

Presentment Date and Time: March 3, 2021 at 12:00 p.m. (prevailing Eastern Time)
Objection Deadline: March 2, 2021 at 4:00 p.m. (prevailing Eastern Time)

Evan R. Fleck
Benjamin Schak
MILBANK LLP
55 Hudson Yards
New York, New York 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

Aaron L. Renenger
MILBANK LLP
1850 K Street NW, Suite 1100
Washington, D.C. 20006
Telephone: (202) 835-7500
Facsimile: (202) 263-7586

Counsel for Debtors and Debtors-In-Possession

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

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

**NOTICE OF PRESENTMENT OF STIPULATION AND AGREED ORDER
BETWEEN DEBTORS AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

PLEASE TAKE NOTICE that the *Stipulated Non-Waiver Agreement and Agreed Order*

Pursuant to Federal Rule of Bankruptcy Procedure 9017 and Federal Rule of Evidence 502(d)

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. 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); 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, Colombia.



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Regarding Information Concerning Airbus Investigation and Analysis, which is annexed hereto as **Annex A** (the “Stipulation”), will be presented for signature to the Honorable Judge Martin Glenn, United States Bankruptcy Judge for the Southern District of New York (the “Court”), Room 501, One Bowling Green, New York, New York, 10004 on **March 3, 2021 at 12:00 p.m.** (prevailing Eastern Time).

PLEASE TAKE FURTHER NOTICE that any objections or responses to the Stipulation shall: (a) be in writing; (b) conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, all General Orders applicable to chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York, and the *Order Implementing Certain Notice and Case Management Procedures* [Docket No. 47] (the “Case Management Order”); (c) be filed electronically with this Court on the docket of *In re Avianca Holdings S.A.*, Case 20-11133 (MG) by registered users of this Court’s electronic filing system and in accordance with the General Order M-399 (which is available on this Court’s website at <http://www.nysb.uscourts.gov>) by **March 2, 2021 at 4:00 p.m.** (prevailing Eastern Time) (the “Objection Deadline”); and (d) be promptly served on the following parties: (i) the Chambers of the Honorable Martin Glenn, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004; (ii) the Debtors, c/o Richard Galindo (richard.galindo@avianca.com); (iii) Milbank LLP (Attn: Evan R. Fleck, Esq., Benjamin Schak, Esq., and Aaron L. Renenger, Esq. (efleck@milbank.com, bschak@milbank.com, and arenenger@milbank.com)), counsel for the Debtors; (iv) Ropes & Gray LLP (Attn: Mark Somerstein, Esq. and Michael G. McGovern, Esq. (mark.somerstein@ropesgray.com and michael.mcgovern@ropesgray.com)), special government investigations counsel to the Debtors; (v) Morrison & Foerster LLP (Attn: Brett H. Miller, Esq. and Todd M. Goren, Esq. (brettmiller@mofo.com and tgoren@mofo.com)), counsel to the Official Committee of Unsecured

Creditors (the “Committee”); (vi) William K. Harrington, U.S. Department of Justice, Office of the U.S. Trustee, 201 Varick Street, Room 1006, New York, NY 10014 (Attn: Brian Masumoto, Esq. and Greg Zipes, Esq.); (vii) the Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549; (viii) the Federal Aviation Administration, 800 Independence Ave., S.W. Washington, DC 20591 (Attn: Office of the Chief Counsel); and (ix) the attorneys for any other official committee(s) that may be appointed in these Chapter 11 Cases.

PLEASE TAKE FURTHER NOTICE that, if no objections are received by the Objection Deadline, the Court may approve the Stipulation without further notice.

PLEASE TAKE FURTHER NOTICE that if an objection is timely filed by the Objection Deadline, the Court will notify the Debtors and the objecting parties of the date and time of the hearing with respect to the Stipulation and the Debtors’ obligation to notify all other parties entitled to receive notice. The Debtors and any objecting parties are required to attend the hearing in accordance with General Order M-543 (which can be found at <http://www.nysb.uscourts.gov>), and failure to attend may result in relief being granted or denied upon default.

PLEASE TAKE FURTHER NOTICE that copies of the Stipulation and other pleadings for subsequent hearings may be obtained free of charge by visiting the KCC website at <http://www.kccllc.net/avianca>. You may also obtain copies of any pleadings by visiting at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: New York, New York
February 24, 2021

/s/ Evan R. Fleck
Evan R. Fleck
Benjamin Schak
MILBANK LLP
55 Hudson Yards
New York, New York 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

-and-

Aaron L. Renenger
MILBANK LLP
1850 K Street NW, Suite 1100
Washington, D.C. 20006
Telephone: (202) 835-7500
Facsimile: (202) 263-7586

*Counsel for Debtors and
Debtors-in-Possession*

Annex A

Stipulation

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

-----X
In re: : Chapter 11
: :
AVIANCA HOLDINGS S.A., *et al.*,¹ : Case No. 20-11133 (MG)
: :
Debtors. : (Jointly Administered)
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**STIPULATED NON-WAIVER AGREEMENT AND AGREED ORDER
PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9017
AND FEDERAL RULE OF EVIDENCE 502(d) REGARDING
INFORMATION CONCERNING AIRBUS INVESTIGATION AND ANALYSIS**

Pursuant to Rule 9017 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 502(d) of the Federal Rules of Evidence, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) and the Official Committee of Unsecured Creditors (the “UCC”), by and through their respective attorneys and subject to Court approval, have agreed to this order (the “Order”) regarding the disclosure of certain factual information obtained and legal

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. 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); 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, Colombia.

analyses conducted related to the business relationship and contractual obligations between the Debtors and Airbus SE (the “Airbus Matter”).

WHEREAS, the Debtors retained Ropes & Gray LLP (“Ropes & Gray”) to, *inter alia*, provide assistance regarding the Airbus Matter;

WHEREAS, on May 10, 2020, the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”);

WHEREAS, the Debtors obtained Court approval to retain Milbank LLP (“Milbank,” and, together with Ropes & Gray and all other legal counsel to the Debtors, “Debtors’ Counsel”) as counsel on June 9, 2020 (*see* Dkt. No. 259);

WHEREAS, the UCC obtained Court approval to retain Morrison & Foerster LLP (“MoFo”) as counsel on July 14, 2020 (*see* Dkt. No. 460);

WHEREAS, the Debtors obtained Court approval to retain Ropes & Gray as special government investigations counsel on July 15, 2020 (*see* Dkt. No. 476);

WHEREAS, in connection with their representation of the Debtors, Debtors’ Counsel has conducted interviews with relevant officers and employees of the Debtors, reviewed documents and records of the Debtors, and analyzed potential claims and defenses in connection with the Airbus Matter;

WHEREAS, the UCC has requested, among other things, information regarding the Airbus Matter; and

WHEREAS, the Debtors and the UCC (together, the “Parties”) wish to establish reasonable and appropriate procedures and protocols with respect to the provision and treatment of information regarding the Airbus Matter;

NOW, THEREFORE, it is hereby AGREED AND ORDERED that:

1. All Confidential Airbus Matter Information (as defined herein) that is disclosed or delivered in any manner, including through email correspondence, document productions, teleconferences, and/or memoranda, from Debtors' Counsel to MoFo and/or any other attorneys, financial advisors, and accountants retained by the UCC pursuant to sections 328 and 1103 of the Bankruptcy Code (collectively, the "UCC Professionals") shall be considered confidential and shall be delivered to and maintained by the UCC Professionals on a Professionals' Eyes Only basis unless otherwise agreed by Debtors' Counsel. Such Confidential Airbus Matter Information shall not be given, shown, made available to, disclosed, or communicated in any way to any persons, except to the UCC Professionals unless otherwise agreed by Debtors' Counsel. For the avoidance of doubt, Confidential Airbus Matter Information shall not be given, shown, made available to, disclosed, or communicated in any way to members of the UCC unless otherwise agreed by Debtors' Counsel.

2. "Confidential Airbus Matter Information" means all non-public documents, records, reports, analyses, memoranda, data, facts, impressions, communications, and other information, whether written, electronic, visual, or oral, related to or in connection with the Airbus Matter obtained solely from the Debtors or any of their representatives, provided that the term "Confidential Airbus Matter Information" shall not include information obtained (i) from a source other than the Debtors or their representatives, or (ii) pursuant to Rule 2004 of the Bankruptcy Rules. Any extracts, summaries, derivations, and/or analyses of Confidential Airbus Matter Information prepared by or on behalf of any UCC Professional shall also be considered Confidential Airbus Matter Information.

3. Confidential Airbus Matter Information shall be used by the UCC Professionals solely for the purposes of these chapter 11 cases and in any proceedings wherein a claim arises out of the same transaction(s) or occurrence(s) involved in these chapter 11 cases, and not for any other purpose, including any other litigation or judicial proceedings that are not related to these chapter 11 cases, or any business, competitive, governmental, commercial, or administrative purpose or function.

4. Unless otherwise agreed by Debtors' Counsel, if the UCC Professionals wish to file any Confidential Airbus Matter Information with the Court in these chapter 11 cases for any reason, such Confidential Airbus Matter Information shall be filed under seal in accordance with the Federal Rules of Civil Procedure, the Bankruptcy Rules, and the Local Bankruptcy Rules for the Southern District of New York, such as by redacting the Confidential Airbus Matter Information in pleadings, briefs, declarations, and memoranda, and replacing exhibits containing Confidential Airbus Matter Information with a placeholder, and providing unredacted and complete copies of all such submissions to all Parties to this Order and to the Court.

5. Pursuant to Rule 502(d) of the Federal Rules of Evidence, the disclosure or delivery of any Confidential Airbus Matter Information from Debtors' Counsel to any UCC Professional as provided for herein shall not constitute or be deemed a waiver or forfeiture of any claim of attorney-client privilege, work product protection, or any other applicable privilege or protection, either in these chapter 11 cases or any other proceeding.

6. The Parties agree that disclosure or delivery of any Confidential Airbus Matter Information pursuant to this Order shall not be deemed a failure to take reasonable steps to prevent the disclosure of information that is protected by the attorney-client privilege, work product protection, or any other applicable privilege or protection under Federal Rule of Evidence

502(b)(2). The UCC agrees to make a good faith effort to defend against any argument made by any other person or entity that disclosure or delivery of Confidential Airbus Matter Information as provided for herein constitutes a waiver of the attorney-client privilege, work product protection, or any other applicable privilege or protection on any basis.

7. The Parties acknowledge and agree that neither the Debtors nor any of their representatives, including Debtors' Counsel, (a) make any representation or warranty as to the accuracy or completeness of any Confidential Airbus Matter Information, (b) have any obligation to update or supplement Confidential Airbus Matter Information, nor (c) shall have any liability resulting from any use of Confidential Airbus Matter Information by the UCC Professionals.

8. The Parties shall make good faith efforts to resolve any disagreements arising from or related to this Order prior to seeking relief from the Court.

9. The Parties may enforce the provisions of this Order, including that disclosure or delivery of Confidential Airbus Matter Information as provided for herein shall not constitute or be deemed a waiver of forfeiture of any claim of attorney-client privilege, work product protection, or any other applicable privilege or protection.

10. The provisions of this Order shall survive the final termination of the chapter 11 cases and the Debtors' emergence from bankruptcy for any Confidential Airbus Matter Information. The final termination of the chapter 11 cases and the Debtors' emergence from bankruptcy shall not relieve counsel or other persons obligated hereunder from their responsibility to maintain the confidentiality of Confidential Airbus Matter Information pursuant to this Order.

11. The Court retains exclusive jurisdiction with respect to all matters arising from or related to implementation, interpretation, and enforcement of this Order.

Dated: February 24, 2021
New York, New York

By: /s/ Evan R. Fleck
Evan R. Fleck
Benjamin Schak
MILBANK LLP
55 Hudson Yards
New York, NY 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219
Email: efleck@milbank.com
bschak@milbank.com

-and-

Aaron L. Renenger
MILBANK LLP
1850 K Street NW, Suite 1100
Washington, D.C. 20006
Telephone: (202) 835-7500
Facsimile: (202) 263-7586
Email: arenenger@milbank.com

*Counsel for Debtors and
Debtors in Possession*

Dated: February 24, 2021
New York, New York

By: /s/ Mark Somerstein
Mark Somerstein
Michael G. McGovern
ROPES & GRAY LLP
1211 Avenue of the Americas
New York, NY 10036
Telephone: (212) 596-9000
Facsimile: (212) 596-9090
Email: mark.somerstein@ropesgray.com
michael.mcgovern@ropesgray.com

*Special Government Investigations
Counsel to Debtors*

Dated: February 24, 2021
New York, New York

By: /s/ Ruti Smithline
Brett H. Miller
Todd M. Goren
Ruti Smithline
Jocelyn E. Greer
MORRISON & FOERSTER LLP
250 West 55th Street
New York, NY 10019
Telephone: (212) 468-8000
Facsimile: (212) 468-7900
Email: brettmiller@mofo.com
tgoren@mofo.com
rsmithline@mofo.com
jgreer@mofo.com

*Counsel for Official Committee
of Unsecured Creditors*

IT IS SO ORDERED.

Dated: _____, 2021
New York, New York

THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE