

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

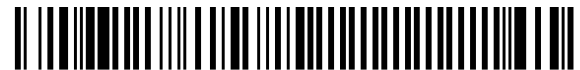
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 In re: : Chapter 11
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 AVIANCA HOLDINGS S.A., *et al.*,¹ : Case No. 20-11133 (MG)
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 Debtors. : (Jointly Administered)
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**AMENDED FINAL ORDER 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**

Upon consideration of the motion (the “Motion”)² (ECF Doc. # 17) of the above-captioned debtors and debtors-in-possession (the “Debtors”), seeking entry of a final order (this “Final Order”) pursuant to sections 105(a) and 363 of the Bankruptcy Code (i) authorizing (but not directing) the Debtors to pay or honor prepetition obligations to the Ordinary Course

¹ 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. International 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); Nicaragüense de Aviación, Sociedad Anónima (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aéreo 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); AV Loyalty Bermuda Ltd. (N/A); Aviacorp Enterprises S.A. (N/A). The Debtors’ principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá D.C., Colombia.

² Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.



Counterparties, (ii) modifying the automatic stay to the extent necessary to effectuate setoffs with the Ordinary Course Counterparties, and (iii) granting certain related relief, all as described more fully in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012; and it appearing that venue of these chapter 11 cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the Motion and the *Declaration of Adrian Neuhauser in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* (ECF Doc. # 20), dated as of May 10, 2020 (the "Petition Date"); and upon the statements of counsel in support of the relief requested in the Motion at the hearing before the Court; and all of the proceedings had before the Court; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED and approved on a final basis to the extent set forth herein.
2. Subject to the other provisions in this Final Order, the Debtors are authorized, but not directed, to (i) pay, perform, and honor their obligations to their customers, travel agencies, charter and tour operators, and other Ordinary Course Counterparties as requested in the Motion, including but not limited to, those obligations arising before the Petition Date, and (ii) continue,

renew, replace, and/or terminate, one or more of the programs or arrangements with the Ordinary Course Counterparties as the Debtors deem appropriate, in the ordinary course of business, without further application to the Court.

3. The Debtors are authorized, but not directed, to continue to receive, process, and honor credit card transactions and debit transactions and continue to pay processing and related fees to credit card companies, credit card processors, and debit service providers. The Debtors are further authorized, but not directed, to (a) pay all Chargebacks along with the other fees related to credit card processing, and (b) to enter into modifications to its Credit Card Agreements with Elavon Financial Services DAC (UK Branch), Elavon Canada Company, U.S. Bank National Association, acting through its Canadian Branch and U.S. Bank National Association (together with any affiliates, "Elavon") without further approval of the Court. Immediately upon the execution of any agreement or amendment incorporating such modifications, the automatic stay in effect pursuant to section 362 of the Bankruptcy Code shall be modified to permit Elavon to exercise its operations, rights, and remedies under such Credit Card Agreement, as amended, including the netting of prepetition and post-petition sales, refunds, fees and Chargebacks. All amounts validly due to Elavon related to its performance under its Credit Card Agreements, and any amendments thereto in accordance with this Order, in each case on or after the Petition Date shall be allowed administrative expense claims in these Chapter 11 cases.

4. The Debtors are authorized, but not directed, to honor all Tickets and Vouchers issued by the Debtors and, with respect to Tickets and Vouchers issued by any of the Debtors' non-Debtor affiliates, to honor all such Tickets and Vouchers to the extent the Debtors determine in their business judgment that the failure to do so would result in reputational or other harm to their businesses.

5. The stay imposed by section 362 of the Bankruptcy Code may be, and hereby is, modified solely to the limited extent necessary to permit (a) the travel agencies, ARC, and BSPs to follow their normal setoff and processing procedures in accordance with the terms and conditions of their contracts in respect of undisputed obligations owing to such person; (b) Cargo Sales Agencies or other similar agencies to follow their normal setoff procedures in respect of undisputed obligations owing to such person; and (c) the netting of the Chargebacks. Notwithstanding entry of this Final Order, the Debtors' rights to enforce the automatic stay provisions of section 362(a) of the Bankruptcy Code with respect to any creditor who demands payment of their prepetition debts as a condition to doing business with the Debtors postpetition are preserved.

6. The Debtors are authorized, but not directed, to honor all refund requests received by the Debtors and, with respect to refund requests received by any of the Debtors' non-Debtor affiliates, to honor all such refund requests to the extent the Debtors determine in their business judgment that the failure to do so would result in reputational or other harm to their businesses.

7. The Debtors are authorized, in their discretion and in the exercise of their business judgment, to make payment to the Ordinary Course Counterparties on the condition that by accepting payment, the Ordinary Course Counterparties agree to maintain, reinstate, or otherwise comply with the On-Going Obligations/Terms during the pendency of these cases.

8. Ordinary Course Counterparties' acceptance of payment is deemed to be acceptance of the terms of this Final Order, and if the Ordinary Course Counterparty thereafter does not provide the Debtors with, or otherwise comply with, On-Going Obligations/Terms during the pendency of these cases, then any payments of prepetition claims made after the Petition Date

will be deemed to be avoidable postpetition transfers and shall be recoverable by the Debtors in the Debtors' discretion.

9. The Debtors are authorized, but not required, to obtain written verification of On-Going Obligations/Terms from the Ordinary Course Counterparties before issuing payment hereunder; provided, however, that the absence of such written verification shall not limit the Debtors' rights hereunder.

10. All applicable banks and other financial institutions are authorized and directed, when requested by the Debtors and in the Debtors' sole discretion, to receive, process, honor, and pay any and all and electronic funds transfer requests and checks drawn on the Debtors' accounts to customers and/or the other Ordinary Course Counterparties, whether those checks were presented or funds transfer requests initiated prior to or after the Petition Date, and to make other transfers provided that sufficient funds are available in the applicable accounts to make the payments.

11. This Final Order shall not, however, be construed to limit, or in any way affect, the Debtors' ability to contest any claim, invoice, or other charge of any customer and/or other Ordinary Course Counterparty on any grounds.

12. Nothing contained in this Final Order or the Motion shall constitute a rejection or assumption by the Debtors, as debtors-in-possession, of any executory contract or unexpired lease by virtue of reference to any such contract or lease in the Motion.

13. Any payment made pursuant to this Final Order is not, and shall not be, deemed an admission to the validity of the underlying obligation or waiver of any rights the Debtors may have to dispute such obligation subsequently.

14. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any party.

15. The Debtors shall provide the professionals retained by the Official Committee of Unsecured Creditors (the "Committee") with 5 business days' notice (or as much notice as is reasonably practicable under the circumstances) before making any material changes to programs or arrangements with Ordinary Course Counterparties outside of the ordinary course of business. The rights of the Committee to seek (a) additional disclosures from the Debtors regarding payments to any Ordinary Course Counterparty, and (b) to avoid and recover any payment made to any Ordinary Course Counterparty, respectively, are expressly reserved and shall not be prejudiced by entry of the Interim Order or this Final Order.

16. Notwithstanding any applicability of Bankruptcy Rule 6004, the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

17. The Debtors are authorized and empowered to take all actions necessary to implement the relief requested in this Final Order.

18. This Court shall retain jurisdiction with respect to any matters, claims, rights, or disputes arising from or related to the implementation of this Final Order.

IT IS SO ORDERED.

Dated: November 20, 2020
New York, New York

/s/ Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge