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October 18, 2020

Honorable Martin Glenn  
United States Bankruptcy Judge  
United States Bankruptcy Court  
for the Southern District of New York  
One Bowling Green  
New York, New York 10004-1408

Re: **Avianca Holdings S.A., et al. v. USAVflow Ltd. and Citibank, N.A. (In re Avianca Holdings S.A., et al., No. 20-01244 (MG) (Bankr. S.D.N.Y); Request For Hearing On Motion For Temporary Restraining Order**

To The Honorable Martin Glenn:

This firm is proposed special litigation counsel to Avianca Holdings S.A. and its affiliated debtors and debtors in possession ("**Avianca**"). Avianca writes with respect to its TRO Motion<sup>1</sup> and specifically to request that the Court set a hearing on the TRO Motion (the "**TRO Hearing**") at the Court's first convenience.

Time is of the essence. Injunctive relief is warranted under the circumstances for the reasons set forth in the TRO Motion, Memorandum, and accompanying Declarations. But, the timing is particularly important because Citibank is sweeping the accounts on a daily basis and forwarding those funds to the Lenders' accounts in violation of the automatic stay. See Neuhauser Decl. ¶¶ 14-16 & accompanying schedule. This must stop immediately, especially when the harm grows everyday as receivables accumulate now that operations have resumed after the recent lifting of government restrictions.

Efforts to reach compromise on a briefing schedule for the TRO Motion did not result in agreement. Since last Thursday, October 15, Avianca has been in discussions with Defendants and an informal group of individual Lenders (the "**USAV Lender Group**") that have not been named as defendants in the lawsuit.<sup>2</sup> They dispute there is a need for immediate relief and have requested discovery in advance of any hearing to consider a preliminary injunction. Avianca, however, is requesting the TRO Hearing in the first instance to stop immediately the daily sweeping of cash and obtain a return to the Collections and Debt Service Reserve Accounts of

<sup>1</sup> 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 And Hearing [Adv. Proc. ECF No. 2] (the "**TRO Motion**"). Capitalized terms not defined herein have the meanings ascribed in the Complaint For Permanent Injunction And Declaratory Relief [Adv. Proc. ECF No. 1] and Memorandum of Law In Supp. Of TRO Mot. [Adv. Proc. ECF No. 3] ("**Memorandum**"). See also Neuhauser Decl. [ECF No. 4]; Arrubla-Paucar Decl. [ECF No. 5]; and Tecce Declaration [Adv. Proc. ECF No. 6] (the "**Declarations**").

<sup>2</sup> Avianca has no objection to the USAV Lender Group being heard at the TRO Hearing provided it is without prejudice to the negotiation of appropriate terms for the USAV Lender Group's intervention, which can be finalized after the TRO Hearing.



approximately \$34 million swept to date. Should the Court enter a temporary restraining order, then Avianca will provide reasonable discovery after the TRO Hearing and during the ensuing fourteen (14) day period in advance of any preliminary injunction hearing.

Counsel is available at the Court's convenience any day and time. However, should the Court want to ask questions of the Declarants at the hearing on the TRO Motion, please note the Declarants are unavailable on Monday morning (October 19), Tuesday (October 20), and Wednesday morning (October 21)—but can be available any other time.

Respectfully submitted,



James C. Tecce

cc: Brandon Batzel, Esq. (Counsel to USAV Lender Group)  
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