

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

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In re: : Chapter 11  
: :  
AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup> : Case No. 20-11133 (MG)  
: :  
Debtors. : (Jointly Administered)  
: :  
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**STIPULATION AND ORDER AUTHORIZING DEBTORS TO  
REJECT CERTAIN UNEXPIRED LEASES WITH AIRCRAFT  
COUNTERPARTIES AND TO RETURN AND/OR ABANDON CERTAIN AIRCRAFT,  
AS APPLICABLE**

The debtors in the above-captioned cases (the “Debtors”) and the undersigned parties to this stipulation (collectively, the “Aircraft Counterparties”) with respect to the aircraft lease transactions relating to the aircraft leases (the “Leases”) and related documents set forth in Exhibit A (collectively with the Leases, the “Aircraft Agreements”) in respect of the aircraft listed in Exhibit A hereto, along with the airframes, engines<sup>2</sup>, related equipment and/or other equipment,

<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.

<sup>2</sup> As set forth on Exhibit A, the Debtors and Aircraft Counterparties have agreed to perform an engine swap, replacing ESN 697732 with ESN 643759, such that the Aircraft Counterparties will retain the Aircraft Equipment (with ESN 643759) and the Debtors will retain ESN 697732.



documents, and records with respect to the Leases (collectively, the “Aircraft Equipment”) that are subject to the *Second Stipulation and Order between Debtors and Aircraft Counterparties Concerning Certain Aircraft* [Dkt. No. 396] (the “Second Stipulation”), by and through their respective counsel, hereby enter into this stipulation, agreement and proposed order (this “Stipulation”) and represent and agree as follows:

A. On May 10, 2020 (the “Petition Date”), the Debtors filed voluntary petitions under Chapter 11 of the Bankruptcy Code.

B. On June 29, 2020, the Debtors filed the Second Stipulation, seeking to provide terms for the utilization of the Aircraft during the Stipulation Period (as defined in the Second Stipulation) or, alternatively, to reject or abandon the Aircraft Equipment on the terms set forth in the Second Stipulation.

C. The Aircraft Counterparties notified the Debtors pursuant to a termination notice dated January 5, 2021 that the Aircraft Counterparties intend to terminate the Stipulation Period with respect to the Aircraft Equipment on March 6, 2021.

D. The Debtors and the Aircraft Counterparties now wish to agree to the rejection of the Leases and the return and/or abandonment, as applicable, by the Debtors of the relevant Aircraft Equipment identified on Exhibit A, with such rejection and/or abandonment to be effective as of the date of the completion of the respective Ferry Flight (as defined in the Second Stipulation and, as used herein, each a “Ferry Flight”) of the relevant Aircraft Equipment, and to defer all disputes (if any) concerning any claim or right that any Aircraft Counterparty may have, including, without limitation, the entitlement to any administrative expense claim, that arises out of or relates to the Aircraft Agreements or the Aircraft Equipment.

**NOW, THEREFORE, UPON THE FOREGOING RECITALS, WHICH ARE INCORPORATED AS THOUGH FULLY SET FORTH HEREIN, IT IS HEREBY**

**STIPULATED AND AGREED, BY AND AMONG THE PARTIES, THROUGH THEIR UNDERSIGNED COUNSEL, AND UPON COURT APPROVAL HEREOF, IT SHALL BE ORDERED THAT:**

1. Pursuant to section 365 of the Bankruptcy Code and subject to the terms of this Stipulation, the Leases listed on Exhibit A hereto are hereby rejected and effective with respect to the relevant Aircraft Equipment as of the applicable date and upon completion of the Ferry Flight with respect to such Aircraft Equipment (in either case, the “Rejection Date”).

2. The Debtors and the Aircraft Counterparties have separately agreed to ferry flight agreements (each, a “Ferry Flight Agreement”) with respect to the Ferry Flights of the relevant Aircraft Equipment, which set forth the procedures, costs and expenses regarding the redelivery of such Aircraft Equipment to the Aircraft Counterparties, in each case pursuant to the Second Stipulation and such Ferry Flight Agreement. The delivery of the Aircraft Equipment shall occur on a mutually acceptable date or dates, (i) in the case of MSN 3518 (as defined on Exhibit A), March 1, 2021 and (ii) in the case of MSN 3467 (as defined on Exhibit A), March 5, 2021, or such later date or dates as may be mutually agreed in writing by the Debtor and the Aircraft Counterparties (in either case, the “Outside Date”).

3. The Debtors shall, at the Aircraft Counterparties’ expense payable in advance, (i) deliver the relevant Aircraft Equipment to the Aircraft Counterparties pursuant to applicable Ferry Flight Agreement, (ii) as soon as reasonably practicable, return the technical records and documents relating to any Aircraft Equipment that are in the Debtor’s possession or control with respect to the relevant Aircraft Equipment (to be set forth separately in writing), and (iii) cooperate in taking all actions and signing all documents reasonably required by the Aircraft Counterparties with regard to the return of the Aircraft Equipment to the Aircraft Counterparties,

including lease termination, the transfer of title, and its deregistration and export from the current state of registration or country of previous importation, in each case, to the extent applicable.

4. Pursuant to the Second Stipulation and the relevant Ferry Flight Agreement, the Debtors shall maintain existing insurance coverage and continue the existing storage maintenance program as to the Aircraft Equipment until the earlier of (i) the date on which the Debtors deliver the Aircraft Equipment to the Aircraft Counterparties, or (ii) the applicable Outside Date, and after such earlier date of (i) or (ii), the Debtors shall have no further obligations of any kind under the related Lease, including the maintenance of insurance coverage or the continuance of any storage maintenance program as to the Aircraft Equipment, and the Aircraft Counterparties shall pay or reimburse the Debtors for any costs and expenses incurred after the return of any Aircraft Equipment or the applicable Outside Date, as applicable, including, without limitation, cost and expenses relating to parking or permits for the relevant Aircraft Equipment.

5. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby modified to permit the Aircraft Counterparties to take possession, transfer, move, effect title transfer, or otherwise dispose of the Aircraft Equipment and to terminate the leasing of the relevant Aircraft Equipment under the Leases including, without limitation, authorizing the application of any security deposit, maintenance reserves, or other security held by any Aircraft Counterparty, to the extent applicable, against obligations of the Lessee Debtor pursuant to the terms of the Original Aircraft Agreements; provided that no Aircraft Counterparty shall be permitted to assert any claims against the Debtors in any court other than this Court.

6. Any proof of claim arising out of the Aircraft Equipment or the Aircraft Agreements must be filed on or before 30 days after the entry of an order approving this Stipulation. If no proof of claim is timely filed, the Aircraft Counterparties shall be forever barred

from asserting a claim against the Debtors or the Debtors' estate and from participating in any distributions on such a claim that may be made in connection with these chapter 11 cases.

7. The Aircraft Counterparties' rights to assert any secured or unsecured claim are fully preserved. The Aircraft Counterparties' rights to receive payment of any amounts owing from the Debtors pursuant to the Second Stipulation, through the date of the termination of the Stipulation Period, are fully preserved. To the extent provided in the Second Stipulation, or to the extent that the Debtors have operated the Aircraft Equipment for commercial purposes following the Petition Date, the Aircraft Counterparties' rights to assert entitlement to an administrative expense claim that arises out of or relates to the Aircraft Agreements or the Aircraft Equipment, are fully preserved. The Debtors reserve and retain all of their defenses and rights to object to or otherwise challenge all claims of the Aircraft Counterparties. For the avoidance of doubt, Debtors and the Aircraft Counterparties shall each pay their own legal fees and expenses in respect of the documentation entered into concerning the engine swap of the Aircraft Equipment, rejection of the Aircraft Agreements, abandonment of the Aircraft Equipment and the return of the Aircraft Equipment to the Aircraft Counterparties.

8. Each Lease with respect to the relevant Aircraft Equipment shall continue in effect after the Rejection Date applicable to such Aircraft Equipment solely for the purpose of maintaining registration of such Aircraft Equipment until the deregistration of such Aircraft Equipment has occurred. Notwithstanding the foregoing or anything else in this Stipulation, the treatment of any claims asserted by the Aircraft Counterparties shall continue to be governed by the Second Stipulation as though each Lease had been rejected on the applicable Rejection Date, without enhancing or increasing such claims as a result of a Lease continuation under this

Paragraph 8 for the purpose of maintaining registration of the Aircraft Equipment until deregistration thereof.

9. The Debtors are authorized and empowered to take all actions necessary to implement the relief requested in this Stipulation.

10. This Stipulation may be changed, modified, or otherwise altered in a writing executed by the Parties to this Stipulation. Oral modifications are not permitted.

11. This Stipulation, together with the Second Stipulation, contain the entire agreement between the parties with respect to the subject matter hereof, and may only be modified in writing, signed by the parties or their duly appointed agents. Except as expressly set forth herein, all rights set forth in the Second Stipulation are hereby preserved.

12. This Stipulation may be executed in one or more counterparts, by facsimile, electronic transmission or otherwise, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

13. This Stipulation shall be effective immediately upon approval by the Court. The Court shall retain jurisdiction for purposes of resolving any issues relating to this Stipulation.

Dated: New York, New York  
February 16, 2021

**Stipulated and agreed to by:**

AVIANCA HOLDINGS S.A., et al., debtors and  
debtors-in-possession

By: /s/ Gregory Bray

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CIT AEROSPACE INTERNATIONAL, as Lessor to  
MSN 3467 and MSN 3518

By: /s/ Barbra R. Parlin

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*Attorneys for Lessor*

**SO ORDERED**

Dated: February 23, 2021  
New York, New York

/s/ Martin Glenn  
MARTIN GLENN  
United States Bankruptcy Judge



## **EXHIBIT A**

### **Aircraft Counterparties**

1. CIT Aerospace International, as Lessor for MSN 3467
2. CIT Aerospace International, as Lessor for MSN 3518

### **Aircraft Equipment**

1. One (1) Airbus A319-112 aircraft with manufacturer's serial number 3467 and Ecuadorian Registration Mark HC-CSB with two (2) CFM International model CFM56-5B6/3 engines bearing manufacturer's serial numbers 697728 and 643759<sup>3</sup> (collectively, "MSN 3467").
2. One (1) Airbus A319-112 aircraft with manufacturer's serial number 3518 and Ecuadorian Registration Mark HC-CSA with two (2) CFM International model CFM56-5B6/3 engines bearing manufacturer's serial numbers 697760 and 697761 (collectively, "MSN 3518").

### **Aircraft Agreements**

- A. International Aircraft Lease Agreement dated as of June 26, 2007 between CIT Aerospace International as lessor, and Aerovías del Continente Americano S.A. Avianca, as lessee, and the Operative Agreements as defined therein, as supplemented and amended from time to time with respect to MSN 3467.
- B. International Aircraft Lease Agreement dated as of June 27, 2007 between CIT Aerospace International as lessor, and Aerovías del Continente Americano S.A. Avianca, as lessee, and the Operative Agreements as defined therein, as supplemented and amended from time to time with respect to MSN 3518.
- C. Guaranty dated as of November 22, 2019 between Avianca Holdings S.A. and CIT Aerospace International as lessor of MSN 3467.
- D. Guaranty dated as of November 22, 2019 between Avianca Holdings S.A. and CIT Aerospace International as lessor of MSN 3518.

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<sup>3</sup> The Debtors and Aircraft Counterparties have agreed to perform an engine swap, replacing ESN 697732, constituting an "Engine" under the relevant Aircraft Agreement, with ESN 643759, such that the Aircraft Counterparties will retain the Aircraft Equipment including ESN 643759 and the Debtors will retain ESN 697732, in each case pursuant to the terms of the Aircraft Agreements.