Pass Through Account by each Card Processor during the calendar week ending on the immediately preceding Friday.

SECTION 2. Conditions of Effectiveness of this Amendment. This Amendment shall become effective on the date when the Administrative Agent (or its counsel) shall have received an executed counterpart (or written evidence satisfactory to the Administrative Agent (which may include a facsimile or other electronic transmission) that such party has signed a counterpart) of this Amendment

from the Seller, the Purchaser, the Collateral Agent and the Administrative Agent (such date, the “**Amendment Effective Date**”).

**SECTION 3. Costs and Expenses.** The Purchaser hereby reconfirms its obligations pursuant to Section 8.6 of the Purchaser Credit Agreement to pay and reimburse the Administrative Agent, the Collateral Agent and each other Person entitled thereto for all reasonable and documented costs and expenses (including, without limitation, reasonable fees of counsel) incurred in connection with the negotiation, preparation, execution and delivery of this Amendment and all other documents and instruments delivered in connection herewith, and hereby reconfirms that such amounts shall be disbursed by the Collateral Agent from the Collections Account to the Administrative Agent, the Collateral Agent, and the other Persons entitled thereto pursuant to Sections 2.02(a) and (b) of the Cash Management Agreement.

**SECTION 4. Credit Documents and Transaction Documents.**

(a) This Amendment shall constitute a “Credit Document” for all purposes of the Purchaser Credit Agreement and the other Purchaser Finance Documents.

(b) This Amendment shall constitute a “Transaction Document” for all purposes of the RSPA and the other Transaction Documents

**SECTION 5. Representations and Warranties.** To induce the Administrative Agent, the Collateral Agent to enter into this Amendment, and the Lenders (as defined in the Purchaser Credit Agreement) to consent to this Amendment, each of the Seller and the Purchaser in respect of the matters in the following sub-paragraphs which relate to itself only, represents and warrants to the Administrative Agent and the Lenders (as defined in the Purchaser Credit Agreement) on and as of the Amendment Effective Date that, in each case:

(a) the representations and warranties of the Purchaser contained in Section 4 of the Purchaser Credit Agreement and in any other Purchaser Finance Document, or which are contained in any other document furnished at any time under or in connection herewith or therewith, and the representations and warranties of the Purchaser and the Seller contained in Article IV of the RSPA and in any other Credit Document, or which are contained in any other document furnished at any time under or in connection herewith or therewith, are true and correct on and as of the Amendment Effective Date, except to the extent that such representations and warranties refer specifically to an earlier date in which case they are true and correct as of such earlier date; and

(b) this Amendment has been duly authorized, executed and delivered by it and this Amendment and the Cash Management Agreement constitute its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar laws of general applicability relating to or limiting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

**SECTION 6. Reference to and Effect on the Cash Management Agreement and the Transaction Documents.**

(a) On and after the Amendment Effective Date, each reference in the Cash Management Agreement to “this Agreement”, “hereunder”, “hereof” or words of like import referring to the Cash Management Agreement, and each reference in the other Transaction Documents and the Purchaser Finance Documents to the Cash Management Agreement, “thereunder”, “thereof” or words of like import

referring to the Cash Management Agreement, shall mean and be a reference to the Cash Management Agreement as modified by this Amendment.

(b) The Purchaser Credit Agreement, the RSPA, the Cash Management Agreement and each of the other Credit Documents and Purchaser Finance Documents, as specifically amended by this Amendment, are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed.

(c) The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Lender or the Administrative Agent under any of the Purchaser Finance Documents, nor constitute a waiver of any provision of any of the Purchaser Finance Documents.

#### SECTION 7. Law and Jurisdiction

(a) THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (NOT INCLUDING SUCH STATE'S CONFLICT OF LAWS PROVISIONS OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

(b) Each of the parties hereto hereby irrevocably consents to the exclusive jurisdiction of any court of the State of New York or any United States federal court sitting in the Borough of Manhattan, New York City, New York, United States, and any appellate court from any thereof in respect of any actions or proceedings brought against it hereunder, and hereby waives its rights to any other jurisdiction that may apply by virtue of its present or any other future domicile or for any other reason. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, any objection to any suit, action, or proceeding that may be brought in connection with the Transaction Documents in such courts whether on the grounds of venue, residence or domicile or on the ground that any such suit, action or proceeding has been brought in an inconvenient forum. Additionally, each of the parties hereto hereby waives the right to assert counterclaims in any such proceedings and agrees that final judgment in any such suit, action or proceeding brought in such court shall be conclusive and binding upon such party and may be enforced in any court of the jurisdiction to which such party is subject by a suit upon such judgment.

(c) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION OR LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO ANY TRANSACTION DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH OF THE PARTIES HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 8. Successors and Assigns. The provisions of this Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Purchaser nor the Seller may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each

Lender.

SECTION 9. Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

SECTION 10. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original.

SECTION 11. Limited Recourse.

(a) Notwithstanding any other provision of this Amendment or the Transaction Documents, each party hereto hereby agrees that the Purchaser's obligations under this Amendment shall be limited recourse obligations of the Purchaser, with recourse against the Purchaser being limited to the assets (other than the ordinary share capital and any transaction fee charged by the Purchaser pursuant to the Administration Agreement) of the Purchaser at such time available for application by or on behalf of the Purchaser in making payments in accordance with this Amendment. The parties hereby acknowledge and agree that the Purchaser's obligations under this Amendment are solely the corporate obligations of the Purchaser, and that none of the officers, directors, shareholders or agents of the Purchaser, any of its Affiliates or any other Person, shall be personally liable to make any payments of principal, interest or any other sum now or hereafter owing by the Purchaser hereunder. After the Purchaser's assets (other than the ordinary share capital and any transaction fee charged by the Purchaser pursuant to the Administration Agreement) are realized and exhausted, all sums due but still unpaid in respect of the Purchaser's obligations hereunder shall be extinguished and shall not thereafter revive with respect to the Purchaser and its liability hereunder, and the Seller shall not have the right to proceed against the Purchaser or any of its Affiliates or any of its officers, directors, shareholders or agents for the satisfaction of any monetary claim or for any deficiency judgment remaining after foreclosure of any of its assets.

(b) No party hereto shall take any steps for the purpose of procuring the appointment of any examiner, administrator, receiver, liquidator, provisional liquidator, bankruptcy trustee or administrative receiver or the making of any administrative order or court order or application or for instituting any bankruptcy, examinership, reorganization, arrangement, insolvency, winding up, liquidation, composition or any like proceedings under Applicable Law in respect of the Purchaser or its Affiliates or in respect of any of their liabilities, including, without limitation, as a result of any claim or interest of such parties.

(c) The provisions of this Section 11 shall survive termination of this Agreement.

*[The remainder of this page is intentionally left blank.]*



IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the date first above written.

**USAVFLOW LIMITED,**  
as Purchaser

By:   
Name: Peter Lundin  
Title: Director

AEROVÍAS DEL CONTINENTE AMERICANO  
S.A. AVIANCA,  
as Seller

By: 

Name: Roberto Held

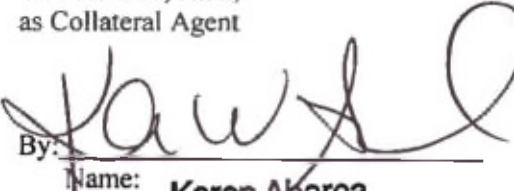
Title:

*Signature Page to Amendment to Cash Management Agreement*

**CITIBANK, N.A.,**  
as Administrative Agent

By:   
Name: \_\_\_\_\_  
Title: **Miriam Molina**  
**Senior Trust Officer**

**CITIBANK, N.A.,**  
as Collateral Agent

By:   
Name: \_\_\_\_\_  
Title: **Karen Abarca**  
**Senior Trust Officer**

## WAIVER AND CONSENT

THIS WAIVER AND CONSENT (this “**Waiver**”), dated as of November 27, 2019, by and among USAVFLOW LIMITED, an exempted company incorporated and registered under the laws of the Cayman Islands with registered number 324668 and having its registered office at the offices of MaplesFS Limited, PO Box 1093, Queensgate House, Grand Cayman, KY1-1102, as borrower (the “**Borrower**”), Avianca Holdings S.A., a corporation (*sociedad anónima*) organized under the laws of the Republic of Panama, Taca International Airlines, S.A., a company organized under the laws of El Salvador, Avianca Costa Rica S.A., f/k/a Lineas Aéreas Costarricenses S.A., a company organized under the laws of Costa Rica, and Trans American Airlines, S.A., a company organized under the laws of Peru (the “**Guarantors**” and together with the Borrower, the “**Obligors**”), the lenders party hereto (the “**Lenders**”), Citibank, N.A., in its capacity as administrative agent (in such capacity, the “**Administrative Agent**”) and Citibank, N.A., as collateral agent for the Lenders (in such capacity, the “**Collateral Agent**”), is made with reference to that certain Loan Agreement, dated as of December 12, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), by and among the Borrower, the Guarantors, the Administrative Agent, the Collateral Agent and the Lenders. All capitalized terms used herein without definition shall have the meanings set forth in the Loan Agreement or the RSPA (as defined below), as applicable.

## WITNESSETH:

WHEREAS, Avianca Holdings S.A. has informed the Lenders of its intention to implement a strategic plan (“**Avianca Strategic Plan 2021**”) which, among other things, includes: (a) proposing to its lenders certain re-profiling of its debts, and (b) incurring not less than US\$250 million of convertible term loans from United Airlines, Inc. (“**United**”), Kingsland Holding Limited or its affiliates (collectively, “**Kingsland**”) and one or more lenders, of which at least US\$200 million shall be funded by United and Kingsland.

WHEREAS, each of the Obligors hereby acknowledges and agrees that, as of the date hereof, certain of the Events of Default (as identified on Schedule I hereto) have occurred under the Loan Agreement and certain Trigger Events and/or Adjustment Events (as identified on Schedule II hereto) have occurred under the Contract Rights and Receivables Sale, Purchase and Servicing Agreement, dated December 12, 2017 (as amended, amended and restated, supplemented, or otherwise modified from time to time, the “**RSPA**”), among Aerovías del Continente Americano S.A. Avianca, a company organized under the laws of Colombia (“**Avianca S.A.**”), as the Seller, USAVflow Limited, a company organized under the laws of the Cayman Islands, as the Purchaser (the “**Company**”) and Avianca S.A. as the Servicer, the Receivables Maintenance Agreement, dated December 12, 2017 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Undertaking Agreement**”), between Avianca S.A. and the Company, and the Cash Management Agreement dated December 12, 2017 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Cash Management Agreement**” and, collectively with the Loan Agreement and the Undertaking Agreement, the “**Applicable Credit Documents**”), among Avianca S.A., the Company, and Citibank, N.A. as Administrative Agent, as applicable (each Event of Default described on Schedule I, solely as it exists, or may exist, under the Applicable Credit Documents after the date hereof, for the reasons described on Schedule I, a “**Specified Loan Agreement Default**”, each Trigger Event and/or Adjustment Event described

on Schedule II, solely as it exists, or may exist, under the Applicable Credit Documents after the date hereof, for the reasons described on Schedule II, a “**Specified Receivables Transfer Default**”, and the Specified Loan Agreement Defaults and Specified Receivables Transfer Defaults, collectively, the “**Specified Defaults**”).

WHEREAS, as a result of the occurrence of any of the Specified Defaults, the Lenders, the Administrative Agent and the Collateral Trustee may exercise, at any permissible time under the Applicable Credit Document, the rights and remedies under such Applicable Credit Document, the applicable Security Documents and applicable law against the Obligors (such rights, remedies and actions, collectively, “**Enforcement Actions**”), in each case in accordance with the Applicable Credit Documents, the applicable Security Documents and applicable law.

WHEREAS, the Obligors have requested that the Lenders agree (i) to waive each Specified Loan Agreement Default, (ii) waive the application of the covenants set forth under Sections 5.8.2 and 5.8.3 of the Loan Agreement for the Reference Periods ending (x) September 30, 2019 and (y) December 31, 2019 and (iii) to refrain from taking any Enforcement Actions with respect to the waived Specified Defaults and from directing the Administrative Agent to take any Enforcement Actions with respect to the Specified Defaults, in each case to afford the Obligors an opportunity to negotiate with certain of their creditors, in order to consummate the Avianca Strategic Plan 2021.

WHEREAS, the Seller has requested that the Purchaser, Administrative Agent and Collateral Agent agree (i) to waive each Specified Receivables Transfer Default and (ii) to refrain from taking any Enforcement Actions with respect to the waived Specified Defaults and from directing the Administrative Agent to take any Enforcement Actions with respect to the Specified Defaults, in each case to afford the Obligors an opportunity to negotiate with certain of their creditors, in order to consummate the Avianca Strategic Plan 2021.

WHEREAS, the Lenders have agreed to such waiver and consent requests, subject to the terms and provisions set forth in this Waiver.

NOW, THEREFORE, in consideration of the foregoing premises, the terms and conditions stated herein and other valuable consideration (including the fee described in Section 4), the receipt and sufficiency of which are hereby acknowledged by the parties hereto, such parties hereby agree as follows:

1. Waiver and Consent.

- (a) Subject to the terms and conditions of this Waiver, the Lenders hereby (i) waive each Specified Default, (ii) waive the application of the covenants set forth under Sections 5.8.2 and 5.8.3 of the Loan Agreement for the Reference Periods ending (x) September 30, 2019 and (y) December 31, 2019, (iii) agree to refrain from (x) taking any Enforcement Actions with respect to the waived Specified Defaults (to the extent such actions would be permissible despite the waivers hereunder) and (y) directing the Administrative Agent to take any Enforcement Actions with respect to the waived Specified Defaults and (iv) direct the Administrative Agent and the Collateral Agent to enter into this Waiver and grant the waivers and consents contemplated hereby.

- (b) Subject to the terms and conditions of this Waiver, the Purchaser, Seller, Administrative Agent and Collateral Agent hereby (i) waive each Specified Receivables Transfer Default and (ii) agree to refrain from (x) taking any Enforcement Actions with respect to the waived Specified Defaults (to the extent such actions would be permissible despite the waivers hereunder) and (y) directing the Administrative Agent to take any Enforcement Actions with respect to the waived Specified Defaults.
2. Conditions of Effectiveness. This Waiver shall be effective as of the date on which all of the following shall have occurred (for the avoidance of doubt, the following need not occur on the same date): (i) the Administrative Agent shall have received, no later than 5:00p.m. (New York time) on November 29, 2019, counterparts of this Waiver duly executed and delivered by the Obligors, the Required Lenders, the Service, the Seller, the Purchaser, the Administrative Agent and the Collateral Agent; (ii) Avianca Holdings S.A. shall have received proceeds, in the amount of at least US\$250,000,000, of the senior secured convertible loan from United, Kingsland and one or more other lenders; (iii) the Administrative Agent shall have received, for the benefit of the Lenders, a one-time fee, as consideration for the waivers contemplated herein, equal to the outstanding principal amount owed by the Borrower to the Lenders that are party to this Waiver, as of the Business Day prior to the date of payment, multiplied by one-half of one percent (0.50%), together with instructions specifying the amount of such fee to be paid to each Lender and (iv) no Default, Event of Default, Trigger Event or Adjustment Event under any Applicable Credit Document shall have occurred and be continuing after giving effect to this Waiver, including without limitation any Event of Default under Section 6.1.6 of the Loan Agreement or any Adjustment Event under clause (b) of the definition of "Adjustment Event" in the RSPA or the Cash Management Agreement.
3. Representations and Warranties. Each of the Obligors hereby represents and warrants that (a) this Waiver has been duly authorized by all necessary corporate action of such Obligor, (b) this Waiver has been duly executed and delivered by such Obligor and constitutes a legal, valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its terms except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law), (c) before and immediately after giving effect to this Waiver, (i) all of the representations and warranties of the Obligors, as applicable, set forth in the Loan Agreement and the other Credit Documents (other than, with respect to (x) the representation made in Section 4.1.9 and the phrase "all representations and warranties of the Obligors set forth in the Credit Documents are true and correct" in Section 4.1.12 of the Loan Agreement, the absence of the Specified Defaults and (y) clause (a) of Section 4.1.18, the absence of any litigation, investigation, arbitration or other proceeding pending or threatened in relation to the Specified Defaults and the Avianca Strategic Plan 2021) are true and correct in all material respects on and as of the date hereof with the same force and effect as if made on and as of such date (it being understood and agreed that any such



representation or warranty which by its terms is made as of an earlier date, was true and correct in all material respects as of such earlier date), and any representation and warranty that is qualified as to “materiality”, “Material Adverse Effect” or similar language shall be true and correct in all respects on the applicable date(s) (in each case, after giving effect to this Waiver), and (d) the execution and delivery of, and performance under, this Waiver do not contravene the terms of such Obligor’s constituent documents, any applicable law, decree, judgement, award, injunction or similar legal restriction in effect applicable to such Obligor, or any material agreement binding upon such Obligor.

4. Effect on the Loan Agreement; Reaffirmation.

- (a) Each Obligor agrees that, except as expressly agreed under this Waiver, (i) the execution, delivery and effectiveness of this Waiver shall neither operate as a waiver of any rights, power or remedy of the Lenders under any Applicable Credit Document (including but not limited to the rights to declare the existence of any previous, current, ongoing or future event of default and/or the acceleration of any loan under any Applicable Credit Document), nor constitute a waiver, amendment or modification of any provision of the Applicable Credit Documents, and (ii) each Applicable Credit Document shall remain in full force and effect in accordance with its existing terms. The execution, delivery and effectiveness of this Waiver shall not be considered to create a course of dealing or otherwise obligate Lenders to execute similar waivers or amendments under the same or similar circumstances.
- (b) Each Obligor (i) agrees that this Waiver shall not limit or diminish the obligations of such person under, or release such person from any obligations under, each Applicable Credit Document and each other document to which it is a party, (ii) confirms, ratifies and reaffirms its obligations under each Applicable Credit Document and each other document to which it is a party, (iii) agrees that this Waiver does not constitute and cannot be interpreted as an amendment to any Applicable Credit Document and/or the Security Documents, which therefore remain unmodified, and (iv) agrees that each Applicable Credit Document to which it is a party remains in full force and effect and are hereby ratified and confirmed.
- (c) This Waiver shall constitute a “Credit Document” for all purposes under the Applicable Credit Documents.

5. GOVERNING LAW. THIS WAIVER AND ANY CLAIMS, CONTROVERSIES, DISPUTES, OR CAUSES OF ACTION (WHETHER ARISING UNDER CONTRACT LAW, TORT LAW OR OTHERWISE) BASED UPON OR RELATING TO THIS WAIVER, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE SAME APPLICABLE LAW AND JURISDICTION ESTABLISHED IN THE LOAN AGREEMENT.

6. Miscellaneous. Sections 8.9.2-3, 8.10, and 8.11 of the Loan Agreement shall apply to this Waiver, *mutatis mutandis*.



7. Headings. Section headings in this Waiver are included herein for convenience of reference only and shall not constitute a part of this Waiver for any other purpose.
8. Counterparts. This Waiver may be executed by one or more of the parties on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Waiver by facsimile or other electronic imaging means (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Waiver.

*[Signature Page Follows]*

IN WITNESS WHEREOF, this Waiver has been duly executed as of the day and year first written above.

USAVFLOW,  
as the Borrower and the Purchaser

By: PLX A  
Name: PETER LUNN  
Title: Director

AVIANCA COSTA RICA S.A., f/k/a LINEAS  
AEREAS COSTARRICENSES S.A.,  
as a Guarantor

By: 

Name:

Title:

Renato Cuvelo  
Attorney in Fact.

[Avianca - Signature Page to Waiver]



AVIANCA HOLDINGS S.A.,  
as a Guarantor

By: 

Name: Renato Cavalo  
Title: Attorney in fact

[Avianca - Signature Page to Waiver]



TACA INTERNATIONAL AIRLINES, S.A.,  
as a Guarantor

By: 

Name:

Renato Couelo

Title:

Attorney in fact.



TRANS AMERICAN AIRLINES, S.A.,  
as a Guarantor

By: 

Name: Renato Carlo  
Title: Attorney in Fact

[Avianca - Signature Page to Waiver]

AEROVIAS DEL CONTINENTE  
AMERICANO S.A. AVIANCA,  
as Seller

By: 

Name: *Gerardo Cuervo*

Title: *Secretary General - Officer*

[Avianca - Signature Page to Waiver]



CITIBANK, N.A.,  
as the Administrative Agent and Collateral  
Agent, in each case acting pursuant to the  
direction of the Required Lenders,

By: 

Name:

Title:

**Miriam Molina**  
Senior Trust Officer

[Avianca - Signature Page to Waiver]

DEUTSCHE BANK AG, LONDON BRANCH.  
as a Lender,

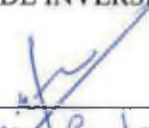
By:   
Name: Shrikant Padmanabhan  
Title: Managing Director

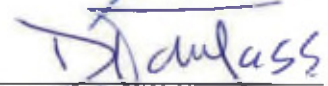
By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
**Claire Coustar**  
**Managing Director**

[Avianca - Signature Page to Waiver]

Title:

MONEDA S.A. ADMINISTRADORA  
GENERAL DE FONDOS acting on behalf of  
MONEDA LATINOAMERICA DEUDA  
LOCAL FONDO DE INVERSION, as a Lender,

By:   
Name: Felipe Contreras  
Title: Attorney at Law

By:   
Name: Daniel Vargas  
Title: Attorney at Law

PRIVAL BANK, S.A.  
as a Lender,

By

Name: Juan C. Fábrega / Jaime Sosa  
Title: Presidente / Gerente General

Bank United  
as a Lender,  
By: Carlos E. Perera  
Name: Carlos E. Perera  
Title: SVP

METROBANK, S.A., as a Lender,

By: 

Name: Ernesto A. Boyd, Jr.

Title: Power of Attorney

*[Avianca - Signature Page to Waiver]*



BANCO DE CREDITO DEL PERU MIAMI  
AGENCY,  
as a Lender,

By: 

Name:

**Andres Arredondo**

Title:

**General Manager  
BCP Miami Agency**



**Luis Awapara  
VP of Corporate and  
Relationship Banking**

FIRST CITIZENS BANK LIMITED  
as a Lender,

By:

Name: \_\_\_\_\_

Title:

BRIAN WOO

GENERAL MANAGER

### **Schedule I – Loan Agreement Specified Defaults**

#### **Loan Agreement**

1. An Event of Default has occurred under Section 6.1.6 of the Loan Agreement, as one or more defaults has occurred with respect to Indebtedness of the Receivables Seller and/or the Obligors that exceeds in the aggregate \$20,000,000 and that permits the holders of such Indebtedness to accelerate the maturity thereof or to require the mandatory prepayment, defeasance or redemption thereof.
2. An Event of Default has occurred under Section 6.1.3(a) of the Loan Agreement, as Holdings did not maintain a Capitalization Ratio at all times during each Reference Period of not more than 0.86:1.00 pursuant to Section 5.8.2 of the Loan Agreement.
3. An Event of Default has occurred under Section 6.1.3(a) of the Loan Agreement, as the Borrower failed to specify the details of existing Events of Default and the action that such Obligor has taken or proposes to take with respect thereto, pursuant to Section 5.6.3(a) of the Loan Agreement.
4. An Event of Default has occurred under Section 6.1.12 of the Loan Agreement, as one or more of the Obligors or the Receivables Seller has admitted in writing its inability to pay its debts generally.
5. One or more Events of Default have occurred under Section 6.1.4 of the Loan Agreement, as the Receivables Seller has failed duly to perform or observe the terms and obligations contained in, and defaulted under, the Receivables Transfer Documents, and Trigger Events have occurred under the RSPA, in each case as described below on this Schedule I under the headings “Contract Rights and Receivables Sale, Purchase and Servicing Agreement” and “Cash Management Agreement”.
6. One or more Events of Default have occurred under Section 6.1.3(a) of the Loan Agreement, as the Obligors failed to provide notice of the Events of Default described in items 1, 2, 3, 4 and 5 above to the Administrative Agent within two Business Days thereof, as is required under Section 5.6.4(a) of the Loan Agreement.

## **Schedule II – Receivables Transfer Documents Specified Defaults**

### **Contract Rights and Receivables Sale, Purchase and Servicing Agreement**

1. An Adjustment Event has occurred under clause (b) of the definition of “Adjustment Event” in the RSPA, as a default has occurred with respect to Indebtedness of the Seller, Avianca, Inc., Holdings and/or the Specified Subsidiaries that exceeds in the aggregate \$20,000,000 and that permits the holders of such Indebtedness to accelerate the maturity thereof or to require the mandatory prepayment, defeasance or redemption thereof.
2. One or more Trigger Events have occurred under Section 6.01(c)(i) of the RSPA, as the Seller failed to provide notice of the Adjustment Event described in item 1 above to the Administrative Agent within one Business Days thereof, as is required under Section 2.01(f)(v)(A) of the Undertaking Agreement.

### **Cash Management Agreement**

1. An Adjustment Event has occurred under clause (b) of the definition of “Adjustment Event” in the Cash Management Agreement, as a default has occurred with respect to Indebtedness of the Seller or the Servicer, Holdings or any Specified Subsidiary that exceeds in the aggregate \$20,000,000 and that permits the holders of such Indebtedness to accelerate the maturity thereof or to require the mandatory prepayment, defeasance or redemption thereof.

**EXHIBIT 34**

1  
2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 - - - - -x

5  
6 In the Matter of:

7 AVIANCA HOLDINGS S.A., et al., Main Case No.  
8 Debtors. 20-11133-mg

9  
10 - - - - -x

11  
12 United States Bankruptcy Court

13 One Bowling Green

14 New York, New York

15  
16 August 19, 2020

17 10:00 A.M.

18  
19  
20  
21 B E F O R E:

22 HON. MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE  
24  
25

1  
2 (Doc# 694, 708, 709, 712) Telephone Hearing Using  
3 CourtSolutions RE: Debtors' (I) Request for Expedited  
4 Determination; and (II) Emergency Motion for Authorization to  
5 Enter into Letter Agreements with Financing  
6 Arrangers

7  
8 (Doc##695, 694, 696, 712) Telephone Hearing Using  
9 CourtSolutions RE: Debtors' (I) Request For Expedited  
10 Determination; and (II) Motion for Authorization to File DIP  
11 Facility Fee Letter Under Seal

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20 Transcribed by: Sharona Shapiro  
21 eScribers, LLC  
22 352 Seventh Avenue, Suite #604  
23 New York, NY 10001  
24 (973) 406-2250  
25 operations@escribers.net



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A P P E A R A N C E S (ALL TELEPHONIC):

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SIMPSON THACHER & BARTLETT LLP

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New York, NY 10017

BY: SANDEEP QUSBA, ESQ.

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Morristown, NJ 07962

BY: VIRGINIA SHEA, ESQ.

UNITED STATES DEPARTMENT OF JUSTICE

Office of the United States Trustee  
201 Varick Street  
Suite 1006  
New York, NY 10014

BY: BRIAN S. MASUMOTO, ESQ.

AVIANCA HOLDINGS S.A.

6

## P R O C E E D I N G S

1  
2 THE CLERK: Good morning. This is Judge Glenn's  
3 courtroom deputy, Deanna Anderson. We are going to be starting  
4 the hearing momentarily. If all the parties can make sure that  
5 they state their name each time they speak on the court record,  
6 and also if there are any electronic devices that are on that  
7 might interfere with the recording, please make sure to mute  
8 them.

9 Mr. Milender, can you please give your appearance for  
10 the record?

11 MR. MILENDER: Good morning. Parker Milender of  
12 Milbank on behalf of the debtors. And I am joined my  
13 colleague, Evan Fleck of Milbank, who will be leading today's  
14 hearing.

15 THE CLERK: Thank you both.

16 Mr. Goren?

17 MR. GOREN: Thank you. Todd Goren, Morrison &  
18 Foerster, on behalf of the official committee of unsecured  
19 creditors.

20 THE CLERK: Thank you very much, Mr. Goren.

21 Mr. Trust?

22 MR. TRUST: Yes, thank you. Good morning, Your Honor.  
23 Brian Trust of Mayer Brown, counsel to BNP Paribas in respect  
24 of certain aircraft financing transactions. Thank you.

25 THE CLERK: Thank you.

AVIANCA HOLDINGS S.A.

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1           My apologies if I mispronounce this name. Sandeep,  
2           the last name is [kis'-ba]; is that correct?

3           MR. QUSEBA: Yes, that's pretty close. Sandy [kuz'-  
4           ba], Simpson Thacher & Bartlett, counsel for JPMorgan as a  
5           proposed arranger for the Chapter 11 debtors, the debtor-in-  
6           possession financing facility.

7           THE CLERK: Okay. Thank you for correcting the  
8           pronunciation.

9           MR. QUSEBA: No problem.

10          THE CLERK: Mr. Deutsch?

11          MR. DEUTSCH: Good morning. Doug Deutsch from  
12          Clifford Chance on behalf of Goldman Sachs Lending Partners,  
13          one of the proposed arrangers for the facility.

14          THE CLERK: Thank you.

15          Ms. Shea?

16          MS. SHEA: Good morning, Your Honor. Virginia Shea of  
17          McElroy, Deutsch, Mulvaney & Carpenter on behalf of the Chubb  
18          sureties.

19          THE CLERK: Thank you.

20          I have a party from Dorsey & Whitney, Natasha Wells,  
21          on behalf of a creditor. Ms. Wells, are you going to be  
22          speaking on the record today?

23          MS. WELLS: No.

24          THE CLERK: Okay. Thank you.

25          Mr. Sam Kohn is also on the roster on behalf of U.S.

AVIANCA HOLDINGS S.A.

8

1 Bank Association, but is not on the dashboard at this time.

2 I'm making his appearance in case he does join later.

3 Mr. Masumoto --

4 MR. MASUMOTO: Good morning.

5 THE CLERK: -- can you please make your appearance?

6 MR. MASUMOTO: Good morning. Brian Masumoto for the  
7 Office of the United States Trustee.

8 THE CLERK: Okay. Thank you very much.

9 Judge, that's everyone.

10 THE COURT: All right. Good morning, everybody. This  
11 is Judge Glenn. We're here in Avianca, 20-11133. We're here  
12 in connection with the debtors' expedited motion for approval  
13 of the fee letter, which is ECF docket number 694, and the  
14 motion to seal the unredacted fee letter, which is ECF docket  
15 number 695.

16 The hearing commenced yesterday and was adjourned  
17 until this morning. As was explained yesterday, the parties,  
18 the committee, the debtor, and Goldman and JPMorgan were  
19 completing negotiations of revisions to the fee letter. The  
20 Court has been provided with an unredacted version of the fee  
21 letter, and I believe the redacted document either has or will  
22 be filed on the docket.

23 Mr. Fleck, do you want to begin?

24 MR. FLECK: Thank you, Your Honor. For the record,  
25 Evan Fleck of Milbank LLP on behalf of the debtors.

1 But let me begin, Your Honor, by thanking the Court  
2 for your time yesterday and today. I think for good order for  
3 the record I would note that in connection with yesterday's  
4 hearing, which was effectively to report on the adjournment and  
5 the discussions that Your Honor just alluded to, we did provide  
6 an update on operational matters and an overview with respect  
7 to the DIP financing. So for those who may be reading this  
8 transcript, it should probably be done in conjunction with  
9 yesterday.

10 And I would just also note, again, we appreciate you  
11 giving us this time on a crowded calendar. I think for many of  
12 us who have been working, all of us on the phone, certainly,  
13 and the Court, who have been working during the pandemic  
14 period, we've often commented that it feels like Groundhog Day,  
15 and it is, in many respects, again, given that we're before  
16 Your Honor.

17 I think we're pleased, though, to report, as we  
18 anticipated yesterday with some cautious optimism --

19 THE COURT: Mr. Fleck, I don't know whether you can --

20 MR. FLECK: I've got it on --

21 THE COURT: -- but your voice cut out, so you  
22 better -- you don't have to do the thanks again, but why don't  
23 you pick up with your negotiations with Goldman and JPMorgan.  
24 Go ahead.

25 THE CLERK: Judge, I don't see him on the dashboard



AVIANCA HOLDINGS S.A.

10

1 anymore. He might have --

2 THE COURT: Okay. He may have dropped off?

3 THE CLERK: Yeah.

4 THE COURT: All right. We'll wait for him to come  
5 back.

6 THE CLERK: Okay.

7 THE COURT: The technology has worked well except when  
8 it hasn't. But for the most part we haven't had -- we really  
9 have not had problems.

10 And Mr. Milender dropped off as well? Is that --

11 THE CLERK: Yes, they were on the same line.

12 THE COURT: Oh, okay. Is someone able to email them  
13 in the event they don't realize they've dropped off?

14 UNIDENTIFIED SPEAKER: I can text Mr. Fleck.

15 THE COURT: All right. Thank you very much.

16 Parker Milender just came back on the dashboard.

17 MR. FLECK: Your Honor, it's Evan Fleck.

18 THE COURT: All right, Mr. Fleck, you and Mr. Milender  
19 had dropped off, so I think you were about to say that you, I  
20 think, successfully completed your negotiations with JPMorgan  
21 Chase and Goldman.

22 MR. FLECK: Yes.

23 THE COURT: If you want to pick up there, that would  
24 be fine.

25 MR. FLECK: Yes, thank you, Your Honor. Apologies.

AVIANCA HOLDINGS S.A.

11

1 It was a rather abrupt separation from the line by Court  
2 Solutions, so apologies to you and others on the line for that.

3 THE COURT: I commented, after you dropped off, the  
4 technology has worked well except for when it hasn't, but those  
5 have been rare instances. But go ahead.

6 MR. FLECK: Okay. All right. So let me just kind of  
7 try to move more swiftly through this so that we don't have  
8 that happen again. Maybe we can get through it.

9 Okay. So as I was saying, Your Honor, the time was  
10 put to productive use yesterday. As is not unusual, it took a  
11 little bit longer, so it was good that you didn't have  
12 availability in the afternoon, because we worked until this  
13 morning to resolve the issues, and we are where I'd hoped we  
14 would be yesterday in a fully consensual posture with respect  
15 to the relief.

16 As was noted yesterday, the U.S. Trustee's office is  
17 on board, procedurally and substantively. The creditors'  
18 committee is also supportive, and importantly, our proposed  
19 arrangers, Goldman Sachs and JPMorgan, are all in agreement.

20 Just for good order, again, Your Honor, I'd note that,  
21 in addition to the docket entries that Your Honor referenced,  
22 and as you anticipated, docket number 723 is the redacted  
23 version of the fee letter, and we also filed at the same docket  
24 number a revised proposed order.

25 So while I previewed the relief yesterday, and I think

1 Your Honor understands both the reason for the relief and the  
2 substance of what we're seeking, perhaps I should provide the  
3 Court with an overview of the relief. And again, it is set  
4 forth in the motion at 694.

5 Your Honor, today the debtors are seeking approval of  
6 two agreements. It's an engagement letter and the second is a  
7 fee letter. The engagement letter is with both banks, and  
8 that's filed in full; it's not redacted. The fee letter is the  
9 document that has some confidential and commercially-sensitive  
10 information, and each of which is a tri-party agreement by and  
11 among the debtors, Goldman Sachs, and JPMorgan.

12 Your Honor, the engagement letter provides for the  
13 following: the engagement of Goldman Sachs and JPMorgan as  
14 co-lead arrangers of the debtors' anticipated 900-million-  
15 dollar tranche A DIP facility; the engagement of JPMorgan as  
16 administrative agent of the tranche A DIP facility; the  
17 indemnification of Goldman Sachs and JPMorgan by the debtors,  
18 as set forth in the letter; and finally, the reimbursement of  
19 Goldman Sachs and JPMorgan of certain reasonable, out-of-pocket  
20 fees and expenses, including those for their respective  
21 counsel, up to a cap of one million dollars each for Goldman  
22 Sachs and JPMorgan.

23 As it relates to Goldman Sachs, the Court will recall  
24 that, on a prior motion, the Court granted most of this relief  
25 back in mid-July when we were authorized to indemnify Goldman

1 Sachs and reimburse their expenses up to one million dollars at  
2 that time. And I would note, just for clarity, Your Honor, the  
3 relief we're seeking today, it's not a fresh start with respect  
4 to the million-dollar reimbursement. It's inclusive of the  
5 prior amounts, up to a total cap for Goldman, and then  
6 obviously JPMorgan is just getting started with respect to  
7 their work, although it has been quite active since their  
8 involvement in recent days.

9 And so in that respect, Your Honor, the new engagement  
10 letter is intended to supersede the prior letter with Goldman,  
11 but as I said, won't result in any additional amounts that  
12 would be covered.

13 With respect to the fee letter, Your Honor, it's one  
14 fee letter that covers both of the bank entities, and it  
15 contemplates the payment of a single arranger fee, which will  
16 be split fifty-fifty between the two financial institutions,  
17 Goldman Sachs and JPMorgan, the payment of an annual  
18 administrative fee to JPMorgan, as administrative agent for the  
19 tranche A DIP facility, as well as an alternative transaction  
20 fee payable solely in the event that the debtors proceed with  
21 an alternative DIP facility that's not arranged by JPMorgan and  
22 Goldman Sachs, and lastly, certain fees related to any  
23 conversion of the tranche A DIP facility to an exit facility.  
24 And the amounts, the underlying amounts, have been redacted in  
25 the docket entry 723. Obviously, Your Honor has the full and

1 complete version as does the creditors' committee and the  
2 Office of the United States Trustee.

3 As Your Honor would expect, most of our discussions,  
4 over the course of the weekend and into last night, related to  
5 the terms of when and the circumstances giving rise to an  
6 alternative transaction fee and the amount of the fees. And in  
7 each case the changes that were made, at the request and urging  
8 of the creditors' committee, enure to the benefit of the  
9 estate, in terms of tightening of the circumstances, clarity  
10 with respect to language, and certain reductions with respect  
11 to the fees that should be apparent, I believe, to Your Honor,  
12 in looking at the redline version that is either in your inbox  
13 or perhaps open on your screen.

14 THE COURT: I actually have it open.

15 MR. FLECK: Your Honor -- okay, great. Your Honor,  
16 I'm happy to explain, at this point, the need for the urgent  
17 relief. I spoke to it a bit yesterday in our brief hearing,  
18 with respect to the mark conditions and the debtors' work,  
19 since before the petition date, to secured debtor-in-possession  
20 financing, the extensive efforts that have been undertaken by  
21 the debtors, literally every day of these Chapter 11 cases, and  
22 the debtors' business judgment, combined with the views of the  
23 proposed arrangers, that we are very much in a critical period  
24 with respect to the market to be able to fill the book in terms  
25 of the syndication process.

1           So I'm happy to go into further detail, if it's  
2 helpful for the Court, in terms of the need for relief at this  
3 time. I'll just also emphasize as well, Your Honor, and I  
4 noted this on the record yesterday, that both arrangers have  
5 not been waiting for the relief from this Court, and the  
6 debtors certainly appreciate that.

7           I spoke yesterday about the extensive lender call  
8 which took place last week, the calls that have happened  
9 subsequent that have been led by the arrangers with proposed  
10 financing parties. People are working literally day and night,  
11 and some of those people, there's a huge team at both banks  
12 working with the debtors to assist us in this process and  
13 hopefully have a successful syndication that we hope to be able  
14 to memorialize in a motion before the Court that we hope to be  
15 able to file over the course of the next couple of weeks to  
16 ultimately have a hearing before Your Honor, we hope on a  
17 consensual basis, but in either event, at some point during the  
18 month of September.

19           THE COURT: All right.

20           MR. FLECK: I think at this point -- yeah --

21           THE COURT: I think that --

22           MR. FLECK: I was just going to say, Your Honor --  
23 other counsel, Mr. Fleck, and then if I have questions or  
24 something comes up --

25           MR. FLECK: Great.

1 THE COURT: -- I'll come back to you, okay?

2 All right. So thank you very much.

3 MR. FLECK: Thank you, Your Honor.

4 THE COURT: Mr. Goren, on behalf of the committee, do  
5 you want to speak?

6 MR. GOREN: Yes, thank you, Your Honor. Todd Goren,  
7 Morrison & Foerster, on behalf of the official committee of  
8 unsecured creditors.

9 The committee certainly recognizes the debtors' need  
10 for financing. We've been working with them throughout the  
11 process and throughout the case so far in getting set to get to  
12 this point where they're out in the market seeking the  
13 financing.

14 As Mr. Fleck noted, we did have some concerns with the  
15 structure of the fees and in some cases the amount of the fees  
16 being paid to the arrangers. Fortunately, both the debtors and  
17 the arrangers were willing to work with us, and we were able to  
18 reach a consensual resolution that we think appropriately  
19 aligns everybody's interests to get the best possible financing  
20 here.

21 So certainly the committee hopes that the relief is  
22 approved and that the arrangers are able to go out and raise  
23 all of the debt that is necessary here.

24 THE COURT: Thank you very much, Mr. Goren.

25 Mr. Qusba?



1 MR. QUSBA: Your Honor, good morning. Sandy Qusba,  
2 Simpson Thacher, counsel for JPMorgan.

3 I think both the committee's counsel and Mr. Fleck  
4 have really appropriately disclosed, sort of, the negotiations  
5 that have gone on, particularly over the last, I'll call it,  
6 seventy-two-plus hours. Obviously we have been working quite a  
7 bit, as Mr. Fleck noted, not only on the legal side but the  
8 business folks themselves. The financing package has actually  
9 been launched, and people are hard at work in going into the  
10 third week of August on a fairly complicated restructuring and  
11 financing package in the emerging markets. But we're hopeful,  
12 and we're certainly going to put our shoulder into it and try  
13 to get it done to meet the company's liquidity needs and  
14 capital needs going forward.

15 So we appreciate the committee working with us.  
16 Obviously, we appreciate the debtors working with us, and we  
17 look forward to completing the process.

18 THE COURT: Thank you very much, Mr. Qusba.

19 Mr. Deutsch?

20 MR. DEUTSCH: Good morning, Your Honor. Doug Deutsch,  
21 Clifford Chance, on behalf of Goldman Sachs.

22 I don't have a lot to add to what was said by both the  
23 debtor, the committee, and JPM. I can assure you that the  
24 negotiations over the last -- since this weekend have -- is  
25 accurate. I think there's been a fulsome discussion of issues

1 and a good resolution of those issues. So we look forward to  
2 having a successful syndication and ultimately DIP facility  
3 emerging.

4 THE COURT: Thank you very much.

5 Mr. Masumoto?

6 MR. MASUMOTO: Good morning, Your Honor. Brian  
7 Masumoto for the Office of the United States Trustee.

8 Your Honor, we have no objections to the proposed DIP  
9 financing arrangements.

10 THE COURT: And I take it that's also true as to the  
11 sealing motion as well?

12 MR. MASUMOTO: I'm sorry, Your Honor?

13 THE COURT: And no objection as to the sealing of the  
14 fee letter?

15 MR. MASUMOTO: Yes, Your Honor, that's correct. As  
16 indicated by Mr. Fleck, a redacted form of the letter has been  
17 posted on the docket at docket number 723.

18 THE COURT: Thank you very much, Mr. Masumoto.

19 Does anybody else wish to be heard?

20 All right. Hearing none, both motions are granted.  
21 So the motion to approve the fee letter is granted, and the  
22 motion to seal the unredacted fee letter is also granted. The  
23 redacted fee letter is ECF docket number 723, and there's also  
24 the revised proposed order which the Court has reviewed. So  
25 both of those are approved.

1           Mr. Fleck, just be sure that we have Word versions of  
2 both, and they'll be entered promptly. I'm glad you were able  
3 to resolve this matter on a consensual basis. Since the first  
4 day it was -- while the debtors entered Chapter 11 with a large  
5 unencumbered cash balance, it was, I think, clear from the  
6 start, and particularly as the pandemic has extended on, that  
7 debtor-in-possession financing was going to be required. And  
8 I'm glad you've been able to get this far, and certainly we'll  
9 see how syndication and the tranche A goes, and I'll look  
10 forward to hearing -- I think we should be able to get a  
11 hearing without any difficulty. As usual, check with Deanna  
12 and you'll be able to get a hearing date when we get the motion  
13 on file.

14           Anything else for today, Mr. Fleck?

15           MR. FLECK: Thank you, Your Honor. We very much  
16 appreciate all of that. And I guess the only thing I would  
17 note, Your Honor, obviously we have hearing next week on the  
18 26th in connection with the USAV flow matter, and we do like to  
19 give the Court an update on other matters that we expect to  
20 file.

21           I would just note, for the Court's reference, we do  
22 anticipate filing a motion, in the near term, in connection  
23 with another component of the DIP facility. You noted  
24 yesterday that there's a tranche A and a tranche B, and I gave  
25 an overview of some of the component parts, including the

1 freeing up of some additional collateral to become -- or at  
2 least part of the collateral for the DIP facility, and part of  
3 that relates to the bondholder transaction.

4 So we will be filing a motion before the Court that's  
5 contemplated in the transaction with the noteholders to approve  
6 a breakup fee and certain expenses in connection with that  
7 transaction. Obviously we're not seeking any relief today,  
8 really just wanted to give Your Honor and the parties who are  
9 on the line sort of a heads up that we will be filing that, on  
10 appropriate notice, and then we'll look to be before the Court  
11 on that at the appropriate time.

12 THE COURT: All right. And with respect to the USAV  
13 Flow dispute or rejection of the contracts, supplemental briefs  
14 were filed last night. Some of the filings with attachments  
15 are very, very voluminous, and I will be starting my review of  
16 those materials today.

17 Now, I don't want to go too far because I don't know  
18 whether anybody for any of the other parties in that matter are  
19 on the phone today, but is it contemplated this is going to be  
20 an evidentiary hearing with respect to that?

21 MR. FLECK: Your Honor, I don't believe that anybody  
22 from the USAV Flow parties, either the lender side or USAV  
23 Flow -- at least I didn't see them registered for the call  
24 today, and I actually am not sure from my colleagues as to  
25 whether any agreements have been reached on that. May I

1 propose that we coordinate among the parties and then promptly  
2 advise chambers?

3 THE COURT: Yes, please do that. I don't want to get  
4 into the merits of it without everybody on the phone, but  
5 confer with the other parties and ascertain whether there's  
6 going to be any cross-examination in connection with the  
7 hearing. It will be a Zoom hearing, as I had indicated  
8 previously, whether or not there are actually witnesses that  
9 are cross-examined live during the hearing. It's a major  
10 matter, and I want to devote sufficient time to it. And just  
11 being able to see and hear the lawyers as they argue is very  
12 helpful and obviously, if there are any witnesses, I think I've  
13 already entered a procedures order with respect to that. If  
14 not, there will be. But why don't you check? And if you could  
15 file a status letter, after you confer with the parties, so I'm  
16 aware of how we're going to go forward. Okay?

17 MR. FLECK: Yes, we will do that.

18 THE COURT: Thank you very much. All right. Anybody  
19 else --

20 MR. FLECK: Okay.

21 THE COURT: -- have anything more to raise today?

22 All right. Thank you very much, and we are adjourned.

23 IN UNISON: Thank you, Your Honor.

24 (Whereupon these proceedings were concluded)

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## I N D E X

RULINGS:	PAGE	LINE
Motion to approve the fee letter is granted.	18	21
Motion to seal the unredacted fee letter is granted	18	22

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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript is a true and accurate record of the proceedings.

*Sharona Shapiro*

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Sharona Shapiro (CET-492)  
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Date: August 20, 2020



**EXHIBIT 35**

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

AVIANCA HOLDINGS S.A., et al.	Main Case No.
Debtors.	20-11133-mg

- - - - -x

United States Bankruptcy Court  
One Bowling Green  
New York, New York

August 18, 2020  
2:00 PM

B E F O R E:  
HON. MARTIN GLENN  
U.S. BANKRUPTCY JUDGE

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(Doc# 694, 708, 709) Telephone Hearing Using CourtSolutions RE:  
Debtors' (I) Request for Expedited Determination; and (II)  
Emergency Motion for Authorization to Enter into Letter  
Agreements with Financing Arrangers. Next Hearing set for  
08/19/2020 at 10:00 am

(Doc## 695, 694, 696) Telephone Hearing Using CourtSolutions  
RE: Debtors' (I) Request For Expedited Determination; and (II)  
Motion for Authorization to File DIP Facility Fee Letter Under  
Seal. Next Hearing set for 08/19/2020 at 10:00 am

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AVIANCA HOLDINGS S.A.

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## P R O C E E D I N G S

THE COURT: Good afternoon to everybody. We're here in Avianca, 20-11133. There were two matters on the calendar, first this afternoon the emergency motion for authorization to enter a letter agreement with financing arrangers, that's ECF docket number 694; and a motion to field certain information, that was ECF docket number 695.

Mr. Fleck?

MR. FLECK: Good afternoon, Your Honor. Evan Fleck of Millbank on behalf of the debtors.

Thank you very much, Your Honor, for hearing us today. I want to apologize in advance. We, at the debtors, are working through some final language with the arrangers who are the subject of the motion and the relief that the debtors are seeking today. And I apologize to the Court and the court staff and the parties on the line.

But regrettably, while I fully expect that we will be proceeding on a consensual basis with respect to the motion, we are not quite prepared to do that at this time. And I understand that Your Honor -- the Court may not be available later on this afternoon. The next setting may be tomorrow morning at 10 a.m. And --

THE COURT: I have a hearing this afternoon at 4 o'clock. I am available tomorrow morning at 10.

MR. FLECK: Okay. Well, Your Honor, if it pleases the

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1 Court, we would appreciate we could adjourn the matter to  
2 tomorrow morning. Again, I believe we will have a consensual  
3 hearing. We really appreciate it. And I'll say it more  
4 emphatically perhaps tomorrow, the constructive engagement in  
5 particular by the creditors' committee and their advisors. And  
6 I do believe we will have a consensual motion.

7 But given the fact that we don't have a hallway  
8 outside of your courtroom to work this out right now and we're  
9 working through conference calls, we would appreciate it if you  
10 wouldn't mind giving us the time tomorrow morning at 10.

11 THE COURT: I'd be happy to do that.

12 Does anybody else wish to be heard today?

13 Mr. Fleck, could you just give me an update generally  
14 on where things stand?

15 MR. FLECK: Yes, Your Honor. With respect to the  
16 cases generally or as it pertains to the matter that's before  
17 the Court?

18 THE COURT: Well, why don't you give me a quick update  
19 on the case as a whole? And then just talk about the  
20 financing. As I understand it, the debtors are seeking two  
21 tranches of financing A and B, a total of 1.6 billion dollars  
22 divided between the two tranches. But why don't you, if you  
23 could, give me an update generally?

24 MR. FLECK: Sure, Your Honor. Happy to do that. In  
25 terms of operational update, we have had a bit of positive

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1 news. I know my reports in the past have been a little bit  
2 negative in terms of getting back in the air for passenger  
3 travel.

4 And we have a bit of a change in development in that  
5 the Government of Colombia and various news outlets over the  
6 past week or so, we understand that we will be able to resume  
7 flying some commercial domestic airline routes in Colombia as  
8 of September 1st. So there are, obviously, no guarantees in  
9 this environment, but we are very optimistic with respect to  
10 that development.

11 We also understand that there are other markets such  
12 as El Salvador. They may be slated to reopen for some level of  
13 flying in mid-September as well. And as a result, we may be  
14 able to deploy up to ten percent of our pre-COVID-19 capacity  
15 next month. So that's an exciting development. We're  
16 enthusiastic about that and preparing accordingly.

17 International routes are a bit more uncertain at this  
18 point in time. The expectation is that we will be able to  
19 effectuate a modest ramping up of flying operations in the near  
20 term. And so that is also a positive development generally.

21 I would also note that the resumption of flight  
22 operations does involve, as you'd expect, substantial  
23 incremental cost for the debtors, especially with regard to  
24 labor expenses. As you're aware, Your Honor, since late March  
25 and for the duration of these cases, as I said, the passenger

1 operations have been at a standstill. And we've only had cargo  
2 operations in effect. And so the debtors have been focused on  
3 conserving cash and reducing cost as much as possible until the  
4 Government-imposed restrictions were lifted.

5 So given that that's about to change, we do anticipate  
6 a significant uptick in cash burn as we get aircraft ready for  
7 flying and bringing employees back from furlough, purchasing  
8 fuel, and other operational expenses. That cash burn has  
9 created even more of an urgency as you'd expect with respect to  
10 the DIP financing process which is clearly in a very high gear  
11 at this point. And so the motion that otherwise would have  
12 been before Your Honor was to bring onboard Goldman Sachs and  
13 JPMorgan for a range of services. We think time is of the  
14 essence with respect to that process.

15 As Your Honor is aware with respect to the financing  
16 since the very first hearing, we talked about the efforts, and  
17 the very focused efforts, of the debtors to try to secure  
18 debtor-in-possession financing that began before the petition  
19 date and has continued to be a focus every day of these  
20 debtors.

21 And so we have been flexible in our approach and  
22 responsive to market indications. And that has led the debtors  
23 to the determination that it made sense to seek a market-based  
24 solution with respect to the financing for purposes of Tranche  
25 A.

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1           And so that's the need for the involvement of JPMorgan  
2 and Goldman in the capacities that are described in the letters  
3 that we're seeking approval of. That process, although the  
4 letters haven't been approved, has already begun because based  
5 upon the debtors' view, as informed by JPMorgan and Goldman, as  
6 I said, the time is of the essence. This time of year,  
7 literally these days, we believe are critical in terms of going  
8 out to the market, educating the market with respect to the  
9 needs as well as the collateral that's available to support the  
10 financing and to lock that in quite promptly.

11           And so specifically, Your Honor, last week on Friday,  
12 JPMorgan and Goldman hosted a lender call that I'm told was one  
13 of the longest and most comprehensive in the history of those  
14 institutions, having hosted many such calls, during which Mr.  
15 Neuhauser, our CFO, participated and provided significant and  
16 comprehensive report with respect to the debtors' operations,  
17 business, as well as the DIP financing, collateral available,  
18 and some go-forward plan with respect to the debtors as we  
19 return to something of a more normal steady state for the  
20 airline. That information by the way, Your Honor, is on the  
21 debtors' website. There was some private-side information as  
22 well for those that signed NDAs.

23           So the process that's contemplated to be run by the  
24 two banks, JPMorgan and Goldman, is well under way. They've  
25 since participated on hours of calls with the institutions that

1 were both on that call. And I understand the number was more  
2 than a hundred institutions as well as others who have  
3 expressed interest. And so we're very much in high gear.  
4 We're optimistic about the process. We would very much like to  
5 file a motion before the Court at some point this month which  
6 only gives us less than two weeks by my count and seek to have  
7 a hearing on that motion at some point next month, of course,  
8 subject to the Court's availability.

9 THE COURT: Let me ask, are both Tranche A and Tranche  
10 B being syndicated?

11 MR. FLECK: No, Your Honor. Well, the process that's  
12 being run by the banks is Tranche A.

13 THE COURT: All right. And what is the status of  
14 Tranche B?

15 MR. FLECK: Well, as has been sort of part of -- it  
16 hasn't been part of the court record, but it has been made  
17 public through a 6-K that was filed by the debtors last week  
18 and the information that's on the debtors' website. There  
19 is -- has been significant progress with respect to commitments  
20 that have been made for the Tranche B financing.

21 I want to be very clear, Your Honor, that the -- all  
22 of the commitments that we've achieved for the debtors in terms  
23 of financing commitments and arrangements to allow additional  
24 collateral to be available to support the financing are all  
25 subject to -- first of all, they haven't been approved by the

1 Court, as Your Honor is well aware, and are subject to higher  
2 and better proposals. But we are making significant progress.  
3 And I think we do have some significant sort of wind in our  
4 sails, I guess to mix metaphors for this business and perhaps  
5 others. But we feel like we're in a much better position.  
6 We're being cautious but also optimistic of where we stand  
7 today relative to when we were last before Your Honor and gave  
8 an update on the financing status.

9 THE COURT: Just briefly address, what is it that  
10 you're trying to file under seal?

11 MR. FLECK: For purposes of today's motion, Your  
12 Honor?

13 THE COURT: Yes.

14 MR. FLECK: Oh, it was to file under seal the fee  
15 letter and that the fee letter remain under seal and not be  
16 made available as well as the -- it's basically the economic  
17 terms with respect to both the financial arrangements for the  
18 fees that we paid to Goldman and to JPMorgan. So the fee  
19 letter itself contains sensitive and confidential and  
20 commercial information regarding the structure and the amount  
21 of the fees relating to the Tranche A facility.

22 And as such -- and we think it is customary that those  
23 types of arrangements are filed under seal. Obviously, they've  
24 been provided to the Office of the United States Trustee as  
25 well as to the Official Committee of Unsecured Creditors.



1 THE COURT: I gather that the committee has been  
2 actively involved and there's been adjustment in the fees that  
3 are being asked to be approved; is that correct?

4 MR. FLECK: That's correct, Your Honor. They have  
5 been instrumental in significant changes. I believe they filed  
6 the statement on the docket yesterday to that effect. But this  
7 is not just sort of just me saying that the normal speech about  
8 a creditor's committee. This was really meaningful work. And  
9 we appreciate their involvement in the process. And so that --  
10 and unfortunately, it had to take place over the course of a  
11 weekend and principally this past Sunday. So we, again,  
12 appreciate the commitment to the success of the cases and the  
13 financing in particular.

14 THE COURT: All right. Mr. Miller, do you want to be  
15 heard?

16 MR. MILLER: Your Honor, Brett Miller, Morrison &  
17 Foerster, on behalf of the official committee.

18 We certainly agree with Mr. Fleck. It was a pretty  
19 busy weekend. And the lenders, the proposed arrangers, made  
20 significant modifications. It's unfortunate that we're, I  
21 think, at the final drafting stage. There may be some  
22 questions that hopefully can get resolved in the next couple  
23 hours. But it was a good process. It's how the system is  
24 supposed to work with the committee getting notice, being  
25 involved in the negotiations.

1           And we thought we had a deal. I still think we will  
2 have a deal, but it may take a couple more hours.

3           THE COURT: All right. Mr. Masumoto, do you want to  
4 be heard?

5           MR. MASUMOTO: Your Honor, I have no objections to the  
6 process or the substance.

7           THE COURT: All right. And in terms of -- and your  
8 office is often active on sealing requests. And I'm not ruling  
9 on it today because the whole -- everything is being put off  
10 until tomorrow. But does the U.S. Trustee's Office have any  
11 objections to the sealing request?

12           MR. MASUMOTO: No, Your Honor. I believe -- we were  
13 provided with an unredacted copy. We do ask, I believe in  
14 accordance with your typical ruling, that a redacted letter be  
15 made available without the sealing of the entire document.

16           THE COURT: Okay. And, Mr. Fleck, is that agreeable  
17 with the debtors?

18           MR. FLECK: Yes, Your Honor.

19           THE COURT: Okay. All right. Well, let me ask. Is  
20 there anybody else that wishes to be heard today? We're  
21 obviously going to adjourn the hearing until tomorrow morning.  
22 But if anybody else wants to be heard, I'm happy to hear them  
23 now.

24           All right. Mr. Fleck, just be sure that you or Mr.  
25 Milender files a notice on the docket as soon as possible that

AVIANCA HOLDINGS S.A.

16

1 will -- the hearing is being adjourned until 10 o'clock  
2 tomorrow morning. I look forward to talking to you all  
3 tomorrow morning.

4 MR. FLECK: Great. Thank you very much, Your Honor.

5 THE COURT: All right. We're adjourned. Thank you  
6 very much.

7 (Whereupon these proceedings were concluded)

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C E R T I F I C A T I O N

I, Michael Drake, certify that the foregoing transcript is a true and accurate record of the proceedings.



---

Michael Drake (CER-513, CET-513)  
AAERT Certified Electronic Transcriber  
  
eScribers  
352 Seventh Ave., Suite #604  
New York, NY 10001

Date: August 19, 2020

**EXHIBIT 36**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re:

AVIANCA HOLDINGS S.A, *et al.*,

Chapter 11

Debtors.

Case No. 20-11133 (MG)  
(Jointly Administered)

-----X  
**ORDER WITH QUESTIONS THAT COUNSEL FOR THE PARTIES SHOULD  
ADDRESS DURING THE HEARING OF THE REJECTION MOTION**

Without limiting the arguments that counsel may make during the hearing, the Court requests that counsel address the following questions:

1. What is the unpaid balance of the loan extended by the Lender Group?
2. If the Court concludes the RSPA is an executory contract and can be rejected, absent rejection of the other agreements, what if any obligations do *each* of the parties to the remaining contracts have, including
  - a. with respect to credit card receivables that were sold or transferred to USAV before rejection that (i) have not yet been collected, or (ii) have been collected but the funds have not yet been distributed in accordance with contract provisions dealing with distribution of proceeds, and
  - b. with respect to receivables that are generated *post-rejection of the RSPA*?
3. Could the agreements other than the RSPA continue to be operative and performed if the RSPA alone is rejected? What would be the ongoing obligations of the Debtors under each of those other agreements if the RSPA is rejected?
4. If the RSPA is rejected, and the Court concludes that the other agreements are not executory, must the Debtors continue to perform under the other agreements? For example, must the Debtors continue to “service” any credit card receivables sold prior to rejection of the RSPA, and if so, which contractual provisions impose such obligations?
5. What specific provisions of the Undertaking Agreement, if any, require USAV to perform material ongoing obligations?
6. If the RSPA is rejected, and the Court concludes that the other agreements are not executory, do any of the other agreements impose obligations on the Debtors relating to



“future” receivables that are not sold under the RSPA (because it was rejected). If so, specifically identify the contracts and provisions that impose such obligations.

7. Assuming that the other contracts are not executory and cannot be rejected, is there a “breach” under any of the other agreements? What specifically is each breach?
8. Is there a breach by the Debtors of the Cash Management Agreement if the Debtors continue to service any credit card receivables sold to USAV prior to rejection of the RSPA?
9. Is there a breach by the Debtors of the Cash Management Agreement if the RSPA is rejected and Debtors enter into a new cash management agreement and credit card processing agreements with respect to credit card receivables generated post-rejection?
10. If after rejection of the RSPA, the Debtors sell future receivables to some party other than USAV, what if any obligations do the Debtors have under each of the other agreements?

**IT IS SO ORDERED.**

Dated: August 25, 2020  
New York, New York

*Martin Glenn*

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MARTIN GLENN  
United States Bankruptcy Judge



**EXHIBIT V**

ORAL ARGUMENT REQUESTED

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**Case Nos. 1:20-cv-08008-LTS; 1:20-cv-08364-LTS**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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IN RE AVIANCA HOLDINGS S.A., ET AL.,  
*DEBTORS.*

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USAV SECURED LENDER GROUP,  
USAVFLOW LIMITED,  
*APPELLANTS,*

V.

AVIANCA HOLDINGS S.A., ET AL.,  
*APPELLEES.*

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APPEAL FROM THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
BANKR. CASE No. 20-11133 (MG)

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**APPENDIX TO OPENING BRIEF FOR  
APPELLANT USAV SECURED LENDER GROUP  
VOLUME 4 OF 5 (PAGES A1002-A1067)**

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**WHITE & CASE LLP**

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*Attorneys for the USAV Secured Lender Group*

Pursuant to Fed. R. Bankr. P. 8018(b)(1), in support of its brief filed concurrently herewith, Appellant USAV Secured Lender Group<sup>1</sup> submits this Appendix comprised of the following documents:

AX <sup>2</sup>	Document Description (Date of Entry)	Docket No.	App'x Page Range
<b>VOLUME 1</b>			
1	Docket entries from Main Chapter 11 Bankruptcy Case, <i>In re Avianca Holdings S.A.</i> , Case No. 20-11133 (MG) (Bankr. S.D.N.Y.)	N/A	A1-A106
2	Docket entries from Adversary Proceeding, <i>Avianca Holdings S.A. v. USAVflow Limited</i> , Case No. 20-01189 (MG) (Bankr. S.D.N.Y.)	N/A	A107-A111
3	Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts <sup>3</sup> (6/23/2020)	Bk.Dkt.306 <sup>4</sup>	A112-A131
4	Declaration of Adrian Neuhauser in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (6/23/2020)	Bk.Dkt.306-1	A132-A136
5	Contract Rights and Receivables Sale, Purchase and Servicing Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 1	A137-A270

<sup>1</sup> Capitalized terms used but not defined in this Appendix have the meanings provided in the USAV Secured Lender Group's opening brief.

<sup>2</sup> "AX" refers to the Appendix Exhibit Number, as cited in the USAV Secured Lender Group's opening brief.

<sup>3</sup> The cover notice to the Rejection Motion has been omitted.

<sup>4</sup> "Bk.Dkt." refers to docket entries from the main Chapter 11 bankruptcy case captioned *In re Avianca Holdings S.A.*, Case No. 20-11133 (MG) (Bankr. S.D.N.Y.).

6	Receivables Maintenance Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 2	A271-A303
7	Cash Management Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 4	A304-A336
8	Credomatic Notice of Transfer, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 5	A337-A374
9	Credomatic Consent and Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 6	A375-A381
10	AMEX Notice and Consent, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 7	A382-A409
11	Loan Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 9	A410-A569
<b>VOLUME 2</b>			
12	Complaint <sup>5</sup> (6/23/2020)	Ap.Dkt.1, <sup>6</sup> Bk.Dkt.307	A570-A581
13	USAVflow Limited's Objection and Reservation of Rights to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (7/22/2020)	Bk.Dkt.616	A582-A600
14	Legal Opinion of Gómez-Pinzón Abogados S.A.S., Dated December 12, 2017 (7/22/2020)	Bk.Dkt.616-1	A601-A611
15	Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (7/22/2020)	Bk.Dkt.617	A612-A645
16	Declaration of Jorge Suescún Melo in Support of Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order	Bk.Dkt.618	A646-A654

<sup>5</sup> Exhibits to the Complaint have been omitted. The USAV Secured Lender Group can provide all the exhibits upon the Court's request.

<sup>6</sup> "Ap.Dkt." refers to docket entries from the adversary proceeding captioned *Avianca Holdings S.A. v. USAVflow Limited*, Case No. 20-01189 (MG) (Bankr. S.D.N.Y.).

	Authorizing Rejection of Certain Executory Contracts (7/22/2020)		
17	Notice of Trigger Event, Dated March 31, 2020 (7/23/2020)	Bk.Dkt.619-1	A655-A660
18	Transcript of Telephonic Status Conference Held on July 27, 2020 <sup>7</sup> (7/28/2020)	Bk.Dkt.647	A661-A690
19	Official Committee of Unsecured Creditors' Reply in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/07/2020)	Bk.Dkt.681	A691-A702
20	Debtors' Reply to the Objections of USAV and the USAV Secured Lender Group to the Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/07/2020)	Bk.Dkt.683	A703-A734
21	Second Declaration of Adrian Neuhauser in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/07/2020)	Bk.Dkt.683-1	A735-A740
22	Email Communication amongst Avianca and Citibank, N.A., Between July 5, 2020 and July 8, 2020 (8/07/2020)	Bk.Dkt.683-4	A741-A744
23	Certified English Translation of Declaration of Jaime Alberto Arrubla-Paucar in Support of the "Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts" (8/07/2020)	Bk.Dkt.684-1	A745-A758
24	Supplemental Response of the Official Committee of Unsecured Creditors to the Court's Questions Posed at the July 27, 2020 Status Conference (8/18/2020)	Bk.Dkt.714	A759-A763

<sup>7</sup> All transcript indexes in this Appendix have been omitted. The USAV Secured Lender Group can provide the full index upon the Court's request.

25	Debtors' Response to the Court's Questions Posed at the July 27, 2020 Status Conference (8/18/2020)	Bk.Dkt.715	A764-A782
26	USAV Secured Lender Group's Supplemental Brief in Support of Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/18/2020)	Bk.Dkt.716	A783-A803
27	USAVflow Limited's Combined Response to (A) Debtors' Reply in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts and (B) Questions Posed by the Court at the July 27, 2020 Status Conference (8/18/2020)	Bk.Dkt.717	A804-A817
28	Sur-Reply of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/18/2020)	Bk.Dkt.718	A818-A850
29	Declaration of Vicente Lines in Support of the USAV Secured Lender Group's Supplemental Brief and Sur-Reply in Support of Objection to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/19/2020)	Bk.Dkt.719	A851-A857
30	Second Declaration of Jorge Suescún Melo in Support of Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/19/2020)	Bk.Dkt.720	A858-A884
<b>VOLUME 3</b>			
31	Option Agreement, Dated December 12, 2017 (8/19/2020)	Bk.Dkt.721-1	A885-A896
32	Waiver Request Letter from Avianca to the Lenders, the Agents, and USAV, Dated February 19, 2018 (8/19/2020)	Bk.Dkt.721-11	A897-A900

33	Waivers of Trigger Events, Dated on or about April 13, 2018 and November 27, 2019 (8/19/2020)	Bk.Dkt.721-12	A901-A956
34	Transcript of Hearing Held on August 19, 2020 (8/20/2020)	Bk.Dkt.743	A957-A980
35	Transcript of Hearing Held on August 18, 2020 (8/21/2020)	Bk.Dkt.742	A981-A998
36	Order with Questions that Counsel for the Parties Should Address During the Hearing of the Rejection Motion (8/25/2020)	Bk.Dkt.757	A999-A1001
<b>VOLUME 4</b>			
37	Avianca's August 26, 2020 Hearing Demonstrative (8/26/2020)	N/A	A1002-A1030
38	USAV Secured Lender Group's August 26, 2020 Hearing Demonstrative (8/26/2020)	N/A	A1031-A1067
<b>VOLUME 5</b>			
39	Transcript of Hearing Held on August 26, 2020 (8/27/2020)	Bk.Dkt.788	A1068-A1204
40	Memorandum Opinion Granting in Part and Denying in Part Debtors' Motion to Reject the USAV Agreements (9/04/2020)	Bk.Dkt.850	A1205-A1245
41	USAV Secured Lender Group's Notice of Appeal <sup>8</sup> (9/18/2020)	Bk.Dkt.959	A1246-A1251
42	USAVflow Limited's Notice of Appeal <sup>9</sup> (9/18/2020)	Bk.Dkt.960	A1252-A1257

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<sup>8</sup> Exhibits to the USAV Secured Lender Group's Notice of Appeal have been omitted. Exhibit A to the Notice of Appeal, the Order, is included in this Appendix as Exhibit 40.

<sup>9</sup> Exhibits to USAV's Notice of Appeal have been omitted. Exhibit A to the Notice of Appeal, the Order, is included in this Appendix as Exhibit 40.



October 14, 2020  
New York, New York

Respectfully submitted,

**WHITE & CASE LLP**

By: /s/ Glenn M. Kurtz

---

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*Attorneys for the USAV Secured  
Lender Group*

**EXHIBIT 37**

# In re Avianca Holdings S.A., et al

August 26, 2020

Hearing on the Debtors' Motion for Entry of an Order  
Authorizing Rejection of Certain Executory Contracts



## Table of Contents

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- I. Background**
  - a. The Questions Before the Court*
  - b. The Transaction*
- II. The USAV Contracts Are Executory**
  - a. The RSPA*
  - b. The Undertaking Agreement*
  - c. Other USAV Agreements*
- III. Rejection Is A Reasonable Exercise of The Debtors' Business Judgment**
- IV. The Debtors Are Not Seeking Rescission: Rejection Is Sufficient to Achieve The Debtors' Objectives**
- V. USAV's Damages Claim Will Be Unsecured**

## In re Avianca Holdings S.A., et al

August 26, 2020  
Hearing on the Debtors' Motion for  
Entry of an Order Authorizing Rejection of  
Certain Executory Contracts



## The Key Questions Before the Court are Simple

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There are **two key questions** before the Court:

- 1) Are the USAV Agreements executory?
- 2) Will benefits flow to the Debtors through rejection, such that rejection is a reasonable exercise of the Debtors' business judgment?

## The Debtors Seek to Breach The USAV Agreements

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- The Debtors are **not seeking rescission** of the USAV Agreements, only rejection.
- **Breaching** the USAV Agreements allows the Debtors to **realize the value** of their business: ticket sales.
- USAV will be entitled to **exactly what they contracted for: a claim** against the Debtors in the full amount of the remaining balance outstanding on its loan.

# Transaction Overview



## The USAV Transaction

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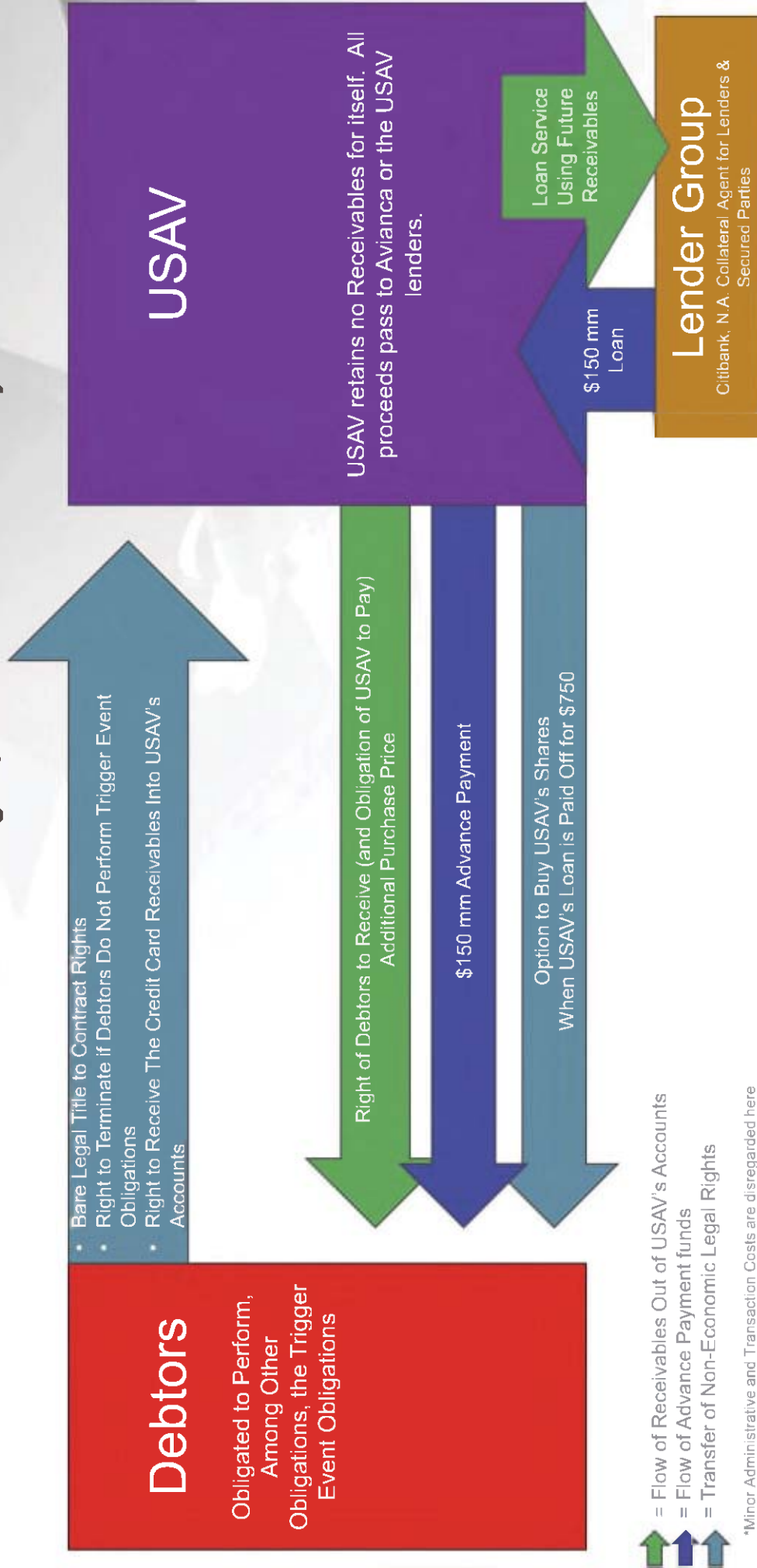
Prepared by Milbank LLP

- On December 12, 2017, the Debtors entered into a series of agreements with and involving USAVflow Limited (“USAV”), a Cayman Islands special purpose company.
  - Together, the agreements (the “USAV Agreements”) constituted a single transaction (the “USAV Transaction”), pursuant to which Avianca securitized certain credit card receivables arising from purchases in the United States of Avianca flights.
- Under the RSPA, which is governed by Colombian law, Avianca “sold” credit card receivables to USAV, and USAV borrowed \$150 million pursuant to a term loan facility from a consortium of lenders.
  - The aggregate purchase price for the credit card receivables was (a) an initial installment of \$150 million, plus (b) the “Additional Purchase Price,” or the net amount due on the credit card receivables each month after deduction of the amount necessary to repay principal and interest installments to the lenders.
- As of March 31, 2020, approximately \$103 million remained **outstanding under the loan agreement**. As of July 2020, approximately **\$96 million** remained.

Prepared by Milbank LLP

## USAV's Interest in The Receivables is Neither Complete Nor Permanent

**USAV Is the Titular Owner of the Contract Rights, But It Does Not Retain Any Receivables for Itself**



## The USAV Parties Attempt to Over-Simplify this Transaction

---

### *The Debtors Have Always Retained an Economic Interest in the Receivables*

- The Debtors did **not** agree to sell—for **\$150 million**—permanent ownership and full economic interest in Credit Card Receivables that averaged between **\$369 and \$456 million per year**. See RSPA § 4.01(qq) (Debtors Exhibit 2, at 30 [Dkt. No. 306-2, Exh. 1]).
- Instead, the Debtors **always** retained an **economic interest** in the Receivables, through their **contractual rights**, pursuant to the governing agreements, to **receive the Additional Purchase Price**.
- In the months **before the COVID-19 pandemic** and the resulting cessation of the Debtors' passenger service, **92-95%** of the Receivables **flowed back to the Debtors**. Since the **Petition Date**, the Debtors have received **no payments** from USAV. Second Neuhauser Decl. ¶¶ 3, 8 (Debtors Exhibit 12 [Dkt. No. 683-1]).
- The Debtors **do not seek to take back** pre-petition transfers of Receivables made under the USAV Agreements.

## Events Prior to Bankruptcy



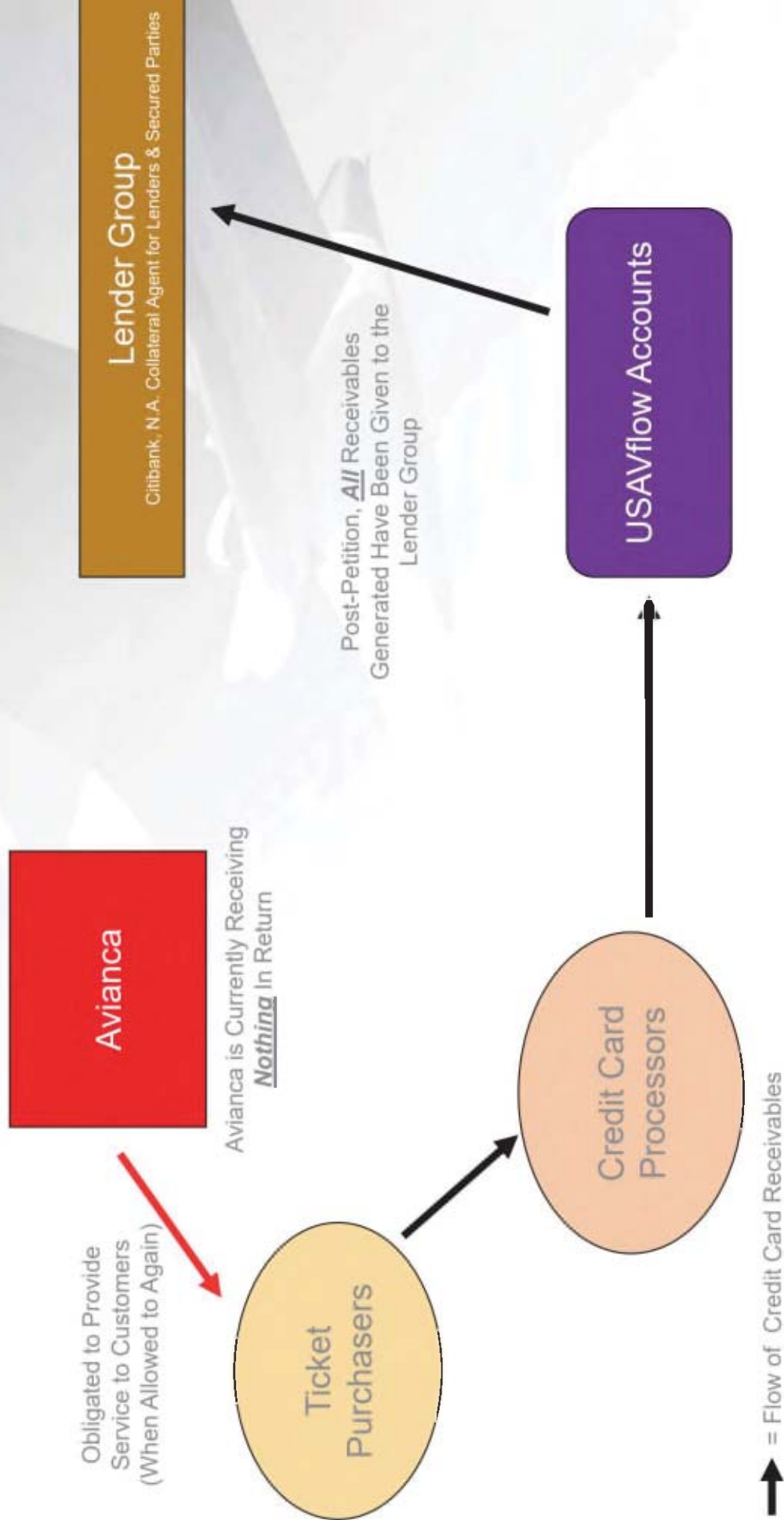
### The Obligation to Pay Additional Purchase Price was Still in Effect Until the Petition Date

- On **April 12, 2020**, Citibank, on behalf of **USAV**, paid the monthly amount due on USAV's Loan, beginning a new collection period.
- From **April 12 through May 11**, the Credit Card Receivables were **not generated in sufficient amounts** to meet the outstanding amount due on USAV's Loan.
- Accordingly, Avianca did not receive the Additional Purchase Price because insufficient amounts were generated. The contractual right to the Additional Purchase Price was not "cut off" or "extinguished" by any act of USAV or the Lender Group.
- The Debtors received the **first notice** of a Retention Event on **May 11, 2020**—**after** the Petition Date.
- The Debtors sent an **automatic stay notice** on May 15, 2020. Citibank, at the direction of the Lender Group, **has since swept more than \$13 million.**



Prepared by Milbank LLP

## The Debtors Are Currently Receiving None of the Cash Flow from the Receivables





# The USAV Agreements Are Executory

## All Parties Cite the Same Definition of Executory Contracts

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Prepared by Milbank LLP

*“If both parties have **substantial, unperformed obligations**, the contract is executory, **even though** the uncompleted obligation of one of the parties only involves the **payment of money**.”*

*In re Teligent, Inc.*, 268 B.R. 723, 732 (Bankr. S.D.N.Y. 2001) (emphasis added)

*“[I]f the parties **contractually agree** that some or all of the terms are **sufficiently important to discharge any further obligations** imposed on the party aggrieved by a breach, their **intent will govern**.”*

*In re Hawker Beechcraft, Inc.*, 486 B.R. 264, 278 (Bankr. S.D.N.Y. 2013) (emphasis added)



### *The RSPA: The Debtors Have Material Outstanding Obligations*

- The failure by the Debtors to perform any of the following results in a “**Trigger Event**,” which gives USAV the **right to terminate the RSPA**:
  - Continuing to **operate domestic and international flights**.
  - Generating receivables sufficient to **pay USAV the Monthly Settlement Amount**.
  - **Maintaining a Collections Coverage Ratio** of at least 1.75:1.00 at any date of determination.
  - Performing and observing all **material covenants** contained in the **Undertaking Agreement**, any **RSPA Security Document**, and any **Notice and Consent**.

See RSPA § 6.01 (Debtors Exhibit 2, at 34-36 [Dkt. 306-2, Exh. 1]).

### *The RSPA: The Debtors Have Material Outstanding Obligations*

- In the event the Debtors enter into new card processing agreements, the failure by the Debtors to perform any of the following results in a breach by the Debtors:
  - Execution of a new Notice and Consent whereupon the **new processor agrees to send the Receivables to USAV's** accounts
  - Delivery of **new legal opinions** to USAV and the Lender Group's agent, subject to the Lender Group's approval
  - Delivery of a new closing certificate **certifying the transfer of new rights** under the new card processing agreements
  - Grant of a **back-up security interest in favor of USAV** in those Receivables

See RSPA § 2.03(b) (Debtors Exhibit 2, at 20-21 [Dkt. 306-2, Exh. 1]).



### *The RSPA: The Debtors Have Material Outstanding Obligations*

- The failure to perform **any of the requirements of Section 6.01** results in a right by USAV to terminate the RSPA. The failure to perform the **requirements of Section 2.03(b)** would give USAV a right to sue for breach.
- The **Lender Group’s own Colombian law expert** opined that the Debtors would be “**breaching its express obligations under the contract**,” should the Debtors choose to enter into replacement card processing agreements (upon rejection of the RSPA). Second Suescún Declaration ¶ 60 (emphasis added) (Secured Lenders Exhibit 6 [Dkt. No. 720]).
- Case law is clear that a contract is **executory** when a **failure to perform** duties thereunder gives rise to a **right to terminate** the contract. See *In re Gen. DataComm Indus., Inc.*, 407 F.3d 616, 624 (3d Cir. 2005) (contract was executory because it specified that failure to perform certain duties entitled counterparty to terminate the contract).
- These are **not mere “conditions,”** as the USAV Parties assert. The requirements each relate to the “**root or essence of the contract**”: the production and delivery of Receivables. See *In re AbitibiBowater Inc.*, 418 B.R. 815, 830 (Bankr. D. Del. 2009).

See RSPA (Debtors Exhibit 2 [Dkt. 306-2, Exh. 1]).

## The Key Agreements Are Executory

Prepared by Milbank LLP

### *The RSPA: USAV Has Material Outstanding Obligations*

- USAV's ongoing obligation to deliver **Additional Purchase Price** to the Debtors is **plainly material**.
- Under **no circumstances** is USAV entitled to **permanently retain** amounts in excess of currently **due loan obligations**.
- It is clear that the parties **never** intended for the initial purchase price of **\$150 million** paid in 2017 to compensate the Debtors for **all future Receivables**. The obligation to pay Additional Purchase Price is at **"the essence" of the parties' agreement**. See *In re WorldCom, Inc.*, 343 B.R. 486, 496-97 (Bankr. S.D.N.Y. 2006).
- This obligation to pay Additional Purchase Price was still in place **as of the Petition Date**.
- The March Notice was merely a **reservation of rights**.
- USAV **continued to remit payments** of Additional Purchase Price following the March Notice.
- The Lender Group **did not receive a prepetition notice** setting forth, among other things the "Unwind Amount . . . and . . . all unpaid fees, expenses and indemnities incurred by, or claimed through, a Purchaser Finance Party . . ." **as required by Cash Management Agreement § 2.06(e)**, and therefore **never** took the necessary steps to effectuate USAV's entitlement to the proceeds of the Receivables. See Debtors Exhibit 5, at 16 [Dkt. No. 306-2, Exh. 4].

See RSPA (Debtors Exhibit 2 [Dkt. 306-2, Exh. 1]).

## The Key Agreements Are Executory

---

### *The Undertaking Agreement Is An Executory Contract*

- **Avianca's Outstanding Obligations**
  - Responding to inquiries of the Card Processors, **correcting errors, and settling claims** and disputes relating to the Receivables
  - **Managing, servicing, and administering** the Contract Rights and the Collections
  - Using best efforts to **collect all payments** called for under the terms and provisions of the Card Processing Agreements as and when the same become due
  - **Providing monthly statements** regarding collections to USAV and Citibank
  - Ensuring that each of the **Card Processing Agreements remains the legal, valid, and binding** obligation of each of the parties thereto
  - Performing and **observing all material covenants** contained in each Card Processing Agreement
  - **Renewing each Card Processing Agreement** in accordance with the terms thereof, and not consenting to termination by any Card Processor
- **USAV's Outstanding Obligations**
  - Providing all necessary **account records** to Avianca

See Undertaking Agreement (Debtors Exhibit 3 [Dkt. 306-2, Exh. 2]).



## **Rejection Satisfies the Business Judgment Test**

## Rejection of the USAV Agreements Satisfies the Business Judgment Test

---

### *The USAV Agreements Are Highly Burdensome on the Debtors' Estate*

- Sound business judgment generally **requires rejection** where an executory contract is **burdensome to the debtor's estate** and the rejection **would relieve the estate** of such burden. *In re Stable Mews Assocs., Inc.*, 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984).
- The business judgment standard requires a court to approve a debtor's business decision **unless** that decision is the product of **bad faith, whim, or caprice**. *In re Bradlees Stores, Inc.*, 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996).
- Rejection of the USAV Agreements is **well within the Debtors' sound business judgment**.
  - Avianca is not receiving the benefit of the proceeds generated from Receivables it is **incurring substantial costs to generate**.
  - Given USAV's post-petition conduct, Avianca is **not receiving** even those financial benefits under the USAV Agreements it received **prior to the petition date**.
  - If the USAV Agreements are rejected, the Receivables will **flow into the Estate**, assisting in the Debtors' **successful reorganization**, to the **benefit of all creditors**.

## Rejection Will Benefit the Debtors' Estate

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### *First, Rejection Alone Dictates that the Receivables Flow Back to the Debtors*

- Contrary to the USAV Parties' assertions, the **Debtors have substantial remaining interests** in the Receivables. **USAV has bare legal title** (at most), and little or no economic interest.
- Rejection provides USAV with a **pre-petition claim for rejection damages**, which results in **return of the economic interest in the Receivables to the Debtors**.

**Once the Claim is Discharged, Sections 2.11 and 2.04 of the Cash Management Agreement Require the Transfer of Funds Back to the Debtors**

**Section 2.11 Payments upon Discharge of Purchaser Financing.** Upon payment in full of all obligations owed to the Purchaser Finance Parties pursuant to Section 2.04(ii) hereof, the Purchaser shall instruct the Collateral Trustee to disburse any amounts remaining in the Collections Account and the Debt Service Reserve Account to the New York Pass-Through Account, to be applied by the U.S. Account Bank (as instructed by the Purchaser) to make payments to the Seller in accordance with the RSPA.

**Section 2.04 Trigger Event Priority of Payments.** If the Collateral Agent and the Collateral Trustee have prior to 10:00 a.m. (New York time) on any Business Day received written notice from the Administrative Agent that (1) a Trigger Event has occurred and notice has been given by the Purchaser pursuant to Section 6.02 of the RSPA or by the Administrative Agent (at the direction of the Required Lenders in accordance with the Purchaser Credit Agreement), or (2) the Liquidated Damages is automatically payable pursuant to Section 6.03 of the RSPA, and have not received written notice from the Administrative Agent (acting at the direction of the Required Lenders) by 10:00 a.m. on such Business Day that such notice has been revoked or is otherwise of no further force or effect, (i) the Collateral Agent shall, pursuant to Section 2.3.2 of the Loan Agreement, disburse the cash standing to the credit of the New York Pass-Through Account to the Collections Account and provide notice to the Collateral Trustee of such disbursement, and (ii) following the disbursement set forth in clause (i) above, the cash standing to the credit of the Collections Account and the Debt Service Reserve Account shall be disbursed by the Collateral Trustee (or by the U.K. Account Bank as instructed by the Collateral Trustee) pursuant to Section 3.1 of the Security Trust Deed.

See CMA §§ 2.04, 2.11 (Debtors Exhibit 5, at 15, 18 [Dkt. No. 306-2, Exh. 4]).



**Second, Rejection Allows the Debtors to Enter into New Card Processing Agreements**

- As it stands, upon entering into **new card processing agreements with different processors**, **RSPA § 2.03 requires** the Debtors to:
  - Execute a new Notice and Consent whereupon the **new processor agrees to send the Receivables to USAV's** accounts
  - Grant a **back-up security interest in favor of USAV** in those receivables
- **Rejection** frees the Debtors from these **onerous obligations**.
- Entering into these new agreements would undoubtedly be a breach of the RSPA—but the Debtors **will have already breached by rejection**.

See RSPA § 2.03 (Debtors Exhibit 2, at 20-21 [Dkt. 306-2, Exh. 1]).

# The Debtors Are Not Seeking Rescission

## The Effect of Breaching the RSPA Gives Rise to a Damages Claim

---

### ***USAV Will Be Entitled to a Damages Claim, and Nothing More***

- **Colombian law** determines the parties' rights in the event of **breach by rejection**.
- Colombian law dictates that the ***parties' agreement must control***. All parties—including the Colombian legal experts—agree.
- The RSPA grants **USAV a right to collect liquidated damages** immediately upon the Debtors' **bankruptcy filing**, equal to the unpaid principal due on USAV's loan, plus interest, and administrative costs.

**Section 6.03 Automatic Trigger Event.** In the case of a Trigger Event specified in Section 6.01(h), and notwithstanding the availability of other remedies under Section 6.02, the Liquidated Damages shall automatically become due and payable and all amounts deposited in the New York Pass-Through Account, the Collections Account and the Debt Service Reserve Account shall be disbursed to repay such amounts.

- The **Liquidated Damages** clause is **enforceable** under **Colombian law**.

See RSPA § 6.03 (Debtors Exhibit 2, at 37 [Dkt. 306-2, Exh. 1]).



## **USAV's Damages Claim Will Be Unsecured**

## USAV's Damages Claim Will Be Unsecured

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- Whether a claim is **secured or unsecured** is a question that can **only** be determined through an **adversary proceeding**. Bankruptcy Rule 7001(2).
- The **default rule for rejection** of an executory contract is that damages must be **administered through bankruptcy**, and receive the priority provided to **general unsecured creditors**. See, e.g., *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984).
- The USAV Parties cannot **simultaneously argue** that the **Debtors have no property interest** in the Receivables, **and** that they granted a **valid security interest** in them.
- At most, the security interest only **springs into effect** in the event that the RSPA is declared “**illegal, invalid, ineffective, or unwound**.” See Colombian Back-Up Security Agreement § 2.01 (Debtors Exhibit 16, at 4 [Dkt. 715-1, Exh. 1]).
- The UCC-1 Filing Statement **perfected a sale, not a security interest**.
  - The RSPA specifically provides for perfection of the sale via the filing of the UCC-1 statement. See RSPA § 2.01(g) (Debtors Exhibit 2, at 17-18 [Dkt. No. 306-2, Exh. 1]).
  - When accounts and payment intangibles are sold, the UCC requires the filing of a financing statement to perfect the buyer's interest. UCC § 9-102 cmt. 5(a), (d).
- As of the **Petition Date**, therefore, USAV held **no valid security interest**.

**EXHIBIT 38**

WHITE & CASE

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*In re Avianca Holdings S.A., et al.,*  
Case No. 20-11133 (MG)

Hearing on Debtors' Motion for Entry of an Order  
Authorizing Rejection of Certain Executory Contracts

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August 26, 2020

# The Debtors Admit They Only Have an Interest in the Non-Excess Proceeds

Hearing Date and Time: August 26, 2020 10:00am ET

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*Counsel for Debtors and  
Debtors-In-Possession*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re

AVANCA HOLDINGS S.A., *et al.*

Debtors.<sup>1</sup>

Chapter 11

Case No. 20-11133 (MG)

(Jointly Administered)

DEBTORS' REPLY TO THE OBJECTIONS OF USAV AND THE USAV SECURED  
LENDER GROUP TO THE DEBTORS' MOTION FOR ENTRY OF AN ORDER  
AUTHORIZING REJECTION OF CERTAIN EXECUTORY CONTRACTS

6. *Second*, the Debtors are not seeking to "rescind" the RSPA. In accordance with well-settled case law, the Debtors are seeking to *breach* the RSPA and the other USAV Agreements. The result of such breach is specified under the RSPA itself—the liquidated damages set forth in sections 6.02 and 6.03 of the RSPA ("Liquidated Damages"). USAV will have a pre-petition claim for Liquidated Damages against the Debtors and, once that amount is paid, 100% of the economic interest in the Receivables will revert to the Debtors.

7. *Third*, rejection—rather than rescission—will restore a full economic interest in proceeds from credit card receivables to the Debtors in one of two ways. First, the payment and discharge of USAV's claim against the Debtors for Liquidated Damages eliminates any economic interest USAV has in the Receivables, even if it retains bare legal title. Second, and at a minimum, rejection and breach of the USAV Agreements would give the Debtors the option of replacing the Card Processing Agreements. Entering into agreements with new credit card processors would undeniably allow receivables that would otherwise be subject to the RSPA to flow to the Debtors.

ECF 683



# Mission Product Confirms That Debtors Cannot Unwind a Transaction in Order to Benefit Reorganization

- *Mission Prod.*, 139 S. Ct. at 1665-66: “Tempnology’s plea to facilitate trademark licensors’ reorganizations cannot overcome what Sections 365(a) and (g) direct. **The Code of course aims to make reorganizations possible. But it does not permit anything and everything that might advance that goal.** Here, Section 365 provides a debtor like Tempnology with a powerful tool: Through rejection, the debtor can escape all of its future contract obligations, without having to pay much of anything in return. **But in allowing rejection of those contractual duties, Section 365 does not grant the debtor an exemption from all the burdens that generally applicable law**—whether involving contracts or trademarks—**imposes on property owners.** Nor does Section 365 relieve the debtor of the need, against the backdrop of that law, to make economic decisions about preserving the estate’s value—such as whether to invest the resources needed to maintain a trademark. In thus delineating the burdens that a debtor may and may not escape, **Congress also weighed (among other things) the legitimate interests and expectations of the debtor’s counterparties. The resulting balance may indeed impede some reorganizations, of trademark licensors and others.** But that is only to say that Section 365’s edict that rejection is breach expresses a more complex set of aims than Tempnology acknowledges.”



The Card Processors Are Required to Deliver the Proceeds Under Any Card Processing Agreement Directly to USAV - AMEX

- ☐ The AMEX Notice expressly defines the “AMEX Contract” to include “all extensions, amendments, supplements, **or replacements** of such agreements....”

"Assigned Contract Rights" means the contract rights of Avianca S.A. under the AMEX Contract to (a) receive any kind of payments, indemnities or economic compensations derived from Specified Sales, including the right, among other things, to receive all future Collections derived therefrom and (b) to enforce the rights referred to in (a) against AMEX. For the avoidance of doubt, the Assigned Contract Rights shall not include (x) any obligation or liability of Avianca S.A. under the AMEX Contract or arising in any manner therefrom, or (y) the rights of Avianca S.A.

“Specified Sales” means the sales, including future sales, made by travel agencies in the United States and cleared through ARC of airline tickets or related services provided by the Receivables Seller where payment in the case of any such sale is made by an American Express® Card, however branded, or any one or more of such Cards, including all such sales identified by those certain merchant codes set forth on Exhibit A hereto, with such changes, if any, as shall have been made from time to time after delivery and acceptance of a Merchant ID Supplement.

AMEX Notice §§ 3, 4

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## NOTICE AND CONSENT

Ladies and Gentlemen

- [illegible]

# The Card Processors Are Required to Deliver the Proceeds Under Any Card Processing Agreement Directly to USAV - Credomatic

EXECUTION VERSION

CREDOMATIC NOTICE OF TRANSFER

BAC International Bank, Inc.

CREDOMATIC CONSENT AND AGREEMENT

“Assigned Contract Rights” means the contract rights of Avianca S.A. under the Credomatic Contracts (including, specifically, the Credomatic USA Supplement) to (a) receive any kind of payments, indemnities or economic compensations derived therefrom on account of Specified Sales, including the right, among other things, to receive all future Collections derived therefrom; and (b) to enforce the rights referred to in (a) against Credomatic. For the avoidance of doubt, the Assigned Contract Rights shall not include (x) any obligation or liability of Avianca S.A. under the Credomatic Contracts or arising in any manner therefrom; (y) any rights of TACA International Airlines, S.A. or its subsidiaries under the Credomatic Contracts or (z) the rights of Avianca S.A.

EXECUTION VERSION

CREDOMATIC NOTICE OF TRANSFER

BAC International Bank, Inc.

CREDOMATIC CONSENT AND AGREEMENT

“Specified Sales” means the sales, including future sales, made by travel agencies in the United States and cleared through ARC of airline tickets or related services provided by Avianca S.A. where payment in the case of any such sale is made by a Master Card® Card or Visa® Card, however branded, or any one or more of said Cards, including all such sales identified by those certain merchant codes set forth on Exhibit A hereto, with such changes, if any, as shall have been made from time to time after delivery and acceptance of a Merchant ID Supplement.

☐ The Credomatic Notice expressly defines the “Credomatic Contracts” to include “all extensions, amendments, supplements, or replacements of such agreements....”

Credomatic Notice and Credomatic Consent and Agreement (Defined Terms)

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A1038



# The Card Processors Are Required to Deliver the Proceeds Under Any Card Processing Agreement Directly to USAV - Credomatic

EXECUTION VERSION

CREDOMATIC NOTICE OF TRANSFER

RAC International Bank, Inc.

☐ Under Credomatic Notice § 3, the Debtors “unconditionally and irrevocably authorize[d] and direct[ed] Credomatic ... to remit all amounts payable by Credomatic ... in respect of the Assigned Contract Rights” to USAV’s account

CREDOMATIC NOTICE OF TRANSFER

EXECUTION VERSION

EXECUTION VERSION

(a) For good and valuable consideration given by Avianca S.A., its subsidiaries and the Company, and subject to the terms of the Notice, Credomatic **unconditionally and irrevocably:**

(i) acknowledges, and consents to, the transactions described in Section 1 (xi) (“Notice and Transfer of Receivables”) of the Notice;

(ii) represents that, to the best of its understanding pursuant to the representations made by the Notice Parties, immediately before giving effect to the transactions described in Section 1 of the Notice, Avianca S.A. is the owner of the Assigned Contract Rights and Assigned Receivables and agrees that after giving effect to the transactions described in Section 1 of the Notice, the Company is the owner of the Assigned Contract Rights and Assigned Receivables and agrees to make all applicable payments under the Credomatic Contracts, in respect of Specified Sales in accordance with the instructions set forth in Section 3 (a) of the Notice unless and until such Notice is terminated in accordance with Section 5(a) of the Notice; **provided that** all such payments shall be made in United States dollars in immediately available and freely transferable funds and **provided further that**, except for payment of the Directed Amounts to the account specified in the Notice, neither Credomatic nor any Credomatic Company shall have any further obligation with respect to receipt by any party of any amounts to be paid pursuant to this clause (ii), including but not limited to amounts that may be withheld from such payments on account of taxes.

agrees not to enter into any other contract or replacement contract with the Client or any of its affiliates with respect to the Specified Sales without the previous written consent of the Collateral Agent, and to transact all business in respect of the Specified Sales under the current Credomatic Contracts as extended; **provided, however, that**, such limitation shall not limit or otherwise impair Credomatic’s rights or remedies under the Credomatic Contracts, including, without limitation, its rights under clause 3 of the Credomatic Master Agreement or its rights to modify, amend, replace or update the Credomatic Contracts in a way that does not materially affect the Specified Sales, the Assigned Receivables or the Assigned Contract Rights; and **provided further**, that such limitation shall not limit or otherwise impair Credomatic’s rights to enter into new contractual relationships with other Client Affiliates that are not being processed, acquired or otherwise serviced by Credomatic as of the date hereof

Credomatic Notice § 3; Credomatic Consent and Agreement §§ (a)(ii), (xi)

## Rejection Does Not Release the Obligations of Non-Debtors, Including the Card Processors

- ❑ *Mission Prod.*, 139 S. Ct. at 1662: “A rejection **does not terminate** the contract.”
- ❑ *Fraunhofer-Gesellschaft Zur Förderung Der Angewandten Forschung E.V. v. Sirius XM Radio Inc.*, 940 F.3d 1372, 1379-80 (Fed. Cir. 2019): Rights of non-debtor parties not unilaterally terminated by a debtor’s rejection of a license agreement; instead, status of non-debtor parties’ rights among themselves depended on non-bankruptcy law.
- ❑ *Rubin v. Whitney*, 295 N.Y.S. 255, 267 (Sup. Ct. 1937): “A breach by one of the parties to a tripartite agreement is not a basis for rescission as to the other parties.”
- ❑ *Lawry v. Palm*, 192 P.3d 550, 568 (Ct. App. Co. 2008): “Plaintiffs have cited no case, and we have found none, standing for the proposition that, in a three-party contract, one party’s breach of obligations owed to a second excuses performance by the third.”

# The Trigger Event Can Only Be Revoked by USAV and the Lenders

**WHITE & CASE**

## Contract Rights and Receivables Sale Servicing Agreement

**Aerovías del Continente Americano S.A.**  
as the Seller and the Service

**LSA VOW Limited**  
as the Purchaser

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Cash Management Agreement § 2.04

# The Debtors Do Not Have Any Material Unperformed Obligations under the Undertaking Agreement

EXECUTION VERSION

Dated 12/15/2017

## Receivables Maintenance Agreement

Between

Aerovias del Continente Americano S.A. Arizansa  
as the Seller and the Servicer

and

USAIDBor Limited  
as the Purchaser

© 2017 USAIDBor Limited  
1111 Avenue of the Americas  
New York, New York 10036

☐ The Debtors' obligations as Servicer terminated automatically pre-petition

### Section 3.12 Servicer Termination and Replacement

(a) (i) The Purchaser may at any time terminate with the written consent of the Administrative Agent (acting at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement), and (ii) the Administrative Agent (acting at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement) may at any time terminate the appointment of the Servicer by giving at least thirty (30) days' written notice to that effect.

(b) The Servicer's appointment shall automatically terminate upon the occurrence of any Trigger Event with respect to the Servicer.

(c) No termination of the appointment of the Servicer shall, however, take effect until a new Servicer has been appointed.

(d) The Purchaser (with the consent of the Administrative Agent (acting at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement)) shall be entitled to appoint a successor Servicer. If the Purchaser is unable to name a successor Servicer within sixty (60) days after notice is delivered in connection with Section 3.12(a) or automatic termination of the Servicer under Section 3.12(b), the Administrative Agent (acting at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement) may, at Seller's sole expense, either appoint an internationally reputable financial institution as successor Servicer or apply to a court of competent jurisdiction for the appointment of a successor Servicer or other appropriate relief. Any such appointment shall be binding upon all the parties hereto.

(e) If the Servicer's appointment is terminated, it shall on the date of the termination deliver to the new Servicer the records kept by it pursuant to this Agreement.

Undertaking Agreement § 3.12(b), (d)



## The Key Agreements Are Executory

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### *The RSPA: The Debtors Have Material Outstanding Obligations*

- The failure by the Debtors to perform any of the following results in a “**Trigger Event**,” which gives USAV the **right to terminate the RSPA**:
  - Continuing to **operate domestic and international flights**.
  - Generating receivables sufficient to **pay USAV the Monthly Settlement Amount**.
  - **Maintaining a Collections Coverage Ratio** of at least 1.75:1.00 at any date of determination.
  - Performing and observing all **material covenants** contained in the **Undertaking Agreement**, any **RSPA Security Document**, and any **Notice and Consent**.

See RSPA § 6.01 (Debtors Exhibit 2, at 34-36 [Dkt. 306-2, Exh. 1]).

# Trigger Events Are Conditions, Not Obligations

EXECUTION VERSION

WHITE & CASE

Dated 12/12/2017

Contract Rights and Receivables Sale, Purchase and Servicing Agreement

Aerovías del Continente Americano S.A. ("Avianca")  
as the Seller and the Servicer

among

USAVIOM Limited  
as the Purchaser

Wha & Cas LLP  
1201 Avenue of the Americas  
New York, New York 10020

RSPA § 6.01

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## TRIGGER EVENTS AND REMEDIES

**Section 6.01 Trigger Event:** Each of the following events shall constitute a "Trigger Event":

- (a) (i) the Seller or the Servicer fails to pay any amount due under this Agreement; or any other Transaction Document when due or any Monthly Settlement Amount or Surcharge is not paid or distributed to the Administrative Agent's Account when due unless (x) the amount in the Collections Account is sufficient on such due date to pay or distribute all amounts due on such date and (y) such amount is paid or distributed from the Collections Account to pay such amount in full within 3 Business Days of its due date or (ii) upon any application or attempted application of funds pursuant to the Cash Management Agreement, the cash standing to the credit of the Collections Account and the Debt Service
- (b) the Collections Coverage Ratio is below 175.00 as any date of determination, a Retention Event occurs and continues for ten consecutive months, or an Adjustment Event as described in clause (b) or (c) of the definition thereof occurs and continues for 10 consecutive days;
- (c) the Seller or the Servicer fails duly to perform or observe
  - (i) any term or obligation under the Underlying Agreement (except Sections 2.01(c), (d), (e), and (f)(i) and Section 2.02(c) thereof), any RSPA Security Document or any Notice and Consent; or
  - (ii) a Card Processing Agreement; it is demanded by any party for any reason, unless such termination is a Permitted Termination and the Seller and the Servicer complete a Contract Rights and Receivables Addition acceptable to the Purchaser (with the consent of the Administrative Agent acting at the direction of the Required Lender; pursuant to the Purchaser Credit Agreement) promptly (and in any event within 10 days) following such termination;
- (d) (i) the capacity or ability of the Seller to operate domestic and/or international flights is materially impaired for any reason or (ii) the capacity or ability of the Specified Subsidiaries, individually or collectively, to operate domestic and/or international flights is materially impaired for any reason; unless the gross revenue generated by their domestic and international flights immediately before such material impairment constituted less than 30% of the gross revenue generated by the Seller and all Specified Subsidiaries in the aggregate in the previous 12 months;

# The Debtors Failed to Notify USAV That They Were Unable to Fly, as Required under the RSPA

## EXECUTION VERSION

## WHITE &amp; CASE

Dated 12/2/2017

**Contract Rights and Receivables Sale, Purchase  
Servicing Agreement**

**2009-10**

**Aerovías del Continente Americano S.A. Avianca**  
as the Seller and the Service

and

CSAVflow Limited  
as the Purchaser

W. Thorne & Co. Ltd.  
1111 Avenue of the Americas  
New York, New York 10020

**Section 6.01** **Trigger Events** Each of the following events shall constitute a "Trigger Event":

- (i) the capacity or ability of the Seller to operate domestic and/or international flights is materially impaired for any reason or (ii) the capacity or ability of the Specified Subsidiaries, individually or collectively, to operate domestic and/or international flights is materially impaired for any reason, unless the gross revenue generated by their domestic and international flights immediately before such material impairment constituted less than 30% of the gross revenue generated by the Seller and all Specified Subsidiaries in the aggregate in the previous 12 months;
- (c) the Seller or the Servicer fails duly to perform or observe:
- (i) any term or obligation under the Undertaking Agreement (except Sections 2.01(c), (d), (e), and (s)(4) and Section 2.02(c) thereof), any RSPA Security Document or any Notice and Consent; or

RSPA § 6.01

# The Debtors Failed to Notify USAV That They Were Unable to Fly, as Required under the RSPA

EXECUTION VERSION

Dated 12/12/2017

Receivables Maintenance Agreement

Section 2.01 Covenants of the Seller. The Seller hereby covenants and agrees with the Parties hereto:

(f) Books and Records Reporting.

(v) The Seller shall provide to the Purchaser and the Administrative Agent (A) promptly and in any event within one Business Day after the occurrence of any Trigger Event, Potential Event, Retention Event or Adjustment Event notice of such Trigger Event, Potential Event, Retention Event or Adjustment Event, including the details thereof and the actions that are being taken or are proposed to be taken with respect thereto.

## The Debtors Acknowledge There Has Been a Trigger Event

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
Case No. 20-11133-mg  
In the Matter of:  
AVIANCA HOLDINGS S.A., et al.,  
Debtors.  
United States Bankruptcy Court  
One Bowling Green  
New York, New York  
July 27, 2020  
3:30 PM  
REFORE:  
HON. MARTIN GLENN  
U.S. BANKRUPTCY JUDGE

operation@scribbr.com | (973) 406-2250  
www.scribbr.com

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Let me ask Mr. Leblanc now, if you don't have a position on it yet, you'll tell me that -- but the objectors argue that a triggering event occurred under the RSPA prior to the petition date, when the flights were grounded. Does Avianca agree with that position?

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MR. LEBLANC: Your Honor, I don't believe we dispute that position.  
THE COURT: Okay.

## After a Trigger Event, the Debtors' Contingent Right to Additional Purchase Payments Is Extinguished

EXECUTION VERSION

WHITE & CASE

Dated 12/12/2017

Contract Rights and Receivables Sales  
Servicing Agreement

among

Aerovías del Continente Americano S.A.  
as the Seller and the Service

and

USAirport Limited  
as the Purchaser

Witness at City of New York  
1771 Avenue of the Americas  
New York, New York 10020

**Section 3.01 Purchase Price**

(a) In consideration of the Sale and Transfer of the Contract Rights, the Receivables and the Collections derived therefrom, the Purchaser shall pay to the Seller a purchase price (the "Purchase Price") in an amount equal to the sum of the Advance Payment and the Additional Purchase Price with respect to each Payment Period, which shall be due and payable, as follows:

(i) The Advance Payment, which shall be due and payable on the Effective Date.

(ii) The Additional Purchase Price with respect to each Payment Period, which shall be due and payable in installments, (A) as provided in Section 2.01(c), Section 2.02(f) and Section 2.03(e) of the Cash Management Agreement and (B) payable pursuant to Section 3.01(f); **provided that no Additional Purchase Price shall be paid during the continuance of a Retention Event, an Adjustment Event or a Trigger Event. The Seller hereby acknowledges and irrevocably agrees to the payment of the Additional Purchase Price on such terms and conditions.**

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RSPA § 3.01(a)(ii)



# The Trigger Event Can Only Be Revoked by USAV and the Lenders

- ☐ Section 3.01 (a)(ii) of the RSPA provides that any Additional Purchase Price is only “due and payable” under the priority of payment provisions set forth in Sections 2.01, 2.02, or 2.03 of the Cash Management Agreement.
- ☐ Each of those provisions of the Cash Management Agreement explicitly provides that the Seller’s interest in the Additional Purchase Price cannot be restored following a Trigger Event absent written notice from the Administrative Agent (at the direction of the USAV Secured Lender Group)

EXECUTION VERSION

WHITE & CASE

Dated 12/12/2017

Contract Rights and Receivables Sale, Purchase and Servicing Agreement

Autovias del Continente Americano S.A. Autovias as the Seller and the Servicer

USAVen Limited as the Purchaser

White & Case LLP  
1121 Avenue of the Americas  
New York, New York 10020

Section 2.02 Standard Payment Date Prior to Payment: Unless the Collateral Agent has prior to 10:00 a.m. (New York time) on the Payment Date with respect to any Interest Period received written notice from any Notice Party that (1) a Trigger Event has occurred and is continuing and notice has been given by the Purchaser pursuant to Section 6.02 of the RSPA or by the Administrative Agent (at the direction of the Required Lender) in accordance with the Purchase Credit Agreement); (2) the Liquidated Damages is automatically payable pursuant to Section 6.03 of the RSPA or (3) an Adjustment Event has occurred and is continuing and notice has been given by the Purchaser pursuant to Section 6.04 of the RSPA or by the Administrative Agent (in accordance with Section 2.04(b) hereof or at the direction of the Required Lender; in accordance with the Purchase Credit Agreement), and has not received written notice from the Administrative Agent (acting at the direction of the Required Lender) prior to 10:00 a.m. (New York time) on such Payment Date that such written notice has been revoked or is otherwise no longer of further force or effect, the cash standing in the credit of the Collections Account (and for purposes of clauses (a), (b) and (c) below, if cash standing in the credit of the Collections Account is insufficient to make such payment, cash standing in the credit of the Debt Service Reserve Account) as follows:

(f) Sixth, unless the Collateral Agent has prior to 10:00 a.m. (New York time) on such Payment Date received notice from a Notice Party that a Redemption Event has occurred and is continuing, and has not received written notice from the Administrative Agent (acting at the direction of the Required Lender) prior to 10:00 a.m. (New York time) on such Payment Date that such written notice has been revoked or is otherwise no longer of further force or effect, distribute all remaining cash to the Seller's Account as a payment of the Additional Purchase Price; and



# The Trigger Event Can Only Be Revoked by USAV and the Lenders

Aerovías del Continente Americano S.A. Avianca  
Centro Adm inistrativo, Avenida Calle 26  
No. 59-15 Piso 10, Bogotá, D.C.  
Colombia

Lender, Administrative Agent,  
Collateral Agent and the Borrower  
(each as defined below)

Ludwig and Ciechota notes,

February 19, 2018

[illegible][illegible]

Due to back-office processing difficulties of Comdomic and Collections by Comdomic and AMEX were unable to be deposited in the New York Pass Through Account as required pursuant to the Loan Agreement and the RSPA. These difficulties have now been

☐ Since closing, the Debtors requested and obtained waivers for no fewer than six Trigger Events, which waivers were granted by USAV and the Agents (with the consent of the USAV Secured Lender Group). See Ex. M to Second Weedman Decl.

These back-office difficulties did result in two payments being made to Avianca and various payments by Credomatic and AMEX to the Collections Account being delayed, however, which caused certain technical defaults to occur – the Events of Default under the Loan Agreement and Trigger Events under the RSPA are outlined on Exhibit A attached hereto. As noted above, the underlying difficulties have been resolved but these Events of Default and Trigger Events are still outstanding, and we hereby respectfully request your consent to certain related waivers and amendments. White & Case LLP is preparing waivers for these, drafts of which will be shared with you shortly, and a minor amendment to the Cash Management Agreement to increase the frequency of the reporting of the cash flows into the New York Pass-Through Account in order to provide notice to the Lenders in connection with Collections deposited into the New York Pass Through Account.

Ex. L to Second Weedman Decl.

# The Collateral Agent Sent a No Waiver Letter

CITIBANK, N.A.  
581 Greenwich Street  
New York, NY 10013

March 31, 2020

USABank Limited  
c/o P.O. Box 1093  
Grand Square  
Grand Central  
KWT 11027  
Custody (Holds)  
Telephone: (845) 945-7099  
Email: [usabank@usabank.com](mailto:usabank@usabank.com)

Avance del Contingente  
Avance S.A. Avance  
Central Calle 26 No. 59-15 Pto  
10  
Bojales, D.C.  
Columbia  
Atención: Vicepresidente  
Telephone: (57) 205 6765  
Email: [avancadelcontingente@usabank.com](mailto:avancadelcontingente@usabank.com)

Avance Holdings S.A.  
Iza International Airlines S.A.  
Avance Costa Rica S.A. (Iza)  
Train America Airlines, S.A.  
400 Avenida del Contingente  
Santitas, S.A. Avance  
Central Calle 26 No. 59-15 Pto 10  
Bojales, D.C.  
Columbia  
Atención: Vicepresidente  
Telephone: (57) 205 6765  
Email: [avance@usabank.com](mailto:avance@usabank.com)

Loan Agreement... Name of Default Events Recovery of Debt  
RSPA - Name of Trigger Events Recovery of Debt

Lenders and Guarantors

Reference is made to the Loan Agreement, dated as of December 12, 2017 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement") by and among USABank Limited, as borrower (the "Borrower"), the Guarantors referred to therein (the "Guarantors"), the Lenders referred to therein (the "Lenders") and Citibank, N.A. as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent") and as collateral agent and (ii) to the Contract Rights and Receivables Sale Purchase and Servicing Agreement, dated as of December 12, 2017 (as amended, supplemented or otherwise modified from time to time, the "RSPA"), between Avance del Contingente S.A. Avance (the "Seller") and the Borrower. Capitalized terms used but not defined in Articles shall have the meanings assigned therein in the Loan Agreement or RSPA, as applicable.

The Administrative Agent has been informed by the Lenders (i) that the Borrower is in breach of certain terms and conditions of the Loan Agreement as specified on Schedule I hereto, which have caused Events of Default under Section 6.1 of the Loan Agreement (collectively, the "Default Events/Default") to occur and continue and (ii) that the Seller is in breach of certain terms and conditions of the RSPA as specified on Schedule II hereto, which have caused Trigger Events under Section 6.01 of the RSPA (collectively, the "Specified RSPA Events") and together with the Specified Events of Default (the "Specified Events") to occur and continue.

Ex. A to First Weedman Decl.

- ☐ The fact that the Collateral Agent, through a clerical error, allowed a nominal amount of Additional Purchase Price payments to be made (before setting off any additional payments for a full month prior to the filing here) is not a defense to the unambiguous terms of the RSPA.
- ☐ In fact, the Collateral Agent specifically sent a no waiver letter

The Agents (acting at the direction of the Required Lenders) and the Lenders (collectively, the "Secured Parties") continue to evaluate their response to the Specified Events. We hereby inform you that (a) the Secured Parties have not waived any Specified Events or any other existing or future default or Event of Default under the Loan Agreement or Trigger Event under the RSPA, and this letter is not, and shall not be deemed to be, and no action, inaction or acquiescence by the Secured Parties (including, without limitation, the acceptance of any payment under the Loan Agreement or the making of any payments to the Seller pursuant to the Cash Management Agreement) shall constitute a waiver, (b) the Secured Parties are not obligated in any way, and have not agreed, to forbear from individually or collectively enforcing rights or remedies under the Loan Agreement, the RSPA, the Security Documents, any other Credit Document or under all applicable law, all rights with respect to which are expressly reserved by the Secured Parties, (c) neither any Obligor nor the Seller should assume that any Obligor or the Seller or any of their Subsidiaries or Affiliates has a commitment from any of the Secured Parties to forbear or "stand still", (d) no past or future forbearance on the part of any of the Secured Parties should be viewed as a limitation upon or waiver of the absolute right and privilege of the Secured Parties in exercising remedies that currently or may in the future exist and (e) any single or partial exercise of any right or remedy under the Credit Documents shall not preclude any other or further exercise thereof or the exercise of any other right or remedy. Until such time, if any, as the Administrative Agent (acting at the direction of the Required Lenders) and the Lenders agree in writing to a waiver of, or a consent to, any Specified Event or any other default, Event of Default, Adjustment Event or Trigger Event, no such waiver or consent shall exist or be implied.

# The RSPA Prohibits a Waiver of Rights Absent Consent from All Parties, Which Was Not Provided Here

<p>EXECUTION VERSION</p> <p><b>WHITE &amp; CASE</b></p> <p>Dated 12/12/2017</p> <p>Contract Rights and Receivables Sale, Purchase and Servicing Agreement</p>	<p><b>Section 9.02 Amendment or Waiver.</b> Any provision of this Agreement may be amended or waived only with the written consent of each of the Seller, the Purchaser and the Administrative Agent (acting at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement); provided that any amendment that affects the rights or obligations of the Servicer hereunder shall require also the written consent of the Servicer.</p>
	<p>White &amp; Case LLP 1733 Avenue of the Americas New York, New York 10020</p> <p>12</p>

RSPA § 9.02

# The Debtors Admitted That They Are Not Entitled to Any Additional Purchase Price Payments

20-11133-mg Doc 306-1 Filed 06/23/20 Entered 06/23/20 12:06:30 Exhibit A - Neuhauser Declaration Pg. 2 of 5

Dennis F. Dunne  
Evan R. Fleck  
MILBANK LLP  
55 Hudson Yards  
New York, NY 10001  
Telephone (212) 530-5000  
Facsimile (212) 530-5219

Gregory  
MILL  
2029  
Los A  
Teleph  
Facsim

Counsel for Debtors and  
Debtors-In-Possession

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

AVIANCA HOLDINGS S.A., *et al.*

Debtors.

6. On or about May 11, 2020, Citibank, N.A. ("Citibank"), in its capacity as administrative agent under one of the USAV Agreements, the Cash Management Agreement, delivered a Notice of Retention Event declaring that "a Retention Event has occurred and is continuing" under section 2.09(b) of such agreement. Under section 3.01(ii) of another USAV Agreement, the Contract Rights and Receivables Sale, Purchase and Servicing Agreement (the "RSPA"), no Additional Purchase Price is payable during the continuance of a Retention Event. Accordingly, pursuant to the terms of the USAV Agreements, USAV currently has no obligation to pass the proceeds of any credit card receivables to Avianca.

DECLARATION OF ADRIAN NEUHAUSER IN SUPPORT OF DEBTORS'  
MOTION FOR ENTRY OF AN ORDER AUTHORIZING REJECTION  
OF CERTAIN EXECUTORY CONTRACTS

ECF 306-1

13

# The Supreme Court in *Mission Product* Unequivocally Held That a Debtor Cannot Use Rejection to Unwind a Transaction

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- ❑ *Mission Prod. Holdings v. Tempnology, LLC*, 139 S. Ct. 1652, 1662 (2019): “When [rejection] occurs, the debtor and counterparty do not go back to their pre-contract positions. Instead, **the counterparty retains the rights it has received under the agreement**. As after a breach, so too after a rejection, those rights survive.”
- ❑ *Mission Prod.*, 139 S. Ct. at 1663: “**So if the not-yet debtor was subject to a counterparty’s contractual right** (say, to retain a copier or use a trademark), **so too is the trustee or debtor once the bankruptcy petition has been filed**. The rejection-as-breach rule (but not the rejection-as-rescission rule) ensures that result.”
- ❑ *Mission Prod.*, 139 S. Ct. at 1666: “We hold that under Section 365, a debtor’s rejection of an executory contract in bankruptcy has the same effect as a breach outside bankruptcy. Such an act **cannot rescind rights that the contract previously granted**.”



# The RSPA Is a Sale of the Future Proceeds

EXHIBIT VERSION	
WHITE & CASE	
Contract Rights and Receivables Servicing Agreement	<p>Section 2.01 <u>Purchase, Sale and Transfer of the Contract Rights and Receivables</u></p> <p>Subject to the terms and conditions of this Agreement, in reliance on the recitals, agreements, representations, and warranties herein contained and made pursuant hereto:</p> <p>(a) In accordance with article 905 of the Colombian Code of Commerce and other Applicable Law:</p> <p>(i) effective on the Effective Date the Seller sells to the Purchaser, and the Purchaser buys from the Seller, finally, definitively, and irrevocably, the existing (as of the date hereof) Contract Rights arising under and the Receivables accrued under the AMEX Contract and the Credomatic Contract; and</p> <p>"Contract Rights" means the contract rights of the Seller under the Card Processing Agreements to (i) receive any kind of payments, indemnities or economic compensations derived therefrom on account of Specified Sales, including the right, among other things, to receive all future Collections derived therefrom and (ii) to enforce the rights referred to in (i) against the respective Card Processors thereunder. For the avoidance of doubt, the Contract Rights shall not include (a) any obligation or</p> <p>"Collections" means all cash collections and other cash proceeds derived from the Contract Rights or the Receivables, whether received by the Seller, the Purchaser, or any other Person.</p>
Due to 12/12/2017	
Aerostis del Continente Americano (S.A.) as the Seller and the Servicer	
and	
ESAYBIO Limited as the Purchaser	
White & Case LLP 1221 Avenue of the Americas New York, New York 10020	

RSPA § 2.01

# Conclusions of the Debtors' Foreign Law Expert

20-11133-mg Doc 619-6 Filed 07/23/20 Entered 07/23/20 00:17:42 Exhibit F

GÓMEZ-PINZÓN

Pg 2 of 11

25 AÑOS

Bogotá D.C., December 12, 2017

**USAVflow Limited**

as Purchaser  
P.O. Box 1093GT, Queensgate House, South Church Street,  
Georgetown, Grand Cayman, Cayman Islands

**Citibank, N.A.**

as Administrative Agent and as Collateral Agent  
388 Greenwich Street  
New York, NY 10013, USA

**Citibank, N.A., London Branch**, as Collateral Trustee

**Lenders**

Based upon the foregoing, we are of the opinion that:

8.

The sale and transfer of the Receivables and the Contract Rights under the RSPA (and the right to receive all present and future Collections as a consequence of the exercise of such Contract Rights under the Card Processing Agreements) constitutes a valid and irrevocable sale and transfer of the Receivables and the Contract Rights existing on the date of execution of the RSPA. As a consequence of such sale and transfer, the Purchaser has the right to receive all future Collections derived from the exercise of such Contract Rights. After such sale and transfer, the Purchaser will have good title to the Contract Rights, and such title shall be free and clear of any liens (other than liens created pursuant to the Opinion Documents). Upon execution and delivery of the RSPA, no other action will be required to effectuate the sale and transfer of the Receivables and the Contract Rights from the Seller to the Purchaser, other than the execution of the Notice and Consents, for purposes of complying with the provisions of the Card Processing Agreements and Colombian laws.

Ex. F to First Weedman Decl.



# Conclusions of the Debtors' Foreign Law Expert

20-11133-mg Doc 619-6 Filed 07/23/20 Entered 07/23/20 00:17:42 Exhibit F	
Pg 2 of 11 GÓMEZ-PINZÓN 25 AÑOS	
Bogotá D.C., December 12, 2017	
<b>USAVflow Limited</b> as Purchaser P.O. Box 1093GT, Queensgate House, South Church Street, Georgetown, Grand Cayman, Cayman Islands	
<b>Citibank, N.A.</b> as Administrative Agent and as Collateral Agent 388 Greenwich Street New York, NY 10013, USA	
<b>Citibank, N.A., London Branch</b> , as Collateral Trustee	
<b>Lenders</b>	
9. Upon the sale and transfer to the Purchaser of the Contract Rights and the sale and transfer of the Receivables pursuant to the RSPA and the Notice and Consents, the Receivables and the Contract Rights (and the right to receive all present and future Collections as a consequence of the exercise of such Contract Rights under the terms of the Card Processing Agreements) will not constitute right or property, as the case may be, of the Seller. As of the date thereof, there are no specific laws or, to the best of our knowledge, after due research, precedents, providing that, upon the existence of any bankruptcy or similar proceeding involving the Seller, (i) the sale and transfer of the Contract Rights, as proposed to be conducted by the Seller, should not be recognized and upheld; or (ii) such Contract Rights should not be part of the Seller's estate during any of such proceedings.	
Therefore, it is our opinion that (i) the RSPA is a true, definitive and final transfer of the Contract Rights to the Purchaser; (ii) in any reorganization proceeding in Colombia involving the Seller, neither the Seller nor any other Person (including any Governmental Authority) should have the right to direct that payments under the Contract Rights (and the right to receive all present and future Collections, as a consequence of the exercise of such Contract Rights under the terms of the Card Processing Agreements) be placed under the direction or control of the Seller or any other Person prior to, on or after such reorganization proceeding involving the Seller; and (iii) the assignment of Contract Rights should not be capable of being set aside or invalidated at the instigation of the Seller, any creditor of the Seller or any other person (including any <i>síndico</i> , promoter, liquidator, trustee, receiver or similar official with respect to the Seller), pursuant to any Colombian proceeding, including an <i>acción revocatoria</i> under Colombian laws.	

Ex. F to First Weedman Decl.

# The Lenders' Foreign Law Expert Has Confirmed That a Sale Occurred

IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK	
In re:	Chapter 11
AVANCA HOLDINGS S.A., <i>et al.</i> <sup>1</sup>	Case No. 20-11133 (MG)
Debtors.	(Jointly Administered)

SECOND DECLARATION OF JORGE SUESCUN MELO IN SUPPORT OF  
OBJECTION OF THE USAV SECURED LENDER GROUP TO  
DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
REJECTION OF CERTAIN EXECUTORY CONTRACTS

I, Jorge Suescun Melo, hereby declare as follows:

1. I submit this declaration in response to the  
Reply<sup>2</sup> to the objections of USAV<sup>3</sup> and the USAV Sec  
motion for entry of an order authorizing rejection of certain  
Motions<sup>4</sup> and the declaration of Mr. Jaime Arrubla-Pardo  
Declaration<sup>5</sup>.

2. I have reviewed the Debtors' Reply and  
review. I disagree with certain statements included therein

47. Taking into consideration the context in which the RSPA was negotiated and  
executed to determine the real intent of the parties, the above constitutes clear evidence that both  
parties realized that the RSPA was, in fact, a sale and purchase agreement. The clear and objective  
legal opinion rendered by the Seller's Colombian counsel created on USAV a legitimate  
expectation that both parties consider the transaction as "a valid and irrevocable sale", that is, a  
true sale.

ECF 720

## The USAV Parties Attempt to Over-Simplify this Transaction

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### *The Debtors Have Always Retained an Economic Interest in the Receivables*

- The Debtors did **not** agree to sell—for **\$150 million**—permanent ownership and full economic interest in Credit Card Receivables that averaged between **\$369 and \$456 million per year**. See RSPA § 4.01(qq) (Debtors Exhibit 2, at 30 [Dkt. No. 306-2, Exh. 1]).
- Instead, the Debtors **always** retained an **economic interest** in the Receivables, through their **contractual rights**, pursuant to the governing agreements, to **receive the Additional Purchase Price**.
- In the months **before the COVID-19 pandemic** and the resulting cessation of the Debtors' passenger service, **92-95%** of the Receivables **flowed back to the Debtors**. Since the **Petition Date**, the Debtors have received **no payments** from USAV. Second Neuhauser Decl. ¶¶ 3, 8 (Debtors Exhibit 12 [Dkt. No. 683-1]).
- The Debtors **do not seek to take back** pre-petition transfers of Receivables made under the USAV Agreements.

# The Debtors Admit That They Seek to Unwind the Sale

- ☐ RSPA § 6.02 (“Once the Liquidated Damages is paid in full as provided for hereunder, the Purchaser may proceed to unwind the purchase and sale.”)

<b>Hearing Date and Time:</b> August 26, 2020 10:00am ET	
<b>Dennis F. Dunne</b> Evan R. Fleck MLBANK LLP 55 Hudson Yards New York, New York 10001 Telephone: (212) 530-5000 Facsimile: (212) 530-5119	<b>Gregory Bray</b> MLBANK LLP 2029 Century Park East, 33 <sup>rd</sup> Floor Los Angeles, CA 90067 Telephone: (424) 386-4000 Facsimile: (213) 629-5063
<b>Andrew M. Leblanc</b> Aaron L. Renanger MLBANK LLP 1850 K Street NW Suite 1100 Washington, DC Telephone: (202) 462-1000 Facsimile: (202) 462-1001	
<b>Counsel for Debtors and Debtors-In-Possession</b> <b>UNITED STATES BANKRUPTCY COURT</b> <b>SOUTHERN DISTRICT OF NEW YORK</b>	
<b>In re:</b> <b>AVIANCA HOLDINGS S.A., et al.</b> <b>Debtors.</b>	
<b>DEBTORS' REPLY TO THE OBJECTIONS OF THE LENDER GROUP TO THE DEBTORS' MOTION FOR REJECTION OF THE CONTRACTS AUTHORIZING REJECTION OF C</b>	
<p>42. Contrary to the Debtors' contentions, the Debtors seek to breach the executory USAV Agreements, not to rescind them. The result of this breach, accomplished through rejection, will be USAV's claim for rejection damages against the Debtors—specifically, a pre-petition claim in the amount of the Liquidated Damages provision contained within the RSPA. This Liquidated Damages amount is equal to the unpaid principal remaining on USAV's loan, plus surcharged interest on that principal until paid in full, and other miscellaneous costs related to the unwinding of the transaction. That breach of the RSPA would lead to this result is apparent from the RSPA itself—for under Colombian law, as under U.S. law, the remedy for breach of contract is determined in the first instance by reference to the contract itself. See Arrubla Decl. ¶ 18. Rescission is nowhere implicated.</p>	
<p>61. Here, there are specialized terms in the RSPA which limit the remedy available to USAV in the event of the Debtors' breach. The RSPA provides that USAV receives a damages claim, and thereafter must return all economic interest in the Receivables to the Debtors. By the express terms of the RSPA, rejection results in certain damages—the "Liquidated Damages" 6.03. As Justice Sotomayor foresaw, available to USAV.</p>	

## The Debtors Admit That they Seek to Unwind the Sale

- Throughout their brief, the Debtors repeatedly admit that they seek to unwind the sale:
- Seeking to “**extinguish** the economic interest of USAV in the Receivables” (Debtors’ Reply at ¶ 56; see also ECF 715 at ¶ 20);
- Seeking to “**return . . . the economic interest in the Receivables**” to themselves (Debtors’ Reply at ¶ 43)
- Seeking to “**restore** the flow of Receivables to the Debtors” (Debtors’ Reply at ¶ 48; see also ECF 683 at ¶ 56; ECF 715 at ¶ 21);
- Seeking to have “**100% of the economic interest in the Receivables . . . revert**” to themselves (Debtors’ Reply at ¶ 6);
- Seeking to “**recoup the economic value of their future ticket sales via credit card in another way**” the Proceeds (Debtors’ Reply at ¶ 57);

## The Effect of Breaching the RSPA Gives Rise to a Damages Claim

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### ***USAV Will Be Entitled to a Damages Claim, and Nothing More***

- **Colombian law** determines the parties' rights in the event of **breach by rejection**.
- Colombian law dictates that the ***parties' agreement must control***. All parties—including the Colombian legal experts—agree.
- The RSPA grants **USAV a right to collect liquidated damages** immediately upon the Debtors' **bankruptcy filing**, equal to the unpaid principal due on USAV's loan, plus interest, and administrative costs.

**Section 6.03 Automatic Trigger Event.** In the case of a Trigger Event specified in Section 6.01(h), and notwithstanding the availability of other remedies under Section 6.02, the Liquidated Damages shall automatically become due and payable and all amounts deposited in the New York Pass-Through Account, the Collections Account and the Debt Service Reserve Account shall be disbursed to repay such amounts.

- The **Liquidated Damages** clause is **enforceable** under **Colombian law**.

See RSPA § 6.03 (Debtors Exhibit 2, at 37 [Dkt. 306-2, Exh. 1]).



# The RSPA Does Not Allow the Debtors to Unwind the Sale, Even If They Pay Liquidated Damages in Full

EXECUTION VERSION

## WHITE & CASE

Dated 12/12/2017

### Contract Rights and Receivables Sale, Purchase and Servicing Agreement

Attestados del Contador Público Americano S.A. Attestada  
as the Seller and the Servicer

and

USAATM Limited  
as the Purchaser

White & Case LLP  
1775 Avenue of the Americas  
New York, New York 10020

RSPA § 6.02

**Section 6.02 Remedies.** Upon the occurrence of a Trigger Event, the Purchaser may, or the Administrative Agent (at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement) shall prematurely terminate (resolver) this Agreement, upon written notice to the Parties to this Agreement (with a copy to the Administrative Agent in the case of a notice by the Purchaser). As a consequence of the early termination (resolución) of this Agreement, the Parties agree that the Seller shall pay to the Purchaser liquidated damages (*clausula penal como estimacion minima y anticipada de perjuicios*) (the "Liquidated Damages") in an amount equal to the Unwind Amount, which Liquidated Damages shall be due and payable by the Seller upon such demand without the need of a court procedure or any other procedure whatsoever to adjudicate the Seller in default (*mora*) or for any other purpose. At any time while the Liquidated Damages are not paid in full, the Seller hereby irrevocably authorizes the Purchaser, the Servicer and the Agents to apply the amount of all Collections (including, without limitation, all cash standing to the credit of the New York Pass-Through Account, the Collections Account and the Debt Service Reserve Account) to the payment of the Liquidated Damages and disburse such Collections in accordance with the Trigger Event Priority of Payments. In any event, the Purchaser may exercise from time to time all other rights and remedies provided hereunder or under any other Transaction Document and all rights and remedies under Applicable Law, including to a purchaser of similar assets. The exercise of any one or more of the rights under this Section 6.02 shall not preclude the subsequent exercise of any other rights or remedies exercisable hereunder under any other Transaction Documents or under Applicable Law. The Seller and the Purchaser agree and acknowledge that the Purchaser may pursue additional damages, if not covered by the Liquidated Damages, under the other provisions of the Transaction Documents. Once the Liquidated Damages is paid in full as provided for hereunder, the Purchaser may proceed to unwind the purchase and sale by transferring back to the Seller the Contract Rights, the Receivables, and all Collections derived therefrom.



## Mission Product Does Not Allow the Debtors to Use Rejection to Expand the Debtors' Estate

- ❑ *Mission Prod.*, 139 S. Ct. at 1663: “In preserving those rights [conveyed pre-petition], Section 365 reflects a general bankruptcy rule: **The estate cannot possess anything more than the debtor itself did outside of bankruptcy** . . . The rejection-as-breach rule (but not the rejection-as-rescission rule) ensures that result.”
- ❑ *Mission Prod.*, 139 S. Ct. at 1663: Holding that “**a debtor’s property does not shrink by happenstance of bankruptcy, but it does not expand, either**” and that the rejection power cannot be used to recapture interests . . . given up” prepetition.
- ❑ *Mission Prod.*, 139 S. Ct. at 1663: “**So if the not-yet debtor was subject to a counterparty’s contractual right** (say, to retain a copier or use a trademark), **so too is the trustee or debtor once the bankruptcy petition has been filed**. The rejection-as-breach rule (but not the rejection-as-rescission rule) ensures that result.”
- ❑ *Mission Prod.*, 139 S. Ct. at 1663: “And conversely, the rejection-as-rescission approach would circumvent the Code’s stringent limits on “avoidance” actions—the exceptional cases in which trustees (or debtors) may indeed unwind pre-bankruptcy transfers that undermine the bankruptcy process.”

23

# The Debtors Mischaracterize the Colombian Back-Up Security Agreement

Hearing Date and Time: August 26, 2020 10:00am ET	
Dennis F. Dunne Evan R. Fleck MILBANK LLP 55 Hudson Yards New York, New York Telephone: (212) 530-4 Facsimile: (212) 530-4	Gregory Bray MILBANK LLP Andrew M. Leblanc Aaron L. Renenger
<p>(c) The Contract Rights under any Card Processing Agreements, and the Future Revenues and Collections derived therefrom, <u>should the RSPA be declared illegal or invalid</u> or, for any reason whatsoever, <u>if the RSPA ceases to exist or the sale and purchase under the RSPA is held to be or becomes ineffective</u> or for any other reason the Secured Party fails to have title to the Contract Rights under any Card Processing Agreements, or the Future Revenues or the Collections derived therefrom: . . .</p> <p>Third Renenger Decl. Ex. 1 (Colombian Back-Up Security Agreement) § 2.01 (emphasis added).</p> <p>Rejection—i.e., breach—of the RSPA does not result in the RSPA being declared illegal, invalid, ineffective or unwound. As the parties agree, rejection is a simple breach. As a result, the</p>	
DEBTORS' RESPONSE TO THE COURT'S QUESTIONS POSED AT THE JULY 27, 2020 STATUS CONFERENCE	

# The Debtors Mischaracterize the Colombian Back-Up Security Agreement

<p>PLEDGE OVER CONTRACT RIGHTS AND FUTURE REVENUES</p> <p>by and between</p> <p>AFROVÍAS DEL CONTINENTE AMERICANO S.A. AVIANCA, as the Grantor</p> <p>and</p> <p>LSAVFLOW LIMITED, as the Secured Party</p> <p>December 12, 2017</p>	<p>ARTICLE II GRANT OF PLEDGE</p> <p>SECTION 2.01. Grant of Pledge. To secure the full, complete and indefeasible performance of the Secured Obligations and pursuant to the terms of articles 1207 of the Colombian Code of Commerce and Law 1676, the Grantor hereby grants to the Secured Party a movable guarantee (<i>garantía mueble</i>) in the form of a first priority pledge (the "Pledge") on the following future assets and rights, Should they belong to the Grantor in the following circumstances (the "Pledged Rights and Assets"):</p> <p>(a) The Collections should they be wired to, or received by, the Grantor;</p> <p>(b) The Contract Rights under any Additional Card Processing Agreement, and the Future Revenues and Collections derived therefrom, should any such Contract Rights, Future Revenues and Collections not be transferred to the Secured Party pursuant to the provisions of the RSPA (the "Replacement and Additional Contract Rights");</p> <p>(c) The Contract Rights under any Card Processing Agreements, and the Future Revenues and Collections derived therefrom, should the RSPA be declared illegal or invalid or, for any reason whatsoever, if the RSPA ceases to exist or the sale and purchase under the RSPA is held to be or becomes ineffective or for any other reason the Secured Party fails to have title to the Contract Rights under any Card Processing Agreements, or the Future Revenues or the Collections derived therefrom; and</p> <p>(d) To the extent not otherwise included, all substitutions, replacements, accessions, products, and Proceeds of any or all of the foregoing (<i>bianes derivados y atribuibles</i>).</p>
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Ex. B to Second Weedman Decl.

# The Debtors Mischaracterize the Costa Rican Back-Up Security Agreement

<p><b>COSTA RICAN BACK-UP SECURITY AGREEMENT</b></p> <p>This SECURITY AGREEMENT dated as of December 12, 2017, is made between the Grantor and the Secured Party.</p> <p>WHEREAS, reference is made to the AVIANCA-BAC CREDITMATIC Back-Up Security Agreement for the Processing of Credit Card Transactions in Affiliated Card Establishments, dated as of June 10, 2015, between the Grantor, Taca International Airlines ("TACA") and BAC International Bank, Inc. ("Creditmatic") (the "Creditmatic Back-Up Security Agreement") pursuant to which Creditmatic serves as Taca's and Avianca's card payment processor for sales generated through the cards, and to the location and/or identity specified in the Creditmatic Master Agreement;</p> <p>WHEREAS, reference is made to the Merchant Application &amp; Authorization Agreement dated 17, 2016 among Avianca, Inc., a corporation organized under the laws of the State of New York ("Avianca Inc.") and Creditmatic of Florida, Inc. (the "Creditmatic Supplement"), a "Contract" as defined under the Creditmatic Master Agreement (supplement to the Creditmatic Back-Up Security Agreement) (the "Secured Contract");</p> <p>WHEREAS, reference is made to the Assignment of Rights Agreement, dated as of June 10, 2017 among Avianca, Taca International Airlines S.A. ("Taca"), and Creditmatic (the "Taca Assignment") pursuant to which Avianca's and Taca's rights under the Creditmatic Back-Up Security Agreement are assigned to Creditmatic; and</p> <p>WHEREAS, reference is made to the Credit Rights Receivables Sale, Purchase and Assignment Agreement, dated as of the date between Creditmatic and the Secured Party (the "CRSPA") pursuant to which Grantor will sell and the Secured Party will purchase Avianca's Contract Rights and the Receivables under the Secured Contract;</p> <p>WHEREAS, reference is made to the Receivables Maintenance Agreement, dated as of the date between the "Undertaking Agreement") pursuant to which the Grantor agrees to make the inventory, services, and other agreements set forth therein with respect to the maintenance, preservation, and performance of the Grantor's obligations under the CRSPA in respect of the Contract Rights and the Receivables sold to the Secured Party;</p>	<p>Pursuant to the terms of the CRSPA and the Undertakings Agreement, the Grantor will agree, among others, to (i) replace the Creditmatic Contract and the AMEX Contract with Additional Card Processing Agreements, under certain circumstances; (ii) comply with Section 2.03(b) of the CRSPA; (iii) transfer the Collections to the Secured Party should they be received by the Grantor after the date of execution of the CRSPA and (iv) perform all other obligations set forth in the CRSPA and the Undertaking Agreement (the "Secured Obligations").</p> <p><b>2. Grant of Security Interest</b></p> <p>Notwithstanding the mutual intent of the parties to treat the sale of the Contract Rights and the Receivables under the CRSPA as a true sale to Secured Party, and without limitation of such sale, Grantor hereby (i) based on Law on Security over Movable Assets and (ii) constituting a Costa Rican Security grants, effective as of the date hereof, to the Secured Party a security interest in the Collateral to secure full, complete and indefeasible performance of the Secured Obligations. With respect to such grant of a security interest, the Secured Party may at its option exercise from time to time any and all rights and remedies under this Agreement, the Law on Security over Movable Assets or otherwise.</p>
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Ex. C to Second Weedman Decl.

**EXHIBIT VI**

ORAL ARGUMENT REQUESTED

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**Case Nos. 1:20-cv-08008-LTS; 1:20-cv-08364-LTS**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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IN RE AVIANCA HOLDINGS S.A., ET AL.,  
*DEBTORS.*

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USAV SECURED LENDER GROUP,  
USAVFLOW LIMITED,  
*APPELLANTS,*

V.

AVIANCA HOLDINGS S.A., ET AL.,  
*APPELLEES.*

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APPEAL FROM THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
BANKR. CASE No. 20-11133 (MG)

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**APPENDIX TO OPENING BRIEF FOR  
APPELLANT USAV SECURED LENDER GROUP  
VOLUME 5 OF 5 (PAGES A1068-A1257)**

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**WHITE & CASE LLP**

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*Attorneys for the USAV Secured Lender Group*

Pursuant to Fed. R. Bankr. P. 8018(b)(1), in support of its brief filed concurrently herewith, Appellant USAV Secured Lender Group<sup>1</sup> submits this Appendix comprised of the following documents:

<b>AX<sup>2</sup></b>	<b>Document Description (Date of Entry)</b>	<b>Docket No.</b>	<b>App'x Page Range</b>
<b>VOLUME 1</b>			
1	Docket entries from Main Chapter 11 Bankruptcy Case, <i>In re Avianca Holdings S.A.</i> , Case No. 20-11133 (MG) (Bankr. S.D.N.Y.)	N/A	A1-A106
2	Docket entries from Adversary Proceeding, <i>Avianca Holdings S.A. v. USAVflow Limited</i> , Case No. 20-01189 (MG) (Bankr. S.D.N.Y.)	N/A	A107-A111
3	Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts <sup>3</sup> (6/23/2020)	Bk.Dkt.306 <sup>4</sup>	A112-A131
4	Declaration of Adrian Neuhauser in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (6/23/2020)	Bk.Dkt.306-1	A132-A136
5	Contract Rights and Receivables Sale, Purchase and Servicing Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 1	A137-A270

<sup>1</sup> Capitalized terms used but not defined in this Appendix have the meanings provided in the USAV Secured Lender Group's opening brief.

<sup>2</sup> "AX" refers to the Appendix Exhibit Number, as cited in the USAV Secured Lender Group's opening brief.

<sup>3</sup> The cover notice to the Rejection Motion has been omitted.

<sup>4</sup> "Bk.Dkt." refers to docket entries from the main Chapter 11 bankruptcy case captioned *In re Avianca Holdings S.A.*, Case No. 20-11133 (MG) (Bankr. S.D.N.Y.).



6	Receivables Maintenance Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 2	A271-A303
7	Cash Management Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 4	A304-A336
8	Credomatic Notice of Transfer, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 5	A337-A374
9	Credomatic Consent and Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 6	A375-A381
10	AMEX Notice and Consent, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 7	A382-A409
11	Loan Agreement, Dated December 12, 2017 (6/23/2020)	Bk.Dkt.306-2 Ex. 9	A410-A569
<b>VOLUME 2</b>			
12	Complaint <sup>5</sup> (6/23/2020)	Ap.Dkt.1, <sup>6</sup> Bk.Dkt.307	A570-A581
13	USAVflow Limited's Objection and Reservation of Rights to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (7/22/2020)	Bk.Dkt.616	A582-A600
14	Legal Opinion of Gómez-Pinzón Abogados S.A.S., Dated December 12, 2017 (7/22/2020)	Bk.Dkt.616-1	A601-A611
15	Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (7/22/2020)	Bk.Dkt.617	A612-A645
16	Declaration of Jorge Suescún Melo in Support of Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order	Bk.Dkt.618	A646-A654

<sup>5</sup> Exhibits to the Complaint have been omitted. The USAV Secured Lender Group can provide all the exhibits upon the Court's request.

<sup>6</sup> "Ap.Dkt." refers to docket entries from the adversary proceeding captioned *Avianca Holdings S.A. v. USAVflow Limited*, Case No. 20-01189 (MG) (Bankr. S.D.N.Y.).

	Authorizing Rejection of Certain Executory Contracts (7/22/2020)		
17	Notice of Trigger Event, Dated March 31, 2020 (7/23/2020)	Bk.Dkt.619-1	A655-A660
18	Transcript of Telephonic Status Conference Held on July 27, 2020 <sup>7</sup> (7/28/2020)	Bk.Dkt.647	A661-A690
19	Official Committee of Unsecured Creditors' Reply in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/07/2020)	Bk.Dkt.681	A691-A702
20	Debtors' Reply to the Objections of USAV and the USAV Secured Lender Group to the Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/07/2020)	Bk.Dkt.683	A703-A734
21	Second Declaration of Adrian Neuhauser in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/07/2020)	Bk.Dkt.683-1	A735-A740
22	Email Communication amongst Avianca and Citibank, N.A., Between July 5, 2020 and July 8, 2020 (8/07/2020)	Bk.Dkt.683-4	A741-A744
23	Certified English Translation of Declaration of Jaime Alberto Arrubla-Paucar in Support of the "Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts" (8/07/2020)	Bk.Dkt.684-1	A745-A758
24	Supplemental Response of the Official Committee of Unsecured Creditors to the Court's Questions Posed at the July 27, 2020 Status Conference (8/18/2020)	Bk.Dkt.714	A759-A763

<sup>7</sup> All transcript indexes in this Appendix have been omitted. The USAV Secured Lender Group can provide the full index upon the Court's request.

25	Debtors' Response to the Court's Questions Posed at the July 27, 2020 Status Conference (8/18/2020)	Bk.Dkt.715	A764-A782
26	USAV Secured Lender Group's Supplemental Brief in Support of Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/18/2020)	Bk.Dkt.716	A783-A803
27	USAVflow Limited's Combined Response to (A) Debtors' Reply in Support of Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts and (B) Questions Posed by the Court at the July 27, 2020 Status Conference (8/18/2020)	Bk.Dkt.717	A804-A817
28	Sur-Reply of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/18/2020)	Bk.Dkt.718	A818-A850
29	Declaration of Vicente Lines in Support of the USAV Secured Lender Group's Supplemental Brief and Sur-Reply in Support of Objection to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/19/2020)	Bk.Dkt.719	A851-A857
30	Second Declaration of Jorge Suescún Melo in Support of Objection of the USAV Secured Lender Group to Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts (8/19/2020)	Bk.Dkt.720	A858-A884
<b>VOLUME 3</b>			
31	Option Agreement, Dated December 12, 2017 (8/19/2020)	Bk.Dkt.721-1	A885-A896
32	Waiver Request Letter from Avianca to the Lenders, the Agents, and USAV, Dated February 19, 2018 (8/19/2020)	Bk.Dkt.721-11	A897-A900

33	Waivers of Trigger Events, Dated on or about April 13, 2018 and November 27, 2019 (8/19/2020)	Bk.Dkt.721-12	A901-A956
34	Transcript of Hearing Held on August 19, 2020 (8/20/2020)	Bk.Dkt.743	A957-A980
35	Transcript of Hearing Held on August 18, 2020 (8/21/2020)	Bk.Dkt.742	A981-A998
36	Order with Questions that Counsel for the Parties Should Address During the Hearing of the Rejection Motion (8/25/2020)	Bk.Dkt.757	A999-A1001
<b>VOLUME 4</b>			
37	Avianca's August 26, 2020 Hearing Demonstrative (8/26/2020)	N/A	A1002-A1030
38	USAV Secured Lender Group's August 26, 2020 Hearing Demonstrative (8/26/2020)	N/A	A1031-A1067
<b>VOLUME 5</b>			
39	Transcript of Hearing Held on August 26, 2020 (8/27/2020)	Bk.Dkt.788	A1068-A1204
40	Memorandum Opinion Granting in Part and Denying in Part Debtors' Motion to Reject the USAV Agreements (9/04/2020)	Bk.Dkt.850	A1205-A1245
41	USAV Secured Lender Group's Notice of Appeal <sup>8</sup> (9/18/2020)	Bk.Dkt.959	A1246-A1251
42	USAVflow Limited's Notice of Appeal <sup>9</sup> (9/18/2020)	Bk.Dkt.960	A1252-A1257

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<sup>8</sup> Exhibits to the USAV Secured Lender Group's Notice of Appeal have been omitted. Exhibit A to the Notice of Appeal, the Order, is included in this Appendix as Exhibit 40.

<sup>9</sup> Exhibits to USAV's Notice of Appeal have been omitted. Exhibit A to the Notice of Appeal, the Order, is included in this Appendix as Exhibit 40.

October 14, 2020  
New York, New York

Respectfully submitted,

**WHITE & CASE LLP**

By: /s/ Glenn M. Kurtz

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**EXHIBIT 39**

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

AVIANCA HOLDINGS S.A., et al.,                      Main Case No.  
20-11133-mg  
Debtors.

- - - - -x

United States Bankruptcy Court  
One Bowling Green  
New York, New York

August 26, 2020  
10:00 AM

B E F O R E:  
HON. MARTIN GLENN  
U.S. BANKRUPTCY JUDGE



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Evidentiary Hearing Using Zoom for Government RE: Debtor's

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Motion for Entry of an Order Authorizing Rejection of Certain

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Executory Contracts. (Doc. Nos. 306, 362, 616 to 619, 659, 662,

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674, 681, 683, 684, 714, 715, 716, 717, 718, 719, 720, 721,

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726, 739, 749, 750, 755)

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SCOTT GRIESSMAN, ESQ.

JOSHUA WEEDMAN, ESQ.

ALSO PRESENT:

STEPHEN MALDONADO, Interpreter

JORGE SUESCUN MELO, Witness

VICENTE LINES, Witness

ADRIAN NEUHAUSER, Witness

JAIME ALBERTO ARRUBLA-PAUCAR, Witness

AVIANCA HOLDINGS S.A., et al.

6

## P R O C E E D I N G S

THE COURT: We're here in Avianca Holdings, S.A., case number 20-11133. This hearing is in connection with the debtors' motion to reject what's been referred to as the USAV agreements. It bears docket number 306. There, obviously, have been numerous filings in addition to that.

I've reviewed all of the pleadings that have been filed; the declarations. Yesterday, Milbank and White & Case circulated PowerPoint slides that they can use during the hearing.

My courtroom deputy, Deanna Anderson, will control the sharing screen function.

We'll proceed in the following order. The debtors' counsel first, the committee counsel next since they both support the rejection motion, the secured lenders counsel next, USAVflow counsel then, and then the U.S. Trustee if Mr. Masumoto wishes to be heard with respect to the motions.

I did not set time limits for any of the arguments today. I hope everyone will proceed -- we have the day blocked out if we need it, I hope we don't need all that.

The parties indicated -- well, they've stipulated to the admissibility of exhibits. I entered an order previously admitting them. White & Case subsequently indicated that an incorrect document was uploaded.

Let me ask the debtors' counsel whether they have any

1 objection to the substitution of the correct exhibit for the  
2 one that was mistakenly uploaded.

3 MR. LEBLANC: Your Honor, this is Andrew Leblanc from  
4 Milbank and I'm -- can you hear me okay, Your Honor?

5 THE COURT: Yes, I can.

6 MR. LEBLANC: Okay.

7 THE COURT: Loud and clear.

8 MR. LEBLANC: Your Honor, I -- let me just check. I'm  
9 actually going to ask my partner, Mr. Renenger, who's also on  
10 the line, but I don't believe we do, but I'll defer to Mr.  
11 Renenger on that.

12 MR. RENENGER: I can confirm, Your Honor. This is  
13 Aaron Renenger of Milbank. I can confirm we have no objection  
14 to the updated exhibit.

15 THE COURT: All right. The updated exhibit is  
16 admitted in evidence as well.

17 I have hard copies of the slides in front of me, but  
18 you'll be able to share the screen and use those.

19 I had entered an order with questions for counsel to  
20 address during the hearing. That order was prepared before I  
21 had reviewed the slides, some of the questions that I raised  
22 are addressed in the slides. I'm not requiring anybody to deal  
23 with their arguments in any particular order.

24 I hope, during the course of your arguments, you will,  
25 at least, address the questions that I've had as well.

AVIANCA HOLDINGS S.A., et al.

8

1           So let's start with the debtor's counsel. Who's going  
2 to argue for the debtors?

3           MR. LEBLANC: Your Honor, this is Andrew Leblanc of  
4 Milbank again, and I'll be handling the argument for us.

5           THE COURT: Okay, Mr. Leblanc.

6           MR. LEBLANC: Thank you, Your Honor.

7           THE COURT: Let me just -- before you start, let me  
8 just -- any of the parties who are going to be heard in the  
9 argument, do you have any preliminary questions you want to  
10 raise before we move into the arguments?

11           Hearing none --

12           MR. KURTZ: Glenn Kurtz for the lenders.

13           No, Your Honor. Thank you.

14           THE COURT: All right. Go ahead. Thank you very  
15 much, Mr. Kurtz.

16           Okay. Mr. Leblanc, go ahead.

17           MR. LEBLANC: Thank you, Your Honor.

18           For the record again, Andrew Leblanc of Milbank LLP on  
19 behalf of the debtors.

20           Your Honor, I will note and just introduce the Court  
21 to our two witnesses who are on the phone. I know Your Honor  
22 had noted that they were here already.

23           First, Mr. Neuhauser, who's the debtors' chief  
24 financial officer and is the declarant -- the factual  
25 declarant, whose two declarations have already been admitted at



1 Exhibits 1 and 12 of the debtors' set of exhibits. And Mr.  
2 Arrubla, who's our expert on Columbian law, and he's -- they're  
3 both here available in case the Court has any questions for  
4 them.

5 Relatedly, Your Honor, and I know Your Honor noted  
6 this as well, that Steven Maldonado of Ubiquis Group is here to  
7 assist with translation to the extent that is necessary for any  
8 of the witnesses.

9 Your Honor, what I would propose is -- we did get your  
10 questions, and it was very useful, and I'll speak on behalf of  
11 Mr. Kurtz that that was useful, I'm sure, for both of us to see  
12 those questions. What I would propose, Your Honor, in light of  
13 those questions is to do sort of a slimmed-down version of our  
14 PowerPoint presentation where we do address some of those  
15 questions, but I then want to just walk through each of your  
16 ten questions and address them so that we're as clear as we can  
17 be with the questions that Your Honor had coming into receiving  
18 the slide deck. And so that's what I would propose, Your  
19 Honor.

20 And so what we would turn to first, Your Honor, is our  
21 slide 3, and I know Your Honor has a hard copy of it. I'm not  
22 sure if it's more convenient for the screen to be shared or  
23 not, but either way -- I'm fine to proceed either way.

24 THE COURT: I leave it to you to decide whether you  
25 want to share the screen and show the slides. There are,

1 obviously, a lot of other people who are making an appearance,  
2 but I'm going to leave it to you. As I say, I have a hard copy  
3 of your slides in front of me, but proceed as you wish, okay?

4 MR. LEBLANC: Thank you, Your Honor. If it's not  
5 inconvenient for Your Honor's chambers to share the screen with  
6 our slides, that would be great. I think with the number of  
7 people on the line, that would be convenient.

8 THE COURT: All right. And Deanna will change you to  
9 a co-host so that you're able to share your screen.

10 I should have said at the start, obviously, we're  
11 using Zoom for government -- the hearing. The audio of the  
12 hearing is being recorded. At the end of the day, an MP3 audio  
13 file is sent to the court. Any party wishing to order a copy  
14 of the transcript may do so.

15 No video recording of the hearing is being made, nor  
16 may one be made by anybody else. So there is an audio  
17 recording being made from which the transcript can be prepared.

18 Go ahead, Mr. Leblanc.

19 MR. LEBLANC: Thank you, Your Honor.

20 THE CLERK: Judge, sorry to interrupt. I made Ms.  
21 Lauria co-host; is that correct, Mr. Leblanc?

22 MR. LEBLANC: Yes. Your Honor, one of my colleagues,  
23 Kristina Lauria, is actually going to run the audio-visuals for  
24 us, if that's --

25 THE COURT: Makes good sense. Thank you. Go ahead.

1 MR. LEBLANC: It certainly makes sense for me. If you  
2 saw my desk here, you'd see the reason why.

3 So Your Honor -- and as I said, we'll start on slide  
4 3, which is really just our introduction.

5 Your Honor, we believe that there are two key  
6 questions before the Court. The first is are the contracts  
7 that we seek to reject executory, and then secondly, obviously,  
8 in the context of any rejection, the question is whether  
9 rejection of those contracts would benefit the estate such that  
10 it's consistent with the exercise of our business judgment.

11 Your Honor, we think those questions in this context  
12 are actually very clear and easy to resolve, but there are a  
13 lot of issues. And obviously, the Court knows, and the paper  
14 industry knows, that a lot of ink has been spilled talking  
15 about a number of issues that go well beyond the two issues  
16 that we identified here. And what I'm going to try to do in  
17 the course of my discussion, Your Honor, is just try to make  
18 this as simple as possible, because it really is a relatively  
19 straightforward issue when you come down to it. It is are  
20 these contracts executory, and in significant part, the  
21 question is is the RSPA executory because that is the  
22 fundamental contract that is at issue here. And if so, should  
23 we be permitted to reject it?

24 Now, if we turn to slide 4, Your Honor, to be  
25 absolutely clear, what we are seeking through the motion is

1 relief that provides us with the ability to service our  
2 customers, and to generate revenue from that.

3 We are not asking to rescind the existing contracts,  
4 to revert back to any prior position, to have any monies flow  
5 back to us, but simply, Your Honor, to realize the value of  
6 ticket sales that we accomplish as we move forward in time, and  
7 in return, what we believe the governing agreements require is  
8 that USAV get exactly what they contracted for and that is a  
9 liquidated damages claim against the estate that they will  
10 argue is secured, we will argue is unsecured, but a liquidated  
11 damages claim against the estate.

12 We believe that is the correct outcome from rejection  
13 of these contracts, and I'll walk Your Honor through that. But  
14 fundamentally -- and I think it's important to emphasize this  
15 and I may do this more than once as I talk to Your Honor --  
16 what we need here is the ability to sell tickets and have that  
17 money flow through to the estate.

18 Operating aircraft, it's -- we don't need to put  
19 evidence on of this. Operating aircraft is extraordinarily  
20 expensive between the crew, the aircraft, the other  
21 obligations, the landing rights, the gate rights, fuel costs;  
22 extremely expensive. The notion that we would be forced to  
23 operate aircraft without getting the benefit of those ticket  
24 sales makes absolutely no sense and it is inconsistent with  
25 what the parties contracted for.

1 Now, over the course of the next several slides, Your  
2 Honor, we detail our overview of the transactions, and I'll  
3 look at slide 6. I'm not going to spend a lot of time on this  
4 because I think Your Honor knows this very, very well based on  
5 the questions we saw. I don't think there's a lot of dispute.  
6 But I do want to highlight a few issues.

7 At the bottom of this slide 6, Your Honor, we give  
8 some detail about the outstanding amounts of the loan, but I  
9 want to be even more precise because we saw Your Honor's  
10 question.

11 So we have the amount there as of March 31st, 2020,  
12 which was approximately 103 million dollars. Our  
13 understanding -- and I will tell the Court that our  
14 understanding is not complete because there are records that we  
15 don't have of conduct that occurred post-petition, but let me  
16 just give you what we understand the numbers to be.

17 As of the petition date, on May 10th, there was  
18 100,000,000 dollars left in the outstanding balance of the  
19 loan. As of May 12th, so two days later, after the retention  
20 event notice was provided, there was a balance of 96,875,000.

21 We understand that, through the course of the case, so  
22 from May 12th through August 21st, an additional 6,903,866  
23 dollars -- that's 6,903,866 -- has arrived in the collection  
24 account, in our understanding, has been swept on a daily basis  
25 to the lenders.

1           In addition, Your Honor, at some point in that time --  
2 meaning from May 12th to August 21st, the amounts in the  
3 reserve account were also swept and paid to the lenders in the  
4 amount of 13,456,014, so that's 13,456,041 (sic). The "as of  
5 July 22" number that we put on this slide, Your Honor, that  
6 ninety-six million is really the balance that existed on May  
7 12th.

8           But if we assume that the two amounts that were swept  
9 from the collection accounts and the reserve accounts were in  
10 fact applied to principal, then without accounting for the  
11 incurrence of additional interest, we believe the outstanding  
12 balance on the loan is approximately 76,515,120 dollars. And  
13 that's, again, without accounting for the accrual of additional  
14 interest. And --

15           THE COURT: Mr. Leblanc, may I ask this question?

16           MR. LEBLANC: Yes.

17           THE COURT: And I didn't have this in my questions,  
18 but what is your understanding of the uncollected balance of  
19 receivables that USAVflow is holding? So --

20           MR. LEBLANC: Your Honor --

21           THE COURT: -- you've given me the cash amounts, but  
22 they're also, I assume, holding so far uncollected receivables.

23           MR. LEBLANC: Your Honor, we don't have insight into  
24 that. We don't expect that they have meaningful uncollected  
25 receivables because we know two things. USAVflow, we do not

1 believe holds any meaningful amounts of cash, even on a daily  
2 basis, and they don't really hold the receivables. We think  
3 those are held by the credit card processors. And so the  
4 payments, when made by the credit card processors to USAVflow,  
5 are actually then -- they're swept, on a daily basis, to -- and  
6 now, at this point in time, our understanding is they're being  
7 provided on a daily basis to the lending parties.

8 THE COURT: Okay. Thank you, I understand.

9 MR. LEBLANC: So we don't think there's --

10 THE COURT: Okay. I understand then.

11 MR. LEBLANC: a balance there. This will be relevant,  
12 Your Honor, when -- I'm going to talk about the things leading  
13 up to the bankruptcy, in a moment, where this will really  
14 become a relevant discussion, Your Honor.

15 What I think is important, Your Honor, we can look at  
16 slide 7 -- and again, I'm going to go quickly through this  
17 background section because I don't think it is -- I think Your  
18 Honor has a very good understanding of it. But if we look at  
19 slide 7, this is just a pictorial representation, but what --  
20 and if I could ask my colleague to just advance to slide 7.

21 We just wanted to show how everything flows here, and  
22 this is where I was taking from, Your Honor, when I said that  
23 our understanding is USAVflow doesn't meaningfully hold the  
24 receivables. A couple of things that are important here, Your  
25 Honor, the green bar in the middle of your screen, the rights



1 of the debtors to receive additional purchase price. I think  
2 it's important to remind Your Honor of just the order of  
3 magnitude of what that is. This transaction, while the initial  
4 purchase price was 150 million dollars, you can see here, on  
5 slide 8, Your Honor, we give the order of magnitude of what the  
6 amounts are. The credit card receivables average between 369  
7 million and 456 million per year, in the years leading up to  
8 this agreement.

9 In 2016, the amounts that were reverted back to  
10 Avianca were 457 million dollars, and in 2017, through the date  
11 of the agreement, on October 31st, there was 454 million that  
12 was reverted back to Avianca. And the amounts that are  
13 retained by the lenders is relatively small, a couple of  
14 million dollars a year -- I'm sorry, a month, rather, whereas  
15 the vast majority of it -- and the estimate that's provided in  
16 the evidence that's before the Court is historically ninety-  
17 three to ninety-five percent of all receivables are returned to  
18 Avianca in the form of additional purchase price.

19 And so the retention by USAVflow and its lenders,  
20 relative to what is actually paid to Avianca, is very minimal.  
21 What's important about that is, this additional purchase  
22 price -- and we'll talk about this in a second -- that is the  
23 primary obligation that USAVflow has to the lenders that -- I'm  
24 sorry, to Avianca. That continues throughout the course of the  
25 arrangement, and that is an unbelievably material amount, both

1 to USAVflow, obviously it's ninety-five percent of what  
2 actually throws through them, but also obviously to Avianca, in  
3 the service of their business. And the debtors have always had  
4 that right to receive that additional purchase price, and  
5 that's been consistent throughout the agreement.

6 Now, I do think -- because I think Your Honor has a  
7 very good understanding of the background of these, I am going  
8 to turn now just to -- there is a fundamental disagreement  
9 about what happened leading into the bankruptcy, so I'll turn,  
10 Your Honor, to slide 10, because I think it's important to  
11 slowly walk through -- and I'll ask my colleague, again, to  
12 share the screen with slide 10 -- to walk through what happened  
13 pre-petition.

14 Obviously, we all know what happened in the world; the  
15 effects of COVID and its effects on the ability of companies  
16 like the debtor to perform their services, meaning to fly  
17 aircraft. On March 31st of 2020, the lenders directed the  
18 administrative agent, and the administrative agent did send a  
19 notice to the company, to Avianca. And it was entitled: "A  
20 notice of trigger events/reservation of rights". And there is  
21 a fundamental disagreement between us and the lenders as to the  
22 import of this document.

23 We believe what the lenders did here is exactly what  
24 they said they were doing; they were reserving their rights.  
25 And in fact, we've highlighted on this page -- and Your Honor,

1 if Your Honor wants to look at the document itself, it is  
2 Exhibit 2A of the lender's exhibit list. But we've tried to  
3 highlight here the things that we think are critical to  
4 recognize about what the lenders were doing.

5 First, the lenders advised the administrative agent --  
6 and you see it in the bottom left corner -- the administrative  
7 agent has been informed by the lenders that the seller is in  
8 breach of certain terms and conditions of the RSPA, as  
9 specified on schedule 2. And if Your Honor looks at schedule,  
10 which we don't have up on the slide here, but I will just tell  
11 you that it's a triggering event under Section 6.01(ii) of the  
12 RSPA, as the capacity or ability of the seller to operate  
13 international flights is materially impaired.

14 So the lenders gave notice of a breach, what they  
15 termed a breach. And then, if you look at the upper right box,  
16 the part that we're quoting there, they said what they're doing  
17 in response to that breach. They said at the direction of the  
18 required lenders, they're reserving their rights and they're  
19 continuing to evaluate their response to the specified events,  
20 meaning the failure by the -- the inability by the company to  
21 be able to fly.

22 And then further, in the bottom box, they say that  
23 they reserve any and all rights, powers, and privileges and  
24 remedies under the loan agreement. What they didn't do, Your  
25 Honor, is they didn't actually exercise any rights or remedies

1 under the terms of the RSPA or the cash management agreement,  
2 which is the document that actually governs how the funds flow  
3 here. And --

4 THE COURT: You don't dispute that a triggering event  
5 had occurred; am I correct?

6 MR. LEBLANC: We don't dispute that they gave notice  
7 of a triggering event, Your Honor. What --

8 THE COURT: No, my question is: are you disputing  
9 that a triggering event had occurred?

10 MR. LEBLANC: We are not, Your Honor. We're not.

11 THE COURT: Go ahead.

12 MR. LEBLANC: What we're disputing is that they  
13 invoked any of the remedies that are available to them upon the  
14 occurrence of a triggering event. And Your Honor, I think it's  
15 critical -- and this document, unfortunately we don't have a  
16 slide with respect to this, but there are -- the cash  
17 management agreement is the agreement that governs the flow of  
18 funds between Citibank, the lenders, and Avianca.

19 And in the cash management agreement, there's a very  
20 specific requirement for a notice to be given for the lenders  
21 to trigger the shifting of the flow of funds upon the  
22 occurrence of a triggering event. That, Your Honor -- for the  
23 Court's benefit, the cash management agreement is our Exhibit  
24 5, which is in evidence, and the provision I would point the  
25 Court to is Section 2.06(e).

1           2.06(e) gives a very specific reference to what is  
2 required to come from the administrative agent in the event  
3 that there is a triggering event and the lenders have opted to  
4 modify the flow of funds, in other words, to modify the flow of  
5 funds such that they are paid everything and Avianca is paid  
6 nothing, in their words.

7           And that never occurred. In fact, what did occur, in  
8 real time, what actually happened is the lenders reserved their  
9 rights and continued to evaluate their options. And we know  
10 this because -- and we can turn to the next slide -- the  
11 lenders continued thereafter to make -- and so I'm not on slide  
12 11 -- continued thereafter to make additional purchase payments  
13 to Avianca.

14           And I think this is important, Your Honor, to walk  
15 through because the evidence on this is uncontroverted. In our  
16 exhibit 12, which is Mr. Neuhauser's second declaration, at  
17 paragraph 5, we detail what happened after the receipt of this  
18 March 31st, 2020 notice. And we do that because we think this  
19 is really important. And what it shows is that, even after  
20 that notice was provided, from April 1st through the occurrence  
21 of a new monthly -- the start of a new fiscal month for this  
22 agreement, on April 12th, each day cash was swept to Avianca,  
23 exactly as it was done on March 30th.

24           Now, what happened in April 12th is a new month  
25 starts, and the way that the agreement operates is that from

1 the -- at the start of a month, every dollar that's received  
2 first goes to the lenders to satisfy their principal and  
3 interest obligations and any fees of USAVflow that are de  
4 minimis, and then the additional purchase price payments are  
5 made to Avianca.

6 But because of the COVID shutdown, from April 12th  
7 forward, at no point in time in that month did Avianca generate  
8 sufficient revenues through these accounts to make additional  
9 purchase payments to the lenders. The consequence of that is  
10 nothing else was paid. But the point is, for the remainder of  
11 the month of April, when payments were due, they were made  
12 through April 12th. From April 12th forward, there were no  
13 payments that ever became due.

14 And at no point in time, until the petition date, was  
15 there any other notice that was given by the lenders that they  
16 intended to cut off, in any respect, the rights of Avianca to  
17 receive additional purchase price. And so while they gave  
18 notice of a trigger event, they specifically reserved their  
19 rights with respect to remedies, and they specifically did not  
20 give notice that would be required to change the flow of funds.

21 THE COURT: Why does that make a difference, Mr.  
22 LeBlanc?

23 MR. LEBLANC: Your Honor, it makes a difference for  
24 this reason because we believe the occurrence of the petition  
25 date is what actually changes the flow of funds. And it's a

1 provision that they're ignored in their recitation. And when  
2 you look at their slides, it's almost remarkable the efforts to  
3 which they go to ignore Section 6.03 of the RSPA. And Section  
4 6.03 is the automatic trigger which automatically causes the  
5 liquidated damages provision to become due and payable. And  
6 I'll talk in a minute, and we have some slides that come up  
7 that will explain why that is critically relevant.

8 But Your Honor, to the extent -- and it's  
9 remarkable -- I'm not going to pull up their slides, but when  
10 you look at their slide 9, they cite to a passage, in slide 9,  
11 from Section 2.04 of the cash management agreement, and they  
12 highlight literally every line in it, except for the one  
13 sentence that relates to liquidated damages becoming due and  
14 payable because of Section 6.03 of the RSPA. Why that's  
15 critical is because, when it's due and payable under Section  
16 6.03, it is automatic, Your Honor. And it is not in the same  
17 way reversible as they contend other payments are. And it  
18 triggers certain obligations under Section 2.11 and 2.04 of the  
19 cash management agreement. And we have those in our slides  
20 coming up in just a second.

21 That's why, Your Honor, I'm focused on this is what's  
22 critical to us is that, prior to the petition date, they didn't  
23 take any steps to stop the flow of funds to USAV -- I'm sorry,  
24 from USAV to Avianca. They only did so after the petition  
25 date. They did so pursuant to a retention notice that was



1 given after the petition date. And we believe that's critical  
2 because, at the time of the petition, our entitlement to these  
3 funds continued to flow, and that's what we believe gives rise  
4 to limiting their right to a liquidated damages claim against  
5 the estate. That's the reason, Your Honor, this is important.

6 And I think -- I don't know that there's any dispute  
7 from them that it is important, and I say that because the  
8 lenders say in their papers, and even in their slides, that the  
9 continued payment to us of the additional purchase price was a  
10 clerical error. Now, there is no evidence, whatsoever, that  
11 this was a clerical error. There's no letter that came from  
12 Citibank saying this was a mistake, you need to return these  
13 funds to us. There's no witness evidence that they submitted.  
14 It is undisputed that this was not a clerical error.

15 THE COURT: Let me ask you a question, Mr. LeBlanc.

16 MR. LEBLANC: Yes.

17 THE COURT: And I don't have the agreement opened in  
18 front of me, but my recollection is that liquidated damages  
19 were due upon termination of the RSPA. What is the language  
20 you're relying on? You're saying that liquidated damages  
21 automatically became due upon the filing of the petition. Your  
22 view is that the lenders did not have to terminate the RSPA in  
23 order to trigger the liquidated damage requirement?

24 MR. LEBLANC: That is correct, Your Honor.

25 THE COURT: Do you have that language handy that

1     you're --

2             MR. LEBLANC:   We do.

3             THE COURT:   -- you're referring to?   If you could  
4     just --

5             MR. LEBLANC:   I do.

6             THE COURT:   -- read it to me, I would appreciate it.

7             MR. LEBLANC:   I would, Your Honor.   I will.   And Your  
8     Honor, just for the record, this is our Debtors' Exhibit number  
9     2, which is in evidence, and it's the Contract Rights and  
10    Receivable Sale Purchase and Servicing Agreement.   And it's  
11    Section 6.03, which is entitled automatic trigger event.   And  
12    it says:   "In the case of a trigger event, specified in Section  
13    6.01(h), and notwithstanding the availability of other remedies  
14    under Section 6.02, the liquidated damages shall automatically  
15    become and be forthwith due and payable, and all amounts  
16    deposited in the New York pass-through account, the collections  
17    account, and the debt service reserve account shall be  
18    disbursed to repay such amounts."

19            THE COURT:   Okay, thank you.

20            MR. LEBLANC:   And Section 6.01(h), Your Honor, that is  
21    the predicate for this, is -- and I'll just give you the first  
22    clause.   It's:   "Any insolvency event occurs with respect to  
23    the seller."

24            THE COURT:   All right.   Thank you very much.

25            MR. LEBLANC:   Yes, Your Honor.   And again, that's

1 Exhibit 2, Section 6.03.

2 And Your Honor, that, we think, is critical. It is  
3 why we think the lenders are trying so hard to say that the  
4 relevant triggering event is the pre-petition one, that that  
5 reordered the parties' priorities and that that only takes  
6 effect upon a termination. And that's where we have a  
7 disagreement.

8 THE COURT: Would you agree that, in connection with  
9 your rejection motion, the Court does not have to determine  
10 what, if any, rejection damages -- assuming that I find that  
11 you can reject the RSPA, the Court does not, at this stage,  
12 determine the amount of the rejection damages that would be  
13 due.

14 So for example, if their remedy, as you say, is  
15 limited to liquidated damages, if it's not resolved between the  
16 parties, and the contract is rejected, the Court would have to  
17 resolve it. Their position is that their rejection damages  
18 would not be limited to liquidated damages. I guess the only  
19 point I'm trying to make now is your rejection motion itself  
20 does not require the Court to decide what damages, if any, the  
21 lenders would be entitled to recover.

22 MR. LEBLANC: That is absolutely correct, Your Honor.

23 THE COURT: Okay. All right. Go ahead.

24 MR. LEBLANC: And I would further -- I'd say even one  
25 further point, just to foreshadow the discussion at the end of

1 this is, is Your Honor doesn't need to decide -- we don't  
2 believe, for the purposes of this discussion, that Your Honor  
3 needs to decide whether that rejection damages claim is a  
4 secured claim or an unsecured claim, and we'll talk about that  
5 at the end.

6 THE COURT: Right.

7 MR. LEBLANC: But what --

8 THE COURT: I was going to ask a question earlier, but  
9 I think you sort of, in effect, answered it. Your view is that  
10 the debtors appropriately exercised business judgment in  
11 deciding to reject the RSPA whether the rejection damages claim  
12 is secured or unsecured, correct?

13 MR. LEBLANC: Correct, Your Honor. And just to  
14 explain that, Your Honor, I mean, what the lenders are saying  
15 here is that they're entitled to get every first dollar that we  
16 raise until they're paid in full. Even a secured claim, which  
17 we question whether it would be, even a secured claim can be  
18 treated, under a bankruptcy plan, in a way that does not  
19 require every first dollar that the debtor raises to be paid to  
20 them.

21 And so a secured claim for the company -- as against  
22 the company, in the amount of their outstanding claim, would be  
23 far better for us than the consequence of them keeping every  
24 dollar of revenue that we earn from ticket sales. So that's  
25 why we think that the argument that you have to decide whether

1 it's a secured claim first, because you may not give us  
2 authority to reject if it is a secured claim, we just think  
3 that's wrong, given what they're contending here.

4 It could be different if they were making different  
5 arguments, but the notion that we would not receive any revenue  
6 from ticket sales makes plain that rejection, for us, that  
7 gives us the right to receive revenue from ticket sales is far  
8 better than even them getting a secured claim against the  
9 estate. And I'm sure that unsecured creditors would agree with  
10 that, even the committee; even if that were a secured claim,  
11 it's just far better for everyone if we could treat that  
12 consistent with the requirements 1129(b), and we had options to  
13 deal with that rather than having to give them every first  
14 dollar.

15 And it really, I think, highlights, Your Honor, the  
16 dichotomy between the parties. I mean, what they're trying to  
17 say is we should not be subject at all -- the fact that you're  
18 in bankruptcy should be irrelevant to us; we shouldn't be  
19 subject to your bankruptcy at all. We should just step, not  
20 only in front of everybody, but it's beyond superpriority. It  
21 is saying every dollar you raise should just come to us until  
22 we're done.

23 And if you accept their argument in their papers, even  
24 then it doesn't stop. They get every dollar. USAVflow is  
25 entitled to every dollar we earn from ticket sales, pursuant to

1 these two credit card processing agreements, forever. That's  
2 what they bought for 150 million dollars, and that, obviously,  
3 Your Honor, is, in our view, just fundamentally wrong.

4 Your Honor, let me turn to the first of the, sort of,  
5 two fundamental questions, and I'll do this on slide 14. And I  
6 know Your Honor --

7 MS. LAURIA: Excuse me for the interruption. I just  
8 have been disconnected from the share-my-screen, so if Deanna  
9 could just reextend the invite to share my screen I should be  
10 able to --

11 THE CLERK: All right.

12 MS. LAURIA: -- reconnect.

13 THE CLERK: Excuse me. You've already been made a  
14 cohost. You should be a cohost. I already made you a cohost.

15 MR. LEBLANC: And just for our record, Your Honor,  
16 that was Kristina Lauria, also from Milbank.

17 Your Honor, there's no -- on slide 14, we just have a  
18 couple of cases. I'll do this very quickly. I don't think  
19 there's any dispute about what the relevant standards are as to  
20 whether or not the contracts are executory. There is a dispute  
21 about whether or not the obligations that are imposed --  
22 continue to be imposed on the debtors are of a significance  
23 that they could rise to the level of executory so that they're  
24 substantial obligations. And the Hawker Beechcraft decision,  
25 we think, sets this out quite plainly. If they're sufficiently

1 important to discharge any further obligations, then their  
2 intent will govern.

3 And if we go to the next slide, Your Honor, I'm not  
4 sure how really in dispute the question of whether the RSPA is  
5 executory is, to be honest with you. The debtors clearly have  
6 significant material obligations that remain outstanding. We  
7 list here, on this page, those that arise pursuant to Section  
8 6.01.

9 There are eighteen different trigger events in Section  
10 6, and these are just a handful of them. But these are very  
11 significant obligations. The failure of the debtor to comply  
12 with any of them gives USAV the right to terminate the  
13 agreement. So we think when you look at that, through the lens  
14 of the Hawker Beechcraft analysis, it plainly says that the  
15 contracts are executory.

16 But Your Honor, the lenders argue, in response, that  
17 they couldn't declare a breach because we failed to fly  
18 aircraft. Now, that's belied by the fact that they actually  
19 did declare a breach because we weren't flying aircraft, the  
20 very provision that's that first one on the list.

21 They now describe it -- USAVflow describes it as  
22 careless wording. But in any event, even if these were not a  
23 breach, if you turn to the next page, Your Honor, Section 2.03,  
24 these are covenants that are imposed upon the debtors to not  
25 have a different credit card servicer service these contracts.



1           And notably absent from the lender's argument is any  
2 discussion of whether or not they could declare a breach if we  
3 did this, if we went out and found new credit card servicers to  
4 get around the USAVflow structure who didn't have an obligation  
5 to put the money to USAVflow and who could pay the money  
6 directly to us. And so that clearly is -- for the purposes of  
7 determining whether a contract is executory, there is no doubt.

8           And in fact, Your Honor, if you turn to the next page,  
9 I make the point that even their own expert says, in his second  
10 supplemental declaration, says that if we did that -- and this  
11 is the second bullet -- we would be breaching our obligations,  
12 our express obligations under the contract, and it would give  
13 right to a rise for them to -- a right for them to seek to  
14 terminate.

15           So Your Honor, I don't think -- even if they want to  
16 argue -- that's why I think the argument between conditions and  
17 obligations is sort of a red herring. I think it's wrong, in  
18 any event, and their own conduct makes that clear because they  
19 did declare a breach for failure to meet one of the conditions.  
20 But even leaving that aside, the Section 2.03 obligations,  
21 which are fundamental to this deal, and which would be breached  
22 if we did this, make this contract continue to have very  
23 meaningful obligations imposed on the debtors.

24           And similarly, Your Honor, if we turn to the next  
25 slide, this is why I foreshadowed this issue with you, Your

1 Honor. I don't think there's any question that they have,  
2 USAVflow has very material continuing obligations to us.  
3 There's no circumstance in which we sold hundreds of millions  
4 of dollars of receivables every year for 150 million dollars.  
5 That didn't happen. And it's not how the parties performed the  
6 contract. It's not how the parties understood the contract to  
7 operate. And if the contract is terminated, it's not how the  
8 contract will operate, Your Honor.

9 We're entitled to a massive reversionary interest here  
10 from USAVflow. They have very significant obligations to pay  
11 an enormous amount of money going forward, well beyond -- it  
12 has to be calculated every month, but well beyond the money  
13 that was paid by them, the 150 million dollars.

14 And the argument seems to be, Your Honor, that this  
15 right of ours, this obligation imposed on USAV to pay us was  
16 terminated pre-petition and therefore can't be a remaining  
17 obligation imposed on USAVflow. That's just a fundamental  
18 misreading of the documents, Your Honor, and what we think is  
19 clear is, first of all, for the reasons I talked about a few  
20 minutes ago, they didn't do that. Their notice was not  
21 effective to do that, and they didn't give the notice that was  
22 required. We have it here, Section 2.06(e) of the cash  
23 management agreement has additional obligations imposed upon  
24 them. But moreover, that's just not what happened. They  
25 continue to make those payments to us.

1           Your Honor, on the next page, we talk about the  
2     undertaking agreement, and the reason we address this agreement  
3     separately, Your Honor, is because the undertaking agreement  
4     has obligations that limit the debtors' ability to enter into  
5     optional credit card servicing agreements with other providers,  
6     and so we need this contract -- we need to be able to breach  
7     this contract.

8           One of the questions Your Honor asked in your  
9     questions was what continuing obligations does USAVflow have  
10    under the terms of the undertaking. And Your Honor, I'll  
11    answer that question now, and we think the only continuing  
12    obligation is under Section 3.05 of that agreement, which is  
13    just to provide records when requested. This is your question  
14    number 5. I think that's the only provision.

15          But, Your Honor, that's of -- it's not of any real  
16    help to the lenders and USAVflow here because if they have no  
17    obligations and therefore the contract's not executory, but the  
18    debtor has significant obligations, then we can simply breach  
19    the contract. And they're entitled to exactly what they're  
20    entitled to if the contract is executory and Your Honor grants  
21    us the right to reject the contract, namely --

22          THE COURT: That was -- let me, Mr. Leblanc. I mean,  
23    I didn't frame the questions this way, but I think it probably  
24    came through. One of the issues I've been mulling is does it  
25    make a difference whether contracts other than the RSPA are

1 executory? If you can reject the RSPA and, therefore, cut off  
2 the future receivables from this mechanism, what is it? And  
3 let's assume that you breach the undertaking or the cash  
4 management and the other agreements; what is the impact of it?  
5 You're not seeking to assume those agreements. If they're not  
6 executory and you breached them, there is a damage -- there may  
7 be a damage remedy available. How it would be determined, I  
8 don't know. But let me come back.

9           You say under the undertaking agreement the only  
10 obligation that USAVflow had was Section 3.05 to provide  
11 records. Why is that a material obligation?

12           MR. LEBLANC: Well, Your Honor, look, I think -- let  
13 me answer both the questions.

14           I'm not sure that it is a material obligation, Your  
15 Honor. The obligations imposed upon the debtors certainly are  
16 material. And we're fine. Just to be as direct as I can, Your  
17 Honor, I think we agree with you. We do agree with you that if  
18 Your Honor permits us to reject the RSPA, the other contracts  
19 that impose obligations on us, we can simply breach. The  
20 consequences are exactly the same. But the RSPA is the one  
21 that we need to reject because that is an executory contract.

22           The undertaking -- Your Honor, I think your question  
23 highlighted the issue that it appears as though the undertaking  
24 is really just an effort to limit what we can do and impose  
25 obligations on us, the debtors. And if Your Honor doesn't

1 permit the rejection of those contracts, then we would just  
2 make the decision to breach. And they'll have whatever damage  
3 claim that they have.

4 But I think, Your Honor, your point is well taken,  
5 that -- the overall point, that what we really want here is  
6 rejection of the RSPA so that we can begin to receive the  
7 receivables directly and not suffer the payment of the full  
8 amount of the liquidated damages obligation that will be  
9 treated in our bankruptcy as a rejection damages claim, and  
10 then we'll move on.

11 But I think Your Honor is exactly right. The rest of  
12 the contracts that are part of this -- that's what I'm not -- I  
13 don't intend to spend any time on the question of whether these  
14 contracts are all integrated or not. Where I know there is  
15 some dispute about that under Colombian law, I'm just not going  
16 to deal with that, because I don't think -- that's not central  
17 to the issues that we need to be decided.

18 THE COURT: All right. But do I understand you are  
19 arguing that the undertaking agreement is executory and that  
20 the obligation of USAVflow that continues, the only obligation  
21 is under 3.05, providing of records. And then there was an  
22 issue whether that's a material obligation sufficient to make  
23 this an executory contract. Is that a fair statement?

24 MR. LEBLANC: That is a fair statement, Your Honor.  
25 And if you disagreed with us on the materiality of that

1 obligation, and therefore there was no obligation on their  
2 part, then we'd be fine.

3 THE COURT: I haven't made -- let me make clear. I  
4 haven't made a decision on any of this. I'm just trying to  
5 make sure I understand what the arguments are. Okay?

6 Go ahead.

7 MR. LEBLANC: Yeah. I appreciate that, Your Honor. I  
8 wasn't suggesting you had. But if you do, what we care about  
9 is getting access to our receivables. And the undertaking --  
10 being able to breach the undertaking is what -- one of the  
11 steps that we believe is required to do that.

12 Your Honor, I'm going to spend just a couple minutes,  
13 because we've actually covered a lot of this in our colloquy,  
14 on the question of whether or not it's within our business  
15 judgment to reject this.

16 I've talked about this at great length, I think, to  
17 date. Your Honor, we are not -- we're not taking this step  
18 lightly. We are consciously coming into this because the issue  
19 we have is we need access to our receivables. That's what we  
20 need. And we think the right way to do that is through this  
21 action.

22 Your Honor, I will say we've also obviously filed a  
23 recharacterization motion -- or a pleading seeking  
24 recharacterization. And we've chosen to proceed with the  
25 rejection motion first. We are reserving our right to seek to

1 recharacterize the transaction as a financing. And I know Your  
2 Honor has written on this in the past, and I'm happy to talk  
3 about it if necessary. But we want to be clear.

4           There's two ways -- and we're going to talk about this  
5 in just a second. We believe that the right outcome here is  
6 that, upon rejection, the receivables flow to us through the  
7 USAVflow structure. And I'll talk about that in a second.  
8 That's the application of the liquidated damages provision and  
9 the provisions of the cash management order.

10           There also, obviously, is -- it is an option, and the  
11 UCC focuses on this, that we believe it's clear that we could  
12 enter into a new set of credit card servicing agreements with  
13 different parties that just take it outside the USAVflow  
14 structure.

15           If the Court were to conclude that the only remedy  
16 available to us was to proceed through having to go out and  
17 retain new credit card servicers, then we would likely pursue  
18 our recharacterization petition in full force. And the only  
19 reason I say that is just -- just to be fully candid with the  
20 Court, we think it is a business -- there are business issues  
21 associated with replacing these credit card servicers in the  
22 short term, and there are larger business relationships for the  
23 company with the credit card service providers. And so while  
24 we're asking for that relief, and if Your Honor granted it, we  
25 would take all available steps. But we don't want -- we want



1 to be clear that we're not foregoing the opportunity to seek  
2 recharacterization in the event that that were to happen.

3 And the reason I say that is because if we were  
4 entitled, as we believe we are, to simply get the receivables  
5 flowing directly to us under the existing structure, then we  
6 probably would forego the opportunity to seek  
7 recharacterization at that point because it really would  
8 just -- that would have the effect that we would need, which is  
9 to get the money flowing to us.

10 THE COURT: Let me be very clear, that I'm very  
11 mindful, whether it's in connection with this rejection motion,  
12 or the recharacterization complaint, of rendering decisions  
13 that would unsettle the marketplace. Let me put it that way.  
14 So when I -- this is quite some years ago now -- wrote the  
15 Sterling Optical or Sterling Vision decision -- it was a  
16 case -- it was a motion that I inherited from Judge Gerber  
17 while he was still on the bench, and I wrote -- I concluded in  
18 that that it didn't make a difference whether it was a true  
19 sale or a secured financing; the outcome essentially would be  
20 the same. Obviously, that involved UCC and not Colombian law,  
21 but nevertheless.

22 So I will be very candid. I don't know whether the  
23 structure that's been used with respect to Avianca's receivable  
24 financing is one that's common in the marketplace. And I'm --  
25 I mean, I'll decide the issues based on the way I think they

1 should come out, but I'm very mindful of not wanting to, with  
2 incomplete knowledge, take a decision that has the effect of  
3 substantially unsettling the marketplace.

4 Certainly, again, I'm not -- this is not the adversary  
5 proceeding seeking recharacterization in the face of the legal  
6 opinions that Avianca got that it was a true sale. That  
7 doesn't absolutely determine the outcome. It certainly would  
8 create hurdles for you.

9 But even with respect to this rejection motion, I have  
10 not seen this structure before. Whether the agreements are  
11 sufficiently interrelated such that rejection of one permits  
12 rejection of all is one issue. But I'm very sensitive to that.

13 Go ahead with your argument.

14 MR. LEBLANC: Thank you, Your Honor.

15 No. And we appreciate that, Your Honor. And I wasn't  
16 trying to get it all into the recharacterization arguments.  
17 Just making a point that as long as we get the receivables in a  
18 way that that allows the company to continue its business in a  
19 meaningful way, then we don't -- I don't think we'll need to go  
20 down that road at all. But I understand what Your Honor is  
21 saying.

22 So, Your Honor, there -- as we said, rejection here,  
23 if you look at slide 22, there really are two potential  
24 outcomes that we've identified.

25 One is we do believe that rejection alone of the RSPA

1 and either our breach or rejection of the undertaking alone  
2 would cause the receivables to then flow through to the  
3 company, through the structure. What it provides -- and we've  
4 talked about a lot of this already, I'm just going to go  
5 through it again very quickly -- what the contracts provide is  
6 in the event of a trigger event such as what occurred here is  
7 that the liquidated damages become due and payable on the  
8 petition date. Exactly what you'd expect from any loan  
9 agreement -- an acceleration on the petition date -- and  
10 exactly what we're seeking to provide them, which is a claim  
11 against this estate for the amount of the unpaid -- for what's  
12 called the unlined costs which is effectively what they're owed  
13 under their agreements.

14           How this flows, Your Honor -- if you turn to slide  
15 23 -- how it flows through the various agreements is -- the  
16 cash management agreement, Section 2.11, says that "Upon  
17 payment in full of all obligations owed to the purchaser or  
18 financed parties pursuant to Section 2.042 hereof, the  
19 purchaser shall instruct the collateral trustee," and then I'm  
20 going to skip to the last clause, "to make payments to the  
21 seller in accordance with the RSPA."

22           Now, Section 2.042 is copied below. And, Your Honor,  
23 that's the trigger event priority of payments. And what it  
24 says there, romanette (ii) at the bottom says you disburse  
25 pursuant to these two clauses. But what you're disbursing,

1 Your Honor, are in Arabic 2 in this paragraph; the liquidated  
2 damages -- what you're doing is you're making these payments  
3 where the liquidated damages is automatically payable pursuant  
4 to Section 6.03 of the RSPA. And, Your Honor, that's the  
5 provision -- Section 6.03 of the RSPA is the provision I read  
6 to you just a few minutes ago that is the automatic triggering  
7 event and automatically makes that liquidation payment due and  
8 payable.

9 Now, what our interpretation of this, Your Honor, is  
10 that when that automatic triggering event happens, and the  
11 liquidation payment is due and payable, Section 2.11 says that  
12 is what you have. You've got your claim against the company  
13 under the RSPA. That's the only -- the RSPA only provides that  
14 claim against the company, the liquidated damages claim against  
15 the company.

16 And it begins with upon payment in full of all  
17 obligations. But we are a company in bankruptcy. And so what  
18 payment in full of all obligations means for us as a company in  
19 bankruptcy is, you're treated pursuant to a plan. And  
20 therefore, you have all the rights that you have under the  
21 Bankruptcy Code.

22 And we cited a litany of cases, Your Honor. And even  
23 the Mission Products decision from the Supreme Court  
24 recognizes that when you have a claim against a debtor estate,  
25 you get it -- they don't use the tiny bankruptcy dollars

1 language that the legion of cases do use in New York. That's  
2 what you get is you get paid in tiny bankruptcy dollars. That  
3 may be -- I think what the Supreme Court says may be pennies on  
4 the dollar of your claim.

5 But that's the reason that these receivables, in our  
6 view, should automatically flow to the company pursuant to the  
7 governing agreements because they have exactly what they  
8 contracted to get, a liquidated damages claim against the  
9 company that will then be satisfied pursuant to the plan, and  
10 they'll be entitled to every right that they have under the  
11 bankruptcy code.

12 Now secondly, Your Honor, an alternative way or a  
13 alternative result of rejection here, is that we certainly  
14 could upon rejection, enter into new card servicing agreements  
15 with -- card processing agreements with alternative processors.  
16 I don't think there's any question, if we're relieved of the  
17 obligations under the RSPA, which are the only obligations that  
18 prevent us -- well, the RSPA and we breached the undertaking,  
19 either through rejection or just because we breached, then we  
20 are entitled to go and find a new card processor to process the  
21 payments, and we're entitled to do that entirely outside the  
22 USAVflow structure. That would be an alternative way of doing  
23 it.

24 And the obligations -- and I'll talk about this in  
25 response to Your Honor's questions in a second -- the

1 obligations that are imposed on the card processors where those  
2 obligations will continue to exist, but these agreements, new  
3 agreements, could be done with different processors that would  
4 be outside of the structure, and therefore, those new parties  
5 wouldn't have any obligation.

6 So we think either under those -- either of those  
7 approaches, Your Honor, we'd be entitled to get the benefit of  
8 the receivables that are flowing from our provision of services  
9 to our customers, which is all that we're looking for here,  
10 Your Honor. We want to provide them exactly what they're  
11 entitled to under their contract, which is the liquidated  
12 damages provision upon the bankruptcy, and begin -- be able to  
13 service our customers when the public health environment  
14 permits it without having to do so for free essentially, from  
15 our perspective.

16 Now Your Honor, before I close, I wanted to go through  
17 the questions, I think we've actually addressed many of them,  
18 but just to be as direct as I can, I wanted to just walk  
19 through each of the questions and give Your Honor our best  
20 effort to explain our position.

21 So question 1, Your Honor, I think I've addressed with  
22 the unpaid balance of the USAV loan. If Your Honor has any  
23 further question on that, I'm happy to address it.

24 THE COURT: No, go ahead.

25 MR. LEBLANC: Okay. Question two --

1 THE COURT: Why don't you take down the slide deck?

2 MR. LEBLANC: Question --

3 THE COURT: Thank you. Go ahead, Mr. Leblanc.

4 MR. LEBLANC: Thank you, Your Honor.

5 Question 2, Your Honor, "If the Court concludes the  
6 RSPA is an executory contract and can be rejected, absent"  
7 other -- absent "rejection of the other agreements, what  
8 obligations do each of the parties to the remaining contracts  
9 have, including with respect to receivables that were sold or  
10 transferred to USAV before rejection, that have not yet been  
11 collected or have been collected, but the funds have not yet  
12 been distributed in accordance with contract provisions dealing  
13 with the distribution of proceeds and with respect to  
14 receivables that were generated post-rejection of the RSPA?"

15 I tried to address, I think most of this, Your Honor.  
16 I will say, I think Your Honor to be fully responsive to your  
17 question, I would say that as long as we are permitted to  
18 either reject or the Court concludes the undertaking, the  
19 receivables management agreement is not executory and we can  
20 breach that, then we have some rejection -- some obligations,  
21 and I can walk through them if Your Honor wants to, related to  
22 things like indemnities and things like that, but with respect  
23 to the servicing of the or the contracts themselves, if we can  
24 reject the RSPA and the undertaking, then we have the relief  
25 that we need.



1           And our view is, as we've explained, you know, that  
2     the credit card servicers would still be obligated to send  
3     money to the USAV accounts. Our interpretation of the  
4     contracts is that USAV would be entitled -- would be obligated  
5     to turn those over to the debtors and not send those to the  
6     lenders.

7           Question 3, Your Honor, "Could agreements other than  
8     the RSPA continue to be operative and performed if the RSPA  
9     alone is rejected, and what would be the ongoing obligations of  
10    the debtors under each of these other agreements if the RSPA is  
11    objected?" I think there's a very similar answer, Your Honor.  
12    I think we have certain obligations.

13           So for example, assuming the undertaking is also  
14    breached, under the cash management agreement, we have some  
15    indemnity obligations which would give rise to a pre-petition  
16    claim if breached under the Amex notice agreement. At Section  
17    6, we have an indemnity obligation. Under the expenses  
18    agreement at Section 3, we have a continuing obligation to pay  
19    expenses, which is an obligation we have breached. So we have  
20    certain obligations, but none that relate to the fundamental  
21    issues here.

22           The next question, "If the RSPA is rejected, and the  
23    Court concludes the other agreements are not executory, must  
24    the debtors continue to perform under those other agreements",  
25    and I'll skip the parenthetical, "and if so, what contractual

1 agreements impose those obligations?"

2 I believe, Your Honor, the answer to your question is  
3 no, and we addressed this in connection with the undertaking.  
4 To the extent that Your Honor concludes the other contracts are  
5 not executory, we have the right to reject, and I would point  
6 the Court to Hawker Beechcraft which was affirmed by the  
7 district court where the court said, "If the contract is not  
8 executory and the debtor chooses not to perform, the nondebtor  
9 party gets the same pre-petition breach of contract claim. The  
10 rejection of an executory contract is the same economic  
11 equivalent of the debtor's refusal to perform a nonexecutory  
12 contract, giving rise to the same unsecured claim."

13 We talked about the answer to, I think, number 5; Your  
14 Honor, the only obligation I believe to continue to exist is  
15 Section 3.05.

16 Question 6 relates to, "If the RSPA is rejected and  
17 the Court concludes the other agreements are nonexecutory, do  
18 they impose obligations on the debtors relating to future  
19 receivables?"

20 The answer to that, Your Honor, is no, other than the  
21 undertaking agreement. That's the only other one that does.  
22 And that again, it's either rejectable or nonexecutory, such  
23 that we could breach.

24 Question 7, Your Honor, it wasn't entirely clear -- I  
25 wasn't entirely clear as to your question 7 which says,

1 "Assuming the other contracts are not executory and cannot be  
2 rejected, is there a breach under any of the other agreements.  
3 What specifically is the breach?"

4 I identified, we certainly are in breach of the  
5 expenses agreement, Your Honor, but we think the -- if the RSPA  
6 is rejected, we don't think we would be in breach of any of the  
7 other agreements, other than the undertaking. I don't know if  
8 that answers your question.

9 THE COURT: I think so. Number 8 really relates -- is  
10 really more specific, but I think related to the same thing.

11 MR. LEBLANC: Yes, I agree with that, Your Honor, and  
12 I -- that's what we just went through with respect to new  
13 credit card servicers, as long as the undertaking is also  
14 breached.

15 THE COURT: Is it -- one of Mr. Kurtz's slides, and  
16 I'm sure we'll get to it, do the lenders have the right now to  
17 change the servicer?

18 MR. LEBLANC: Your Honor, I believe they do have the  
19 right to change the servicer under the undertaking. Well, I  
20 should say this, they did, pre-petition. I think now would be  
21 a violation of the automatic stay were they to try.

22 That right arose, but they didn't exercise it, as Your  
23 Honor, I think everyone agrees, they had an obligation, if they  
24 wanted to do so, to give us notice of their intent to do so,  
25 and the agreement is absolutely clear, even in the occurrence

1 of a triggering event, that Avianca continues in its role as  
2 the servicer until such time as it is replaced. So there's not  
3 intended to be a gap period there where there's no servicer.

4 So 9 and 10, Your Honor, I think are of a similar -- I  
5 think we -- I tried to deal with these when we talked about the  
6 replacement -- you know, if we do end up replacing the credit  
7 card processors, we think we can do that, and if we do that,  
8 the debtors would have no further obligations other than, of  
9 course, the obligation to pay any unsecured claims or any  
10 claims that arise.

11 THE COURT: Well, let me ask you this, if you  
12 reject -- if the Court permits you to reject the RSPA, do you  
13 believe there's a prohibition on the debtors entering into a  
14 new credit card processing agreement with Amex?

15 MR. LEBLANC: Your Honor, we do not believe that there  
16 would be. That limitation is imposed within that agreement,  
17 so --

18 THE COURT: Within the RSPA?

19 MR. LEBLANC: It's within the RSPA and the  
20 undertaking.

21 THE COURT: And the undertaking, okay.

22 MR. LEBLANC: Yes.

23 THE COURT: All right.

24 MR. LEBLANC: So we don't think there'd be any  
25 limitation on our ability to do that. I expect that Mr. Kurtz

1 will say that if that happens, Amex has its own independent  
2 obligation to still send those monies to USAVflow.

3 THE COURT: Under the existing contract.

4 MR. LEBLANC: Under the Amex notice and consent  
5 agreement. And so that, obviously that doesn't -- that  
6 wouldn't work for us unless Your Honor agreed with us -- and we  
7 think you should -- that any monies that flow to USAVflow upon  
8 the rejection of the contract, then should be coming to us  
9 because what they've negotiated for is that liquidated damages  
10 provision.

11 THE COURT: Well, let me ask you this, if the debtors  
12 entered into a new credit card processing agreement with Amex  
13 and it was pursuant to that contract that all future Amex  
14 receivables were processed, is there -- what's the contractual  
15 requirement that you believe could be argued to require Amex to  
16 distribute funds to USAVflow rather than whatever it was  
17 required under a new contract?

18 MR. LEBLANC: Your Honor, I'm going to try to argue --  
19 Mr. Kurtz would argue, I think, their notice and consent, that  
20 they would either be in breach -- they'd be in breach of one of  
21 those two contracts, either their pre-existing notice and  
22 consent or the new contract that they had entered into with us  
23 which means that they may not be prepared to entered into one  
24 with us, which is why --

25 THE COURT: Okay. All right. Well let's -- I'm going

1 to give you a chance to reply after Mr. Kurtz argues anyway.  
2 We'll deal with it then, okay?

3 MR. LEBLANC: I try not to anticipate Mr. Kurtz's  
4 arguments too much, but -- because for that exact reason, but I  
5 was just trying to be responsive.

6 THE COURT: That's fine.

7 MR. LEBLANC: Your Honor, at the -- look, Your Honor,  
8 at the end of the day -- and obviously, I appreciate the  
9 opportunity to offer some comments on reply -- but at the end  
10 of the day, our view is that it is critical for the debtors to  
11 be able to return to a normal working environment. That normal  
12 working environment means flying customers, you can't control  
13 that, means that the virus is at a place where that can happen.

14 But what Your Honor can control is that when we get to  
15 that point where we have an opportunity to service our  
16 customers and do what we, the company, wants to do as a  
17 business that we can actually do so where the revenue actually  
18 comes to us, and we're not asking to deny Mr. Kurtz and his  
19 clients their rights to the same treatment that everybody would  
20 have with the debtor in bankruptcy: to have their day in court  
21 on their claim, to argue that it's secured versus unsecured, to  
22 argue for whatever treatment they think they're entitled to.  
23 But what we can't have is a circumstance where we are obligated  
24 to -- where we sell tickets and we can't recognize the revenue  
25 from those ticket sales, because we -- the cost of doing this,

1 is just simply too great.

2 And so Your Honor, we would ask the Court to permit  
3 rejection of the contracts and allow these receivables to flow  
4 to the company.

5 THE COURT: Let me ask you this --

6 MR. LEBLANC: And I'll be happy to answer any  
7 questions or --

8 THE COURT: -- is it realistic to believe that the  
9 approximate seventy-six million dollar outstanding balance will  
10 ever be repaid, such that the debtors would be entitled to --  
11 plus whatever additional damages might get added to that, that  
12 the debtors would actually -- there would actually be a surplus  
13 for the debtors to recover?

14 MR. LEBLANC: Well, I do think -- Your Honor, in two  
15 circumstances, I think the answer to that is yes. I think if  
16 we are permitted to treat it as a claim in the bankruptcy,  
17 absolutely. It will be treated as a claim in the bankruptcy.

18 If we are obligated to direct the first seventy-six  
19 million dollars of payments to them and we incur those monies  
20 without being able to get the revenue to operate our business,  
21 then I think there's a real question, whether we could ever do  
22 that. It doesn't make sense to fly people for free. Seventy-  
23 six million dollars of free flights for -- from the perspective  
24 of Avianca, where we have to pay for fuel, crew, aircraft,  
25 landing rights, gate rights, all of those things, that it just



1 doesn't make sense.

2 THE COURT: Okay. Thank you very much --

3 MR. LEBLANC: Thank you, Your Honor.

4 THE COURT: -- Mr. Leblanc.

5 Let me hear from the committee's counsel? Who is  
6 going to argue for the committee?

7 MR. BUTTERFIELD: Good morning, Your Honor. Ben  
8 Butterfield of Morrison & Foerster for the committee.

9 THE COURT: Thank you, Mr. Butterfield?

10 MR. BUTTERFIELD: Can you hear me?

11 THE COURT: Yes, I can.

12 MR. BUTTERFIELD: Great. So Your Honor, the committee  
13 supports the motion, and frankly, we were a little bit  
14 surprised at the length of the pleadings. We tried in our  
15 pleading to keep it limited. We think this is really just a  
16 straightforward --

17 THE COURT: Thank you very much for doing that.

18 MR. BUTTERFIELD: Yeah, I know. You're welcome.

19 We think this is a pretty straightforward bankruptcy  
20 question, so I won't belabor the points made by Mr. Leblanc.  
21 I'll try to spare you, but just think about what's happening  
22 here, right?

23 So the debtors purported to sell billions of dollars  
24 of receivables. They got an advance payment of 150 million  
25 dollars, and then they get the excess of that payment over

1 time. So clearly this transaction is not about selling  
2 receivables for 150 million dollars. There's something else  
3 that's going on here, and that what's going on is USAV has to  
4 pay an excess amount, right?

5 So when we do our executory contract analysis, we need  
6 an obligation from USAV, we need an obligation from the  
7 debtors, and USAV's obligation here is material, right? It's  
8 to pay the excess amount. So --

9 THE COURT: Under the RSPA.

10 MR. BUTTERFIELD: Yeah, exactly. So now let's look at  
11 what USAV and the secured lenders are saying they have to do.  
12 Well, USAV in its papers is saying that upon the occurrence of  
13 a trigger event, the right to pay the additional purchase  
14 price -- or the obligation I should say to pay the additional  
15 purchase price -- is terminated, right? They say terminated.  
16 That's what they say in their papers.

17 And the USAV lenders, look, they're a little bit more  
18 sophisticated. They don't say it's terminated because they  
19 know the RSPA doesn't say that but what they say is that  
20 there's a -- if a trigger event occurs, then it has to be  
21 waived, right, before the payment resumes. And the waiver,  
22 they say, can't be compelled.

23 So if the waiver can't be compelled, and it's required  
24 to resume the additional purchase price payments, then really  
25 it's the same as if the obligation to pay the additional

1 purchase price is terminated, it doesn't exist anymore. So  
2 that's their argument, and it's not really that different.

3 In both cases, if you hit one of these trigger events,  
4 then all of the sudden you flip your 150 million dollars into a  
5 billion dollar jackpot, and one thing I'll say is that a lot of  
6 these trigger events are outside the control of the company,  
7 like any representation -- okay, here's a hair trigger: Any  
8 representation or warranty of the sellers shall prove to be  
9 incorrect when made, or it becomes unlawful for the sellers to  
10 perform any obligation under any transaction document.

11 THE COURT: Mr. Butterfield, there's no dispute --

12 MR. BUTTERFIELD: Yes.

13 THE COURT: -- that the filing of the Chapter 11  
14 petitions was a triggering event. So what's wrong with the  
15 lender's argument that unless they waive their rights, there is  
16 no excess that would ever flow back to the debtor?

17 MR. BUTTERFIELD: Well -- so the wavier applies to all  
18 the trigger events, not just this one, right? So if you think  
19 about ex ante, what --

20 THE COURT: Yeah, so what's wrong with that argument?

21 MR. BUTTERFIELD: Because there's an express provision  
22 in the -- well, first of all, if we're just focused on the  
23 RSPA, the RSPA doesn't say that. There's nothing about waiver  
24 in the RSPA. All this stuff about waiver is coming from the  
25 cash management agreement.

1           And if you look at the presentation materials that  
2   White & Case provided, they're a little bit misleading on this  
3   point -- not intentionally so, I don't think -- they have a  
4   picture of the RSPA behind these obligations, these waiver  
5   obligations, but actually they're talking about cash management  
6   the whole time, and the text says that.

7           So the first thing I would say is the waiver is  
8   completely outside the RSPA. It's in the cash management  
9   agreement.

10          THE COURT: Okay.

11          MR. BUTTERFIELD: So ex ante, there's no way and the  
12   documents don't say it, that the company would've entered into  
13   an agreement where trigger events outside of their control  
14   could then require a waiver to be waived, and the waiver  
15   couldn't be compelled, and then it would just -- billions of  
16   dollars of receivables are gone. That's an impossible,  
17   impossible reading of the documents.

18          Okay, so what do the documents actually say? So they  
19   say that if there's a trigger event, the purchaser can  
20   terminate, we talk about that, and there's been an automatic  
21   one, which leads to an automatic termination, and then the  
22   collections are disbursed through a new waterfall, the trigger  
23   event, priority of payments, right? And this is something that  
24   the lenders have to (audio interference). They flip it, but it  
25   can get flipped.

1           And so rather -- and so now, once it's flipped, rather  
2     than paying monthly interest and principal, everything goes to  
3     pay the loan, and then once the loan's paid, everything goes to  
4     pay the debtors. That's how it's supposed to work, right?

5           So at the bottom of the waterfall, there's the  
6     debtors, and the obligation to pay the debtors once you've  
7     gotten through the waterfall is USAV's material obligation.  
8     The documents are clear.

9           And you see this is in 3.01(a)(2) of the RSPA where it  
10    says, "The additional purchase price shall be due and payable,  
11    other than during the continuance of a trigger event." That's  
12    all the RSPA says about it. It doesn't say anything about  
13    waiver. Waiver's in cash management.

14          So you know, I'll take the invitation to talk about  
15    cash management, because I do think the agreements are  
16    integrated, and if you look at cash management, the waiver  
17    argument completely falls apart. So there's a provision in the  
18    cash management agreement that says, "When the lenders are paid  
19    in full, USAV shall instruct the collateral trustee to make  
20    payments to the sellers." That's page 18, top of page 18 of  
21    the cash management.

22          So once the lenders are paid in full, waiver or  
23    trigger events are relevant. The cash has to go back to the  
24    company, and that's a direct obligation of USAV, and that's  
25    their (indiscernible) obligation. So then we'll talk about the

1 debtors -- I mean, the debtors' obligation. The debtors hit  
2 this point. It's in the --

3 THE COURT: Your position is that the language on page  
4 18 of the cash management agreement makes this agreement an  
5 executory contract.

6 MR. BUTTERFIELD: Well, if we're just focused on the  
7 RSPA, there's no waiver, so the obligation always exists. It  
8 can't be waived. You don't have to ask for a waiver.

9 THE COURT: When you referred to page 18, were you  
10 referring to the cash management agreement?

11 MR. BUTTERFIELD: Right, yes. So if you take just the  
12 RSPA -- if you combine it with the cash management agreement  
13 and consider them integrated, that's where you get your waiver,  
14 that's where the waiver concept comes from. That's where the  
15 waiver right that the lenders are talking about comes from, but  
16 if you look at that agreement, and you're considering it now,  
17 well, then you have to look at the top of 18 because that tells  
18 you that when they're paid in full, they have to send the money  
19 back to the company.

20 THE COURT: Go ahead.

21 MR. BUTTERFIELD: Okay. So whether it's just RSPA or  
22 RSPA plus cash, we have an executory obligation, and the fact  
23 that there's a waiver is irrelevant -- waivers required is  
24 irrelevant.

25 Okay. So debtors' obligation, this is an easy one.

1 It's easier. 2.01 -- this is not a point that the debtors made  
2 in their papers but 2.01(a)(2) says, "effective on each  
3 contract rights and receivables addition date". So what's that  
4 date? That's the future date on which a replacement processing  
5 agreement becomes effective. So on that date, the debtors  
6 shall sell the contract rights under the new agreement to  
7 USAV -- on that date, the debtors shall sell.

8 So there are numerous obligations under the RSPA, but  
9 the obligation to sell future payment rights on this date, that  
10 is the material obligation. That is the key material  
11 obligation. And there are the other points that the debtors  
12 made about signing a new assignment agreement and perfecting  
13 the sale, those are all material too, but the obligation to  
14 sell is the really critical one, and that's 2.01(a)(2).

15 So second point, what happens next? So from our  
16 perspective, we think this is really simple. The debtors go  
17 replace their credit card processors with a new processor, with  
18 a new bank, without the burden to sell the payment rights that  
19 arise under the new agreements. That's what was sold  
20 previously. It hasn't been sold yet under replacement  
21 agreements, and that obligation to sell it is the executory  
22 obligation that we want to reject.

23 So -- and just to be clear, and I know we talked  
24 about -- you talked about Amex, we're talking about new  
25 processors, different processors. If Amex can't process for us



1 because they have an obligation to USAV under this consent  
2 agreement, there's -- I'll say there's no benefit to flying  
3 fights and not getting paid for them, no benefit to the estate.  
4 So it wouldn't make sense if that was the only option, to use  
5 Amex anymore. There are alternatives.

6 THE COURT: Well, really what ought to happen is if --  
7 and I'm not deciding anything today, but if the Court grants  
8 the motion to reject the RSPA, let's assume also rejects --  
9 grants authority to reject the undertaking, you all ought to go  
10 off and negotiate, and try and get this resolved, is what you  
11 really ought to do, but let's deal with what we're dealing with  
12 right now. Go ahead, Mr. Butterfield.

13 MR. BUTTERFIELD: Thank you, Your Honor. Could not  
14 agree more. I completely agree. Okay.

15 So now why are we here fighting about this? Like why  
16 do the -- it is uncommon for a counterparty to oppose a  
17 rejection motion or to win, so why are we here, right? So I  
18 think the first reason we're here is because there's a hope  
19 that the USAV parties have that they could leave this RSPA in  
20 place and then try to enforce their contract rights, and we go  
21 out to replace the processors, right? And they would say,  
22 either those rights must be sold to them or they have an admin  
23 claim or something like that. If the RSPA is in place, there's  
24 doubt about that, there's a risk, and so that's one reason.

25 And I think the second reason is just to run out the

1 clock, right, because it's harder to replace a credit card  
2 processor when you're flying, than when you're not flying. If  
3 the debtors are going to start flying next month and if we  
4 still have this agreement in place, we still have these  
5 processors in place and we haven't replaced them, then there's  
6 like an operational leverage that could be used here, right?

7 So I think one thing that's important, and I know Your  
8 Honor said he is not prepared to rule today, and I understand  
9 because this is complicated, but we need an order authorizing  
10 rejection of the RSPA as soon as possible.

11 What happens next, you know, the obligation is post-  
12 rejection, all of that could be delayed to another date if  
13 there's more briefing that's required; that's fine. We need  
14 rejection as soon as possible because there's operational  
15 leverage that the USAV parties gain the longer this is delayed.

16 Okay. And the last --

17 THE COURT: I'm not known for letting thing lie very  
18 long before deciding. I'm not ruling today, but -- I'm not  
19 making promises about when, but I typically dispose of things,  
20 pending things before me pretty quickly. So go ahead.

21 MR. BUTTERFIELD: Yeah, thank you, Your Honor.

22 The last thing I'll say is just the remedy here is to  
23 file a proof of claim, and if USAV wants a determination of  
24 what it owns or doesn't own, I think that's squarely in 7001.  
25 If they say look, you guys can do whatever you want, but at the

1 end of the day, we're going to have a security interest in all  
2 this, that's fine, 7001, right? None of that is for today.

3 Today is about rejecting a burdensome contract. This  
4 is about getting out of the shall sell obligation that you see  
5 in 2.01 of the RSPA. So I think it could -- that's why we say  
6 this is a really (indiscernible). Once the RSPA is rejected,  
7 the debtors can go out find replacement agreements, and that's  
8 that.

9 There's one thing I'll say, and I think the debtors --  
10 sorry, not the debtors -- but the USAV parties' response on  
11 this point kind of muddied the waters, so I want to address it  
12 briefly.

13 The USAV parties essentially argued that any attempt  
14 to find a replacement processor would be exercising control, or  
15 attempting to unwind or rescind the sale of the Contract  
16 Rights, capital C, capital R.

17 That's not true. So --

18 THE COURT: Look, my -- this, I will say, parties  
19 can't, by contract, waive a right to reject an executory  
20 contract, a right that's granted in Section 365 of the  
21 Bankruptcy Code.

22 And I'll wait -- Mr. Kurtz will make his argument --  
23 but that in effect seems to me by arguing they sold their  
24 contract rights, and therefore they have nothing that they can  
25 reject at this point. I have a lot of trouble with that

1 argument.

2 The debtors entered into a contract, a series of  
3 contracts. They entered into the RSPA, a contract. And  
4 Section 3 -- if it's executory, because there are obligations  
5 due, material obligations due, remaining obligations on both  
6 parties, or all parties to a contract, Section 365 gives a  
7 debtor a right to reject, assuming it can establish the  
8 business judgment, et cetera. So -- let me stop there.

9 Go ahead, Mr. Butterfield.

10 MR. BUTTERFIELD: No, it -- thank you, Your Honor. We  
11 agree with all that, and we appreciate that.

12 The only point I was trying to make is that when you  
13 hear the word "Contract Rights" capital C, capital R, just keep  
14 in mind that that is referring to rights under specific  
15 agreements, the Credomatic and the Amex agreements to be  
16 specific, right?

17 So it's not all receivables. People have talked in  
18 this proceeding or at least in the papers about all receivables  
19 being sold. The specific rights that have been sold to date  
20 are the payment rights arising under two processor agreements,  
21 full stop. That's it. Nothing else was sold.

22 So there's an obligation to sell, which is the  
23 executory obligation, but what's been sold to date is no more  
24 than the rights under those two agreements.

25 THE COURT: All right. Thank you very much, Mr.

1 Butterfield. Is there anything else, Mr. Butterfield, before  
2 we move on?

3 MR. BUTTERFIELD: No, Your Honor. I would just -- the  
4 last point I was just going to make was about business  
5 judgment. No one here is arguing that this is a benefit to the  
6 estate, and so I don't think there's any reason that that could  
7 be grounds to approve the rejection.

8 THE COURT: All right. Thank you, Mr. Butterfield.  
9 Mr. Kurtz?

10 MR. KURTZ: Good morning, Your Honor. Can you hear  
11 me?

12 THE COURT: Yes, I can.

13 MR. KURTZ: First place, I thank you for kind of  
14 allowing us to go through a presentation before maybe getting  
15 specifically to your questions. Some of your questions embed  
16 really the comments you just made about rejection, and so I  
17 think I'd like to go through my arguments, and hopefully  
18 respond to most of those questions in that fashion.

19 I'll give you a spoiler alert. I agree with you  
20 completely that you can reject a contract to the extent it's  
21 executory. I'm going through why I think it's not executory,  
22 but under Mission, the consequences of that rejection, is that  
23 you don't get to unwind what was previously sold, and I think I  
24 even heard Mr. Butterfield what was sold were these future  
25 contract rights.

1 But let me get to that, I think --

2 THE COURT: I don't think he said they sold future  
3 contract rights, but go ahead. Make your argument.

4 MR. KURTZ: I may have misheard, so but there may --

5 THE COURT: Go ahead and make your argument.

6 MR. KURTZ: -- be some confusion about all of this.

7 But let me start with, I don't know that the  
8 presentations so far have, at least in our view, captured what  
9 it is that the debtors are trying to do and what it is that we  
10 are trying to prevent the debtors from doing. In fact, it  
11 sounds a lot like we're the bad guys, and we think we're  
12 anything but.

13 And I think there's three preliminary matters that I  
14 think help to frame all of this up, and the first one is kind  
15 of an overriding fact that I think needs to be considered and  
16 what people are allowed to do and not allowed to do under law,  
17 and that is that the debtors are in this motion trying to keep  
18 the purchase price, the 150 million dollar purchase price that  
19 was paid, plus the contingent additional purchase price  
20 payments for the assets, while keeping the assets, and giving  
21 them a double recovery, and giving USAV and the lenders  
22 nothing.

23 That's not allowed even where transactions can be  
24 unwound, and to that extent, the motion is unprecedented, and  
25 neither the debtors, nor the committee have cited to a single

1 case that allows a seller to both keep a purchase price, and  
2 take back an asset that was sold, and we think that effort is,  
3 therefore, as unfair as it is unsupported.

4 The second preliminary matter that I would like to  
5 deal with here is really to identify -- and this is where I  
6 think the parties seem to be talking past each other -- but to  
7 identify the proceeds that are actually here at issue because I  
8 heard comment after comment about how there would be no way to  
9 get any money and that the 150 million dollars, hundreds of  
10 millions of dollars more of value would be taken; none of  
11 that's right.

12 The proceeds that were sold in 2017 can be broken down  
13 into two buckets for purposes of trying to kind of evaluate  
14 these claims. The first bucket are the proceeds that  
15 correspond to the 150 million dollar purchase price. Those are  
16 the proceeds that would be needed to repay the lenders, so it's  
17 the purchase price plus interest and other related loan costs.  
18 I've referred to those in the brief, and I'll refer to them as  
19 the non-excess proceeds.

20 They're the non-excess proceeds because there are also  
21 proceeds that are in excess of those amounts, which would be  
22 paid to the debtors if they're generated in the form of  
23 additional purchase payments or an option, which I'm going to  
24 get back to, assuming that there's been no trigger event, and  
25 there has been, but that doesn't mean that the USAV or the



1 lenders are trying to take any economics, other than the  
2 economics that correspond to the 150 million dollar purchase  
3 price.

4           The debtors themselves, -- and if we pull up slides 1  
5 and 2 and have this controlled by Mr. Lee, my colleague -- the  
6 debtors never argue, ever, that they have an interest in the  
7 non-excess proceeds. They admit that their interest is only to  
8 the extent there are excess proceeds.

9           And if go to the first couple of slides, you can see  
10 the variety of ways throughout their papers that the debtors  
11 have spoken to this issue. They have talked about the fact  
12 that their interest is once the liquidated damages, which is  
13 just the outstanding loan amounts, is paid in full -- that once  
14 it's paid in full, it eliminates the economic interest.

15           On page 2, they talk about, and it's really just at  
16 the top -- the bottom line, once the liquidated damages are  
17 satisfied, all receivables must flow back to the debtors. They  
18 say in the next one that they can unwind after everything's  
19 been paid, and then they end with that the interest is limited  
20 to what's due under the loans. That's all we're fighting about  
21 here and the remaining interest, not the interest of the non-  
22 excess proceeds, belong to the debtors.

23           So we feel like there's kind of a slight of hand  
24 approach here where the debtors claim as a premise to their  
25 argument, an interest in excess proceeds, to then try to take

1 away from USAV and the lenders the non-excess proceeds that  
2 they sold in 2007.

3 And I want to stress, because it certainly wouldn't be  
4 clear from the presentations today, that USAV and the lenders  
5 are only protecting non-excess proceeds. They're not  
6 interested in anything in excess of the amounts that are  
7 required to repay the purchase price and the financing for the  
8 purchase price.

9 The debtors have the ability to capture the full  
10 economic value of the excess proceeds by exercising an option,  
11 and it's interesting because neither the debtors or the  
12 committee talked about this, but they have a stock option to  
13 purchase USAV after, and only after there's been a full payment  
14 of the liquidated damages.

15 So all the economics that they're claiming would  
16 somehow be taken by USAV and the lenders isn't ripe because  
17 they have an absolute option after repaying the 150 plus costs,  
18 to purchase USAV in which case they will then own all the  
19 excess proceeds directly.

20 The third and somewhat related matter that I want to  
21 address is the debtors repeated assertion that these non-excess  
22 proceeds are somehow vital revenues to reorganization, which is  
23 incorrect, and it's irrelevant, and it's irrelevant because the  
24 debtors can't take back assets they sold for 150 million  
25 dollars just because it would help the reorganization.

1 Obviously, everybody would be advantaged, if they could sell an  
2 asset, keep the purchase price, and take the asset back, but  
3 that's not what the Code allows.

4 And if we look at-- Mission Products specifically  
5 talked about this because the same argument was raised, and the  
6 Supreme Court very recently talked about the fact that the Code  
7 balances out, and while reorganization is important, so are the  
8 rights of others and that those rights can't be interfered  
9 with, except as permitted, and it doesn't permit anybody to  
10 undo a sale, which we're going to get back to.

11 It's also, Your Honor, not correct that they're vital  
12 to the reorganization. You heard here this morning that why  
13 would they even fly if they don't get the money, and that they  
14 don't get any money, and neither of those things is actually  
15 right.

16 The outstanding loan amount, this is one of the  
17 questions Your Honor asked, is pretty close to what the debtor  
18 said, but to be precise with our answer, it's \$78,919,995.54.

19 And when this debtor is flying, once COVID's resolved,  
20 their business generates on average 4.6 billion dollars in  
21 total operating revenues per year. That's based on the 2017  
22 through 2017 -- '19 numbers. And by the way, when the debtors  
23 say they get nothing from flying, so why would they fly, in  
24 addition to getting 4.6 billion dollars a year, which is the 79  
25 million hardly even makes a dent, they also -- the receivables

1 here at issue are, as I understand it, only covering about  
2 twenty percent of the revenues that they generate through  
3 flying. There's other flights and other sources of processing  
4 money outside of this, which as I understand it comprises the  
5 majority of their collections.

6 So feasibility is not impacted by a 79-million-dollar  
7 obligation to maintain the obligation to pay back the loans  
8 that were taken to finance the purchase, the pay the purchase  
9 price. If the company liquidates, nobody gets paid. When they  
10 start to fly, and I heard today they're going to start to fly  
11 next month, then there's no issue that they have more than  
12 enough money to proceed, and they also don't need these  
13 proceeds to finance these cases.

14 Initially, there's almost nothing coming in right now,  
15 so there's no capital that could be used to finance the cases,  
16 but based on the filings we're looking at, the debtors had 272  
17 million dollars in cash, and cash equivalents at the end of May  
18 according to their operating report, which they haven't claimed  
19 is insufficient at the moment.

20 That number increased to 297 million in June. So in  
21 addition to having adequate cash, they also seem to be  
22 operating at a profit of twenty-five million dollars, which  
23 also demonstrates that they are receiving revenues outside of  
24 these collections that we're all arguing about.

25 Additionally, we understand the debtors are seeking

1 1.6 billion dollars in DIP financing and have indicated their  
2 plan to file a DIP motion by the end of the month for approval  
3 in September. So the debtors are going to have not only their  
4 300 million in growing potential, cash and cash equivalents,  
5 but also 1.6 in financing. So whatever dribs and drabs are  
6 being collected now, aren't going to move the needle at all.

7 And then the debtors' notion that they're incurring  
8 substantial costs to generate the proceeds, those costs,  
9 whatever it costs them to operate a company the way they're  
10 operating a company as a debtor-in-possession, are going to  
11 continue, unless and until they decide to liquidate, which  
12 they're not going to do. They have nothing to do with the  
13 specifics of these arrangements. They will do no more, and no  
14 less if rejection.

15 So the idea of characterizing the work as expensive,  
16 isn't a way to save costs through rejection, it's just a way to  
17 move over the proceeds they already sold from USAV, and  
18 effectively, the lenders to themselves.

19 Your Honor mentioned, I think it was your Sterling  
20 case and that you have an eye on the market, I get. You'll  
21 call balls and strikes under law. But this is a very common  
22 structure in selling receivables used throughout petroleum, and  
23 lots of other industries. They're already following it, and  
24 this will absolutely crush the market. I would say the only  
25 thing unique in any way is that there's Colombian law involved,

1 but this is a very common structure.

2 And the idea, even outside of the adversary, that one  
3 could reject it without even having an adversary, without even  
4 having a trial, is going to send massive tremors through that  
5 piece of the market.

6 The two most foundational points that we've obviously  
7 been addressing in the papers, and I do want to address here is  
8 that the RSPA and the undertaking agreement are not executory,  
9 so they can't be rejected, and even if they could be rejected,  
10 Mission Products does not allow the debtors to take back the  
11 future proceeds that they sold.

12 But in light of some of Your Honor's questions, and  
13 also some of the remarks that were made today, I would like to  
14 first address the fact that even if there is a rejection, and  
15 even if the rejection somehow allows the debtors to claim that  
16 they own the contract rights, they still won't be able to  
17 recover the proceeds that are generated from the contract  
18 rights, meaning the sales of tickets going forward.

19 If the Court permits rejection, the only effect would  
20 be to relieve the debtors of their future performance and  
21 obligations, and the debtors have no control through their  
22 obligations or otherwise, over the future proceeds here at  
23 issue.

24 The debtors have never possessed or exercised or had  
25 any right to exercise any control whatsoever over the contract

1 rights, or the proceeds, since the sale in 2017. The  
2 obligation to provide the proceeds to USAV runs directly from  
3 Amex, and from Credomatic, not from the debtors.

4 And there are two sets of agreements that prevent the  
5 debtors from divesting USAV, and the lenders of the contract  
6 rights and future proceeds, regardless to rejection, and that  
7 is the notices and consents, and the cash management agreement.

8 And maybe we could open up slide 24, but the notice  
9 and consents, in those documents, Your Honor, the card  
10 processors agree not to enter into any new credit card  
11 processing agreements with the debtors without the collateral  
12 agent's consent, which is never going to be provided.

13 THE COURT: And what stops them from entering into  
14 processing agreements with other parties --

15 MR. KURTZ: Well, my --

16 THE COURT: -- not Credomatic, and U.S. -- and Amex?

17 MR. KURTZ: Well, I will -- in terms of the mechanical  
18 argument I'm making now, nothing. In terms of Mission  
19 Products, it is a clear use of rejection to unwind a  
20 transaction, and I'll get back to that, but my understanding  
21 and I think Mr. Leblanc was sort of forthright about it, is I  
22 don't see how they can operate a business without Amex and  
23 without Credomatic, and because rejection would not release  
24 those nondebtors' obligations to apply proceeds. They're not  
25 going to put themselves into a position where they have



1 conflicting contractual obligations which would guarantee that  
2 they would be sued for breach by one party, or by the other. I  
3 don't see why they would look to facilitate this unwinding of  
4 USAV's and the lender's rights by putting themselves into the  
5 crosshairs, and I think Mr. Leblanc understood, kind of  
6 expressed that view, as well.

7 In any case, they'd have to go pay outside of  
8 Credomatic, and they're not allowed to do it under Mission, and  
9 we'll come back to it.

10 But in addition, under the notice and consents,  
11 everything that they collect, so if they're still involved  
12 under a new agreement, same party, same terms, same subject  
13 matter, then they're going to have to share that, they're going  
14 to have to put it into the USAV account.

15 THE COURT: I don't understand why that's the case.  
16 What is it -- if they enter into new processing agreements with  
17 other parties, what is it that would require the servicer  
18 deposit the funds in the USAV accounts?

19 MR. KURTZ: Because the parties will be collecting are  
20 Amex and Credomatic, and Amex and Credomatic have an obligation  
21 to put all the money in, even under a new additional  
22 replacement agreement, and so they'd have to find someone other  
23 than Amex and Credomatic.

24 And then I'll get back to that, but mechanically  
25 speaking, the way the contracts work, there's an irrevocable

1 instruction from the debtors and then these nondebtors, the  
2 credit card processors have agreed that all the assigned  
3 contract rights are going to be delivered, all the proceeds of  
4 that are going to be delivered into a USAV controlled account,  
5 and there's no way they can --

6 THE COURT: But if the assigned --

7 MR. KURTZ: -- do it --

8 THE COURT: -- processing rights are rejected in the  
9 RSPA, what is it that would require Amex or Credomatic to  
10 deposit funds into USAV account?

11 MR. KURTZ: Because the obligations are in the notice  
12 and consent agreements which are not in RSPA, and they -- on  
13 top of that, they're with nondebtors, and so a rejection by the  
14 debtors -- and the debtors have no obligations, I think, under  
15 the notice and consent; they gave an irrevocable instruction --  
16 but once you get to the notice and consent, those are nondebtor  
17 obligations and they won't be released through a rejection in  
18 any case, and so they are sitting with agreements among  
19 nondebtors.

20 They've got the nondebtor Amex and Credomatic, the  
21 nondebtor USAV, and the nondebtor lender parties and their  
22 agreement is that all the dollars that are generated through  
23 the ticket sales under any contract including a new contract,  
24 have to be put into the USAV controlled account.

25 The cash management agreement has the same impact.

1 Section 2.04, we looked a little bit at this with the debtors.  
2 It's interesting that Mr. Leblanc pointed out that, or the  
3 liquidated damages piece was the only thing that was not  
4 highlighted. I actually kept it not highlighted because it  
5 jumps off the page a little better, and I left it in that  
6 condition.

7 So the way this really worked is there was a trigger  
8 event. We're going to walk through the trigger event. The  
9 trigger event cutoff the right to additional purchase payments  
10 until such time as the liquidated damaged amounts are paid in  
11 full.

12 But under the CMA, that was under the RSPA, under the  
13 CMA, you get both the trigger event, and there was a trigger  
14 event notice, and it did go to the collateral agent in March,  
15 but there is a second way to do it, which is liquidated damages  
16 that arise automatically under 6.03. Mr. Leblanc said I'm  
17 trying to avoid that because I haven't apparently talked about  
18 it enough. There's nothing to avoid about 6.03. I completely  
19 agree that upon a filing of the petition, liquidated damages  
20 became automatically payable. That's not particularly relevant  
21 to the issues we've been briefing. It's really 6.02, which is  
22 what's the consequence of that liquidated damage, and  
23 ironically, it's the debtors that have been avoiding that.  
24 That's not going to appear in their slide deck. It will appear  
25 in ours, and we'll get back to it.

1 But once you hit those liquidated damages, what  
2 happens is there is an automatic priority payment scheme that  
3 is imposed under the CMA, and what it says is until the  
4 liquidated damages are paid in full, nothing goes to any other  
5 party.

6 Now there's been a lot of argument that the excess --

7 THE COURT: Mr. Kurtz, let me --

8 MR. KURTZ: -- this is all just acceleration stuff,  
9 it's not (indiscernible) --

10 THE COURT: Mr. Kurtz, let me take you back for a  
11 minute because maybe I misunderstood, you said the debtors are  
12 not a party to the Amex notice and consent. I believe they  
13 are. It was executed by --

14 MR. KURTZ: Right.

15 THE COURT: -- the debtors, USAVflow, American Express  
16 Travel Related Services, American Express --

17 MR. KURTZ: Right.

18 THE COURT: -- Payment Services, Ltd., and Citibank  
19 with respect --

20 MR. KURTZ: Right.

21 THE COURT: -- so that's the Amex notice and consent  
22 dated December 12th, 2017.

23 With respect to Credomatic, you'll correct me if I'm  
24 wrong, there are actually two separate -- there's a Credomatic  
25 notice, which the debtors are a party to, and the Credomatic

1 consent and agreement, I really view those documents -- those  
2 agreements really as in effect, one. The Credomatic notice,  
3 the debtors are a party to. I thought you said that there  
4 are -- those are agreements with nondebtors.

5 MR. KURTZ: Well, I hope I didn't say that. I  
6 certainly didn't --

7 THE COURT: Yeah, you did.

8 MR. KURTZ: -- mean to say it.

9 THE COURT: You did.

10 MR. KURTZ: What I was -- what I hope I said and what  
11 I was trying to say is there that other than irrevocable  
12 instruction given at the execution of those agreements, the  
13 debtors have no continuing obligations under them, that the  
14 obligations that relate to the collection and delivery of the  
15 proceeds here at issue, are all conducted by nondebtors for the  
16 benefit of nondebtors, and so that a rejection of -- in the  
17 first place, the agreements can't be rejected because the  
18 debtors have no unperformed material obligations, they don't  
19 claim they do, but even if it was rejected, they wouldn't  
20 reject the obligations of nondebtors, and so those nondebtor  
21 parties would still be obligated to collect and deliver the  
22 proceeds to USAV's account for the benefit of USAV and the  
23 lenders.

24 THE COURT: All right. Go ahead with your argument.

25 MR. KURTZ: Okay. So you get under 2.04, Your Honor,

1 and you have this new priority scheme basically, it's a  
2 waterfall, and you have to pay the non-excess proceeds, the  
3 liquidated damages, the unpaid amount of the loan and interest  
4 and costs, however you want to -- whatever words you want to  
5 choose before anybody gets anything, and the debtors and the  
6 committee then said, and everything else goes to the debtors.  
7 That's not really right.

8 I would note though that what they're trying to take  
9 is before that, the priority distribution which is the only  
10 thing that at least the lenders are trying to protect, but 2.04  
11 does allow additional amounts, excess amounts, to go to the  
12 debtors if they're due under the RSPA, but they're not due  
13 under the RSPA because of the trigger event I'm going to talk  
14 about, and instead they're due to USAV, although the debtors  
15 then have a right to acquire the stock of USAV, which will get  
16 them all the benefit of those economics, but as a mechanical  
17 matter, they don't actually get the distribution. The  
18 distribution goes to USAV.

19 That's all under, and I don't have a slide for this,  
20 Your Honor. I hadn't really focused on this until I got your  
21 questions, but that's all under Section 3.1 of the Security  
22 Trust Deed, which requires the collateral trustee to apply all  
23 funds to pay off the loans in full before they then get  
24 returned, the excess gets delivered and returned to USAV, which  
25 is then subject to the debtors' option to own the company that,

1 in turn, then owns all the excess proceeds.

2 So relieving the debtors of all future obligations  
3 does nothing to change the waterfall here, as administered by  
4 the collateral agent. All of these parties are nondebtors, and  
5 they have to do all the things they have to do to collect and  
6 deliver proceeds to a USAV account, and so I guess that's again  
7 why I would say that I agree with Mr. Leblanc that Amex and  
8 Credomatic aren't going to give them new agreements anyway.

9 And the fact that it works this way, the fact that  
10 there is a mechanical, contractual way that the proceeds get  
11 deposited to USAV for the benefit of the lenders is just  
12 consistent with the fact that this was a sale, and because it  
13 was a sale, the money has to go out to the buyer and to the  
14 lenders to the buyer.

15 The next issue that I wanted to address is that the  
16 RSPA and the undertaking agreement are not executory, and  
17 therefore, they can't be rejected in any case -- and the  
18 parties agree and there is no dispute -- that you have to have  
19 material unperformed obligations by both parties; they have to  
20 be so essential, that they would relieve the counterparty  
21 performance, and none of the parties here have material  
22 unperformed obligations that would qualify for treatment as an  
23 executory contract.

24 The undertaking agreement is really pretty easy. The  
25 debtors didn't claim in their papers that I saw that USAV has



1 any material unperformed obligations. They did say in their  
2 presentation delivered yesterday that there's this obligation  
3 to provide account records that's about as quintessentially  
4 ministerial as you can have. That's a boilerplate provision.  
5 Even Mr. Leblanc didn't really argue otherwise today and I  
6 don't think there's any case that would support a finding that  
7 a ministerial obligation to provide records is material and  
8 unperformed, so much so that it would allow you to keep 150  
9 million dollars and then take back the asset that you sold.

10 The debtors also don't have a material unperformed  
11 obligation. The debtors point to their obligations as a  
12 servicer. You can see that under Section 3.12 of the  
13 Receivable Maintenance Agreement, that the servicer -- their  
14 obligation to serve as a servicer automatically terminates upon  
15 a trigger event. There is a period of time of sixty days to  
16 replace them that did fall within the Chapter 11 cases as Mr.  
17 Leblanc has said that may give rise to some automatic stay  
18 issue, so nobody went and tried to replace them.

19 If that obligation is not material, I don't know that  
20 they're doing anything; they have no obligation to do anything.  
21 If they stop doing anything through a rejection or otherwise,  
22 those ministerial services would be performed by somebody else,  
23 exactly as contemplated by the agreement; again, nothing that  
24 would allow one to unravel a sale.

25 The RSPA is obviously the gain, that's been pretty

1 clear by not only the presentations, but obviously Your Honor's  
2 questions, and we don't believe there's any material  
3 unperformed obligations by either party under the RSPA, and I  
4 want to start with the debtors.

5 Mr. Leblanc said that he doesn't believe we really  
6 dispute that the debtors have unperformed obligations. To the  
7 contrary, we dispute it hotly, and we think we're completely  
8 right on this. It's been briefed pretty exhaustively, so I'm  
9 not sure how anybody could confuse our position here, but  
10 here's the key. Here's where I think it goes sideways.

11 On page 15 of the debtors' deck -- not ours, but the  
12 debtors' deck -- they make this statement, "The failure by the  
13 debtors to perform" -- perform, that's the key word here --  
14 "any of the following, results in a trigger event, and that  
15 seems to be an effort to show that there's obligations, and  
16 that those obligations have to be performed."

17 There are no obligations to perform concerning trigger  
18 events, and here's the real language. It's our slide 14, and  
19 it doesn't say anything about obligations. It doesn't require  
20 the debtors to do anything. What it does is set up a series of  
21 conditions, and it says, "Each of the following events shall  
22 constitute a trigger event." An obligation says the parties  
23 shall do things. A condition says if something happens or  
24 doesn't happen, there's some contractual consequence which is  
25 what we have here. That's why it's called trigger events and

1 not trigger conditions.

2           What we're getting here is compliance with the  
3 contract. When this occurred, then certain consequences  
4 resulted, primarily acceleration. Acceleration is a contract  
5 right based on compliance with Section 6.01; it's not a breach.  
6 It's not an obligation had to occur; it's not a breach. We  
7 couldn't sue and say we sue you for not having a collection  
8 coverage ratio below 1.75 to 1 because there's no obligation to  
9 maintain it. There's just an accelerating event if you fail to  
10 do that.

11           The debtors also argued in, at least in their  
12 slides -- although I don't think it came up today -- that these  
13 are really important matters, and since they're so important,  
14 they must be obligations and conditions. Materiality doesn't  
15 have anything to do with conditions. In fact, most conditions  
16 are really material. I think they use the word, goes to the  
17 root or assets.

18           MR. KURTZ: If you take a really common condition,  
19 regulatory approval for a merger, it's obviously incredibly  
20 material. If you don't get regulatory approval, you're not  
21 allowed to merge. The transaction disappears, but it's a  
22 condition, not an obligation. You don't have to get regulatory  
23 approval under that condition. You just don't close if you  
24 don't get it. So it's not an obligation, it's a condition.  
25 The debtors have not and cannot point to any language here that

1 says that there's an obligation to do anything other than  
2 simply a trigger event if something occurs or doesn't occur.

3 The debtors also argue that they have a material  
4 outstanding obligation if they reject the credit card  
5 processing agreements. They haven't asked to do that, so  
6 that's not really before the Court. But they say then they  
7 would have to execute new documentation to allow USAV to  
8 continue to receive the proceeds, and that would be a material  
9 obligation. I'm going to address that when I get to that  
10 subject because I think it better fits with that subject and  
11 why they can't do that.

12 But to stay on point, so the debtors don't have any  
13 material, unperformed obligation. The trigger event is  
14 something that already occurred. It's already had  
15 consequences. There's no ongoing obligation. It's not an  
16 unperformed, ongoing obligation because there's nothing left to  
17 do. It's already been triggered, and the trigger is  
18 irrevocable. So it can't be future-looking.

19 USAV also doesn't have any material, unperformed,  
20 ongoing obligation under the RSPA. The debtors rely only on an  
21 obligation to make additional purchase price payments. Your  
22 Honor got a lot of argument about that today. There is no  
23 obligation to do that. I should note that the obligation to  
24 make some additional purchase price payments does not render a  
25 contract executory. We cited a number of cases for that. But

1 even if that wasn't the case, there's no ongoing obligation  
2 because it was eliminated pre-petition through a trigger event.  
3 And the trigger event specifically were that the debtors were  
4 unable to fly and also that the debtors failed to notify USAV  
5 that it was not able to fly. Those are --

6 THE COURT: What would be the consequence of them  
7 being able to fly starting next Monday? COVID went away, and  
8 they were authorized to resume flights.

9 MR. KURTZ: Right. They would have to ask for a  
10 revocation or a waiver, which they haven't done and which won't  
11 happen now. And in any case because of the filing of the  
12 petition, we now have an acceleration at least through  
13 liquidated damages. And that under the CMA requires that the  
14 nonexcess proceeds be used to satisfy in full, pay in full, the  
15 liquidated damage amount before there is any residual interest  
16 that could be paid to USAV, and that USAV would then be able to  
17 basically get to the debtors to the extent that the debtors  
18 exercise the right to buy the equity.

19 So there's no -- I know that's the argument that  
20 they've made that somehow there's a right to undo the trigger  
21 event. Again, I think it's kind of moot by the liquidation  
22 damage that the debtors so heavily rely on. Throughout their  
23 papers and throughout their presentation, they say it's owed,  
24 it's accelerated. So even if it somehow got remediated, it  
25 wouldn't matter.

1           I guess let me take that back. Here's how it would  
2 matter. If it did get revoked, then the debtors would again  
3 have a right to access additional payments under the CMA which  
4 says you get them. The waterfall goes from the liquidated  
5 damage outside, all the amounts to repay, USAV and the lenders.  
6 Then instead of going to USAV, it would go to the debtors if  
7 that was remedied. Right now it just goes to USAV, and then  
8 the debtors get it through the exercise of a stock option. So  
9 the only way you get it is if you have a right under the RSPA.  
10 You only have a right under the RSPA if it's revoked or waived,  
11 none of which has happened. And the debtors, I don't think  
12 there's any doubt about this.

13           Let's go to slide 7.

14           The debtors make a lot of statements without showing  
15 the language about what happens when you have a trigger event,  
16 what happens to the obligation to make additional purchase  
17 price payments. And what it says is -- it's a little hard for  
18 me to read on the screen here. Okay. But it says that, "no  
19 additional purchase price shall be paid during the continuance  
20 of, among other things, a trigger event, and the seller hereby  
21 acknowledges and irrevocably agrees to the payment of  
22 additional purchase price on such terms and conditions." And  
23 there's no disputing right now that there is a trigger event,  
24 and there's no way to get out of the trigger event other than  
25 by revocation.

1           And if we go to slide A, here's the language on  
2   revocation, and you can see that this is -- the revocation has  
3   to be by the USAV and the lenders, and no one's done that. And  
4   until they do that, there's no way to get the dollars. So from  
5   a legal, contractual way, those dollars aren't owed. It  
6   doesn't matter to their economic interest because they still  
7   have the right to purchase the equity they're owed. The excess  
8   is owed. It's owed to USAV, which the debtors can acquire.  
9   And if there's ever a waiver or a revocation, it will be due to  
10   the debtors. But what will never happen is that they can break  
11   the waterfall so that they can take the nonexcess proceeds, the  
12   first dollars in, to repay the loans.

13           And I ought to say something that's really unique  
14   about all this is, there's a lot of arguments in cases about  
15   acceleration. How can I get to the point where you don't get  
16   all your money up front, that we get it in some apportioned  
17   way, the way it was before the trigger event and before the  
18   filing? This one goes really further than I think any one I  
19   can think of in that they say, not only is it no longer  
20   accelerated but you don't even get it. You just don't get  
21   repaid, and the purchase price goes away.

22           So the debtors have acknowledged, unlike today,  
23   throughout the ordinary course of business that, when they had  
24   a trigger event and it resolved, and it hasn't resolved yet,  
25   but one day they think one day it will resolve, that they get



1 back the rights. What they've asked for in the past is for a  
2 waiver of those rights. They've done that with respect to six  
3 prior trigger events. They've asked for waivers, even though  
4 it did resolve. And those were provided, but --

5 THE COURT: Mr. Kurtz, they don't say you won't get  
6 repaid. They say your repayment will come in the form of a  
7 confirmed plan. If you've got a secured claim, it would be  
8 treated that way. If it's unsecured, it would be treated that  
9 way. So they haven't said you're not going to recover.

10 MR. KURTZ: That's a fair point, Your Honor. What  
11 they said is you won't get paid in full; you're going to get  
12 impaired. And that's not allowed, and I'm going to walk  
13 through those provisions when we get to Mission. But in any  
14 case, the debtors have asked for these waivers of these six  
15 times, and they've been granted. They haven't asked for one  
16 with respect to the flight impediment or the notification  
17 waiver, and one hasn't been given, and one is not going to be  
18 given.

19 And the liquidated damages, I mean, they didn't  
20 mention when they talked about waiver, and maybe we could pull  
21 up slide 11. They took a lot of comfort in that the notice  
22 letter didn't purport to exercise remedies. They say,  
23 therefore, we haven't exercised remedies. But as we just  
24 looked at the -- and I guess it is slide --

25 THE COURT: You've got slide 10 not 11 on the screen.

1 Which one did you want?

2 MR. KURTZ: Right. I think I want the slide that  
3 demonstrates that there is an automatic -- automatically the  
4 additional payments stop being made. There's no obligation to  
5 exercise a remedy. It happened. And that was slide 7.

6 But we looked at it already, but this is in response  
7 to the debtors saying we had to elect remedies. There's no  
8 election. It says that there will be no additional purchase  
9 price paid during the continuance of a trigger event. It  
10 doesn't say unless somebody gave notice of it and exercised a  
11 right to it, and that's not how the contract works. Everybody  
12 knows there's lots of contracts that require notice and  
13 elections. This isn't one of them. The debtors didn't point  
14 to anything that said it was, and it's just not.

15 They also argue that some amounts were paid. That's  
16 true. There is no proof it was a clerical error because we're  
17 in a rejection motion. We haven't had discovery. We think  
18 actually all this needs to be dealt with in an adversary, but  
19 that's our understanding. But it doesn't matter because, as  
20 the debtors were fond of pointing out in the notice letter,  
21 there's no waiver, and the contract itself has a no-waiver  
22 provision. And as they're trying to say, it reflects intent.  
23 There's no ambiguity and parol evidence. Especially a clerical  
24 error of paying a couple of hundred thousand dollars on a tens  
25 of millions dollar obligation would reflect anything, but it's

1 also you can't vary an unambiguous contract --

2 THE COURT: Your characterization of something as a  
3 clerical error with no support, no evidentiary support, you'd  
4 like to attach that label to it. The facts are the facts. It  
5 was paid. If you'd like to argue it was a clerical error, I'm  
6 not going to let you do that because you've put in no evidence  
7 to support that it was a clerical error.

8 Go on with your argument.

9 MR. KURTZ: Yeah. So no matter what kind of -- no  
10 matter what the reason, parol evidence is not admissible to  
11 vary the unambiguous terms of a contract. Extrinsic evidence  
12 isn't even admissible, and so it doesn't matter whether any of  
13 those amounts got paid other than there may be a claim to get  
14 them back at some point in a proof for claim, but it doesn't  
15 have anything to do with what we're dealing today.

16 And notwithstanding the arguments about what's owed or  
17 not owed, if we go to slide 13, the debtors have expressly  
18 admitted that they're not entitled to any additional purchase  
19 price payments. This was part of the submission they made  
20 originally in the motion. And so I don't see how there could  
21 really be a dispute about the matter. In fact --

22 THE COURT: Well, what you've just -- the language  
23 that's highlighted is that accordingly to the terms of the USAV  
24 agreement, USAV currently has no obligation to pass the  
25 proceeds of any credit card receivables to Avianca. It's not

1 the same as what you just said.

2 MR. KURTZ: Well, maybe I wasn't clear. I wasn't  
3 trying to say this was responsive to their claim about some  
4 ability to get it back. I was responding to the argument by  
5 the debtors that we needed to elect the remedy in order to have  
6 a right to cut off the additional purchase price payments. And  
7 as I pointed out through the contract language, that's not  
8 right. And as I was trying to point out through the  
9 declaration, they'd at least conceded that those amounts  
10 weren't due, notwithstanding that the March notice didn't  
11 specifically elect a remedy. So I wasn't -- so that was  
12 offered for that argument, not for the during or continuation  
13 of a trigger event (indiscernible).

14 So there are no obligations on either party. There's  
15 no obligation to make current payments, additional payments if  
16 there are excess proceeds. There's no obligation relating to  
17 the trigger events which already occurred. So they're  
18 nonexecutory, and they can't be rejected. But if they could be  
19 rejected -- and this is -- may be the thrust -- it was  
20 certainly the thrust of our original objection -- then the  
21 rejection not only wouldn't allow them to recapture the  
22 proceeds that would be generated by the contract rights at  
23 least through Amex and Credomatic but also by reason of Mission  
24 Product, which is the recent Supreme Court case decision that  
25 addressed exactly this effort to use rejection to effectively

1 unwind a transaction.

2 I'm going to get very quickly to what Your Honor may  
3 view as unwinding or not unwinding, but let me at least frame  
4 up what the decision is, that no counterparty loses the rights  
5 that they received already under the agreement. And the debtor  
6 wasn't subject -- if you have a contract right, you get to keep  
7 the contract right, and you can't unwind that. And I don't  
8 think there's any dispute about that.

9 And so the real question, and here's where I think  
10 maybe this is partially in response, hopefully in response, to  
11 some of Your Honor's questions, at least some of Your Honor's  
12 observations today is, so what was it? What was it that was  
13 sold? That's the controlling question. What was sold in 2017  
14 because whatever was sold in 2017 can't be unwound? And Your  
15 Honor originally asked when we had the status conference or the  
16 scheduling conference about how does Mission Product apply to  
17 future proceeds, and then I think you also offered a remark  
18 earlier about how I was characterizing Mr. Butterfield's  
19 statement. And so this all seems to me to surround exactly  
20 what it means -- what was sold and what it means to have sold  
21 things. And so I'm not sure I've gotten exactly the nuance,  
22 but let me go through what I think the contracts reflect and  
23 the foreign law opinions reflect about what was sold. And what  
24 was sold were the contract rights, which is the output of the  
25 debtor's business at least with respect to the card processing

1 agreements and the future proceeds.

2 And what's important, and kind of goes to economics  
3 and valuation principles and purchase prices and the like, is  
4 that when the USAV paid 150 million dollars for the contract  
5 rights as an income-generating asset that wasn't to buy  
6 whatever was historically owed under our receivable or would be  
7 owed under receivable in some short period of time because what  
8 they were buying was the right to the future receivables. And  
9 I don't think anybody would dispute that there wasn't 150  
10 million dollars under historical receivable at that time or  
11 anything like it. These things get paid on a daily basis. And  
12 what they were buying were future collections that would be  
13 generated by the contract rights, and they sold, not just a  
14 naked box in there. What they sold were the rights to get the  
15 proceeds and tickets sales going forward, and we think that is  
16 unambiguous.

17 And if we can pull up and I think we have slide 16,  
18 this is the RSPA. And it's very clear what was being sold, and  
19 it included the collections, and the collections include  
20 everything that's derived in the future. And I don't think  
21 there's any dispute about that, and that's what we're talking  
22 about now, again, within two buckets. We only want bucket 1.  
23 The debtors had foreign law experts at the time.

24 Maybe move forward to slide 17.

25 And the foreign law expert, the debtors concluded that

1 this was a valid and irrevocable sale and transfer of the  
2 collections, these future proceeds, that as a consequence of  
3 such sale, USAV has a right to receive all future collections.

4 THE COURT: Mr. Kurtz, let me ask you this question.  
5 Is it your view that a contract that is a true sale cannot be  
6 an executory contract that can be rejected by a debtor?

7 MR. KURTZ: No. I think that if there are  
8 unperformed, material obligations on the part of both parties  
9 that are essential enough to relieve a counterparty of  
10 performance in the event of a breach that you can reject. So  
11 then it --

12 THE COURT: I mean, that's why it really didn't seem  
13 to me on this point to really hinge on whether this was a true  
14 sale or a secured financing.

15 MR. KURTZ: Right.

16 THE COURT: Either a contract, whether it was a true  
17 sale or a secured financing if there were future obligations,  
18 material obligations on both parties' part, could be rejected.

19 MR. KURTZ: Right, Your Honor. I don't disagree with  
20 you. My point is that under Mission Product that rejection  
21 does not go back in time and unwind what was already sold. So  
22 the rejection would mean if you have future obligations going  
23 forward that haven't already been transferred.

24 And let's pause for a second and look at Mission. So  
25 there was a future obligation with respect to the continuation



1 of the trademark rights going forward, and the Court said,  
2 yeah, okay, you can reject the ongoing obligations, but you  
3 can't take back the right to use the trademark. And you can't  
4 take back what you sold here either, which was a contract  
5 right. So if there's a material, unperformed obligation  
6 essential to performance and all that, yeah, they can reject,  
7 and obviously as I've argued, we all think that that is true or  
8 that they can. But if they do, the consequence is they're  
9 relieved. They're relieved from ongoing obligations, but they  
10 are not relieved from what they've already done, which is why I  
11 went back to see what did they do. And what they sold is a  
12 contract right that is income-generating going forward.

13 And that's not unusual, Your Honor. We see that all  
14 the time. If you sell a company, you're selling stock. The  
15 company is going to be an income-generating asset. It's going  
16 to continue to make money in the future, and you don't get to  
17 say, well, we'll let you keep the stock but we're going to take  
18 all of the EBITDA that you generate going forward because you  
19 haven't generated it yet. Or maybe an annuity, sure, you can  
20 keep the piece of paper, but we're going to take the next  
21 installments, sale lease-back I mean, what was sold was the  
22 contract rights as an income-generating asset. And the income  
23 that it generates has been sold, and that includes everything  
24 that's been generated yesterday, today, tomorrow, five months  
25 ago, two years ago, and two years from now, subject only to the

1 baskets. Because once they've repaid the 150 -- I mean, the  
2 150, the liquidated damage amount, the purchase price plus the  
3 financing costs, that was the repayment of what was the present  
4 value of the initial purchase price. The initial purchase  
5 price was the discounted present value of the expected future  
6 cash flows like any income-generating asset is, and the  
7 nonexcess proceeds correspond precisely to that. Now, I know  
8 that the debtors have a way to get at the excess proceeds  
9 before a trigger event through additional purchase price  
10 payments after a trigger event by exercising an option to  
11 purchase USAV which has those excess proceeds. But that was  
12 all sold, and the way they get it back is by buying the stock.

13 And to go back to what they agreed they sold, they  
14 agreed they sold all future collections, which is what we're  
15 talking about. They agreed that those future collections would  
16 not constitute a right or property of the seller, and they  
17 agreed that it shouldn't be capable of being set aside. And  
18 we've also put in a foreign law expert that confirms the same  
19 matter, so I don't think there's really a dispute about that.  
20 And the debtors say, and I'm going to pull up what the debtors  
21 say about this because this is -- what I've tried to show you  
22 was the contract to what the opinions were, and that's the  
23 operative document, that's the sale document. That tells you  
24 what got sold, and it was the debtors' opinions that told you  
25 that that was valid and you confirm what got sold. Today what

1 they argue --

2 THE COURT: Yeah, but the issue now is whether Section  
3 365 permits them to -- what's the effect of rejection.

4 MR. KURTZ: Right. Right. That's exactly how I would  
5 phrase it. Not whether it permits it, but what's the effect.  
6 And so the effect is if you already sold it, you can't get it  
7 back, which is why we're fighting about what was sold and what  
8 wasn't sold. That's why the debtors are telling you, we have  
9 all these interests. And they do have interests, but they  
10 don't have interests until liquidated damages are paid. And  
11 they don't have an interest in additional purchase price  
12 payments, the foundation of their argument, because of the  
13 trigger event, although they had the economic benefit through  
14 the stock option.

15 So what they say to Your Honor, not that they've got  
16 anything in front of you. They say the debtors did not agree  
17 to sell for 150 million dollars permanent ownership and  
18 economic interest of between 369 and the other numbers. And  
19 they cite something, so I looked to see what they cited, and  
20 what they cite is a representation that there's going to be  
21 receivables. They want historical receivables between those  
22 numbers. It doesn't say they didn't sell. Contract says  
23 precisely that they did sell. But again if they're trying to  
24 launch an equitable argument that sort of a Sterling-type  
25 argument that we're trying to get more than we're entitled to,

1 no one's claiming that 369 and bigger number, only claiming the  
2 78, 79 million dollars that's still outstanding. All these  
3 other numbers that are the premise for their argument, those  
4 are excess proceeds. They'll get them by acquiring USAV once  
5 they've paid the liquidated damages.

6 And we think it's pretty clean under Mission that they  
7 can't get it back, and there's no way that they could get it  
8 back other than to unwind. Now, the debtors don't actually  
9 argue that Mission Product prevents them from taking back what  
10 they sold. I think everybody agrees with that. I think  
11 everybody has to agree with that. That's why we're trying to  
12 figure out what was sold. What they say is that they're not  
13 trying to unwind the sale, but that's exactly what they are  
14 trying to do. And they can't avoid that by avoiding the word  
15 unwind, and I want to kind of walk through three ways that this  
16 is demonstrated.

17 First way is that the debtors premise throughout this  
18 motion is that they can unwind the transaction under the terms  
19 of the RSPA, under 6.02, although they really talk about it as  
20 6.03. And that provision which I'm going to come back to, but  
21 that provision literally uses the word unwind, and the debtors  
22 do, too, in the way they describe it. So I don't think -- so  
23 when they shift from Mission to the contract ability to unwind,  
24 they admit exactly what they're doing. They're trying to do  
25 one thing: to get back the proceeds. They say when they talk

1 about Mission that's not unwinding. But then when they talk  
2 about the RSPA, they say they get to do that because they get  
3 to unwind. So they've already acknowledged it.

4 They acknowledge it another way as well, which is when  
5 they're not sort of dealing with Mission directly, they make a  
6 whole series of admissions -- and we could pull up slide 21  
7 now -- where they say they're looking to extinguish the  
8 economic interest in the receivables -- those are the future  
9 collections that (indiscernible). They seek a return to get  
10 back the economic interest in the receivables. They look to  
11 restore the receivables where they used to be when they held  
12 them. They say they have a hundred percent of the economic  
13 interest in them reverting, revert their receivables, and also  
14 they want to recoup them. Every one of those words is  
15 synonymous with unwinding or rescission. They also say that  
16 they want to transform USAV's ownership interest into an  
17 impaired claim. You can't transform an ownership interest into  
18 anything else because then you're taking over an ownership  
19 interest.

20 And then, lastly on this point, in addition to the  
21 admissions and the use of verbiage throughout the briefs,  
22 you've got to look at what they're actually asking to do  
23 because choosing the right words, even if they had chosen  
24 consistently throughout the briefs, wouldn't mean they weren't  
25 seeking to unwind the transaction. And here's what they're

1 doing. They used to own contract rights and the right to the  
2 future collections. They sold them for 150 million dollars,  
3 and they no longer have a right. And following this motion,  
4 they want to have them back. And there's no way you can get  
5 those back other than by unwinding the transaction, unless for  
6 some reason USAV and the lenders wanted to sell them back. You  
7 can't get them other than through an unwind. So that's what  
8 they're doing. To use their own words, they're looking to  
9 recover an asset that they sold in 2017, and that's an  
10 unwinding. And you can't do that.

11 And then, here's where I started the first point. But  
12 when the debtors suggested, Your Honor, that they could unwind  
13 under the contract, they do say accurately that Mission allows  
14 the parties to determine their own consequences for their  
15 breaches. That's right. Mission Product is just a commercial  
16 case that says that when you breach a contract you are just in  
17 commercial contract land. You're in nonbankruptcy law. And,  
18 of course, in nonbankruptcy law the parties can determine the  
19 consequences of breach themselves as they've done here. And  
20 the debtors point out that under 6.03 that USAV is entitled to  
21 liquidated damages, and we agree with that as well. But then  
22 what they say is that at some point in the future they will  
23 have a plan of reorganization under which they will allow in  
24 full the liquidated damage claim but not paying in full. So  
25 there is, therefore, a right to unwind the sale given the

1 contract provision, and that's just flatly wrong.

2 THE COURT: So what you had -- assuming that your  
3 remedy is liquidated damages, the Court's not deciding now  
4 whether it's secured or unsecured. Your position is it's  
5 secured. Their position is it's unsecured. And what you would  
6 be entitled to recover under a plan certainly is not being  
7 decided now.

8 MR. KURTZ: Right. But what I think -- but for  
9 purposes of this argument, what the debtors are saying is they  
10 have the contractual right to unwind, and that's why they're  
11 focusing on liquidated damages. And Your Honor has pointed to  
12 6.02, and we can pull up 6.02. It's slide 22. And this is the  
13 relevant provision.

14 And as I've said, the debtors get it right in terms of  
15 their due, they're owing under 6.03. Again, not avoiding it,  
16 it's an undisputed fact here. But then what happens when you  
17 get liquidated damages that would allow them to unwind? And  
18 here's the provision. Once the liquidated damages is paid in  
19 full as provided for thereunder, the purchaser may proceed to  
20 unwind the purchase and sale by transferring back to the seller  
21 the contract rights, the receivables, and all collections  
22 derived therefrom. So the debtors are saying, look, I have a  
23 right here to give you a liquidated damage claim under a future  
24 plan of reorganization, and then we get to unwind. That's what  
25 they cite to. And there's three defects in it.



1 First defect is it's a right that belongs to USAV, not  
2 the debtors. They don't have any such right to unwind the  
3 transaction now or ever. And they never get that right because  
4 by the time they have they have a right to exercise their stock  
5 option, the liquidated damages are already been paid in full.

6 The second defect is that a payment in full of the  
7 liquidated damages amount, which is the amount outstanding in  
8 the loan is a condition precedent to even USAV's right to  
9 unwind the transaction so as to receive excess proceeds. And  
10 the debtors do not satisfy that condition precedent by  
11 providing for payment not in full under some future plan of  
12 reorganization. There's no ambiguity in the RSPA. Payment not  
13 in full is not payment in full so as to satisfy the condition  
14 precedent. And given the unambiguous contract language, I  
15 don't think you need precedent for that, but I actually would  
16 point Your Honor to some precedent, nonetheless. The Second  
17 Circuit's decision in the In Re Delta case, I can give you the  
18 cite, but you probably have it.

19 THE COURT: No, why don't you give me the cite,  
20 please?

21 MR. KURTZ: I'm sorry. 608 F.3d 139, Second Circuit,  
22 2010.

23 And in that case, the debtor had argued that the word  
24 paid, not paid in full but paid, they found some definition in  
25 a dictionary that said the debt's discharged. It's paid, and

1 then they kind of turned that into a term of art into  
2 bankruptcy, discharge in bankruptcy. Bankruptcy Court agreed.  
3 District court affirmed. Second Circuit reversed. And that  
4 was interesting because the Bankruptcy Court actually said paid  
5 doesn't mean paid in full. So even that court was already  
6 focusing on the difference between paid and paid in full.  
7 There's no ambiguity as to paid in full. But in any case, the  
8 Second Circuit reversed and said use ordinary, common  
9 understandings of words, and paid in full -- paid means paid,  
10 and paid in full even more clearly means paid in full and being  
11 paid not in full is not being paid in full.

12 And then, the third reason that they can't unwind and  
13 why the contract doesn't allow for this is because there is no  
14 plan of reorganization. And so even if there was a plan of  
15 reorganization, Your Honor, even if it provides for the payment  
16 in full as required, that would still be in the future, and you  
17 can't satisfy a condition precedent by speculating that some  
18 point in the future you will satisfy. It's only satisfied when  
19 it's satisfied.

20 So they're seeking their relief today. To exercise  
21 the relief today they need to satisfy the condition precedent,  
22 and they don't even if there is in the future a plan that pays  
23 in full. So they wouldn't get to exercise it, and the reality  
24 is there will never be a plan that's paid in full because the  
25 whole premise here is to not pay it in full, and they've

1 already said they're not going to pay it in full.

2 And then, really the last big argument is this new  
3 notion of rejecting contracts and entering into new contracts  
4 and moving the assets over. It's creative. It's unprecedented  
5 as far as I know. I think that's a reason why it's not  
6 really -- well, I think it supports why none of this allowed.  
7 Because if you have to do these kinds of creative things, then  
8 it's because it's outside of what the parties agreed to do.  
9 But in any event, they can't do this. Their idea is to take  
10 what they sold, the contract rights, the ability to sell the  
11 proceeds from their ability to sell through credit cards for  
12 some segment, some minority segment of their business. And  
13 they say they're going to enter brand new ones, same parties,  
14 same terms, same subject matter. And then they're going to --  
15 but park that somewhere else. And that kind of --

16 And by the way, they say outright leaves USAV and the  
17 lenders with a paper shell that would be "worthless", their  
18 word worthless. So all that means is they've conceived of a  
19 new, unprecedented way to unwind the transaction. They get  
20 back the contract rights. They get back the proceeds that they  
21 sold for 150 while keeping the 150. And it's not actually  
22 before the Court as I mentioned before, because I haven't moved  
23 to get rid of those and move to reject or terminate or do  
24 anything else. I'd have to come back. But in any case,  
25 Mission Product held that a debtor cannot through rejection

1 unwind a transaction. And they didn't say you can do that if  
2 you figure out a really creative, lawyerly way to do it. It's  
3 still taking exactly what was sold, putting it up in the new  
4 way, and taking it. It would be the equivalent in the Mission  
5 Product case of canceling the registration on the trademark,  
6 and then reconstituting it and, thereby, saying you don't have  
7 to allow the counterparty to use it under the agreement. And  
8 the Supreme Court said you can't do that.

9           It's the equivalent in Mission of the illustration, if  
10 Your Honor read the case, about the copier about the equivalent  
11 of going in and yanking out the guts to the copier leaving a  
12 worthless shell and then saying, well, we didn't take the  
13 shell; we only took the part that copies, when the Supreme  
14 Court said you can't do that. You can't through rejection take  
15 back the copier, your right to use the copier in the future.  
16 It's the same thing, and it's form over substance, and courts  
17 don't allow form over substance.

18           I could give some cases, if Your Honor wanted to look  
19 at some, about you don't take transactions that lack economic  
20 substance or elevate form over substance to allow people to  
21 kind of move around value this way. It's no different than  
22 directly -- it's an indirect way to take back the exact  
23 proceeds here at issue. They sell a ticket through a credit  
24 card processor. The credit card processor delivers the  
25 proceeds. That's what they get back, and they're not allowed

1 to do that under Mission and as you know Mission really relied,  
2 as I mentioned, heavily on common law, nonbankruptcy law. They  
3 say that's what you look at. There is no nonbankruptcy law  
4 that allows you to do that, that allows a breaching party to  
5 breach and then get back the asset based on their own breach.  
6 And there's no common law, state law, nonbankruptcy law case  
7 that says you can both sell an asset, keep the purchase price,  
8 and take back the asset. They don't cite anything. They can't  
9 cite anything, and they're not allowed to do it that way. And  
10 as I mentioned, in any --

11           Actually, I should go back as well. The other thing  
12 when you pull up slide 23 is the Supreme Court in Mission  
13 Product also focused on avoidance actions and said, look, the  
14 estates can't possess more than they did outside of bankruptcy,  
15 and they can't grow in bankruptcy. They don't expand in  
16 bankruptcy. There is a way to do that. It's an avoidance  
17 action, but that's the only way to do that. And that's why you  
18 don't get to get back something you didn't have.

19           Today, the debtors have absolutely no contract right  
20 and no future collections that are generated by the contract  
21 right, and under this motion that's what they do. They recover  
22 what they sold in 2017. That runs afoul not only of the  
23 rejection as not rescission, it also runs afoul of the Supreme  
24 Court's teachings that you also can't expand. And it all goes  
25 to the same thing. When you start with a fundamental fact --

1 fairness, practical, marketplace, law -- that when you sell  
2 something you don't get to take it back and -- plus keep the  
3 purchase price. It has a lot of manifestations in law, comes  
4 out all kinds of ways, and this is another way that it comes  
5 out.

6 And as I kind of started with but it's worth  
7 repeating, it also doesn't work to try to enter into this new  
8 and a total document, papering exercise that does nothing other  
9 than move the future sale collections from where they were sold  
10 to a new place. But it also doesn't work, because as I  
11 mentioned the flow of funds from Amex and Credomatic will still  
12 go through to a USAV account.

13 And I promised to come back, and I'm sure you'd be  
14 happy for me to violate this promise, but I promised to come  
15 back and say why it also doesn't render the RSPA an executory  
16 contract. This is kind of a new novel, came up in the reply  
17 where the debtors say, oh okay, what if I breach the contract  
18 through rejection by moving all the value over to a new  
19 contract, and then I breach the contract a second time by not  
20 then assigning that to you? Then, isn't that an unperformed  
21 obligation? It's not. It's bootstrapping. You can't take --  
22 you can't use a breach of the RSPA moving into proceeds to say  
23 you now have an unperformed obligation to move them back. It  
24 doesn't work that way. You have to value -- I read a case, I  
25 think it was I think from Michigan, I forget the name. I

1 apologize for it. But last night I thought it was interesting.  
2 You can't use rejection as a pole vault. You can't use a  
3 breach as a pole vault to get something back. And so you can't  
4 say, I have an unperformed obligation. Because if I breach the  
5 agreement through rejection, then I should unbreach it by  
6 assigning the rights back to you. And that I won't do, or that  
7 I should do, and that's material.

8 And in any case, assigning back the assets is totaling  
9 ministerial. We cited a bunch of cases. There was no cases  
10 that the debtors or the committee cited to the contrary.  
11 Assigning title is ministerial, and here's how it is  
12 ministerial. They're already negotiating a new contract. The  
13 contract has a provision that says we're going to have all the  
14 proceeds delivered to accounting, which is controlled by the  
15 debtors. What it really needs to say is all the proceeds are  
16 going to be delivered through account B, controlled by USAV.  
17 So the ministerial act is to substitute new account numbers for  
18 old account numbers. It's literally and an equal amount of  
19 time, and it's not material and unperformed. It's really the  
20 opposite. It's no more than lawyer language.

21 So that leaves a secured claim. Your Honor kind of  
22 indicated that maybe that's for another day. I don't want to  
23 burden you if you still believe that's for another day --

24 THE COURT: I still believe that's the case.

25 MR. KURTZ: Okay. So I won't --



1           So then another couple short issues is the single  
2 integrated contract issue. Your Honor asked about this, what  
3 law applies. It's Colombian law. The New York choice of law  
4 rules are the center of gravity. Everybody agrees with that.  
5 The center of gravity for the issue is that it's the seller's  
6 place of business. It's --

7           THE COURT: Well, let me ask you this, Mr. Kurtz.

8           MR. KURTZ: All right.

9           THE COURT: Do you believe there's a material  
10 difference between Colombia law and New York law?

11          MR. KURTZ: Yeah, there is. And --

12          THE COURT: Okay.

13          MR. KURTZ: -- here's what it is, and I'll rely on my  
14 papers for why it's the center of gravity, and I'll answer just  
15 the question you care about or at least you asked about.

16          THE COURT: No. I don't doubt that Colombia's the  
17 center of gravity, but I view the law in this circuit is, if  
18 there's no difference between New York law and another law that  
19 would apply, the Court can apply New York law. That's why I  
20 asked whether there's a material difference.

21          MR. KURTZ: Right. You're a hundred percent right.  
22 There's got to be a conflict before you go through a conflict  
23 of law --

24          THE COURT: Right.

25          MR. KURTZ: -- analysis. So here's the conflict.

1 Under U.S. law you can take a series of agreements that are  
2 sufficiently related in all the things that matter, and you can  
3 treat them as a single agreement. That's not true under  
4 Colombian law. We have a foreign law expert that said that  
5 there is doctrine -- I guess what we call single integrated;  
6 sometimes we call it that. They call it colligated, colligated  
7 contracts. And a colligated contract are multiple contracts,  
8 and they can't be treated as a single contract. What they can  
9 do is you can look at all of them as related enough to help  
10 inform your view of what a contract means. They're helpful for  
11 interpretive purposes. They kind of inform each other. But  
12 what you can't do is combine them into a single one and treat  
13 them that way. If you want to do that under Colombian law,  
14 then you've got to actually put them together and express your  
15 intent to do that in a single binding contract, and there's no  
16 conflicting Colombian law opinion of that.

17 So because there's that conflict, you can't integrate  
18 them. I'm not sure, Your Honor. I know you haven't made  
19 decisions. You have a lot to think about. Your questions  
20 haven't indicated that you were on the verge of integrating  
21 everything, but Colombian law applies and it doesn't allow  
22 exercise anyways. So you're really dealing with the RSPA and  
23 the underwriting agreement.

24 I can page through Your Honor's questions, if you  
25 think they haven't been answered, your specific questions. But

1 I feel like burdening you.

2 THE COURT: I think you've answered them pretty well.  
3 What I would like to do now, we've been going for a long time.  
4 USAV Flow's counsel is the next to be able to argue. I'd like  
5 to take a short recess, a fifteen-minute recess. Since  
6 nobody's going out to lunch somewhere, but I'm -- everyone, I  
7 ask you to put your -- whether it's your phone or your computer  
8 on mute, stop your video. We're going to resume at 1:17. It's  
9 1:02 on my watch. No one will be readmitted through the  
10 waiting room. You need to keep your connection open. We'll  
11 resume at 1:17 with USAV Flow's counsel, and then we'll go on  
12 until we're done. Okay?

13 MR. KURTZ: Thank you, Your Honor.

14 THE COURT: All right. So we're in recess. Just mute  
15 your line, stop your video. And then at 1:17, we're all back  
16 on.

17 And Deanna, nobody else will get readmitted through a  
18 waiting --

19 THE CLERK: Judge? Judge? Okay.

20 UNIDENTIFIED SPEAKER: Hi. We're in recess, and we're  
21 going to come back at 1:17.

22 THE CLERK: Thank you. He -- his line went out for a  
23 second.

24 UNIDENTIFIED SPEAKER: Yeah, I think he put himself on  
25 mute, but that's what he said.

1 THE CLERK: Right. Thanks.

2 (Recess from 1:02 p.m., until 1:17 p.m.)

3 THE COURT: All right. Good afternoon, everyone.

4 This is Judge Glenn after our short recess. We're going to  
5 begin with USAV's counsel. I don't know who is going to argue  
6 for them.

7 MR. KORPUS: Thank you, Your Honor. Good afternoon.  
8 This is Sheron Korpus from Kasowitz Benson Torres, for  
9 USAVflow. I'll try and be very brief because you've heard a  
10 lot already and Mr. Kurtz covered everything very  
11 comprehensively, and we agree with everything he said.

12 So not to belabor, but the problem with the debtor's  
13 motion is that they are trying through the mechanism of  
14 rejection to get back something that they already sold,  
15 contract rights and future rights that they irrevocably,  
16 finally sold under the RSPA.

17 And for all of the volumes of paper that you've  
18 received and all of the three hours of argument today, there  
19 are three facts that cannot be changed.

20 First, is that the RSPA provides that the debtors  
21 finally, definitively, and irrevocably sold all of the contract  
22 rights and receivables, including future collections as defined  
23 in the agreement on December 12th, 2017, and have already  
24 received the \$150 million in additional payments in return for  
25 that sale.

1           The second fact that cannot be denied, is that the  
2 debtor's special counsel, in its closing opinion, which is not  
3 a litigation document, it was a transactional document at the  
4 time, said that as a matter of Colombian law, the sale and  
5 transfer of the contract rights constitutes a valid and  
6 irrevocable sale and transfer of the contract rights and  
7 receivables and that the purchaser has the right to receive all  
8 future collections derived from the exercise of such contract  
9 rights.

10           So that all happened. And what Mission Products tells  
11 you is that rejection does not rescind rights that the contract  
12 previously granted. So they cannot get what they want through  
13 this. They can talk about liquidated damages being the remedy  
14 and all of these other consequences.

15           But what they really are trying to do, they are trying  
16 to rescind to get back the contract rights. And they just  
17 can't do it under the words of the agreement, under their own  
18 counsel's opinion, and under Mission Products.

19           And as Mr. Kurtz went through it and I won't bother  
20 again that they are pinning their hopes on Section 6.02 and  
21 Section 6.03 of the RSPA. But those provisions don't say what  
22 they want them to say, because 6.03 says that there's a claim  
23 for liquidated damages, but doesn't deal with how they get the  
24 contract rights back. For that, you have to look at 6.02. And  
25 as Mr. Kurtz told you, 6.02 gives us, USAV, the option of

1 unwinding the purchase, not the debtors, and only once we've  
2 been paid in full. And paid in full, like Mr. Kurtz and famous  
3 rappers once said is paid in full. That's what it means.

4 THE COURT: Let me ask you a question.

5 MR. KORPUS: Yes, sir.

6 THE COURT: Where the contract talks about the right  
7 to all future collections, why doesn't that mean all  
8 receivables that were generated as of the petition date? So  
9 they will not have all been collected then, and those that have  
10 now -- are now the property of USAVflow, they have the right to  
11 collect those.

12 That's very similar to Section 552 with respect to  
13 secured claims, that to secure a pre-petition security  
14 interest, carries over -- assuming that the security agreement  
15 has a profit, proceeds, the usual language, that the security  
16 interest transfers to the cash that's received post-petition.

17 But under 552(a), post-petition property is not  
18 subject if there's an after a proper -- after-acquired property  
19 clause, for example, on a security agreement. That security  
20 interest is cut off by 552(a) post-petition.

21 So why isn't this similar? So the language, it's  
22 still gives full force and effect to the language about  
23 collecting receivables. Any receivables that have become  
24 property of the -- of USAV pre-petition can be collected, even  
25 if they're collected post-petition. But that doesn't provide

1 for what happens with future receivables --

2 MR. KORPUS: Well, Your Honor, I think --

3 THE COURT: -- post-petition receivables.

4 MR. KORPUS: Well, obviously the words, post-petition  
5 are not anywhere in the agreement and what we look at is we  
6 look at the agreement under Colombian law. And the --

7 THE COURT: No, but I look at the Bankruptcy Code  
8 because a contract -- contracts frequently have after-acquired  
9 property clauses. But the Bankruptcy Code limits that right,  
10 cuts off that right, after-acquired property, once the petition  
11 date.

12 So this is not just a question of Colombia law, it's a  
13 question what the Bankruptcy Code does.

14 MR. KORPUS: But how is it any different from Mission  
15 Products? It is -- there were also ongoing post-petition  
16 obligation, post-petition rights under Mission Products. And  
17 the court held that once the right has been granted, it's been  
18 granted.

19 It's the same thing here. It's a question of what was  
20 granted at the day of the agreement. And what was granted were  
21 all of the rights, all of the collections in the future. I  
22 don't think that takes you from outside Mission Products, Your  
23 Honor.

24 THE COURT: Go ahead with your argument.

25 MR. KORPUS: Thank you.



1           So then just -- that just leaves the question of this  
2     idea that they can -- the debtors can somehow enter into new  
3     agreements. And the problem with that is once you've sold the  
4     rights, you've sold the rights. You can't then go into new  
5     agreements and get additional rights. You can only sell the  
6     same dollar once.

7           And in any event, as Mr. Kurtz showed you, the  
8     provisions show that all of those -- all of those receivables  
9     would be coming to USAVflow anyway, and would put the credit  
10    card companies in the difficult situation where they would  
11    either be breaching the independent rights to USAV and the  
12    lenders or to the debtors.

13          And I don't think that -- I don't think that the  
14    debtors really want to go there, which is why you've heard Mr.  
15    Leblanc say that if that's where you're heading, they want to  
16    keep the adversary proceeding afloat.

17          And I think that would be great difficulties in doing  
18    that and that's why the motion is not before you right now,  
19    anyway. That's really all I wanted to highlight. I promised  
20    I'd be brief.

21           THE COURT: Thank you very much, Mr. Korpus.

22           Mr. Masumoto, do you want to be heard?

23           MR. MASUMOTO: Good afternoon, Your Honor. Brian  
24    Masumoto with the Office of the United States Trustee.

25           Your Honor, the U.S. Trustee does not take any

1 position regarding the motion.

2 THE COURT: All right. Thank you.

3 All right. Mr. Leblanc, reply?

4 MR. LEBLANC: Thank you, Your Honor. Your Honor, I  
5 don't think I'll actually take that long, although I have a  
6 number of points that I want to touch upon and I'll try to be  
7 discreet about each of them.

8 Let me start with Mr. Kurtz had suggested that the  
9 market's all talking about this, that there's a lot of  
10 contracts -- none of that is in evidence before Your Honor.  
11 There's no amicus pleading here. I think Your Honor just has  
12 to, as we talked about in our opening, just call balls and  
13 strikes in the contract that's before you.

14 There was some discussion that Mr. Kurtz had about the  
15 undertaking that that is not an executory contract because the  
16 debtor has no continuing obligations, and he pointed to the  
17 provisions that relate to the obligations of the debtor as a  
18 servicer.

19 Well, the debtor has obligations under the undertaking  
20 as a seller, as well. Those are contained in Section 2.01.  
21 And if you look at Mr. Kurtz' slides, number 3, he only has the  
22 requirements as a servicer.

23 And Your Honor, the point of this is that both under  
24 the RSPA and under the undertaking, there are obligations for  
25 future credit card sales to go through these processing

1 agreements. Those obligations, once rejected, would give us  
2 the ability to use other credit card services processors to do  
3 exactly what we're doing here. That wouldn't have to flow to  
4 USAVflow.

5 What imposes that obligation on us are those  
6 provisions of the RSPA and of the undertaking, and that's it.  
7 So if we're able to breach those, in the case of the  
8 undertaking because it's not executory or if it's executory --  
9 or in the case of the RSPA, if Your Honor permits us to reject,  
10 then we can do exactly that. That's the point Mr. Butterfield  
11 made.

12 Because I think it's important when you think about in  
13 the context of this -- when you actually look at the  
14 agreements -- and Mr. Butterfield made this point, but I'll try  
15 to do it with even more reference to the provisions I'd urge  
16 the Court to look at in the RSPA itself.

17 What was sold, as Mr. Butterfield said, is the  
18 contract rights. The contract rights are the rights under the  
19 card processing agreements.

20 The card processing agreements are the Credomatic  
21 contract, the Amex contract, and each additional card  
22 processing agreement. And Your Honor, when you go to Section  
23 2.01, this is the provision that says that on the effective  
24 date, the seller sells to the purchaser the existing, as of the  
25 date hereof contract rights arising under the receivables, and

1 the receivables accrued under the Amex contract and the  
2 Credomatic contract. And so it's very specific, because let me  
3 assure Your Honor -- and I don't think you need evidence for  
4 this, Mr. Kurtz had pointed out that the company has over four  
5 billion dollars of revenue each year. They have other credit  
6 card receivable contracts. They get credit card receipts from  
7 other processors outside of the United States.

8 And so there are -- the company already has other  
9 credit card processing agreements that are not subject to the  
10 USAVflow documents. And so there's nothing about these  
11 documents.

12 The RSPA and the undertaking impose obligations on us  
13 that do not permit us today to enter into new contracts. If we  
14 do, we have to put them through here. Those are affirmative  
15 obligations that are imposed on us that we are seeking relief  
16 from in pursuant to the motion.

17 THE COURT: Let me ask you to go back. And because I  
18 think this is an important point --

19 MR. LEBLANC: Yes.

20 THE COURT: -- particularly in light of both Mr.  
21 Kurtz' argument and Mr. Korpus' argument about what are the  
22 provisions and in which contracts that define contract rights?  
23 You (audio interference) --

24 MR. LEBLANC: Yes, Your Honor. (Audio interference)

25 THE COURT: -- told me that it's the rights under the

1 card processing agreements, the Credomatic and Amex agreements.  
2 Could you point me to the specific place where I can find that?

3 MR. LEBLANC: Absolutely. I should have done that  
4 when I said it the first time, Your Honor. Exhibit 2 of our  
5 documents, which is entered in evidence, and this is the RSPA.

6 The RSPA is -- so page 17, Section 2.01(a)(1) is what  
7 says what is sold. And that refers to the contract rights and  
8 the receivables accrued under the Amex contract and the  
9 Credomatic contract.

10 The contract rights are defined in Section 1.01 of the  
11 agreement. And this is on page -- internal page 5, page 13 of  
12 507 of the exhibit. And that defines contract rights to mean  
13 the contract's rights of the seller, under the card processing  
14 agreements -- and it goes on from there.

15 And the card processing agreements in turn is also  
16 defined in Section 1.01 of Exhibit 2 on page 4 -- internal page  
17 4, as the Credomatic contract, the Amex contract, and each  
18 additional card processing agreement.

19 Your Honor, so that is what is sold. Those very  
20 specific agreements. The additional card processing agreements  
21 is the term that is used in the contract to require us to  
22 enter -- to assign those to USAVflow if we enter into them.

23 That is an affirmative obligation imposed on us. And  
24 this gets to one of the other points I wanted to respond to.  
25 Mr. Kurtz -- even though I focus very extensively on Section

1 2.03 of the RSPA, that's the section that imposes the  
2 obligation on us if we enter into a new card servicing -- card  
3 processing agreement that we also assign it to USAVflow.

4 That is clearly -- whatever he may say about the  
5 conditions and what I'm trying to -- I'll talk about that in a  
6 second. But whatever he may say about the conditions in  
7 Section 6.01, even their own expert says that if we enter into  
8 a different card processing agreement, that's a breach of our  
9 contract.

10 That is a very substantial obligation that's imposed  
11 upon us that Mr. Kurtz wants to sweep under the rug and say,  
12 it's only these conditions under 6.01.

13 This is why, Your Honor, in our slides, we actually  
14 separate it out. And we have on slide 15, we had the  
15 obligations imposed by the triggering events under 6.01. And  
16 on slide 16, we actually detail the obligations under Section  
17 2.03(b) of the RSPA.

18 And the reason for that, Your Honor, is -- whatever --  
19 we can have a fight over conditions -- and I think  
20 (indiscernible) v. Bowater (ph.), which is cited by both  
21 parties, Judge Carey's (ph.) decision there makes clear that  
22 the types of obligations that are imposed in the triggering  
23 events are exactly the types of obligations that make it  
24 executory.

25 But whatever debate we have about that, there is no

1 question that the obligations imposed in Section 2.03 are  
2 serious substantial obligations. And their own legal expert  
3 says that if we didn't comply with that, we would be in breach  
4 of these agreements.

5 And I can assure Your Honor that if we went out and  
6 replaced the servicers outside of bankruptcy in a way to move  
7 around their contractual obligations, that they would sue us  
8 for breach. There is no question about that. And so --

9 THE COURT: Well, they aren't going to sue American  
10 Express if you enter into a new contract with American Express.

11 MR. LEBLANC: That's clearly what they're suggesting,  
12 Your Honor. And I think there's -- I have two responses to  
13 that. One is, you know, we certainly -- the American Express  
14 may be different than Credomatic. There are other card  
15 servicer providers other than Credomatic who can process the  
16 contracts -- the cards from people other than Amex.

17 Amex is its own processor. So we may have to stop  
18 taking Amex cards if they're right. We don't think they're  
19 right, and I want to make sure that we're clear about that. We  
20 think that the plain application of the contract -- and I'm  
21 going to go through it again because I think Mr. -- there was  
22 an effort to obfuscate this. The plain application of the  
23 contract means their rights are limited to that liquidated  
24 damages claim under these circumstances. But yes, you're  
25 right, they'll sue Amex. But what they can't --



1 THE COURT: Do they have to do that in bankruptcy  
2 court or nonbankruptcy court?

3 MR. LEBLANC: I presume --

4 THE COURT: Because the debtors are a party.

5 MR. LEBLANC: I'm sorry, Your Honor?

6 THE COURT: The debtors are a party to the agreement  
7 with Amex.

8 MR. LEBLANC: I agree, Your Honor. And I think -- I  
9 think we -- I haven't really given a lot of thought to that  
10 question, but certainly, that would suggest they might have to  
11 do it here.

12 But if they sue them outside of bankruptcy court and  
13 maybe we just can't use Amex or if we can't get a new servicer  
14 to cover that. But again, the reason I mention this, Your  
15 Honor, is to suggest that the RSPA is non-executory,  
16 notwithstanding the obligation to continue if we enter into a  
17 new service agreement, we have to give it to them. It's  
18 absurd. And their own expert says that that would clearly be a  
19 breach.

20 THE COURT: Let me ask you this. I think you've  
21 already addressed it, but I'm going back to my notes from Mr.  
22 Kurtz. He asked the question, what was sold in 2017? You tell  
23 me what was sold in 2017.

24 MR. LEBLANC: Sure. And I think Mr. Butterfield did a  
25 great job of answering that question, Your Honor. What was

1 sold in 2017 was exactly what the contract says, which is the  
2 contract rights, which are rights under these credit -- I don't  
3 want to -- which are the card processing agreement -- the  
4 rights under card processing agreements, which are those  
5 specifically defined contracts. That's what was sold.

6 THE COURT: Okay.

7 MR. LEBLANC: You asked -- Your Honor, you asked Mr.  
8 Kurtz, I thought a pretty straightforward question. What  
9 happens if they can fly next week? And the answer that you got  
10 was a whole lot of words that I don't think actually addressed  
11 the question.

12 Let me tell you what I think their answer to that  
13 question is. If we could fly next week and we started to sell  
14 tickets, they would say that a hundred percent of the revenue  
15 that goes through these credit card servicers comes to them.  
16 That's the answer. There was an entire word salad that talked  
17 about a lot of different things, but that is the answer, Your  
18 Honor, and that is the fundamental point.

19 And it really gets to another argument that they made  
20 that this doesn't really have an effect on Avianca because it's  
21 got four billion of revenue and seventy-eight million dollars,  
22 not a big deal.

23 Your Honor, it is an enormously large deal. Remember,  
24 this is saying we're going to sell \$80 million worth of tickets  
25 and get no revenue out of it whatsoever.

1           So that comes off the top line, if you will, Your  
2 Honor. They're saying, it's not that we can't sell those  
3 tickets. We can sell them. It's just all of the money goes to  
4 them. I don't know how many plane-fuls of flights \$80 million  
5 worth of tickets are, but I assume it's a lot, Your Honor.

6           And that is -- their argument is that unlike everybody  
7 else in this bankruptcy case, they should jump in front of the  
8 line. They should get the next eighty million dollars that we  
9 raise from ticket sales pursuant to these agreements and we  
10 should get nothing out of it. That's their argument.

11           And I think it's both wrong -- it's wrong under the  
12 contracts, Your Honor, which I think is what's critical because  
13 I don't think -- I don't think it turns -- this can't turn  
14 on -- and I agree with Mr. Kurtz to this extent, it can't turn  
15 on how important this is to the debtor.

16           But they're wrong about the contract rights and  
17 they're wrong about the effect that this would have on the  
18 debtor. And in plain English, that's what they're trying to do  
19 is to say, we get the next eighty million dollars of tickets  
20 sales, you get nothing. You're going to fly those planes,  
21 you're going to unfurlough your workers, you're going to do all  
22 these things and generate that revenue and it all comes to us,  
23 entirely. That's what they're asking for.

24           And Your Honor, they could not be more wrong about the  
25 impact of these contracts and the effect that it would have on

1 the company.

2 I'm sorry, Your Honor, I'm just going through my notes  
3 to try to take some things out.

4 Your Honor, their slide 7 -- Mr. Kurtz' slide 7 has a  
5 reference to Section 3.01 of the RSPA as the -- as the trigger  
6 that -- what happens under the trigger.

7 Your Honor, I think this is -- this is just, you know,  
8 a little bit of subterfuge on their part. The contract that  
9 actually governs the flow of funds between the parties is the  
10 cash management agreement. That's our Exhibit 5.

11 The cash management agreement says what needs to  
12 happen for these -- for these things to happen -- for the  
13 trigger event to result in a change in the waterfall. That is  
14 the Section 2.06(e) that I talked about in my opening  
15 statement.

16 There was no discussion of that, Your Honor. There is  
17 zero evidence in this record that the notice that's required  
18 under 2.06(e) was ever delivered to anybody. And that's  
19 critical, Your Honor, for a number of reasons.

20 The 2.06(e) notice, it says -- it's not permissive --  
21 it says, in the event that the administrative agent, at the  
22 direction of the required lenders, pursuant to the purchaser  
23 credit agreement, provides notice of a trigger event to any  
24 notice party, the administrative agent shall concurrently provide a  
25 copy of such notice to the collateral trustee, and the

1 administrative agent shall promptly send a notice to the  
2 collateral trustee and the notice party stating the amount of  
3 the agent amounts due, the unwind amount -- and I'll skip the  
4 parenthetical -- and all unpaid fees.

5 That notice, the required notice, the one that they  
6 shall deliver, was never delivered. And the reason that that  
7 was never delivered is because they never intended and did not,  
8 in fact, trigger -- or I should use the word trigger -- cause a  
9 triggering event -- a termination event under 6.02 of the RSPA.

10 They didn't ever intend for that to happen. And that  
11 triggering -- that termination under 6.02 is critical. The  
12 failure of that is critical to this whole analysis because,  
13 Your Honor, and we walked through this in my opening, when you  
14 look at 2.0 -- when you look at 2.11, which is the automatic  
15 series of payments, and it's the one that has the payment in  
16 full language that I'm going to talk about in a minute, that  
17 says, automatically, once these obligations are paid in full,  
18 then the money flows back to the company, to Avianca.

19 That, in turn, refers to 2.04 of the cash management  
20 agreement. And in 2.04, that is the provision that -- when Mr.  
21 Kurtz highlighted every line other than the relevant line and  
22 told you that was to highlight the relevant line, that's the  
23 point. They never executed a termination under 6.02 of the  
24 RSPA.

25 The only triggering event that's relevant is the

1 insolventcy one under 6.03. And that has no unwind. It has  
2 no -- it's automatic, Your Honor. That's the fact. And 2.11  
3 is what governs this. The cash flows are governed by 2.11.  
4 And 2.11 doesn't have the language that they cite to in the  
5 RSPA with respect to you -- we need to agree that you get  
6 anything. That isn't there.

7 And that's the fallacy of their argument. That's why  
8 under the agreement itself -- even if we don't change the  
9 servicers, these receivables are -- we're entitled to get these  
10 receivables, Your Honor. Before I --

11 THE COURT: When you say, get these receivables,  
12 you're talking about future receivables?

13 MR. LEBLANC: Correct. Absolutely. That's a big  
14 fallacy of it all, Your Honor. We're not trying to do anything  
15 with past receivables. We're not rescinding anything,  
16 unwinding anything. They've been repaid by Mr. Kurtz' count  
17 almost half of the value that they were entitled.

18 We're not trying to affect that at all. We're just  
19 saying future receivables should not flow to them, they should  
20 flow to us, pursuant to these contracts.

21 THE COURT: Mr. Korpus put it different way. He  
22 started by saying the debtors are trying to get back something  
23 they already sold. He said there were three facts that can't  
24 change. And number one was the debtor sold all contract  
25 rights, including future collections. Why isn't that correct?

1 MR. LEBLANC: Your Honor, that -- it is true to the  
2 extent that the definition's in the contract and consistent  
3 with the provisions of the contracts. There was never a sale  
4 of these that -- and this is the point that we've been trying  
5 to make, and maybe we haven't done it as conclusively as we  
6 thought we had.

7 We've never sold 500 million or \$450 worth of  
8 receivables for \$150 million. We sold it subject to the terms  
9 of this agreement and the rights and the obligations of the  
10 parties under this agreement, which includes the payment to us  
11 of a massive amount of additional purchase price. Ninety-five  
12 percent each month of additional purchase price.

13 And what's critical is, we also sold it pursuant to a  
14 contract that has a very clear liquidated damages provision in  
15 the event that we file for bankruptcy. That says exactly what  
16 they get, which is a claim against the debtor in the amount of  
17 the liquidated damages claim.

18 THE COURT: Is there an amortization schedule with  
19 respect to the 150 million?

20 MR. LEBLANC: There is, Your Honor. And obviously a  
21 significant amount of principle has been repaid over time.  
22 There is -- and I'm just trying to think -- I think -- my  
23 understanding, Your Honor, is there is an amortization  
24 schedule. I don't know what the end maturity date is, but I  
25 think it's about two million dollars a month of principle that



1 has been repaid to them each month and that would be relatively  
2 consistent with an October 2017 start date. So almost three  
3 years of payments, just shy of three years and roughly, you  
4 know, sixty million dollars repaid before the sweep of the  
5 eighteen million dollars in cash. I think that's roughly the  
6 amount of amortization, Your Honor.

7 THE COURT: Okay.

8 MR. LEBLANC: But I think this actually gets, Your  
9 Honor, to -- well, let me do a couple of miscellaneous points  
10 and then I'll end with really coming back full-circle to what I  
11 think is the critical point.

12 Mr. Kurtz talked about parol evidence and the fact  
13 that the party's course of conduct is they actually paid us.  
14 That's not parol evidence, that's evidence of the party's  
15 course of conduct, how they understood what they had done.

16 That is evidence that they didn't believe that they  
17 had exercised the rights under 6.02 and cut off our entitlement  
18 to additional purchase price. The fact that they paid it is  
19 evidence of that. It's not parol evidence. It's not  
20 contemporaneous evidence to try to interpret the contract.

21 Slide 13 of their deck, and I think Your Honor  
22 actually sort of caught Mr. Kurtz on this. Slide 13 of their  
23 deck quotes from Mr. Neuhauser's declaration saying that  
24 accordingly that USAV currently has no obligations to pass the  
25 proceeds back.

1 I mean, obviously, we're talking about currently,  
2 under their interpretation of the agreements, but more  
3 importantly, the very paragraph is talking about after they  
4 sent us a retention event notice. That was a post-petition  
5 act.

6 We fundamentally dispute and the course -- the  
7 parties' course of conduct makes clear that they believed --  
8 and we believed, too, that they had an obligation to continue  
9 to pay us the additional purchase price, up through the  
10 petition date and that the cause of their acceleration is the  
11 filing of the petition.

12 Your Honor, I -- so I think it's important to get  
13 back -- you know, Mr. Kurtz started his argument with the first  
14 two slides of his deck saying that we admit that we only have a  
15 claim for the non-excess proceeds. And that's a term -- that's  
16 his term. We have the rights that we have under the contract.  
17 And we believe they have the rights that they have under the  
18 contract.

19 Mr. Kurtz cited to the Delta case. And we had a  
20 chance on the break to pull that case and Your Honor really  
21 should look at it. It's remarkable to me that he cited it  
22 because this is what the Second Circuit actually said. And I  
23 couldn't articulate our position on this point any better than  
24 they did.

25 The creditor in that case wasn't permitted to submit a

1 proof of claim or didn't get paid on its proof -- anything on  
2 its proof of claim. It was some form -- I haven't been able to  
3 quite figure it out, but it was some form of derivative claim.

4 And the Second Circuit says the bankruptcy court's  
5 rejection of the owner participant's claim was based on its  
6 ruling that an exclusionary clause, which canceled Delta's  
7 obligation to pay under the TIA if it, "paid" SLV, was  
8 satisfied by the discharge in bankruptcy of Delta's obligations  
9 to pay SLV.

10 So it was a third party -- they were saying that the  
11 third party's rights to be paid were satisfied by SLV having a  
12 claim in the bankruptcy. The court's reasoning was based in  
13 part on alternative dictionary definitions of pay to the effect  
14 that an obligation is deemed paid once the obligation has been  
15 discharged.

16 This is the line, though. They say what the owner  
17 participant could reasonably expect to receive was a claim  
18 against Delta in bankruptcy for the amount due to it under the  
19 TIA, and to recover ratably for that claim along with the other  
20 creditors.

21 THE COURT: Can you give me the cite to that page?

22 MR. LEBLANC: I will, Your Honor. It is 608 F.3d 139  
23 at 147 Second Circuit 2010, In re: Delta Airlines, Inc. And  
24 the court then said, this contractual expectation was defeated  
25 by the bankruptcy court's interpretation.

1           Your Honor, I couldn't say it better myself here.  
2   They're urging you to adopt a contractual interpretation that  
3   ignores the terms of their own contracts. We are urging Your  
4   Honor to say that you get exactly what you had contracted for.  
5   You have a liquidated damages claim against this estate.  
6   That's what you get. You'll be paid ratably with other  
7   creditors consistent with whatever priority you can establish  
8   for those claims, including if you're secured.

9           We're saying nothing more and nothing less than that.  
10   We're not trying to steal from them. We're not trying to treat  
11   them worse than anyone else. We're trying to treat them  
12   ratably with everyone else. And Your Honor, that -- what I  
13   think has been ignored in this entire discussion by our  
14   adversaries is the fact that we are a company in bankruptcy.  
15   We wish it were different. We wish COVID hadn't struck.

16           But the fact is, we are. And our obligations to them  
17   have to be treated accordingly. And that's why we believe,  
18   Your Honor, we are entitled to reject this contract. And then  
19   pursuant to that rejection, through operation of the contract,  
20   they will get a liquidated damages claim against this estate.  
21   And then pursuant to the contract, these receivables will flow  
22   to us.

23           And alternatively, Your Honor, we'll be entitled to --  
24   if we have to -- go and find new service providers that have  
25   nothing to do with this structure and we'll operate that way.

1 But Your Honor, at the end of the day, we think the Court  
2 should rule in our favor and authorize the debtors to reject  
3 these contracts.

4 THE COURT: So just walk me through -- assuming that  
5 the RSPA is rejected, walk me through what happens with future  
6 American Express credit card receivables and give me a couple  
7 of alternatives. So let's assume a new agreement with American  
8 Express is entered, how -- people use their American Express  
9 card, American Express gets the receivable. Tell me -- walk me  
10 through what happens.

11 MR. LEBLANC: Sure. So Your Honor, I think there are  
12 two alternatives. And actually, I should say three  
13 alternatives. First alternative is, the way we interpret the  
14 contract 2.11 and 2.04 of the cash management agreement, is  
15 that that money -- that has to flow to us because they have --  
16 the credit -- the lenders have exactly what they contracted  
17 for, which is a claim against the estate for their liquidated  
18 damages amount. And that means that we -- it flows to the  
19 debtors. That's option number one.

20 If you disagree with that, we can enter into a new  
21 contract with American Express. And we believe those  
22 receivables would flow to us, although, we recognize that Mr.  
23 Kurtz is likely to sue American Express and try to argue that  
24 we -- they can't do that. Whatever we may be able to do, they  
25 can't do that.

1           So option number three is, if we find a way to avoid  
2   that, then we could go to another -- a third-party servicer who  
3   can service American Express cards, who could receive those  
4   recovery -- those payments and then they would flow directly to  
5   Avianca. They would never go through USAVflow.

6           THE COURT: Okay. All right. Anything else you want  
7   to add?

8           MR. LEBLANC: I would just say, Your Honor, I think  
9   with Credomatic, it's different, just because they're --  
10   Credomatic is a servicer for other people's --

11          THE COURT: Right.

12          MR. LEBLANC: -- branded cards and you can always find  
13   someone else to service those. So that's a slightly different  
14   one.

15          So Your Honor, I just reiterate, we do have a  
16   recharacterization motion. That's not up for today. But we do  
17   want to preserve that. And with that, Your Honor, I would urge  
18   the Court to reject -- allow -- authorize the debtors to reject  
19   those contracts. Thank you.

20          THE COURT: All right. I'm going to take the motion  
21   under submission, and we'll try and get out a decision  
22   reasonably soon.

23          Thank you very much, everybody. I appreciate  
24   everybody's patience. It's been a long hearing. Zoom has its  
25   challenges. But from my standpoint, it works much better than

1 just listening to you all on the telephone, and I was able to  
2 see your slide decks, although I had reviewed them before. So  
3 it was helpful today.

4 So we are adjourned. Thank you very much everybody.

5 (Whereupon these proceedings were concluded)  
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## I N D E X

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C E R T I F I C A T I O N

I, Ellen S. Kolman, certify that the foregoing transcript is a true and accurate record of the proceedings.



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Ellen S. Kolman (CET-568)  
AAERT Certified Electronic Transcriber  
  
eScribers  
352 Seventh Ave., Suite #604  
New York, NY 10001

Date: August 27, 2020

**EXHIBIT 40**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re:

FOR PUBLICATION

Chapter 11

AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup>

Case No. 20-11133 (MG)

Debtors.

(Jointly Administered)

-----X  
**MEMORANDUM OPINION GRANTING IN PART AND DENYING IN PART  
DEBTORS' MOTION TO REJECT THE USAV AGREEMENTS**

***A P P E A R A N C E S:***

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<sup>1</sup> The Debtors in these chapter 11 cases, and each Debtor's federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int'l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



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**MARTIN GLENN**  
**UNITED STATES BANKRUPTCY JUDGE**

## **I. INTRODUCTION<sup>2</sup>**

Pending before the Court is the motion of Avianca Holdings S.A. and its affiliated debtors (the “Debtors” or “Avianca”) seeking entry of an order pursuant to section 365 of the Bankruptcy Code authorizing the rejection of the eight (8) contracts collectively referred to as the USAV Agreements *nunc pro tunc* to June 23, 2020, the motion filing date. (“Motion,” ECF Doc. # 306.) The USAV Agreements were entered into on or about December 12, 2017 to

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<sup>2</sup> Capitalized terms in the Introduction are defined below.

effectuate a transaction among the Debtors, USAVflow Limited (“USAV”), an offshore special purpose vehicle, certain credit card processors, and other counterparties (collectively, the “2017 Transaction”) in connection with USAV’s purchase of certain existing contract rights—including the proceeds generated from certain credit card receivables—and accrued receivables from the Debtors for \$150 million plus the potential for additional amounts. (Lender Objection ¶ 1.) The USAV Lender Group financed the \$150 million purchase price in exchange for primary and guarantee claims against USAV and certain Debtors. (*Id.*)

The central question before the Court is whether some or all of the USAV Agreements are executory and can be rejected under section 365 of the Bankruptcy Code. The Debtors argue that the Debtors and USAV have material unperformed obligations under two of the eight agreements, the RSPA and Undertaking Agreement, and ask the Court to deem the remaining agreements inseparable from the RSPA and Undertaking Agreement for purposes of rejection. (Motion ¶ 29; Reply ¶ 36.) USAV and the USAV Lender Group (together, the “USAV Parties”) argue that the RSPA and Undertaking Agreement are not executory contracts because USAV has no material unperformed obligations under either agreement. According to the USAV Parties, the Debtors, by rejecting the RSPA, are seeking to unwind the 2017 Transaction to get back the contract rights they sold in violation of the Supreme Court’s holding *Mission Prod. Holdings v. Tempnology, LLC*, 139 S. Ct. 1652 (2019) [hereinafter “*Tempnology*”]. (Lender Sur-Reply ¶ 16 (citing *Tempnology*, 139 S. Ct. at 1662, 1663); USAV Objection ¶¶ 31–32).)

For the reasons discussed below, the Debtors’ Motion is **GRANTED IN PART** and **DENIED IN PART**: The Court concludes that the RSPA and Undertaking Agreement are executory contracts that the Debtors may reject pursuant to section 365 of the Bankruptcy Code.

The remaining USAV Agreements are not executory contracts that can be rejected by the Debtors.

## **II. BACKGROUND**

Established in 1919, Avianca is a leading provider of air travel and cargo services in Latin America and around the globe. (Motion ¶ 7.) Avianca is the second-largest airline group in Latin America and the most important carrier in the Republic of Colombia and the Republic of El Salvador. (*Id.*) Avianca is a code-share partner of United Airlines and a member of the Star Alliance—the world’s largest global airline alliance. (*Id.*) Before the COVID-19 pandemic, the Debtors offered passenger services on more than 5,350 weekly flights to more than 76 destinations in 27 countries. (*Id.* ¶ 8.) With approximately 18,900 employees and approximately \$3.9 billion in annual revenues, the Debtors play a key role in the Latin American airline market. (*Id.*) On March 20, 2020, the Republic of Colombia closed its airspace to address the spread of COVID-19. (*Id.* ¶ 9.) Due to the restrictions imposed by the Colombian government, on March 24, 2020, the Debtors announced that they were suspending all scheduled passenger flights from March 25, 2020. (*Id.*) On May 10, 2020 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. (*Id.* ¶ 10.) Each Debtor is continuing to operate its business and manage its properties as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. (*Id.*)

### **A. The Rejection Motion**

On June 23, 2020, the Debtors filed the Motion to reject the USAV Agreements.<sup>3</sup> In support of the Motion, the Debtors submit the declaration of their CFO, Adrian Neuhauser

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<sup>3</sup> On June 23, 2020, the Debtors also filed an adversary proceeding against USAV seeking to recharacterize the 2017 Transaction as a disguised secured financing and seeking a declaration that USAV has no security interest in certain postpetition credit card receivables and related collateral pursuant to section 552 of the Bankruptcy Code. (See “Complaint,” Adv. Proc. No. 20-1189, ECF Doc. # 1 ¶¶ 2–3.) The Debtors state that it will not be necessary



(“Neuhauser Declaration,” ECF Doc. # 306-1), and the declaration Aaron L. Reneger, which attaches copies of the USAV Agreements. (“Reneger Decl.,” ECF Doc. # 306-2.) On July 22, 2020, objections were filed by USAV (the “USAV Objection,” ECF Doc. # 616) and the USAV Lender Group (the “Lender Objection,” ECF Doc. # 617). Foreign law opinions and declarations were submitted in support of the USAV Objection (ECF Doc. # 616-1) and the Lender Objection (ECF Doc. # 618). The Lender Group also submits the declaration of Joshua D. Weedman in support of their Objection. (“Weedman Decl.,” ECF Doc. # 619.)

On July 27, 2020, the Court held a status conference with counsel to the Debtors, USAV, the Lender Group, and the Official Committee of Unsecured Creditors (the “Committee”) to discuss the schedule of reply briefs and the necessity of an evidentiary hearing. (*See* ECF Doc. # 628.) The Court also raised several inquiries for the parties to address in supplemental briefs.

On August 7, 2020, the Debtors filed their reply brief (“Reply,” ECF Doc. # 683) and the Committee filed a reply in support of Debtors’ Motion (“UCC Reply,” ECF Doc. # 681). In support of the Reply, the Debtors submit the second declaration of Adrian Neuhauser (“Second Neuhauser Decl.,” ECF Doc. # 683-1) and the second declaration of Aaron L. Renenger (“Second Renenger Decl.,” ECF Doc. # 683-2). The Debtors also submit the declaration of Jamie Alberto Arrubla-Paucar analyzing, under Colombian law, the effects of a failure to comply with the RSPA by Avianca and the contractual remedies available to USAV. (“Arrubla Decl.,” ECF Doc. # 684.)

On August 18, 2020, the Debtors and the Committee each filed a supplemental response to the Court’s questions posed at the July 27, 2020 status conference. (“Debtors’ Supplemental Response,” ECF Doc. # 715; “UCC Supplemental Response,” ECF Doc. # 714.) On that same

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for the Court to reach the issues raised in the Complaint to the extent that the Court grants the relief requested in the Motion. (*See* Motion ¶ 1 n.2.)

day, the Lender Group filed their response to the Court's questions posed at the July 27, 2020 status conference ("Supplemental Lender Response," ECF Doc. # 716) and a sur-reply to the Lender Objection ("Lender Sur-Reply," ECF Doc. # 718). In support of the Supplemental Lender Response and Lender Sur-Reply, the Lenders submit the declaration of Vicente Lines ("Lines Decl.," ECF Doc. # 719); the second declaration of Jorge Suescun Melo ("Second Melo Decl.," ECF Doc. # 720); and the second declaration of Joshua D. Weedman ("Second Weedman Decl.," ECF Doc. # 721). USAV filed a combined response to the Debtors' Reply and questions posed at the July 27, 2020 status conference. ("Supplemental USAV Response," ECF Doc. # 717.)

The parties also agreed that all of the declarations and exhibits offered in support of and in opposition to the Motions were admissible in evidence (ECF Doc. ## 749, 750), and the parties waived the right to cross-examine any of the declarants (ECF Doc. # 740). The Court entered an Order admitting the declarations and exhibits in evidence. (ECF Doc. # 751.)

On August 25, 2020, the Court entered an order with questions that counsel for the parties were asked to address during the hearing on the Motion. (ECF Doc. # 757.) On August 26, 2020, the Court held a hearing using Zoom for Government and heard arguments from the Debtors, the Committee, the USAV Lender Group, and USAV.

## **B. Overview of the 2017 Transaction**

In 2017, Avianca retained an investment banker to assist in securing new debt financing—the 2017 Transaction was the result of these efforts. (*See* Complaint ¶ 12.) On December 12, 2017, the Debtors and USAV entered into the Contract Rights and Receivables Sale, Purchase and Servicing Agreement (the "RSPA").<sup>4</sup> (*Id.* ¶ 13.) The RSPA is governed by

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<sup>4</sup> The RSPA is annexed as Exhibit 1 to the Reneger Decl.

the laws of Colombia. (*Id.* (citing RSPA § 9.09).) The RSPA memorializes the purported sale of the Debtors’ accrued credit card receivables (the “Receivables”) and the Debtors’ rights to future credit card receivables under card processing agreements (the “Contract Rights”) with (i) American Express Travel Related Services Company, Inc. and American Express Payment Services Limited (“AMEX”) (the “AMEX Agreement”) and (ii) BAC International Bank Inc. and its subsidiaries (“Credomatic”) (the “Credomatic Agreement” and, together with the AMEX Agreement, the “Credit Card Processing Agreements”) related to the purchase in the United States of airline tickets and related services with American Express, Visa, and MasterCard credit cards. (*Id.* ¶ 14 (citing RSPA § 2.01; Recitals).)

In exchange for the purported “sale” of the Contract Rights and Receivables, Avianca received \$150 million plus the potential for additional amounts equal to future credit card receivables generated in any payment period less a reserve amount generally equal to the amount required for USAV’s monthly amortization payments (the “Additional Purchase Price”) under the USAV Loan Agreement (defined below). (*Id.* (citing RSPA § 3.01(a)).)

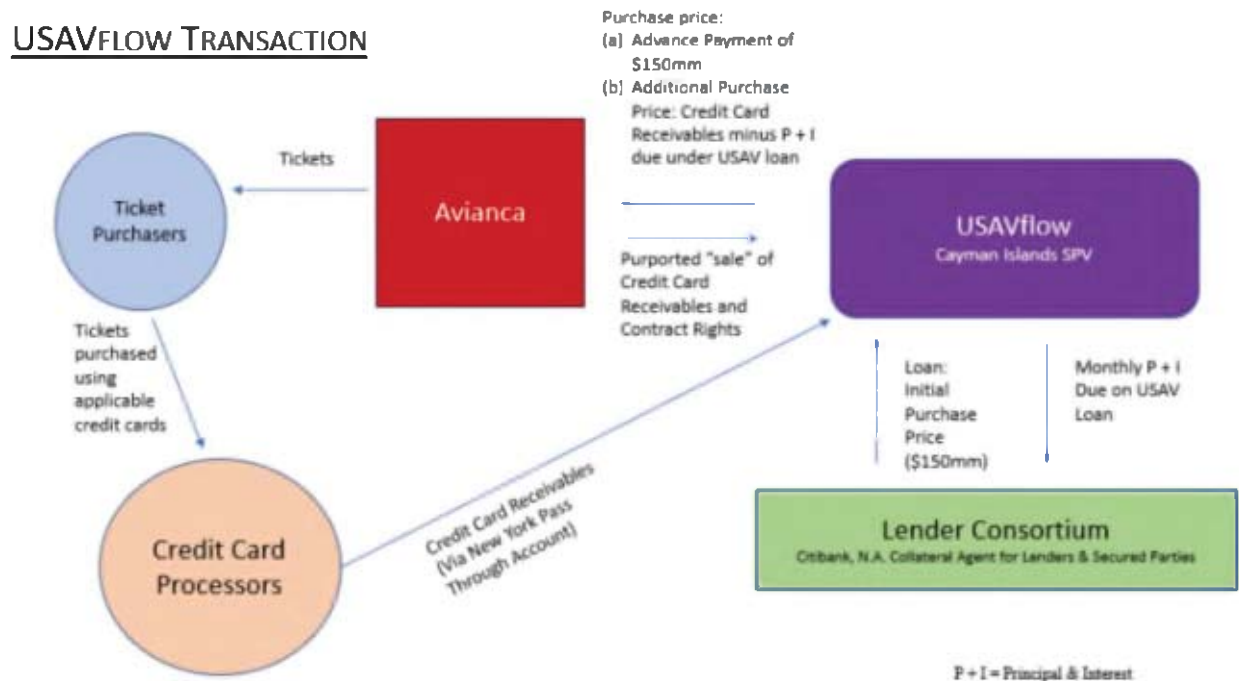
Contemporaneously with the execution of the RSPA, USAV entered into a loan agreement (the “USAV Loan Agreement”)<sup>5</sup> with the USAV Lender Group, certain Debtors as guarantors, and Citibank, N.A. as administrative agent and collateral agent (in such capacities, “Citibank”). (*Id.* ¶ 15.) The USAV Loan Agreement is governed by New York law. (*Id.* ¶ 15 n.4 (citing USAV Loan Agreement § 8.9.1).) Under the USAV Loan Agreement, the USAV Lender Group advanced to USAV \$150 million—the same amount USAV used to pay Avianca under the RSPA. (*Id.* ¶ 16 (citing Cash Management Agreement § 2.1.1).) To repay the loan, USAV retains a portion of the collections on credit card receivables—funneled through a New

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<sup>5</sup> The USAV Loan Agreement is annexed as Exhibit 9 to the Reneger Decl.

York-based bank account (the “New York Pass-Through Account”)—sufficient to make the required amortization payments under the USAV Loan Agreement. (*Id.*) Any surplus above what is required to be repaid or reserved under the USAV Loan Agreement is remitted to the Debtors as the Additional Purchase Price. (*Id.* (citing RSPA § 2.01 and Cash Management Agreement § 2.02).)

The figure below provides an overview of the “future flow” transaction structure contemplated by the 2017 Transaction.



(“Figure 1,” Complaint ¶ 17.)

### C. Events Prior to the Petition Date

From January 2020 through March 2020, the Debtors generated between \$25.2 million and \$48.8 million in credit card receivables each month, with 92% to 95% flowing back to the Debtors as Additional Purchase Price payments. (Reply ¶ 9 (citing Second Neuhauser Decl. ¶ 3).) On March 31, 2020, Citibank, as Administrative Agent, sent a notice to the Debtors by

email, with the subject line, “USAVFlow—Notice of Reservation of Rights” (the “March Notice”). (*Id.* ¶ 10.) The March Notice declared that a Trigger Event had occurred as a result of the Debtors’ inability to fly and that as a result the Debtors were in “breach” of the RSPA (the “Flight Impairment Trigger Event”). (*Id.*) The March Notice did not invoke any remedies, but simply reserved Citibank’s rights to pursue available remedies under the RSPA. (*Id.* (citing Weedman Decl., Ex. A–B.) Thereafter, between April 1, 2020 and April 9, 2020, the Debtors received Additional Purchase Price payments in the aggregate amount of \$255,951.22. (*Id.* ¶ 11 (citing Second Neuhauser Decl. ¶ 5).)

#### **D. Retention Event Notice**

On May 11, 2020, the day after the Petition Date, Citibank delivered to the Debtors a notice that a “Retention Event” under the RSPA had occurred as a result of the drop in the Collections Coverage Ratio (the “Retention Event Notice”). (*Id.* ¶ 13 (citing Motion ¶ 22).) On May 15, 2020, Debtors’ counsel delivered a letter to Citibank’s counsel via email stating that the Retention Event Notice implicated the Debtors’ property and was likely in violation of the automatic stay (the “Automatic Stay Notice”). (*Id.* ¶ 14 (citing Second Renenger Decl., Ex. 1).) On May 18, 2020, Citibank, at the instruction of the Lender Group, transferred approximately \$13.5 million from the New York Pass-Through Account, the Debt Service Reserve Account, and the Collection Account<sup>6</sup> to the accounts of the Lender Group. (*Id.* ¶ 15 (citing Second Neuhauser Decl. ¶ 7; Second Renenger Decl., Ex. 2).) The Debtors state that, on information and belief, from May 18, 2020 to the present, Citibank has been sweeping all funds received from AMEX and Credomatic (the “Credit Card Processors”)—over \$5 million—to the accounts of the Lender Group. (*Id.* ¶ 16 (citing Second Neuhauser Decl. ¶ 8).)

<sup>6</sup> The New York Pass-Through Account, Debt Service Reserve Account, and the Collection Account are under the control of Citibank, N.A., London Branch. (*See* RSPA at 4, 6, 10.)

## E. Overview of the USAV Agreements

The eight USAV Agreements that are the subject of the Motion, include the following:

- i. The **RSPA**, entered into on December 12, 2017 between Aerovías del Continente Americano S.A. Avianca, as Seller and Servicer, and USAV, as purchaser. (Renenger Decl. ¶ 2; *id.*, Ex. 1.) The governing law under the RSPA is Colombian law. (*See* RSPA § 9.09.) The RSPA is more fully discussed below.
- ii. The **Undertaking Agreement**, entered into on December 12, 2017 between Aerovías del Continente Americano S.A. Avianca, as Seller and Servicer, and USAV, as purchaser. (Renenger Decl. ¶ 3; *id.*, Ex. 2.) The governing law under the Undertaking Agreement is Colombian law. (*See* Undertaking Agreement § 4.09.) The Undertaking Agreement is more fully discussed below.
- iii. The RSPA Assignment of Rights Agreement (the “**Assignment Agreement**”), entered into on December 12, 2017 between Aerovías del Continente Americano S.A. Avianca and USAV. (Renenger Decl. ¶ 4; *id.*, Ex. 3.) The governing law under the Assignment Agreement is Costa Rican law. (Assignment Agreement § 5.) The form of Assignment Agreement is annexed to the RSPA as Exhibit E.
- iv. The **Cash Management Agreement**, entered into on December 12, 2017 among Aerovías del Continente Americano S.A. Avianca, as Seller and Servicer, USAV as purchaser, and Citibank, as Administrative Agent and Collateral Agent. (Renenger Decl. ¶ 5; *id.*, Ex. 4.) The governing law under the Cash Management Agreement is New York law. (Cash Management Agreement § 3.08(a).)
- v. The Credomatic Notice of Transfer (the “**Credomatic Notice**”), dated December 12, 2017 executed by Aerovías del Continente Americano S.A. Avianca, Avianca, Inc., Taca International Airlines, S.A. and USAV and accepted and agreed by Citibank as Collateral Agent. (Renenger Decl. ¶ 6; *id.*, Ex. 5.) The governing law under the Credomatic Notice is New York law. (Credomatic Notice § 7(a).)
- vi. The **Credomatic Consent and Agreement**, dated December 12, 2017 executed by Credomatic. (Renenger Decl. ¶ 7; *id.*, Ex. 6.) The contract does not have a governing law provision. The form Credomatic Consent and Agreement is annexed to the RSPA as Exhibit B.
- vii. The **AMEX Notice and Consent**, dated December 12, 2017 and executed by Aerovías del Continente Americano S.A. Avianca and other of the Debtors, USAV, American Express Travel Related Services Company, Inc., American Express Payment Services Limited, and Citibank as Collateral Agent. (Renenger Decl. ¶ 8; *id.*, Ex. 7.) The governing law under the AMEX Notice and Consent is New York law. (AMEX Notice and Consent § 6.) The form of AMEX Notice and Consent is annexed to the RSPA as Exhibit A.



- viii. The **Expenses Agreement**, entered into on December 12, 2017 between USAV and Aerovías del Continente Americano S.A. Avianca. (Reneger Decl. ¶ 9; *id.*, Ex. 8.) The governing law under the Expenses Agreement is the law of the Cayman Islands. (Expenses Agreement § 6.)

Collectively, USAV Agreements effectuate the 2017 Transaction and establish the mechanics of the “future flow” transaction structure set forth in Figure 1 above.

1. The RSPA

The RSPA functions as the master agreement pursuant to which the other USAV Agreements were entered to effectuate the 2017 Transaction. As previously stated, the RSPA was entered into between Aerovías del Continente Americano S.A. Avianca, as Seller and Servicer, and USAV, as Purchaser.

*a. Purchase, Sale and Transfer (Article II)*

The RSPA provides that on the “Effective Date,” December 12, 2017, “the Seller sells to the Purchaser, and the Purchaser buys from the Seller, finally, definitively, and irrevocably, the existing (as of the date hereof) Contract Rights arising under and the Receivables accrued under the AMEX Contract and the Credomatic Contract.” (*See* RSPA § 2.01(a)(i).) “Contract Rights” are defined in the RSPA as the contract rights of Avianca under the Card Processing Agreements<sup>7</sup> “to (i) receive any kind of payments, indemnities or economic compensation derived therefrom on account of Specified Sales, including the right, among other things, to receive all future Collections derived therefrom; and (ii) to enforce the rights referred to in (i) against the respective Card Processors thereunder.” (*See id.* § 1.01.) “Receivables” are defined in the RSPA as “any and all Collections accrued under the Card Processing Agreements that are due on account of Specified Sales from . . . AMEX or Credomatic to the Seller immediately prior

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<sup>7</sup> The RSPA defines Card Processing Agreements to mean the Credomatic Contract, the AMEX Contract, and each Additional Card Purchasing Agreement. (Reneger Decl. at 12.)



to giving effect to this Agreement on the Effective Date (and due to the Purchaser immediately upon giving effect to this Agreement on the Effective Date).” (*See id.* § 1.01.)

The RSPA provides a general definition of the term “Specified Sales” and refers to the AMEX Notice and Consent and the Credomatic Notice and Consent to determine what “Specified Sales” means with respect to each Card Processing Agreement. (*See Reneger Decl.* at 22.)

The AMEX Notice and Consent defines Specified Sales to mean “the sales, including future sales, made by travel agencies in the United States and cleared through ARC of airline tickets or related services provided by the Receivables Seller where payment in the case of any such sale is made by an American Express® Card, however branded, or any one or more of such Cards, including all such sales identified by those certain merchant codes set forth on Exhibit A hereto, with such changes, if any, as shall have been made from time to time after delivery and acceptance of a Merchant ID Supplement.” (*Id.* at 321.) Exhibit A to the AMEX Notice and Consent includes just one (1) merchant number: “7992700286.” (*Id.* at 322.)

The Credomatic Notice and Consent defines Specified Sales to mean “the sales, including future sales, made by travel agencies in the United States and cleared through ARC of airline tickets or related services provided by Avianca S.A. where payment in the case of any such sale is made by a Master Card® Card or Visa® Card, however branded, or any one or more of said Cards, including all such sales identified by those certain merchant codes set forth on Exhibit A hereto, with such changes, if any, as shall have been made from time to time after delivery and acceptance of a Merchant ID Supplement.” (*Id.* at 280–281.) Exhibit A to the Credomatic Notice and Consent includes just one (1) merchant code: “Credomatic FL (VI/MC): 5610-014001084970”. (*Id.* at 283.)

The RSPA also provides that upon termination of either of their Credit Card Processing Agreements, Debtors are required to enter into replacement credit card processing agreements on substantially similar terms within 10 calendar days. (*See* RSPA § 2.03(b).) Upon entry into the replacement processing agreements, the Debtors are obligated to sell to USAV for no additional consideration the Debtors’ payment rights under the new agreements. (*See id.* § 2.01(a)(ii).) The Debtors are also required to enter into ancillary agreements with the credit card processors intended to perfect USAV’s interest in the new agreements and resulting proceeds. (*See id.* §§ 2.01(b)(ii), (c)(ii); 2.03(b)(i)–(vii).)

*b. Consideration (Article III)*

The purchase price under the RSPA was \$150 million plus the Additional Purchase Price, which is defined as amounts payable to the Seller under the RSPA subject to the satisfaction of various conditions, including that no Trigger Event be continuing. (*See id.* §§ 1.01, 3.01(a).) If a Trigger Event occurs, USAV is entitled to withhold the Additional Purchase Price from Avianca during the continuance of the Trigger Event. (*See id.* § 3.01(a)(ii).)

*c. Trigger Events and Remedies*

The RSPA lists eighteen (18) events that constitute “Trigger Events.” (*See id.* § 6.01(a)–(r).) As discussed above, the RSPA provides that “no Additional Purchase Price shall be paid during the continuation of . . . a Trigger Event.” (*See id.* § 3.01(a)(ii).) A Trigger Event occurs, for example, when “the capacity or ability of the Seller to operate domestic and/or international flights is materially impaired for any reason” (*see id.* § 6.01(i)(i)), or upon the occurrence of any Insolvency Event, which the RSPA defines to include the filing of a voluntary petition in bankruptcy (*see id.* § 6.01(h).) A Trigger Event also occurs if the Debtors fail to perform or observe “any term or obligation under the Undertaking Agreement (except Sections 2.01(c), (d),

(e), and (s)(i) and Section 2.02(c) thereof), any RSPA Security Document or any Notice and Consent. (*See id.* § 6.01(c)(i).) Avianca must also continue to generate Receivables sufficient to (i) pay to USAV the Monthly Settlement Amount (as defined in the Cash Management Agreement) and (ii) maintain a Collection Coverage Ratio of at least 1.75:1:00 at any date of determination. (*See id.* §§ 6.01(a), (b).)

If a Trigger Event occurs, USAV is entitled to terminate the RSPA and demand Liquidated Damages, which the RSPA defines as an amount equal to unpaid principal on USAV's loan plus surcharged interest and administrative costs related to unwinding the transaction. (*See id.* § 6.02.) If a Trigger Event occurs due to an Insolvency Event, the Liquidated Damages shall become automatically due and payable. (*See id.* § 6.03.)

## 2. The Undertaking Agreement

Pursuant to the Undertaking Agreement, certain of the Debtors agreed to carry out certain duties as responsibilities as a Servicer in respect to the Contract Rights and Receivables. (Undertaking Agreement §§ 3.02 and 3.03.) As Servicer, the Debtors agreed to undertake certain administrative duties that include (i) responding to inquiries of the Card Processors, correcting errors, and settling claims and disputes relating to receivables (*id.* § 3.02(b)); (ii) managing, servicing, and administering the Contract Rights and the Collections (*id.* § 3.02(e)); (iii) using its best efforts to collect all payments called for under the terms and provisions of the Card Processing Agreements as and when the same become due (*id.* § 3.02(h)); and (iv) providing monthly statements regarding Collections to USAV and Citibank (*id.* § 3.02(k)). Pursuant to the Undertaking Agreement, USAV is required to provide documents, including powers of attorney, necessary for the Debtors to carry out their obligations under the Undertaking Agreement. (*See id.* § 3.05.)

### 3. The Relationship Among the USAV Agreements

The USAV Agreements each have a separate and distinct purpose. (USAV Objection ¶ 12.) As discussed above, the RSPA is a sale agreement pursuant to which Avianca sold its rights to future credit card receivables and associated contract rights under the Card Processing Agreements—*i.e.*, the Contract Rights and Receivables. Pursuant to the Card Processing Agreements, Credomatic and AMEX agreed, among other things, to pay Avianca for sales, including future sales, made by travel agencies in the United States of Avianca’s airline tickets and related services purchased in the United States with Visa or MasterCard cards and American Express cards, respectively. (*Id.*)

Under the Assignment Agreement, Avianca assigned to USAV its interests in its Card Processing Agreement with Credomatic in exchange for the purchase price under the RSPA. Similarly, Avianca transferred to USAV the Contract Rights and Receivables under the AMEX Card Processing Agreement through the AMEX Notice and Consent. (*Id.* ¶ 13.)

The Cash Management Agreement governs the disbursement of funds to the parties, including in the case of a “Trigger Event,” as defined in section 6.01 of the RSPA. Upon notice of the parties of major events (including a Retention Event or a Trigger Event) or any unpaid fees, expenses or indemnities incurred by or claimed through or disburseable to USAV or the Administrative Agent, Citibank is required to adjust the schedule of payments to conform with the priority of payments set forth in Article II of the Cash Management Agreement. (*See* Cash Management Agreement §§ 2.06, 2.07(a), 2.09(c).)

Pursuant to the Expenses Agreement, Avianca agreed to indemnify and settle on USAV’s behalf certain costs, including but not limited to, “any and all fees and expenses USAV incurred in connection with its entry into and the performance of its obligations,” and “all costs, fees and

expenses incurred by [USAV, Citibank], and any other person contracted to provide services in relation to the Receivables or the Loan Agreement or the transactions contemplated thereby.”

(See Expenses Agreement ¶¶ 3.1, 3.4.)

The Debtors concede that the following six (6) agreements are not executory by their own terms: Cash Management Agreement, Expense Agreement, Assignment Agreement, Credomatic Notice, Credomatic Consent and Agreement, and AMEX Notice and Consent. (Motion ¶ 29.)

The Debtors state that these agreements exist solely to effectuate the RSPA, which, according to the Debtors, should deem them inseparable from the RSPA and Undertaking Agreement for purposes of rejection. (*Id.*)

### III. LEGAL STANDARD

#### A. Determining Whether a Contract is Executory

Section 365 of the Bankruptcy Code provides that “the trustee, subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Notably, the Bankruptcy Code does not define the term “executory contract.” The Supreme Court has noted that an executory contract is a contract that neither party has finished performing. *Tempnology*, 139 S. Ct. at 1657 (citing 11 U.S.C. § 365(a)). Most courts have adopted Professor Countryman’s definition of an executory contract as “a contract under which the obligation of both the [debtor] and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing the performance of the other.” Vern Countryman, *Executory Contracts in Bankruptcy: Part I*, 57 MINN. L. REV. 439, 460 (1973). Under Countryman’s “material breach” test, a prepetition contract is executory when both sides are still obligated to render substantial performance. *Enter. Energy Corp. v. United States (In re Columbia Gas Sys.)*, 50 F.3d 233, 239

(3d Cir. 1995); *Mitchell v. Streets (In re Streets & Beard Farm P'ship)*, 882 F.2d 233, 235 (7th Cir. 1989); *In re 375 Park Ave. Assocs.*, 182 B.R. 690, 697 (Bankr. S.D.N.Y. 1995). Where such performance remains due on only one side, the contract is non-executory, and hence, neither assumable nor rejectable. *See In re Chateaugay Corp.*, 102 B.R. 335, 345 (Bankr. S.D.N.Y. 1989). The materiality of the breach is a question of state law. *In re Columbia Gas Sys., Inc.*, 50 F.3d at 239 n.10.

To determine whether a contract was executory, the court in *Gen. DataComm Indus., Inc. v. Arcara (In re Gen. DataComm Indus., Inc.)*, 407 F.3d 616, 624 (3d Cir. 2005), considered whether there were material obligations that remained unperformed by the counterparty at the time the bankruptcy petition was filed. The court found that when the parties define a breach of one party's obligation as a terminable breach in the contract, such obligations are material obligations. *See id.* As such, the benefit plan at issue was executory because it specified that the failure to perform certain duties entitled the counterparty to terminate the contract, and "by contractual definition, therefore, such obligations were material." *Id.* at 625; *see also Jay Dee/Mole Joint Venture v. Mayor & City Council of Balt.*, 725 F. Supp. 2d 513, 526 (D. Md. 2010) ("Where the contract itself is clear in making a certain event a material breach of that contract, a court must ordinarily respect that contractual provision.") (internal quotation marks and citations omitted).

## **B. *Tempnology* and the Effect of Rejection**

*Tempnology* involved a debtor's attempt in a Chapter 11 case to terminate a trademark license it had previously granted to a licensee by rejecting the underlying licensing agreement. *Tempnology*, 139 S. Ct. at 1658–59. The debtor argued that, as a result of rejection, the debtor not only was free to stop performing under the parties' agreement, but also that rejection

terminated the licensee's right to use the licensed trademark going forward. *Id.* The bankruptcy court agreed, reasoning that the debtor's rejection of a trademark licensing agreement must extinguish the rights that the agreement had conferred in the trademark licensee. *Id.* at 1659.

The Bankruptcy Appellate Panel reversed, relying on the Seventh Circuit's decision in *Sunbeam Prods. v. Chicago Am. Mfg., LLC*, 686 F.3d 372 (7th Cir. 2012). The court determined that while rejection converts a debtor's unfulfilled obligations to a pre-petition damages claim, it does not "terminate the contract" or "vaporize[ ]" the counterparty's rights, so the licensee could continue to use the trademark as previously granted to it by the debtor. *Tempnology*, 139 S. Ct. at 1659. The First Circuit rejected the Panel's view, reinstating the bankruptcy court's opinion terminating the license. *Id.* The Supreme Court granted certiorari to resolve the circuit split. *Id.* at 1660.

In an 8-1 decision, Justice Kagan, writing for the Court, reversed the decision of the First Circuit, holding that rejection of an executory contract gives rise to a claim for breach of contract against the debtor, but it does not operate as a termination or rescission of the rejected contract, so a debtor cannot evade its pre-rejection grant of rights. *Id.* at 1657–58. The Court deemed this distinction a "rejection-as-breach" approach, as opposed to the "rejection-as-rescission" approach advocated by the debtor and adopted by the First Circuit. *Id.* at 1663.

The Supreme Court explained that rejection is a breach, and the consequences of such breach are determined by "non-bankruptcy contract law." *Id.* at 1662. Thus, "a debtor's rejection of an executory contract in bankruptcy has the same effect as a breach outside of bankruptcy." *Id.* at 1666. That is, it "does not eliminate rights to the contract already conferred on the non-breaching party." *Id.* at 1659. "It gives the counterparty a claim for damages, while



leaving intact the rights the counterparty has received under the contract.” *Id.* at 1661.

Thus, a debtor does not have a right to repudiate prior performance, but rather can only “repudiat[e] any further performance of its duties.” *Id.* at 1658, 1662 (stating that a debtor “cannot unilaterally revoke” what it contracted to provide the counterparty based on the debtor’s own breach); *In re Lyondell Chem. Co.*, 416 B.R. 108, 115 (Bankr. S.D.N.Y. 2009); *In re Exec. Tech. Data Sys.*, 79 B.R. 276, 282 (Bankr. E.D. Mich. 1987). “A rejection breaches a contract but does not rescind it. And that means all the rights that would originally survive a contract breach, remain in place.” *Tempnology*, 139 S. Ct. at 1657–58, 1666 (“[Rejection] cannot rescind rights that the contract previously granted.”); *Rudaw/Empirical Software Prods., Ltd. v. Elgar Electronics Corp. (In re Rudaw/Empirical Software Prods., Ltd.)*, 83 B.R. 241, 245 (Bankr. S.D.N.Y. 1988) (stating that “debtor cannot undo an executed sale of property where title has passed. Such property does not revert as a result of the debtor’s rejection of the executory contract.”). “When it occurs, the debtor and counterparty do not go back to their pre-contract positions. Instead, the counterparty retains the rights it has received under the agreement. As after a breach, so too after a rejection, those rights survive.” *Tempnology*, 139 S. Ct. at 1662.

*Tempnology* applies to all contracts, not just trademark licenses: “we reject an argument for the rescission approach turning on the distinctive features of trademark licenses. Rejection of a contract—any contract—in bankruptcy operates not as a rescission but as a breach.” *Id.* at 1661. As the Court explained, Section 365 provides debtors with a “powerful tool: Through rejection, the debtor can escape all of its future contract obligations, without having to pay much of anything in return,” given that debtors typically pay claims at “only cents on the dollar.” *Id.* at 1658, 1665.

### C. Business Judgment Standard

Courts are inclined to “approve motions to assume, assume and assign, or reject executory contracts or unexpired leases upon a showing that the debtor’s decision to take such action will benefit the debtor’s estate and is an exercise of sound business judgment.” *In re MF Glob. Holdings Ltd.*, 466 B.R. 239, 242 (Bankr. S.D.N.Y. 2012); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (stating that section 365 is traditionally subject to the “business judgment” standard); *In re Gucci*, 193 B.R. 411, 415 (Bankr. S.D.N.Y. 1996) (“A bankruptcy court reviewing a trustee’s decision to assume or reject an executory contract should apply its ‘business judgment’ to determine if it would be beneficial or burdensome to the estate to assume it.”).

In most cases, a court “will not second-guess a debtor’s business judgment concerning whether the assumption or rejection of an executory contract or unexpired lease would benefit the debtor’s estate.” *MF Glob. Holdings*, 466 B.R. at 242; *see also In re Balco Equities Ltd., Inc.*, 323 B.R. 85, 98 (Bankr. S.D.N.Y. 2005) (“A court ‘should defer to a debtor’s decision that rejection of a contract would be advantageous.’”) (quoting *In re Sundial Asphalt Co.*, 147 B.R. 72, 84 (Bankr. E.D.N.Y. 1992)). “The ‘business judgment’ test merely requires a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the Debtor’s estate.” *MF Glob. Holdings*, 466 B.R. at 242; *see also Bregman v. Meehan (In re Meehan)*, 59 B.R. 380, 385 (E.D.N.Y. 1986) (“The primary issue under the business judgment test is whether rejection of the contract would benefit general unsecured creditors.”); *In re Helm*, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 2006) (“To meet the business judgment test, the debtor in possession must ‘establish that rejection will benefit the estate.’”) (quoting *In re Cent. Jersey Airport Servs., LLC*, 282 B.R. 176, 183 (Bankr. D.N.J. 2002)).

#### IV. DISCUSSION

The central question before the Court is whether the USAV Agreements are executory and can be rejected under section 365 of the Bankruptcy Code. The parties agree on the legal standard for determining whether the USAV Agreements are executory: “if *both* parties have substantial unperformed obligations, the contract is executory even though the uncompleted obligation of one of the parties only involves the payment of money.” *In re Teligent, Inc.*, 268 B.R. 723, 732 (Bankr. S.D.N.Y. 2001) (emphasis in original). (See Motion ¶ 27; USAV Objection ¶ 22 n.7; Lender Objection ¶ 47.)

The Debtors argue that the Debtors and USAV have material unperformed obligations under the RSPA and Undertaking Agreement. (Motion ¶¶ 24–28; Reply ¶¶ 18–29.) The USAV Parties argue that the RSPA and Undertaking Agreement are not executory contracts because USAV has no material unperformed obligations under either agreement. (Lender Objection ¶¶ 44–60; USAV Objection ¶¶ 17–26.) The Debtors concede that the remaining six (6) agreements are not executory by their own terms (Motion ¶ 29), but argue that, under Colombian law, the USAV Agreements should be construed as one transaction for purposes of rejection. (Reply ¶ 37.) The USAV Parties agree that the Court should apply Colombian law to this part of the analysis (Supplemental Lender Response ¶¶ 21–24), but argue that Colombian law does not permit multiple agreements to be treated as one integrated contract. (*Id.* ¶¶ 18–20.)

According to the Lenders, the Debtors, by rejecting the RSPA, are seeking to unwind the 2017 Transaction to get back the contract rights they sold in violation of Supreme Court’s holding in *Tempnology*. (Lender Sur-Reply ¶ 16 (citing *Tempnology*, 139 S. Ct. at 1662, 1663).) The Debtors argue that they are not seeking to unwind the 2017 Transaction. Rather, the Debtors seek to reject—*i.e.*, breach—the RSPA to be relieved of their unperformed obligations

thereunder, namely under RSPA § 2.01 to sell to USAV, for no additional consideration, the contract rights arising under new card processing agreements. (*See* Reply ¶¶ 7, 57.)

### **A. The RSPA Is Executory**

The USAV Parties argue that neither the Debtors nor USAV have material obligations remaining under the RSPA. (*See* Lender Objection ¶¶ 44–60; USAV Objection ¶¶ 18–29.) The Debtors and Committee disagree. As discussed below, the RSPA is an executory contract subject to rejection under section 365 of the Bankruptcy Code because both the Debtors and USAV have material unperformed obligations thereunder.

#### **1. The Debtors’ Ongoing Obligations Under the RSPA**

The Debtors have several material unperformed obligations under the RSPA, including the obligation to sell their rights to payment under replacement credit card processing agreements to USAV for no additional consideration. (*See* RSPA § 2.01(a)(ii).) Other material unperformed obligations of the Debtors include to (a) ensure the Collection Coverage Ratio does not drop below 1.75:1:00 (RSPA § 6.01(b)); (b) observe all obligations under the Undertaking Agreement (*id.* § 6.01(c)(i)); (c) keep all Card Processing Agreements in effect by adhering to all obligations under those agreements (*id.* § 6.01(e)–(f)); and (d) maintain the capacity or ability to operate domestic and/or international flights (*id.* § 6.01(i)(i)) (collectively, the “Trigger Event Obligations”).

The failure to perform any of the Trigger Event Obligations results in a Trigger Event under the RSPA, whereby USAV is entitled to prematurely terminate the RSPA and demand, as damages, payment in full of its loan to the Lender Group, plus surcharged interest and administrative costs—*i.e.*, the Liquidated Damages. (*See* RSPA § 6.02.) The Lender Group argues that the Trigger Event Obligations are not ongoing obligations of the Debtors, but rather

conditions—the non-occurrence of which trigger certain consequences—namely, acceleration of the loan amount in the form of the Liquidated Damages. (Lender Sur-Reply ¶ 46, 47.) The Lender Group interprets the Trigger Event Obligations as being the opposite of a breach, they represent the Debtors’ obligation to comply with contractual terms, not a failure to comply with a contractual term. (*Id.* ¶ 47 (citing *In re Peanut Corp Ins. Litig.*, 524 F.3d 458, 474 (4th Cir. 2008) (noting that “[a] condition precedent is either an act of a party that must be performed or a certain event that must happen before a contractual right accrues or contractual duty arises”) (citations and quotations omitted)).) According to the Lender Group, “all” Trigger Events are merely conditions and that failing to perform is “simply not a breach.” (Lender Objection ¶ 57 (citing *In re Hawker Beechcraft, Inc.*, 486 B.R. 264, 276 (Bankr. S.D.N.Y. 2013) (stating that the “[n]on-occurrence of a condition is not a breach by a party unless he is under a duty that the condition occur.”) (citations and quotations omitted)).

Regardless of how the Trigger Events are characterized, the RSPA clearly gives USAV the right to “prematurely terminate” the RSPA upon the occurrence of a Trigger Event—whether USAV decides to exercise that right is up to it. (*See* RSPA § 6.02.) While the RSPA does not require Avianca to “use best efforts” to ensure that a Trigger Event does not occur, USAV, at the direction of the Lender Group, has the right to unilaterally terminate the RSPA if a Trigger Event occurs. (*Id.* (providing that, “[u]pon the occurrence of a Trigger Event, the Purchaser may or the Administrative Agent (at the direction of the Required Lenders pursuant to the Purchaser Credit Agreement) shall prematurely terminate (*resolver*) this Agreement . . .”).)

When parties to a contract define a breach of one party’s obligations as a terminable breach, such obligations are material obligations. *See In re Gen. DataComm Indus., Inc.*, 407 F.3d at 625 (holding that a contract was executory because it specified that the failure to perform

certain duties entitled the counterparty to terminate the contract, and “by contractual definition, therefore, such obligations were material”). *See also In re Hawker Beechcraft, Inc.*, 486 B.R. at 278 (stating that where the parties “contractually agree that some or all of the terms are sufficiently important to discharge any further obligations imposed on the party aggrieved by a breach, their intent will govern”); *Gencor Indus., Inc. v. CMI Terex Corp. (In re Gencor Indus., Inc.)*, 298 B.R. 902, 911 (Bankr. M.D. Fla. 2003) (holding that an “affirmative duty to [e]nsure that the condition occurs” will be a material obligation); *In re Level Propane Gases, Inc.*, 297 B.R. 503, 508–09 (Bankr. N.D. Ohio 2003) (holding that the requirement to execute releases was material, and not conditional, where it was “specifically what the Debtors bargained for,” without the satisfaction of which, “there would be no sound reason” for the parties to have entered the agreement). Accordingly, the Court concludes that the Debtors have material unperformed obligations under the RSPA.

## 2. USAV’s Ongoing Obligations Under the RSPA

USAV also has material ongoing obligations under the RSPA, most significantly to distribute funds and make payments to the Debtors of the Additional Purchase Price. (Motion ¶ 27 (citing RSPA § 3.01(a)(ii)).) However, the USAV Parties argue this obligation is no longer ongoing because the prepetition Flight Impairment Trigger Event automatically “cut off” the Debtors’ right to an Additional Purchase Price. (Lender Objection ¶¶ 14–15, 48 (citing RSPA § 3.01(a)(ii)).) The Debtors counter that the occurrence of a Trigger Event does not permanently relieve USAV from payment of the Additional Purchase Price. (Reply ¶ 28 (citing RSPA § 3.01(a)(ii) providing “that no Additional Purchase Price shall be paid during the continuance of a . . . Trigger Event”).) Thus, the declaration of a Trigger Event only temporarily relieves USAV’s obligation to pay the Advance Purchase Price. (Reply ¶ 28.) The Debtors also point to section



2.02 of the Cash Management Agreement, which calls for the resumption of payment of the Additional Purchase Price once the Collateral Agent revokes any Trigger Event Notice. (*Id.* (citing Cash Management Agreement § 2.02).)

USAV's conduct confirms its obligation is only temporarily "cut off" upon the occurrence of a Trigger Event: Citibank continued to send Additional Purchase Price payments to the Debtors in April 2020 after sending the March Notice declaring a Trigger Event. (*See* Second Neuhauser Decl. ¶ 5.) The Lender Group does not dispute that the Additional Purchase Price payments are a contingent obligation of USAV. (*See* Lender Sur-Reply ¶ 33.) Rather, the Lenders argue that, because the Flight Impairment Trigger Event remains ongoing and neither USAV nor the Agents has revoked the Trigger Event, USAV has no unperformed obligation to make Additional Purchase Price payments. (*Id.* ¶ 35.)

The fact that an obligation is contingent is irrelevant for the purposes of determining whether the underlying contract is executory. (*See* UCC Reply ¶ 13 (citing *In re RoomStore, Inc.*, 473 B.R. 107, 112–13 (Bankr. E.D. Va. 2012) ("In contrast, debtor's position, which finds ample support in the case law, is that a contingent obligation, even though not yet triggered on a debtor's petition date, is nevertheless executory until expiration of the contingency because until the time has expired during which an event triggering a contingent duty may occur, the contingent obligation represents a continuing duty to stand ready to perform if the contingency occurs.") (citations and internal quotations omitted) (collecting authorities). The fact that USAV's obligation to pay the Additional Purchase Price was contingent on the Petition Date (*i.e.*, such payments would become due following the cessation of the Trigger Event in the future) does not change the legal reality that the obligation is material and unperformed for the purposes of determining the executory nature of the RSPA. (*See* RSPA §§ 3.01(a), 6.01(i)(i).)



Accordingly, the Court finds that USAV has material ongoing and unperformed obligations under the RSPA, namely the contingent obligation to make Additional Purchase Price payments. Therefore, the Court concludes that the RSPA is an executory contract that the Debtors may reject pursuant to section 365 of the Bankruptcy Code.

### **B. The Undertaking Agreement Is Executory**

The parties do not seriously dispute that the Debtors have material unperformed obligations under the Undertaking Agreement. However, the extent of USAV's unperformed obligations is contested by the USAV Parties. For the reasons set forth below, the Court finds that the Undertaking Agreement is executory because both the Debtors and USAV have material unperformed obligations thereunder.

#### **1. Debtors' Ongoing Obligations Under the Undertaking Agreement**

The Debtors have several ongoing obligations under the Undertaking Agreement. These include carrying out duties and responsibilities as servicer of the Contract Rights and Receivables. As Servicer, the Debtors agreed to undertake certain administrative duties that include (i) responding to inquiries of the Card Processors, correcting errors, and settling claims and disputes relating to receivables (Undertaking Agreement § 3.02(b)); (ii) managing, servicing, and administering the Contract Rights and the Collections (*id.* § 3.02(e)); (iii) using its best efforts to collect all payments called for under the terms and provisions of the Card Processing Agreements (*id.* § 3.02(h)); and (iv) providing monthly statements regarding Collections to USAV and Citibank (*id.* § 3.02(k)). (Motion ¶ 24). The Undertaking Agreement also requires the Debtors to ensure that each of the Card Processing Agreements remains the legal, valid, and binding obligation of each of the parties thereto, to perform and observe all of its material covenants and obligations contained in each of them, and to “renew each Card Processing

Agreement in accordance with the terms thereof and not consent to any termination by any Card Processor to any termination thereof.” (Motion ¶ 25 (citing Undertaking Agreement § 2.01(v)).)

The USAV Parties do not contest that the Undertaking Agreement imposes ongoing obligations on the Debtors. (*See, e.g.*, USAV Objection ¶ 15 (stating that Avianca has ongoing obligations to USAV under the Undertaking Agreement “concerning late and delinquent receivables, including to collect USAV-owned receivables so that they can be delivered to USAV”).) While the Lender Group appears to argue that the March Notice terminated the Debtors’ obligations under the Undertaking Agreement, they immediately concede in a footnote that it failed to comply with the technical requirements to name a new servicer as would have been required under the Undertaking Agreement. (*See* Lender Objection ¶ 56; Undertaking Agreement § 3.12.)

Accordingly, the Court concludes that the Debtors have material unperformed obligations under the Undertaking Agreement.

## 2. USAV’s Ongoing Obligations Under the Undertaking Agreement

Pursuant to section 3.05 of the Undertaking Agreement, USAV is required, upon the Debtors’ request, to furnish to the Debtors any documents necessary to enable the Debtors to carry out their duties under the Undertaking Agreement, including furnishing any powers of attorney and other documents. (Lender Objection ¶ 49 (citing Undertaking Agreement § 3.05).) The Lenders argue that such obligation is *de minimis* and contingent, thus, not a material obligation for purposes of determining whether the Undertaking Agreement is executory. (*Id.*)

The Court rejects the Lenders’ argument and finds that the obligation to furnish to the Debtors any documents, including powers of attorney, necessary to enable the Debtors to carry out their duties under the Undertaking Agreement is a material unperformed obligation. *Burley*

*v. Am. Gas & Oil Investors (In re Heafitz)*, 85 B.R. 274 (Bankr. S.D.N.Y. 1988) is instructive in this regard. There, the court found that an oil and gas limited partnership agreement was executory because, *inter alia*, the general partner had an ongoing “obligation to make distributions, to furnish additional financial statements, to prepare quarterly progress reports and to maintain the books and records of the partnership.” *Id.* at 282–84. Similarly, in *In re Teligent, Inc.*, 268 B.R. 723 (Bankr. S.D.N.Y. 2001), Judge Bernstein, while ruling that a merger agreement was executory on narrower facts than those raised by the parties, flagged, *inter alia*, the following as an unperformed obligation under the merger agreement: “the parties must execute any and all further documents and instruments necessary and/or appropriate to carry out the terms and provisions of the Merger Agreement.” *Id.* at 729 n.7; *see also RDP Holdings v. Tech Pharmacy Servs. (In re Provider Meds, L.L.C.)*, 907 F.3d 845, 855 (5th Cir. 2018) (finding that a licensing agreement was executory where, *inter alia*, the agreement “straightforwardly obligated the debtors to take certain ongoing actions, such as filing quarterly reports and not discussing the settled lawsuit”). These cases support the conclusion that USAV’s ongoing obligation to furnish all necessary account records to the Debtors is a material obligation, especially where—as here—Debtors require those documents to perform their obligations under the Undertaking Agreement.

Accordingly, the Court finds that USAV has material unperformed obligations under the Undertaking Agreement. Therefore, the Court concludes that the Undertaking Agreement is an executory contract that the Debtors may reject pursuant to section 365 of the Bankruptcy Code.

**C. Under Colombian Law, The USAV Agreements Cannot be Construed as One Agreement for Purposes of Rejection**

Having concluded that the RSPA and Undertaking Agreement are executory contracts that may be rejected, the Court will now address the Debtors’ request to reject the remaining

USAV Agreements. As previously stated, the Debtors concede that the following six (6) agreements are not executory by their own terms: (1) Cash Management Agreement, (2) Expense Agreement, (3) Assignment Agreement, (4) Credomatic Notice, (5) Credomatic Consent and Agreement, and (6) AMEX Notice and Consent. (Motion ¶ 29.) The Debtors state that these agreements exist solely to effectuate the RSPA and ask the Court to deem these agreements to be inseparable from the RSPA and Undertaking Agreement for purposes of rejection. (Motion ¶ 29; Reply ¶ 36.) The USAV Parties argue that the USAV Agreements are not a single contract for purposes of rejection. (Lender Objection ¶ 34–43; USAV Objection ¶ 27–29.)

The parties agree that Courts look to applicable non-bankruptcy law on this issue and agree that Colombian law—governing law of the RSPA and Undertaking Agreement—should apply to the Court’s analysis regarding the relatedness of the USAV Agreements. (See Supplemental Lender Response ¶ 16; Reply ¶ 36.) The Debtors and the Lender Group submitted Colombian law declarations addressing, *inter alia*, the extent to which several related agreements can be treated as a single contract under Colombian law. (See Arrubla Decl., ECF Doc. # 684-1; Second Melo Decl., ECF Doc. # 720.) The Court has reviewed the Colombian law declarations and both declarants were available at the August 26, 2020 hearing to answer questions of the Court. For the reasons discussed below, the Court concludes that, under Colombian law, the USAV Agreements should not be treated as a single contract for purposes of rejection under section 365 of the Bankruptcy Code.

The Debtors argue that, under Colombian law, the USAV Agreements should be evaluated together for purposes of rejection under section 365. (Reply ¶ 37.) In support of their position, the Debtors submit the Arrubla Declaration, which states that, under Colombian law, agreements that are “related between themselves in regard to their overall economic purpose, so

that each of them has repercussion on the others, and may be based on a single cause or shared economic objective . . . must not be understood in an isolated manner, but instead, they should be interpreted according to the ‘supra-contractual’ economic function of the entire operation as a whole.” (Arrubla Decl. ¶ 14 (citing Supreme Court of Justice, Civil Division, Judgment of December 19, 2018).) Further, “[i]n order to establish a link, the emphasis of the interpretation should not be on the contract, but rather the overall deal as an economic reality and this can be present even when in different contracts the parties only coincide partially or when they are regulated by different rules, whenever they seek the same overall economic goal.” (*Id.* (citing Supreme Court of Justice, Civil Division, Judgement of November 15, 2017).)

The Lender Group submits that, under Colombian law, the USAV Agreements cannot be evaluated together. (*See* Lender Group Supplement Response ¶ 19.) In support, the Lender Group submits the second declaration of Jorge Suescun Melo, which states that, under Colombian law, the doctrine of “colligated contracts” (*contratos coligados*) does not permit multiple agreements to be treated as one integrated contract. (Lender Sur-Reply ¶ 19 (citing Second Melo Decl. ¶¶ 9–19).) Further, “the purpose of the *contratos coligados* doctrine is not to treat separate contracts as a single contract, but simply as an aid to courts when considering how to interpret one contract within a suite of linked contracts, or as a framework for understanding links among a series of contracts towards a common business objective.” (Second Melo Decl. ¶ 19.) The Second Melo Declaration also provides that:

The *contratos coligados* doctrine has nothing to do with whether, and to my knowledge has never been used (and in my view cannot be used) in a manner that would result in, the colligated contracts being treated as a single contract. I am aware of no Colombian case law or arbitral awards applying Colombian law holding that *contratos coligados* are “inseparable” or inextricably linked such that they would be treated by a Colombian court or arbitral panel as a single contract. In fact, the case law says that the opposite is true: if parties wished for a suite of contracts to be treated as one contract,

they must combine all terms and conditions of the proposed transaction into a single writing and separate writings will never be considered a single contract for purposes of Colombian law.

(*Id.* ¶ 11 (citing Colombian Supreme Court of Justice, Decision, November 15, 2017).)

Having considered the Parties respective Colombian law declarations, the Court concludes that, under Colombian law, the USAV Agreements cannot be treated as a single contract for purposes of rejection.<sup>8</sup> The Court finds that the Arrubla Declaration merely sets forth a general cannon of contract interpretation with respect to related agreements but does not discuss or cite to any Colombian case law or arbitral awards holding that related agreements should be treated as a single contract. (*See* Arrubla Decl. ¶¶ 14, 15.) In contrast, the Second Melo Declaration specifically states that “the case law says that . . . separate writings will never be considered a single contract for purposes of Colombian law.” (Second Melo Decl. ¶ 11 (citing Colombian Supreme Court of Justice, Decision, November 15, 2017).) The Second Melo Declaration further provides that “I am aware of no Colombian case law or arbitral awards applying Colombian law holding that *contratos coligados* are ‘inseparable’ or inextricably linked such that they would be treated by a Colombian court or arbitral panel as a single contract.” (*Id.* ¶ 11.)

Therefore, the Court rejects the Debtors’ argument that the USAV Agreements should be considered a single contract for purposes of rejection and concludes that the following agreements are not executory contracts that the Debtors may reject pursuant to section 365 of the Bankruptcy Code: (1) Cash Management Agreement, (2) Expense Agreement, (3) Assignment Agreement, (4) Credomatic Notice, (5) Credomatic Consent and Agreement, and (6) AMEX

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<sup>8</sup> Federal Rule of Civil Procedure 44.1 provides, in relevant part, as follows: “In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court’s determination must be treated as a ruling on a question of law.” FED. R. CIV. P. 44.1.



Notice and Consent. But as the Debtors' counsel acknowledged during argument, while the Debtors may not reject these contracts, the counterparties can assert damages claims under applicable non-bankruptcy law for any breach.

#### **D. Rejection of the RSPA Does Not Rescind or Unwind the 2017 Transaction**

Having concluded that the RSPA and Undertaking Agreements are executory contracts subject to rejection under Bankruptcy Code section 365, the Court must still address the USAV Parties' argument that rejection of the RSPA would violate the Supreme Court's holding in *Tempnology* that rejection does not permit a debtor to "get back" rights that they sold or "unwind" or "rescind" a transaction. (Lender Sur-Reply ¶ 16 (citing *Tempnology*, 139 S. Ct. at 1662–63); *see also* Lender Group Objection ¶¶ 26, 33 (stating that rejection "would not allow the Debtors to take back from USAV Proceeds of the Contract Rights they sold in 2017 because of the contract mechanics.")) The USAV Parties argue that even if the RSPA may be rejected, they are entitled to receive all of the proceeds from *future* (post-rejection) credit card receivables without paying any additional consideration because future receivables were among the Contract Rights sold in 2017. The Debtors and Committee disagree with the assertions made by the Lenders and USAV. Debtors submit that they seek to breach the RSPA so that they are no longer obligated to perform under the RSPA, namely, under RSPA § 2.01(a)(ii), to sell to USAV, for no additional consideration, the contract rights arising under new card processing agreements that the Debtors may seek to enter. (*See* Reply ¶¶ 7, 57.) Indeed, whether the USAV Parties are entitled to receive all of the proceeds from future (post-rejection) credit card receivables without paying any additional consideration is the crux of the dispute.



1. Tempnology Holds that Rejection Does Not Terminate a Contract

In *Tempnology*, the Bankruptcy Court granted the debtors' motion to reject a non-exclusive executory license agreement it entered into with Mission Products for, *inter alia*, the use of certain trademarks of the debtors both in the United States and around the world. *See Tempnology*, 139 S. Ct. at 1658. The consequence of debtors' breach meant two things on which the parties agreed. First, the debtors could stop performing under the contract. *Id.* at 1659. Second, Mission could assert (for whatever it might be worth) a pre-petition claim in the bankruptcy proceeding for damages resulting from the debtors' nonperformance. *Id.* However, the debtors thought that a further consequence of rejection was termination of the rights it had granted Mission to use the trademarks. *Id.* The debtors returned to the Bankruptcy Court and moved for a determination of what rights Mission retained following rejection of the license agreement. *Id.*

In an 8-1 decision, Justice Kagan, writing for the Court, held that rejection of an executory contract gives rise to a claim for breach of contract against the debtor, but it does not operate as a termination or recession of the rejected contract. *Id.* at 1657–58. The Court deemed this distinction a “rejection-as-breach” approach, as opposed to the “rejection-as-rescission” approach advocated by the debtor and adopted by the First Circuit. *Id.* at 1663.

Section 365 of the Bankruptcy Code provides that subject to Bankruptcy Court approval, a debtor may “reject any executory contract”—meaning a contract that neither party has finished performing.” *Id.* at 1657 (quoting 11 U.S.C. § 365(a)). The Supreme Court explained that rejection is a breach, and the consequences of breach are determined by “non-bankruptcy contract law.” *Id.* at 1662. The majority held, and the concurrence emphasized, that in specific cases, specialized terms in a contract may limit what rights the non-breaching counterparty may

have. *See id.* at 1666 (“[T]he baseline inquiry remains whether the licensee’s rights would survive a breach under applicable nonbankruptcy law. Special terms in a licensing contract or state law could bear on that question in individual cases.”) (Sotomayor, J., concurring). Thus, “a debtor’s rejection of an executory contract in bankruptcy has the same effect as a breach outside of bankruptcy. *Id.* That is, it “does not eliminate rights to the contract . . . already conferred on the non-breaching party.” *Id.* at 1659. Rather, “[i]t gives the counterparty a claim for damages, while leaving intact the rights the counterparty has received under the contract.” *Id.* at 1661. “When [rejection] occurs, the debtor and counterparty do not go back to their pre-contract positions. Instead, the counterparty retains the rights it has received under the agreement. As after a breach, so too after rejection, those rights survive.” *Id.* at 1662.

2. The Debtors Sold Contract Rights to Specified Sales Processed by AMEX and Credomatic

Here, the determination of any rejection damages claim is not currently an issue before the Court. But the parties have forcefully contested what rights USAV, as Purchaser, received under the RSPA that necessarily survive the Debtors’ rejection of the RSPA.

Pursuant to the RSPA, Avianca agreed to (i) sell and transfer to the Purchaser, and to be replaced by the Purchaser in the contractual positions under the Card Processing Agreements with respect to, all rights of the Seller in, to and under the Contract Rights; and (ii) sell and transfer to the Purchaser the Receivables.<sup>9</sup> (Reneger Decl. at 10.) The RSPA defines Contract Rights to mean “the contract rights of the Seller under the Card Processing Agreements to (i) receive any kind of payments, indemnities or economic compensations derived therefrom on

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<sup>9</sup> The RSPA defines Receivables to mean “any and all Collections accrued under the Card Processing Agreements that are due on account of Specified Sales from (a) AMEX or Credomatic to the Seller immediately prior to giving effect to this Agreement on the Effective Date (and due to the Purchaser immediately upon giving effect to this Agreement on the Effective Date).” (ECF Doc. # 306-2 at 20–21.)

account of Specified Sales, including the right, among other things, to receive all future Collections derived therefrom; and (ii) enforce the rights referred to in (i) against the respective Card Processors thereunder.” (*Id.* at 13.) The RSPA provides a general definition of the term “Specified Sales”<sup>10</sup> and refers to the AMEX Notice and Consent and the Credomatic Notice and Consent to determine what “Specified Sales” means with respect to each Card Processing Agreement. (*Id.* at 22.)

The AMEX Notice and Consent defines Specified Sales to mean “the sales, including future sales, made by travel agencies in the United States and cleared through ARC of airline tickets or related services provided by the Receivables Seller where payment in the case of any such sale is made by an American Express® Card, however branded, or any one or more of such Cards, including all such sales identified by those certain merchant codes set forth on Exhibit A hereto, with such changes, if any, as shall have been made from time to time after delivery and acceptance of a Merchant ID Supplement.” (*Id.* at 321.) Exhibit A to the AMEX Notice and Consent includes just one (1) merchant number: 7992700286 (the “AMEX Merchant Number”). (*Id.* at 322.) Accordingly, the Court finds that the Debtors sold to USAV the Debtors’ right to receive payment of any sales identified by the AMEX Merchant Number and/or any replacement or additional merchant number assigned by AMEX that identify the Specified Sales with respect

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<sup>10</sup> The RSPA defines Specified Sales to mean “the sales, including future sales, made by travel agencies in the United States and cleared through ARC of airline tickets or related services provided by the Seller where payment in the case of any such sale is made by a MasterCard® Card, Visa® Card, or American Express® Card, however branded, or any one or more of such Cards, including all such sales identified by those certain merchant codes set forth in any Notice and Consent or any notice given by a Card Processor to the Purchaser and the Collateral Agent from time to time as provided in the Notice and Consent by and among, inter alia, the Purchaser, the Seller, the Collateral Agent, and such Card Processor; provided that with respect to each Card Processing Agreement, ‘Specified Sales’ shall include only ‘Specified Sales’ as defined in the Notice and Consent relating to such Card Processing Agreement.” (*Id.* at 22.)

to AMEX. Rejection of the RSPA and Undertaking Agreement does not terminate USAV's right to receive payment of any sales processed by AMEX under the AMEX Notice and Consent.

The Credomatic Notice and Consent defines Specified Sales to mean "the sales, including future sales, made by travel agencies in the United States and cleared through ARC of airline tickets or related services provided by Avianca S.A. where payment in the case of any such sale is made by a Master Card® Card or Visa® Card, however branded, or any one or more of said Cards, including all such sales identified by those certain merchant codes set forth on Exhibit A hereto, with such changes, if any, as shall have been made from time to time after delivery and acceptance of a Merchant ID Supplement." (*Id.* at 280–281.) Exhibit A to the Credomatic Notice and Consent includes just one (1) merchant code: "Credomatic FL (VI/MC): 5610-014001084970" (the "Credomatic Merchant Code"). (*Id.* at 283.) Accordingly, the Court finds that the Debtors also sold to USAV the Debtors' right to receive payment of any sales identified by the Credomatic Merchant Code and/or any replacement or additional merchant code assigned by Credomatic that identify the Specific Sales with respect to Credomatic. Rejection of the RSPA and Undertaking Agreement does not terminate USAV's right to receive payment of any sales processed by Credomatic under the Credomatic Notice and Credomatic Consent and Agreement.

The result of rejection here is not a recession of the RSPA or Undertaking Agreement and rejection does not allow the Debtors to take back the Contract Rights to Specified Sales processed by AMEX and Credomatic that the Debtors sold in 2017. Rather, the result of rejection is to relieve the Debtors of their future performance obligations to USAV, including the unperformed obligation under section 2.01(a)(ii) of the RSPA to sell to USAV the contract rights arising under new credit card processing agreements that the Debtors may seek to enter with new

credit card processors. The only link between the profits generated by operating flights and selling airline tickets and the payment rights purportedly acquired by USAV is the fact that the Debtors have not yet terminated their prepetition credit card agreements with AMEX and Credomatic. (Committee Reply ¶ 22.) Accordingly, the Court rejects the USAV parties' argument that rejection of the RSPA and Undertaking Agreement is a rescission of those agreements in violation of the Supreme Court's holding in *Tempnology*.

### **E. Rejection Damages**

The Debtors' rejection of the RSPA and Undertaking Agreement gives the USAV Parties a claim for damages. *See* 11 U.S.C. § 365(g)(1); *see also Tempnology*, 139 S. Ct. at 1661. The USAV Parties argue that any rejection damages claim in the amount of the Liquidated Damages under the RSPA would be wholly secured pursuant to the terms of the RSPA and its attendant security agreements. The Debtors and Committee submit that USAV's claim for rejection damages would be an unsecured prepetition claim in the amount of the Liquidated Damages under the RSPA. The issue of rejection damages must be resolved through the claims resolution process and is not relevant to the question before the Court of whether the Debtors should be permitted to reject the USAV Agreements. Without resolving the rejection damages issues, the Court will summarize the Parties' competing positions in the footnote below.<sup>11</sup> The parties

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<sup>11</sup> The Lenders argue that providing USAV with an impaired claim under a plan of reorganization would not provide "payment in full" of the Liquidated Damages amount. (Lender Sur-Reply ¶¶ 6, 20.) The Lenders submit that all obligations of the Debtors under the RSPA and the Undertaking Agreement, including the obligation to "transfer Collection to [USAV] should they be received by [the Debtors] after the date of execution of the RSPA," are "Secured Obligations" under (i) a Pledge over Contract Rights and Future Revenues (the "Colombian Purchaser Security Agreement") between Aerovias, as grantor, and USAV as secured party; and (ii) a Costa Rican Back-Up Security Agreement (the "Costa Rican Purchaser Security Agreement") between Aerovias, as grantor, and USAV as secured party. (Supplemental Lender Response ¶ 10 (citing RSPA §§ 6.02 and 6.03).) Thus, the Lenders argue that USAV would be entitled to priority rights against the Contract Rights and Proceeds under the Colombian and Costa Rican Purchaser Security Agreements. (*Id.* ¶ 12.)

The Lender Group further argues that USAV granted security interests in all of its assets to the Lender Group to secure the obligations under the Loan Agreement, including the Contract Rights, and all of USAV's bank accounts into which the Proceeds are deposited, pursuant to (i) a New York Security Agreement governed by New York law; (ii) an Account Control Agreement governed by New York law; (iii) a Security Agreement governed by



should endeavor to resolve these disputes through plan negotiations and, if necessary, through mediation.

**F. Rejecting the RSPA and Undertaking Agreement is a Sound Exercise of the Debtors' Business Judgement**

In most cases, a court “will not second-guess a debtor’s business judgment concerning whether the assumption or rejection of an executory contract or unexpired lease would benefit the debtor’s estate.” *MF Glob. Holdings*, 466 B.R. at 242; *see also In re Balco Equities Ltd., Inc.*, 323 B.R. at 98 (“A court ‘should defer to a debtor’s decision that rejection of a contract would be advantageous.’”) (quoting *In re Sundial Asphalt Co.*, 147 B.R. at 84). “The ‘business judgment’ test merely requires a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the Debtor’s estate.” *MF Glob. Holdings*, 466 B.R. at 242.

Here, the Debtors state that rejection of the RSPA and Undertaking Agreement is crucial for their estates because when the Debtors begin flying again, the cash flow generated by the

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English law; and (iv) a Security Trust Deed governed by English law. (*Id.* ¶ 13.) Thus, the Lender Group concludes that, in the event that the Court grants the rejection Motion, the Lender Group would have a first-priority lien on the Contract Rights and Proceeds “back-to-back” to the valid and enforceable security interests held by USAV under the Colombian and Costa Rican Purchaser Security Agreements. (*Id.*)

The Debtors contend that the result of breach as a result of rejection will be USAV’s claim for rejection damages against the Debtors—specifically, an unsecured pre-petition claim in the amount of the Liquidated Damages provision contained within the RSPA. (Reply ¶ 42.) This Liquidated Damages amount is equal to the unpaid principal remaining on USAV’s loan, plus surcharged interest on that principal until paid in full, and other miscellaneous costs related to the unwinding of the transaction. (*Id.*) That breach of the RSPA, the Debtors submit, would lead to this result is apparent from the RSPA itself—for under Colombian law, as under U.S. law, the remedy for breach of contract is determined in the first instance by reference to the contract itself. (*See Arrubla Decl.* ¶ 18.) The Debtors submit that, at most, they granted a contingent security interest in the Contract Rights and Receivables to USAV in the Colombian and Costa Rican Purchaser Security Agreements. (Debtors’ Supplemental Response ¶ 15.) The Debtors argue, however, that the contingent security interests granted in both of these security agreements were not in effect as of the Petition Date, and to date have not yet sprung into effect. (*Id.*) Although the RSPA permitted USAV to file, and USAV did file, a UCC-1 filing statement, the UCC-1 statement did not perfect a security interest in the Contract Rights but rather perfected the sale thereof. (*Id.* ¶ 18.) The Debtors submit that, even if the Court were to determine that USAV would have a secured rejection damages claim, section 552 of the Bankruptcy Code would cut off any such security interest with respect to post-petition receivables. (*Id.* ¶ 19.) According to the Debtors, because post-petition receivables are generated by the Debtors’ post-petition operations and labor, those receivables would no longer be subject to any security interest that the USAV Parties claim to hold. (*Id.*)

credit card receivables collected under the Card Processing Agreements and the proceeds thereof will be a vital component of the Debtors' liquidity. (Reply ¶ 8.) And Debtors believe that rejection is in their best interests whether the rejection damages claim is secured or unsecured. Absent that cash flow, the Debtors will not be able to bear the cost related to producing the services that give rise to such receivables. (*Id.*) The Court finds that being relieved of unperformed obligations under the RSPA and Undertaking Agreement will benefit the Debtors' estates by restoring critical cash flow to the Debtors. Accordingly, the Court concludes that the decision to reject the RSPA and Undertaking Agreement is a sound exercise of the Debtors' business judgment.

**G. Rejection of the RSPA and Undertaking Agreement Is Effective *Nunc Pro Tunc* to June 23, 2020**

The Debtors argue that rejection should be effective as of June 23, 2020, the date that the rejection motion was filed. The USAV Parties appear to dispute that argument. The Court agrees that rejection should be *nunc pro tunc* to the date the Motion was filed. *See BP Energy Co. v. Bethlehem Steel Corp.*, No. 02 CIV. 6419 (NRB), 2002 WL 31548723, at \*3–4 (S.D.N.Y. Nov. 15, 2002) (stating that, in a case involving gas purchase contracts, “nothing in the language of § 365(a) indicates that a bankruptcy court should be prohibited from assigning a retroactive rejection date” and holding “that a bankruptcy court is not precluded as a matter of law from authorizing a rejection date which precedes the filing of objection when the equities demand such remediation”); *see also In re Jamesway Corp.*, 179 B.R. 33, 38 (S.D.N.Y.1995) (“[A] court can, where appropriate, approve rejection retroactively.”); *In re CCI Wireless LLC*, 279 B.R. 590, 595 (Bankr. D. Colo. 2002) (“[T]his Court may—and in this instance should—approve the



rejection of a non-residential lease retroactive to the filing date of the motion to reject the lease.”)<sup>12</sup>

## V. CONCLUSION

For the reasons discussed above, the Debtors’ Motion is **GRANTED IN PART** and **DENIED IN PART**: The Court concludes that the RSPA and Undertaking Agreement are executory contracts that the Debtors may reject pursuant to section 365 of the Bankruptcy Code. The remaining USAV Agreements are not executory contracts that can be rejected by the Debtors.

**IT IS SO ORDERED.**

Dated: September 4, 2020  
New York, New York

*Martin Glenn*

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MARTIN GLENN  
United States Bankruptcy Judge

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<sup>12</sup> While the Court acknowledges that courts in this Circuit have approved retroactive rejection dates most commonly in the context of unexpired leases of nonresidential real property under section 365(d)(3), the Court rejects the Lenders’ argument that such precedent is inapposite to the present Motion. *See BP Energy Co. v. Bethlehem Steel Corp.*, 2002 WL 31548723, at \*3 n.7 (stating that while the majority of cases “deal with the rejection of an unexpired lease rather than the rejection of an executory utility contract, we find these cases analogous for the purposes of determining whether a bankruptcy court is authorized to assign a retroactive rejection date”)

**EXHIBIT 41**

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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In re:

AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup>

Debtors.

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)  
) Chapter 11  
)  
) Case No. 20-11133 (MG)  
)  
) (Jointly Administered)  
)

**NOTICE OF APPEAL**

**PLEASE TAKE NOTICE** that the group of secured lenders (the “USAV Secured Lender Group”)<sup>2</sup> under that certain Loan Agreement, dated as of December 12, 2017 (as amended, amended and restated, supplemented, or otherwise modified from time to time, the “Loan Agreement”), by and among USAVflow Limited, as borrower, certain Debtors, as guarantors, the financial institutions comprising the USAV Secured Lender Group, as lenders, and Citibank, N.A.,

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number (to the extent applicable) are as follows: Aero Transporte de Carga Unión, S.A. de C.V.; Aeroinversiones de Honduras, S.A.; Aerovias del Continente Americano S.A. Avianca; Airlease Holdings One Ltd.; Avianca Costa Rica S.A.; Avianca Holdings S.A.; Avianca, Inc. (13-1868575); Avianca Leasing, LLC (46-2586415); Avianca Perú S.A.; Avianca-Ecuador S.A.; Aviateca, S.A.; Avifreight Holding Mexico, S.A.P.I. de C.V.; Grupo Taca Holdings Limited; International Trade Marks Agency Inc.; Inversiones del Caribe, S.A.; Isleña de Inversiones, S.A. de C.V.; Latin Airways Corp.; Latin Logistics, LLC (00-0107425); Regional Express Américas S.A.S.; Ronair N.V.; Taca de Honduras, S.A. de C.V.; Taca International Airlines S.A.; Taca S.A.; Tampa Cargo S.A.S.; AV International Holdco S.A.; AV International Holdings S.A.; AV International Investments S.A.; AV International Ventures S.A.; AV Investments One Colombia S.A.S.; AV Investments Two Colombia S.A.S.; AV Taca International Holdco S.A.; Servicios Aeroportuarios Integrados SAI S.A.S. The address of the Debtors’ principal offices is Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

<sup>2</sup> The USAV Secured Lender Group is composed of the following members: Deutsche Bank AG, London Branch; Bank United N.A.; Banco de Credito del Peru, Miami Agency; First Citizens Bank Limited; Metrobank S.A.; Prival Bank S.A.; Moneda Latinoamerica Deuda Local Fondo de Inversion; and Moneda Deuda Latinoamericana Fondo de Inversion.



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as administrative agent and collateral agent, hereby appeals to the United States District Court for the Southern District of New York, pursuant to 28 U.S.C. § 158(a) and Federal Rules of Bankruptcy Procedure 8001-8006, each and every portion of the *Memorandum Opinion Granting in Part and Denying in Part Debtors' Motion to Reject the USAV Agreements* entered by the Court in these chapter 11 proceedings on September 4, 2020 [ECF 850] (the "Order")<sup>3</sup> insofar as the Order granted in part the *Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts* [ECF 306] (the "Motion"). A copy of the Order appealed from is attached hereto as **Exhibit A**.

The USAV Secured Lender Group does not appeal the Order insofar as it denied in part the Motion and (or including) its findings and determinations that:

- (i) under Colombian law, the USAV Agreements cannot be treated as a single contract for purposes of rejection under Section 365 of the Bankruptcy Code;
- (ii) the Cash Management Agreement, the Expense Agreement, the Assignment Agreement, the Credomatic Notice, the Credomatic Consent and Agreement, and the AMEX Notice and Consent are not executory contracts that the Debtors may reject pursuant to Section 365 of the Bankruptcy Code;
- (iii) "the Debtors sold to USAV the Debtors' right to receive payment of any sales identified by the AMEX Merchant Number and/or any replacement or additional merchant number assigned by AMEX that identify the Specified Sales with respect to AMEX," Order at 35-36;
- (iv) "[r]ejection of the RSPA and Undertaking Agreement does not terminate USAV's right to receive payment of any sales processed by AMEX under the AMEX Notice and Consent," *id.* at 36;
- (v) "the Debtors also sold to USAV the Debtors' right to receive payment of any sales identified by the Credomatic Merchant Code and/or any replacement or additional merchant code assigned by Credomatic that identify the Specified Sales with respect to Credomatic," *id.*;

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<sup>3</sup> Capitalized terms not defined herein have the meanings provided in the Order.

- (vi) “[r]ejection of the RSPA and Undertaking Agreement does not terminate USAV’s right to receive payment of any sales processed by Credomatic under the Credomatic Notice and Credomatic Consent and Agreement,” *id.*;
- (vii) rejection does not rescind or unwind the RSPA or the Undertaking Agreement; and
- (viii) “rejection does not allow the Debtors to take back the Contract Rights to Specified Sales processed by AMEX and Credomatic that the Debtors sold in 2017,” *id.*

The names of all the parties to the Order appealed from and the names, addresses, and telephone numbers of their respective counsel are as follows:

**APPELLANT:**

**USAV Secured Lender Group, *Creditor***

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*[Remainder of page intentionally left blank]*

September 18, 2020  
New York, New York

Respectfully submitted,

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**EXHIBIT 42**



*Memorandum Opinion Granting in Part and Denying in Part Debtors' Motion to Reject the USAV Agreements* [Docket No. 850] entered by the Court in these chapter 11 proceedings on September 4, 2020 (the "Opinion")<sup>2</sup> insofar as the Opinion granted in part the *Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Executory Contracts* [Docket No. 306] (the "Motion"). A copy of the Opinion being appealed is attached hereto as **Exhibit A**.

USAV does not appeal the Opinion insofar as it denied in part the Motion and (or including) its findings and determinations that:

- (i) under Colombian law, the USAV Agreements cannot be treated as a single contract for purposes of rejection under Section 365 of the Bankruptcy Code;
- (ii) the Cash Management Agreement, the Expense Agreement, the Assignment Agreement, the Credomatic Notice, the Credomatic Consent and Agreement, and the AMEX Notice and Consent are not executory contracts that the Debtors may reject pursuant to Section 365 of the Bankruptcy Code;
- (iii) "the Debtors sold to USAV the Debtors' right to receive payment of any sales identified by the AMEX Merchant Number and/or any replacement or additional merchant number assigned by AMEX that identify the Specified Sales with respect to AMEX," Opinion at 35-36;
- (iv) "[r]ejection of the RSPA and Undertaking Agreement does not terminate USAV's right to receive payment of any sales processed by AMEX under the AMEX Notice and Consent," *id.* at 36;
- (v) "the Debtors also sold to USAV the Debtors' right to receive payment of any sales identified by the Credomatic Merchant Code and/or any replacement or additional merchant code assigned by Credomatic that identify the Specified Sales with respect to Credomatic," *id.*;
- (vi) "[r]ejection of the RSPA and Undertaking Agreement does not terminate USAV's right to receive payment of any sales processed by Credomatic under the Credomatic Notice and Credomatic Consent and Agreement," *id.*;
- (vii) rejection does not rescind or unwind the RSPA or the Undertaking Agreement; and
- (viii) "rejection does not allow the Debtors to take back the Contract Rights to Specified Sales processed by AMEX and Credomatic that the Debtors sold in 2017," *id.*

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<sup>2</sup> Capitalized terms not defined herein have the meanings provided in the Order.

The names all parties to the Opinion appealed from and the names, addresses, and telephone numbers of their respective counsel are as follows:

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**EXHIBIT VII**



**CORPORATE DISCLOSURE STATEMENT**

Appellant USAV Secured Lender Group, by and through its undersigned counsel, hereby makes the following disclosures pursuant to Fed. R. Bankr. P. 8012 for each member of the USAV Secured Lender Group:

1. Deutsche Bank AG, London Branch has no parent corporation and no publicly held corporation owns, directly or indirectly, 10% or more of any class of its equity interests.

2. Bank United N.A. states that the following entities owns, directly or indirectly, 10% or more of any class of its equity interests: BankUnited, Inc.

3. Banco de Credito del Peru states that the following entities owns, directly or indirectly, 10% or more of any class of its equity interests: Grupo Credito S.A.; Credicorp Ltd.; and Atlantic Security Holding Corporation.

4. First Citizens Bank Limited states that the following entities own, directly or indirectly, 10% or more of any class of its equity interests: First Citizens Holdings Limited; and Ministry of Finance (Corporation Sole).

5. Metrobank S.A. states that the following entities own, directly or indirectly, 10% or more of any class of its equity interests: Metro Holding Enterprises, Inc.; Fundación Reflexión Cristiana; and Buzz Finance Incorporated.

6. Prival Bank S.A. states that the following entities own, directly or

indirectly, 10% or more of any class of its equity interests: Grupo Prival, S.A.; and Grupo Famar, S.A.

7. Moneda Deuda Latinoamericana Fondo de Inversion has no parent corporation and no publicly held corporation owns, directly or indirectly, 10% or more of any class of its equity interests.

8. Moneda Latinoamerica Deuda Local Fondo de Inversion has no parent corporation and no publicly held corporation owns, directly or indirectly, 10% or more of any class of its equity interests.

*[Signature on following page]*

Dated: October 14, 2020  
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