

**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)

AVIANCA HOLDINGS S.A., <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	Adv. Pro. No. 20-01189 (MG)
	:	
v.	:	
	:	
USAVFLOW LIMITED,	:	
	:	
Defendant.	:	

AVIANCA HOLDINGS S.A., <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	Adv. Pro. No. 20-01244 (MG)
	:	
v.	:	
	:	
USAVFLOW LIMITED and CITIBANK, N.A.,	:	
	:	
Defendants.	:	
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SUPPLEMENTAL ORDER APPOINTING MEDIATOR

This Court having ordered [Dkt. No. 1125] (the “Mediation Order”) the Parties (as defined herein) to mediation in an effort to reach a consensual resolution of the disputes set forth in the Mediation Order; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b) and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b) that



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this Court may decide by a final order consistent with Article III of the United States Constitution; and this Court having found that venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The following Parties (the “Parties”) shall participate in the mediation set forth in the Mediation Order: one or more principal representatives of each of the following: (i) the Debtors, (ii) the Official Committee of Unsecured Creditors, (iii) USAVflow Limited, (iv) the USAV Secured Lender Group, and (v) Citibank, N.A. Additional parties other than the Parties may participate in the mediation (a) with the prior written consent of the Mediator, in consultation with the other Parties, or (b) upon further order of this Court. The Mediator may request that the Court order any additional parties to attend the mediation. In such event, appropriate notice and a hearing shall be provided. All additional mediation parties shall become subject to all of the provisions of this order (the “Supplemental Order”).

2. The mediation shall be conducted telephonically. The Mediator, upon consultation with the Parties, shall have the duty and authority to establish the times and deadlines for all mediation activities, including mediation sessions, private meetings between the Mediator and Parties, and the submission of relevant documents.

3. The Mediator is authorized to mediate any issues or claims arising out of or related to (a) the *Memorandum Order Granting in Part and Denying in Part Debtors’ Motion to Reject the USAV Agreements* [Dkt. No. 850] and USAVflow Limited’s and the USAV Secured Lender Group’s appeals thereof [Dkt. Nos. 959, 960], (b) the Debtors’ Complaint against USAVflow Limited [Adv. Pro. No. 20-01189, Dkt. No. 1], (c) the Debtors’ Complaint against USAVflow

Limited and Citibank, N.A. [Adv. Pro. No. 20-01244, Dkt. No. 1], and (d) any other matters that the Mediator deems necessary in order to resolve any of the foregoing.

4. Unless otherwise directed by the Mediator, each of the Parties shall (a) attend and participate in the mediation conferences and (b) appear with at least one principal or other individual with authority to make a decision binding upon such Party (which may not be such Party's counsel).

5. The mediation is nonbinding.

6. Subject to paragraph 8 of this Supplemental Order, all communications made by and all submissions prepared by a Party in connection with the mediation, including but not limited to (a) discussions among any of the Parties during the course of the mediation, including discussions with or in the presence of the Mediator, (b) mediation statements and any other documents or information provided to the Mediator or the Parties in the course of the mediation, and (c) all correspondence, settlement proposals, counterproposals, term sheets, and offers of compromise produced for, as a result of, or in connection with the mediation (collectively, the "Settlement Proposals") shall be strictly confidential and shall remain confidential. Subject to paragraph 8 of this Supplemental Order, the materials described in each of the foregoing clauses (a) through (c): (i) shall be protected from disclosure (and shall not be disclosed) to any other Party or to any other person or party who is not a Party, (ii) shall not constitute a waiver of any existing privileges and immunities, (iii) shall not be used for any purpose other than the mediation, (iv) shall not be admissible for any purpose in any judicial or administrative proceeding, and (v) shall be subject to protection under Rule 408 of the Federal Rules of Evidence and any equivalent or comparable state law.

7. The Parties and their counsel and advisors shall not in any way disclose to any non-Party or to any court, including, without limitation, in any pleading or other submission to any court, any such discussion, mediation statement, other document or information, correspondence, resolution, or Settlement Proposal that may be made or provided in connection with the mediation; *provided* that nothing in this Supplemental Order shall prevent a Party from sharing with the Mediator and thereafter disclosing, to the extent not prohibited by a separate confidentiality agreement or protective order, any draft objections, any potential legal arguments such Party may raise in the chapter 11 cases, any document produced or obtained in discovery, any information that is, was, or becomes available to a Party outside of the mediation, such Party's own work product or materials, or other pleadings filed or to be filed by such Party with a court of competent jurisdiction.

8. Notwithstanding anything in this Supplemental Order to the contrary, nothing in this Supplemental Order shall prevent a Party from disclosing information revealed in the course of the mediation to the extent required or requested by a governmental or regulatory entity with oversight or other authority over such Party or required by statute or court order to other legal or regulatory requirements applicable to such Party; *provided* that if such Party is requested or required to disclose any information to a third party, such Party shall, to the extent not legally prohibited, provide the disclosing party with written notice as soon as reasonably practicable of such request or requirement prior to any disclosure and shall furnish only that portion of such information or take only such action as such Party in good faith (based on advice of counsel) believes is legally required. The Party shall not oppose any reasonable efforts by the disclosing party to obtain an order, agreement, or other reasonable assurance that confidential treatment shall be accorded to any information so furnished.

9. To the extent that any Party is in possession of privileged or confidential documents, such information may be disclosed to the Mediator, but shall otherwise remain privileged and confidential. Any Party may provide documents and/or information to the Mediator that are subject to a privilege or other protection from discovery, including the attorney-client privilege, the work-product doctrine, or any other privilege, right, or immunity the parties may be entitled to claim or invoke (the “Privileged Information”). By providing the Privileged Information solely to the Mediator and no other party, no Party nor its respective professionals intends to, or shall, waive, in whole or in part, the attorney-client privilege, the work-product doctrine, or any other privilege, right or immunity they may be entitled to claim or invoke with respect to any Privileged Information or otherwise, but all such privileges shall be preserved pursuant to Rule 502(d) of the Federal Rules of Evidence.

10. Subject to paragraph 8 of this Supplemental Order, any work product, materials, or information shared or produced by a Party with the Mediator, including Privileged Information, shall be subject to all applicable mediation privileges and shall not be shared by the Mediator with any other Parties without the consent of the sharing or producing Party.

11. No Party shall (a) be deemed to be or become an insider, a temporary insider, a nonstatutory insider under bankruptcy law, an agent, or a fiduciary of any of the Debtors, (b) be deemed to owe any duty to the Debtors or their estates, (c) undertake any duty to any party in interest, or (d) be deemed to misappropriate any information of the Debtors or any person that has designated any material as confidential or highly confidential, with respect to each of the foregoing clauses (a) through (d), as a result of (i) participating in any mediation conference conducted pursuant to this Supplemental Order, (ii) being aware, or being in possession, of any Settlement Proposal delivered or received by any party in interest or their agents or advisors in connection

with a mediation conference conducted pursuant to this order, or (iii) with respect to any mediation conference conducted pursuant to this Supplemental Order, acting together in a group with other holders of securities issued by the Debtors, as applicable; *provided* that nothing herein shall affect any Party's pre-existing fiduciary obligations or compliance with applicable non-bankruptcy law or regulation.

12. Nothing in this Supplemental Order is intended to, nor shall it, waive, release, compromise, or impair in any way whatsoever, any claims or defenses that a party has or may have, whether known or unknown, in connection with or relating to acts or omissions that took place prior to entry of this Supplemental Order.

13. Promptly following the termination of the mediation in accordance with this Supplemental Order (such date, the "Termination Date"), but no later than 7:00 am (ET) on the first day after the Termination Date, the Mediator shall file a notice on the Court's public docket setting forth the following: (i) that the Mediator has conducted the mediation; (ii) the names of the participants in the mediation; and (iii) whether and to what extent the mediation was successful. The Mediator is also authorized, but not required, to report to the Court on the lack of good faith of any Party in the mediation.

14. In addition to maintaining the immunity that the Mediator has as a judge and the immunity of court employees under Federal and common law from liability for any act or omission in connection with the mediation, the Mediator and such court employees may not be compelled to testify or disclose any information concerning the mediation in any forum or proceeding except as provided in the preceding paragraph.

15. The Debtors are authorized to take all actions necessary or appropriate to effectuate the relief granted in this Supplemental Order.

16. For the avoidance of doubt, to the extent any part of this Supplemental Order shall conflict with Local Rule 9019-1, the terms and provisions of this Supplemental Order shall govern.

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Supplemental Order are immediately effective and enforceable upon its entry.

18. All time periods set forth in this Supplemental Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

19. This Court retains exclusive jurisdiction to enter supplemental orders concerning all matters arising from or related to the implementation, interpretation, and enforcement of the Mediation Order and/or this Supplemental Order.

New York, New York
Dated: **November 2, 2020**

/s/Martin Glenn
THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE