

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

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	:	Chapter 11
In re: AVIANCA HOLDINGS S.A., <u>et al.</u> ,	:	
	:	Case No. 20-11133 (MG)
Debtors.	:	
-----X	:	(Jointly Administered)
	:	
AVIANCA HOLDINGS S.A., AEROVÍAS DEL	:	
CONTINENTE AMERICANO S.A. AVIANCA,	:	
TACA, INTERNATIONAL AIRLINES, S.A.,	:	Adv. Proc. No. 20-01244 (MG)
AVIANCA COSTA RICA S.A., and TRANS	:	
AMERICAN AIRLINES, S.A.,	:	
:	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
USAVFLOW LIMITED and CITIBANK, N.A.,	:	
	:	
Defendants.	:	
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**DECLARATION OF ADRIAN NEUHAUSER IN SUPPORT OF AVIANCA'S MOTION,
PURSUANT TO 11 U.S.C. §§ 105(a), 362(a), AND 365(e), AND FED. R. BANKR. P. 7065,
FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**



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I, Adrian Neuhauser, declare under penalty of perjury pursuant to 28 U.S.C. § 1746, that the following is true and correct:

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 a Temporary Restraining Order and Preliminary Injunction (the “Motion”), which was filed concurrently herewith by the above-captioned debtors and debtors-in-possession (the “Debtors”).¹

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. A significant portion of Avianca’s sales are transacted through credit card processors. As a result, credit card receivables are a significant asset and an important source of revenue and cash flow for Avianca’s business. In 2017, Aerovías del Continente Americano S.A. Avianca (“Aerovías”) entered into a series of agreements to effect a debt financing secured by a portion of the company’s credit card receivables.

4. On or about December 12, 2017, Aerovías entered into various agreements with USAVflow Limited (“USAV”), an exempted company incorporated and registered under the laws of the Cayman Islands. Pursuant to those agreements (the “USAV Agreements”), Avianca agreed

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

to “sell” to USAV certain U.S. credit card receivables generated pursuant to credit card processing agreements with BAC International Bank, Inc. and its subsidiaries, American Express Travel Related Services Company, Inc. and American Express Payment Services Limited (the “Card Processing Agreements”) in exchange for an initial “purchase price” of \$150 million, plus additional monthly payments (the “Additional Purchase Price”).

5. 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 and interest payments under a loan agreement with certain third party lenders. Once the USAV loan is repaid, however, Aerovías is entitled to retain all (100%) of Avianca’s credit card receivables.

6. The amounts of Additional Purchase Price are significant. Before the bankruptcy cases, between 92% and 95% of Collections flowed back to Aerovías as Additional Purchase Price. In 2019, before travel restrictions caused by COVID-19 resulted in a significant drop in sales, Avianca produced, on average through 2019, \$53,771,139 in monthly credit card receivables, of which approximately \$49,000,000, on average, was passed on to Aerovías in the form of the Additional Purchase Price. The receivables generated by Avianca totaled \$48.3 million, \$48.8 million, and \$25.2 million for the first three months of 2020, respectively, and are growing again. Aerovías received \$45.9 million, \$45.2 million, and \$23.3 million in Additional Purchase Price during the first three months of 2020, respectively.

7. Under the USAV Agreements, collections from Avianca’s credit card processors are deposited in a “New York Pass-Through Account” maintained at the New York office of Citibank, N.A. (“Citibank”) and then transferred on a daily basis to a “Collections Account” maintained at Citibank’s London branch. Each month, cash standing in the Collections Account

accumulates until it reaches the amount needed to fund USAV's next monthly payment. Funds in the Collections Account may also be disbursed to a "Debt Service Reserve Account" as needed to maintain a reserve equal to four months of USAV's debt service obligations. Funds remaining in the Collections Account and any additional funds coming into the Collections Account for that period are then remitted to Aerovías as Additional Purchase Price.

8. As a result of 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. As described below, that suspension is no longer in effect.

9. 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 Letter"). The March Letter stated that Citibank was "informed by the Lenders" that an Event of Default had occurred under USAV's Loan and that a Trigger Event had occurred and was continuing under the RSPA as a result of the Debtors' inability to fly due to the closure of Colombian airspace. That letter also stated that the Lender Group and its agents "continue to evaluate their response" to the impairment of Avianca's ability to fly internationally.

10. After sending the March Letter, USAV and Citibank continued in April 2020 performing under the CMA and RSPA and remitting Additional Purchase Price as though no Event of Default or Trigger Event had occurred. Between April 1, 2020, and April 9, 2020, Aerovías received daily Additional Purchase Price payments in the aggregate amount of \$255,951.22. While a new monthly period began on April 12, Aerovías did not receive Additional Purchase Price payments during that new monthly period because the volume of Credit Card Receivables

did not reach a level sufficient to cover the interest and amortization payments due on USAV's loan. Therefore, no Additional Purchase Price was payable during that period.

11. From the date of the March Letter through the Petition Date, Citibank did not provide any further notice to Aerovías or take any further actions in response to the purported Trigger Event and Event of Default. Besides continuing to disburse Additional Purchase Price payments under the standard payment priorities in the CMA, Citibank did not modify the priority of payments under the CMA, terminate the RSPA, or make any demand for Liquidated Damages, Unwind Amount, or other amounts.

12. Avianca filed for bankruptcy protection on May 10, 2020. The next day, on May 11, 2020, Citibank attached to an email a notice that a Retention Event had occurred. The supposed Retention Event was the failure to satisfy the Collections Coverage Ratio.

13. On May 15, 2020, counsel to Avianca wrote to Citibank advising it of the existence of the automatic stay and directing that Citibank cease taking any steps to take control over estate property.

14. On May 18, 2020, 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. Citibank's response did not reference any Retention Event.

15. Additionally, from the Petition Date to present, Citibank has swept (and continues to sweep) the Collections from receivables that are in the Collections Account to the accounts of the Lender Group. This amount totals approximately \$20.8 million (from May 11, 2020 to October

8, 2020). Of the \$20.8 million, approximately \$5.9 million was generated during the four weeks of September 2020. And, approximately \$2.9 million was generated during the first eight days of October, that is, from October 1 through October 8.

16. Aerovías has not received any Additional Purchase Price with respect to these Collections. Nor did it receive notice that the remedies for a Trigger Event or Event of Default were being pursued or that funds were being swept to the accounts of the Lender Group. A table showing the total amounts credited and debited to the Collections Account each day from May 11, 2020 through October 8, 2020 appears in the Schedule appended to this Declaration.

17. Recently, travel restrictions resulting from the COVID-19 pandemic that caused material decreases in revenue from credit card receivables have been eased. On September 15, 2020, Colombia's Ministry of Transport announced the phased reopening of international airline routes beginning on September 22, 2020. Avianca began flying routes to New York and Miami from Medellín on September 28, 2020 and resumed international service from Bogotá on October 1, 2020, including flights to and from Miami and New York.

18. As such, business and travel will soon begin to return to more normal levels, and it is expected 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. The cash generated from the receivables has exceeded the amount of USAV's monthly payments since September 2020, meaning Avianca should be receiving Additional Purchase Price under the USAV Agreements.

19. To the extent that USAV and/or Citibank continue to sweep Collections from credit card receivables from the Collections Account to the accounts of the Lenders, the loss of the revenue stream from Additional Purchase Price will jeopardize the Debtors' ability to continue

operations and to work productively toward a successful reorganization. The Debtors' inability to receive the benefit of the credit card receivables Avianca generates has constrained and complicated its operations. Avianca must make critical operational decisions on a daily basis based on the cash-flow considerations, and Citibank's sweeping the Collections from the Collections Account to the accounts of the Lenders (without remitting Additional Purchase Price) renders otherwise profitable routes (principally flights to and from the United States) commercially unviable. To rebuild its route network and operate profitably, Avianca must have certainty that the affected routes will be viable. In addition, denying access to the Additional Purchase Price makes it more difficult for the company to comply with the cumulative cash-burn covenant and to maintain minimum cash under their debtor-in-possession (DIP) financing. The payment of Additional Purchase Price is essential to Avianca's successful reorganization, and the loss of those proceeds has cascading implications that put Avianca's business in jeopardy.

20. Unless the payment priorities are respected, and Citibank remits Additional Purchase Price, the Debtors will continue to incur costs and expend efforts necessary to generate credit card receivables but will not receive the benefit of the proceeds generated by those costs and efforts. At the same time, Citibank and USAV will receive cash flows in excess of the principal and interest payments due to them.

21. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 14th day of October, 2020
in New York, New York

/s/ Adrian Neuhauser
Adrian Neuhauser

SCHEDULE: DAILY CREDITS AND DEBITS IN COLLECTIONS ACCOUNT
May 11, 2020 – October 8, 2020

Posted Date	Amount Credited	Amount Debited
05-11-2020	\$323,096.22	\$0.00
05-12-2020	\$1,007,918.32	(\$3,558,912.89)
05-13-2020	\$0.00	(\$168,015.51)
05-14-2020	\$27,398.44	\$0.00
05-15-2020	\$0.00	(\$27,398.44)
05-18-2020	\$248,926.75	(\$135,148.50)
05-19-2020	\$208,512.63	\$0.00
05-21-2020	\$64,391.63	\$0.00
05-22-2020	\$73,684.44	(\$386,682.51)
05-26-2020	\$151,234.57	(\$73,684.44)
05-27-2020	\$115,960.19	(\$151,234.57)
05-28-2020	\$54,933.97	(\$170,894.16)
06-01-2020	\$25,065.17	\$0.00
06-02-2020	\$182,942.38	(\$27,460.22)
06-03-2020	\$0.00	(\$180,547.33)
06-05-2020	\$101,883.28	\$0.00
06-08-2020	\$196,932.90	(\$101,883.28)
06-09-2020	\$172,851.04	(\$196,932.90)
06-10-2020	\$618,068.97	(\$443,195.46)
06-11-2020	\$19,196.01	(\$347,724.55)
06-12-2020	\$116,024.76	(\$19,196.01)
06-15-2020	\$145,673.51	(\$116,024.76)
06-16-2020	\$161,717.05	(\$145,673.51)
06-17-2020	\$95,000.00	(\$161,717.05)
06-18-2020	\$113,723.85	(\$95,000.00)
06-19-2020	\$201,895.22	(\$193,723.85)
06-22-2020	\$366,888.98	(\$121,895.22)
06-23-2020	\$144,086.39	(\$366,888.98)
06-24-2020	\$260,069.78	(\$206,392.78)
06-25-2020	\$0.00	(\$197,763.39)
06-26-2020	\$10,885.48	(\$10,885.48)
06-29-2020	\$337,155.80	\$0.00
06-30-2020	\$0.00	(\$337,155.80)
07-03-2020	\$96,114.39	\$0.00
07-06-2020	\$30,051.53	(\$96,114.39)
07-07-2020	\$29,898.88	(\$30,051.53)
07-08-2020	\$42,148.39	(\$29,898.88)
07-09-2020	\$127,814.58	(\$42,148.39)
07-10-2020	\$110,460.20	(\$161,113.56)
07-13-2020	\$117,456.96	(\$77,161.22)
07-14-2020	\$0.00	(\$117,456.96)

Posted Date	Amount Credited	Amount Debited
07-16-2020	\$36,663.87	\$0.00
07-17-2020	\$0.00	(\$36,663.87)
07-20-2020	\$100,341.08	(\$68,648.29)
07-21-2020	\$123,134.82	(\$138,351.05)
07-22-2020	\$41,991.87	(\$16,476.56)
07-23-2020	\$20,842.32	(\$41,991.87)
07-24-2020	\$0.00	(\$20,842.32)
07-27-2020	\$228,826.48	(\$69,804.33)
07-28-2020	\$22,124.70	(\$159,022.15)
07-29-2020	\$0.00	(\$22,124.70)
07-30-2020	\$69,341.10	(\$29,801.66)
07-31-2020	\$65,711.13	(\$39,539.44)
08-01-2020	\$0.00	\$0.00
08-03-2020	\$24,715.72	(\$65,711.13)
08-04-2020	\$117,591.05	(\$112,063.95)
08-05-2020	\$0.00	(\$30,242.82)
08-06-2020	\$124,831.86	(\$72,724.06)
08-07-2020	\$74,245.10	(\$52,107.80)
08-10-2020	\$36,860.73	(\$74,245.10)
08-11-2020	\$151,339.11	(\$188,199.84)
08-12-2020	\$95,581.85	(\$39,313.32)
08-13-2020	\$67,679.73	(\$56,268.53)
08-14-2020	\$98,777.72	(\$67,679.73)
08-17-2020	\$141,455.65	(\$98,777.72)
08-18-2020	\$155,900.42	(\$141,455.65)
08-19-2020	\$84,289.52	(\$155,900.42)
08-20-2020	\$84,556.65	(\$84,289.52)
08-21-2020	\$0.00	(\$84,556.65)
08-24-2020	\$681,206.04	\$0.00
08-25-2020	\$258,707.14	(\$681,206.04)
08-26-2020	\$370,371.10	(\$258,707.14)
08-27-2020	\$241,276.56	(\$370,371.10)
08-28-2020	\$126,018.47	(\$241,276.56)
08-31-2020	\$216,401.61	(\$126,018.47)
09-01-2020	\$389,635.23	(\$216,401.61)
09-02-2020	\$0.00	(\$389,635.23)
09-03-2020	\$146,654.25	\$0.00
09-04-2020	\$137,984.27	(\$146,654.25)
09-08-2020	\$306,858.69	(\$137,984.27)
09-09-2020	\$567,738.61	(\$365,301.86)
09-10-2020	\$0.00	(\$509,295.44)
09-11-2020	\$184,027.67	\$0.00
09-14-2020	\$352,670.88	(\$184,027.67)
09-15-2020	\$557,135.26	(\$352,670.88)

Posted Date	Amount Credited	Amount Debited
09-16-2020	\$0.00	(\$557,135.26)
09-17-2020	\$163,170.67	\$0.00
09-18-2020	\$173,558.03	(\$163,170.67)
09-21-2020	\$401,399.95	(\$173,558.03)
09-22-2020	\$513,810.89	(\$401,399.95)
09-23-2020	\$128,253.82	(\$513,810.89)
09-24-2020	\$205,359.13	(\$128,253.82)
09-25-2020	\$263,161.44	(\$205,359.13)
09-28-2020	\$557,038.35	(\$263,161.44)
09-29-2020	\$728,057.80	(\$557,038.35)
09-30-2020	\$146,621.84	(\$728,057.80)
10-01-2020	\$321,344.73	(\$146,621.84)
10-02-2020	\$344,299.10	(\$321,344.73)
10-05-2020	\$737,860.60	(\$344,299.10)
10-06-2020	\$921,260.29	(\$737,860.60)
10-07-2020	\$238,439.77	(\$921,260.29)
10-08-2020	\$347,479.28	(\$238,439.77)