Hearing Date & Time: July 26, 2021 at 2:00 p m. (prevailing Eastern Time)
Objection Deadline: July 20, 2021 at 4:00 p m. (prevailing Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

NOTICE OF HEARING ON DEBTORS' MOTION FOR AN ORDER AUTHORIZING THEM TO (I) ENTER INTO NEW AIRCRAFT LEASE AND LETTER OF INTENT AND (II) REJECT PRE-PETITION AIRCRAFT LEASE WITH WILMINGTON TRUST COMPANY (MSN 7928) AND CERTAIN RELATED AGREEMENTS

[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); Nicaragüense 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.

PLEASE TAKE NOTICE that a hearing (the "Hearing") will be held at **2:00 p.m. (prevailing Eastern Time) on July 26, 2021** before the Honorable Martin Glenn, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004 to consider the *Debtors' Motion for an Order Authorizing Them to (I) Enter Into New Aircraft Lease and Letter of Intent and (II) Reject Pre-Petition Aircraft Lease with Wilmington Trust Company (MSN 7928) and Certain Related Agreements* (the "Motion").

PLEASE TAKE NOTICE that the hearings scheduled for **July 26, 2021**, will be conducted using Zoom for Government (for audio and video purposes) before the Honorable Martin Glenn, United States Bankruptcy Judge.

PLEASE TAKE FURTHER NOTICE that parties wishing to appear at the Zoom Hearings, whether making a "live" or "listen only" appearance before the Court, need to make an electronic appearance through the Court's website at https://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl on or before 4:00 p.m. (Prevailing Eastern Time) on the business day before the day of the Zoom Hearings. After the deadline for parties to make electronic appearances passes, parties who have made their electronic appearance through the Court's website will receive an invitation from the Court with the Zoom link that will allow them to attend the Zoom Omnibus Hearings. Requests to receive a Zoom link will **not** be made by emailing the Court. Further information on the use of Zoom for Government can be found at the Court's website at https://www.nysb.uscourts.gov/zoom-video-hearing-guide.

PLEASE TAKE FURTHER NOTICE that, any objections or responses to the relief requested in the Motion 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 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 **July 20, 2021 at 4:00 p.m., prevailing Eastern Time**; 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, 55 Hudson Yards, New York, NY 10001 (Attn: Evan R. Fleck, Esq., Gregory A. Bray, Esq., and Benjamin Schak, Esq. (efleck@milbank.com, gbray@milbank.com, and bschak@milbank.com)), counsel for the Debtors; (iv) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019 (Attn: Brett H. Miller, Esq. and Todd M. Goren, Esq. (bmiller@willkie.com and tgoren@willkie.com)), counsel to the Official Committee of Unsecured Creditors (the "Committee"); (v) 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.); (vi) the Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549; and (vii) the Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591 (Attn: Office of the Chief Counsel); and (viii) Clifford Chance LLP, 31 West 52nd Street, New York, NY 10019 (Attn: Jennifer DeMarco, Esq. and Robert Johnson, Esq. (jennifer.demarco@cliffordchance.com and robert.johnson@cliffordchance.com)), counsel to Sumitomo Mitsui Banking Corporation, New York Branch, as facility agent and security agent.

PLEASE TAKE FURTHER NOTICE that copies of the Motion 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.

PLEASE TAKE FURTHER NOTICE that *your rights may be affected*. You should read the Motion carefully and discuss it with your attorney, if you have one. If you do not have an attorney, you may wish to consult with one.

PLEASE TAKE FURTHER NOTICE that the Hearing may be continued or adjourned from time to time without further notice other than an announcement of the adjourned date or dates at the Hearing or at a later hearing.

PLEASE TAKE FURTHER NOTICE that you need not appear at the Hearing if you do not object to the relief requested in the Motion.

PLEASE TAKE FURTHER NOTICE that if you do not want the Court to grant the relief requested in the Motion, or if you want the Court to consider your view on the Motion, then you or your attorney must attend the Hearing. If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter orders granting the relief requested in the Motion with no further notice or opportunity to be heard.

Dated: July 6, 2021
New York, New York

/s/ Evan R. Fleck

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

DEBTORS' MOTION FOR AN ORDER AUTHORIZING THEM TO (I) ENTER INTO NEW AIRCRAFT LEASE AND LETTER OF INTENT AND (II) REJECT PRE-PETITION AIRCRAFT LEASE WITH WILMINGTON TRUST COMPANY (MSN 7928) AND CERTAIN RELATED AGREEMENTS

[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); Nicaragüense 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.

The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state as follows in support of this Motion.

Background

1. On May 10, 2020 (the "Initial Petition Date"), certain of the Debtors (the "Initial Debtors") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "Initial Chapter 11 Cases"). On September 21, 2020 (together with the Initial Petition Date, as applicable to each Debtor, the "Petition Date"), each of AV Loyalty Bermuda Ltd. and Aviacorp Enterprises S.A. (collectively, the "Subsequent Debtors") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "Subsequent Chapter 11 Cases" and together with the Initial Chapter 11 Cases, the "Chapter 11 Cases").

2. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the *Amended Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 73] and the *Order Directing Certain Orders in Chapter 11 Cases of Avianca Holdings S.A., et al Be Made Applicable to Subsequent Debtors* [Docket No. 1030].

3. On May 22, 2020, the United States Trustee for the Southern District of New York appointed an official committee of unsecured creditors (the "Committee"). See *Notice of Appointment of Official Committee of Unsecured Creditors* [Docket No. 154]. No trustee or examiner has been appointed in these cases.

4. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to the filing of these cases is set forth in the *Declaration of Adrian Neuhauser in Support of the Debtors' Chapter 11 Petitions and First Day Orders* [Docket No. 20].

5. As the Debtors explained in their *Status Report* filed on February 12, 2021 [Docket No. 1394], a critical step toward their comprehensive restructuring will be the formation of a core fleet by entering into new or amended agreements with aircraft lessors and lenders. The Debtors are now in the final phases of securing a core fleet of narrow-body (such as A320) aircraft on terms consistent with the Debtors' commercial objectives. To this end, the Debtors have already filed motions and obtained approval to enter into, or amend, similar aircraft lease transactions.

6. The Debtors are a party to a pre-petition aircraft lease arrangement with Wilmington Trust Company, not in its individual capacity but solely as owner trustee for the Avianca JOLCO II Trust (the "Lessor", and together with the Aircraft Counterparties (as defined in the Second Stipulation), the "Lessor Parties") with respect to one A320-251N aircraft bearing MSN 7928 (the "Aircraft") (the "Pre-Petition Lease"). The Pre-Petition Lease is part of a complex structure involving various financing arrangements and obligations to third parties. Because of the complexity of this lease and financing structure, the Debtors have decided not to assume the Pre-Petition Lease and its related obligations to third parties. Instead, the Debtors and the Lessor Parties have mutually agreed to enter into a new lease that provides for a simplified lease structure and better economic terms beneficial to the estate. Therefore, the Debtors seek authority to enter into the New Aircraft Lease (as defined below) and New Guarantee (as defined below) and to reject the Pre-Petition Lease and certain Related Agreements (as defined below) effective as of the Debtors' entry into the New Aircraft Lease and New Guarantee.

Relief Requested

7. By this Motion, pursuant to sections 105(a), 363(b), and 365(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), Rules 6004 and 6006 the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 6006-1 of the Local

Rules of the United States Bankruptcy Court for the Southern District of New York (the "Local Bankruptcy Rules"), and the *Second Stipulation and Order Between Debtors and Aircraft Counterparties Concerning Certain Aircraft* [Docket No. 415] (the "Second Stipulation"), the Debtors seek entry of an order authorizing Aerovías del Continente Americano S.A. Avianca or its designated affiliates (the "Lessee") and Avianca Holdings S.A. (the "Guarantor") to (i) enter into the New Aircraft Lease (defined below) and New Guarantee (defined below); and (ii) execute a letter of intent (the "LOI") with respect to the foregoing; and (iii) reject the Pre-Petition Lease described in **Exhibit 1** to the Proposed Order (as defined below) and the executory contracts or unexpired leases associated with the Aircraft to which a Debtor is a party (the "Related Agreements") listed on **Exhibit 2**[2] annexed hereto, with such rejection effective as of the date of entry into the New Aircraft Lease and the New Guarantee (the "Rejection Date").[3] Pursuant to the *Standing Order Authorizing and Approving Procedures for Sealing and Redacting Confidential* Information [Dkt. No. 1475], the LOI and the list of the Related Agreements are omitted from the publicly filed version of this Motion and are attached as **Exhibit B** and **Exhibit 2** to the sealed, unredacted version of this Motion.

8. A proposed form of order granting the relief requested herein is annexed hereto as **Exhibit A** (the "Proposed Order").

The New Aircraft Lease

9. A summary of the principal terms and conditions of the LOI for the new aircraft lease (the "New Aircraft Lease") is set forth below:

[2] Out of an abundance of caution, the Debtors listed all agreements and documents which include executory contracts and unexpired leases associated with the Aircraft on **Exhibit 2**. The Debtors are seeking to reject the Related Agreements solely to the extent an agreement listed on **Exhibit 2** is an executory contract or unexpired lease.

[3] Paragraph C of the Second Stipulation permits the Debtors to reject the Pre-Petition Lease upon 15 days' notice to the Aircraft Counterparties (as defined in the Second Stipulation).

	New Aircraft Lease
Aircraft	A320-251N.
MSN	7928.
Term	[redacted]
Power-by-the-Hour Period	[redacted]
Power-by-the-Hour Pricing	[redacted]
Monthly Rent per Aircraft	[redacted]

10. The New Aircraft Lease features "power-by-the-hour" pricing (i.e., payments based on actual usage instead of fixed monthly rates) for a period that will extend beyond the Chapter 11 Cases. This ensures that the New Aircraft Lease will not burden the Debtors with fixed rents in the event of a low-demand period. Any and all obligations under the New Aircraft Lease, the New Guarantee and any related transaction documents shall be entitled to administrative expense status, including without limitation due to the occurrence of an Event of Default (as defined in the LOI) under the New Aircraft Lease and related transaction documents in accordance with the terms thereof. Furthermore, the only beneficiaries to the LOI and New Aircraft Lease are the parties executing the LOI and New Aircraft Lease.

11. In accordance with the LOI and the Second Stipulation, the Lessor Parties shall be entitled to certain claims against the Lessee and the Guarantor in respect of the Pre-Petition Lease, including administrative expense claims arising under the Second Stipulation or the PBH Agreement (as defined in the Second Stipulation) for amounts accrued and unpaid through the end of the Stipulation Period (as defined in the Second Stipulation) and general, nonpriority unsecured

claims for damages arising from the rejection of the Pre-Petition Lease. The Lessor Parties may elect to file proofs of claim or supplement their existing proofs of claim to reflect further damages arising from the rejection within thirty (30) days after the Rejection Date. Lessee and the Lessor Parties have also agreed to attempt to negotiate the liquidated allowed amount of such claims. If those negotiations are successful, the Debtors will promptly file a motion to approve the settled amount.

12. Accordingly, entry into the New Aircraft Lease and the New Guarantee will enable the Debtors to continue to use the subject leased Aircraft on a more cost-effective basis, while minimizing disruption to their day-to-day operations and forging a path for a more stable operating environment. Furthermore, by entry into the New Aircraft Lease and the New Guarantee, the Debtors are not assuming any obligations to third parties that may arise under the Pre-Petition Lease and Related Agreements.

Jurisdiction and Venue

13. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

14. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

15. The statutory bases for the relief requested herein are sections 105(a), 363(b), and 365(a) of the Bankruptcy Code, Bankruptcy Rules 6004 and 6006, and Local Bankruptcy Rule 6006-1.

Basis for Relief Requested

I. The Court Should Approve the Entrance into the New Lease

16. The Debtors believe that entering into the New Aircraft Lease and the New Guarantee is an ordinary-course transaction because the leasing of aircraft is commonplace in the airline industry, and the Debtors have frequently engaged in aircraft lease transactions in the past

that are similar to the ones now proposed. Accordingly, the Debtors believe that they are authorized to enter into the New Aircraft Lease and New Guarantee under section 363(c) of that Bankruptcy Code that authorizes them to "enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing . . . ." 11 U.S.C. § 363(c)(1). Nevertheless, out of an abundance of caution, the Debtors seek authorization to enter into the New Aircraft Lease and New Guarantee to the extent that such authorization is required under section 363(b) of the Bankruptcy Code.

17. Section 363(b) of the Bankruptcy Code empowers the Court to allow a debtor, in the exercise of its sound business judgment and after notice and a hearing, to "use, sell, or lease, other than in the ordinary course of business, property of the estate." See 11 U.S.C. § 363(b)(1); see also Official Comm. of Unsecured Creditors of LTV Aerospace & Defense Co. v. LTV Corp. (In re Chateaugay Corp.), 973 F.2d 141, 143, 145 (2d Cir. 1992) (holding that a court may approve an application under section 363(b) upon a showing of a good business reason for the disposition); Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983) (requiring "some articulated business justification" to approve the use, sale or lease of property outside the ordinary course of business). Moreover, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." In re Johns-Manville Corp., 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted).

18. The Debtors have exercised sound business judgment and good faith in entering into the LOI with respect to the New Aircraft Lease. Specifically, the LOI is the result of arm's-length negotiations between the Lessee and the Lessor Parties to lease and operate the Aircraft on the terms that are fair and equitable, which the Debtors chose to enter into after considering other

alternatives including whether to amend and assume the Pre-Petition Lease. The modified structure of the New Aircraft Lease together with its improved economic terms are fair, reasonable, and in the best interest of the Debtors' estates. Those terms include rental payment on terms that are suitable for uncertain near-term market conditions, both during and immediately after the chapter 11 cases. The Debtors were able to obtain these favorable lease terms, in part, due to the historically low level of demand for aircraft in the current market. Furthermore, the New Aircraft Lease is an important component of the Debtors' long-term business plan. Entry into the New Aircraft Lease will enable the Debtors to continue to use the subject leased aircraft on a cost-effective basis, while minimizing disruption to their day-to-day operations and forging a path for a more stable operating environment. Therefore, entry into the New Aircraft Lease at this time is in the Debtors' best interests.

II. The Court Should Approve the Rejection of the Pre-Petition Lease and Related Documents

19. Section 365(a) of Bankruptcy Code provides, in pertinent part, that a debtor in possession, "subject to the court's approval, may . . . reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). "The purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to 'renounce title to and abandon burdensome property.'" In re Orion Pictures Corp., 4 F.3d 1095, 1098 (2d Cir. 1993); see also In re Republic Airways Holdings Inc., 547 B.R. 578, 582 (Bankr. S.D.N.Y. 2016) (same).

20. The Supreme Court has recognized that "the authority to reject an executory contract" is not merely incidental, but rather "is vital to the basic purpose of a Chapter 11 reorganization, because rejection can release the debtor's estate from burdensome obligations that

can impede a successful reorganization." NLRB v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984). Courts have similarly held that "[t]he right of a debtor in possession to reject certain contracts is fundamental to the bankruptcy system because it provides a mechanism through which severe financial burdens may be lifted while the debtor attempts to reorganize." Westbury Real Estate Ventures, Inc. v. Bradlees Stores, Inc. (In re Bradlees Stores, Inc.), 194 B.R. 555, 558 n.l (Bankr. S.D.N.Y. 1996); see also In re Ames Dep't Stores, Inc., 306 B.R. 43, 51-52 (Bankr. S.D.N.Y. 2004) ("The ability to reject provides the trustee or debtor-in-possession with the means to relieve the estate of the duty to perform on burdensome obligations at the expense of all of the estate's other creditors, and to avoid the incurrence of additional administrative expenses which lack a corresponding benefit to the estate.").

21. The decision to seek rejection of an executory contract is in the Debtors' reasonable business judgment. See In re Orion Pictures, 4 F.3d at 1098-99 ("[A] bankruptcy court reviewing a trustee's or debtor-in-possession's decision to assume or reject an executory contract [pursuant to section 365] should examine a contract and the surrounding circumstances and apply its best 'business judgment' to determine if it would be beneficial or burdensome to the estate to assume it."); In re Old Carco LLC, 470 B.R. 688, 703 (S.D.N.Y. 2012) (holding that the business judgment standard "applies when a Bankruptcy Court approves a debtor's assumption or rejection of a contract"); In re Delta Air Lines, Inc., 359 B.R. 468, 476 (Bankr. S.D.N.Y. 2006) ("[T]he standard for deciding a motion to reject an executory contract under Section 365(a) is the business judgment rule, which basically means that if it makes economic sense for the debtor in the judgment of management, the motion to reject will be granted.").

22. The business judgment standard requires a court to approve a debtor's business decision unless that decision is the product of bad faith, whim, or caprice. In re Bradlees Stores,

Inc., 194 B.R. at 558 n.1. Courts generally will not second-guess a debtor's business judgment concerning executory contract rejection. See, e.g., In re Grubb & Ellis Co., No. 12-10685 (MG), 2012 WL 1036071, at *4 (Bankr. S.D.N.Y. Mar. 27, 2012) ("Courts should not generally interfere with business decisions absent a showing of 'bad faith, self-interest, or gross negligence.'") (citation omitted); In re MF Glob. Holdings Ltd., 466 B.R. 239, 242 (Bankr. S.D.N.Y. 2012); In re Balco Equities Ltd., Inc., 323 B.R. 85, 98 (Bankr. S.D.N.Y. 2005) ("A court 'should defer to a debtor's decision that rejection of a contract would be advantageous unless the decision is so unreasonable that it could not be based on sound business judgment, but only on bad faith or whim.'") (quoting In re Sundial Asphalt Co., 147 B.R. 72, 84 (E.D.N.Y. 1992)). Furthermore, sound business judgment generally requires rejection where an executory contract is burdensome to the debtor's estate and the rejection would relieve the estate of such burden. See, e.g., In re Orion Pictures, 4 F.3d at 1098-99; In re Stable Mews Assocs., Inc., 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984).

23. The Debtors have exercised sound business judgment and good faith in determining to reject the Pre-Petition Lease and Related Agreements (which are identified on **Exhibits 1 and 2** of the Proposed Order, respectively). The Debtors have examined the complexity of the Pre-Petition Lease structure and their third-party obligations and have determined, in agreement with the Aircraft Counterparties, to reject the Pre-Petition Lease and Related Agreements and, instead, enter into a New Aircraft Lease. Continued compliance with the financing documents and third-party obligations that exist under the Pre-Petition Lease and Related Agreements are burdensome and provide little, if any, benefit to the Debtors and their estates. As a result of the foregoing, the Debtors, in an exercise of their business judgment, have determined to reject the Pre-Petition Lease and Related Documents.

24. Accordingly, the Debtors respectfully request that the Court enter an order, substantially in the form of **Exhibit A** attached hereto, authorizing the Debtors to i) enter into the New Aircraft Lease and New Guarantee and ii) reject the Pre-Petition Lease and Related Agreements as an exercise of sound business judgment and in the interest of the estate.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

25. Given the nature of the relief requested herein, the Debtors respectfully request that the Court enter an order providing that the notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude the relief requested herein from the fourteen (14) day stay period provided under Bankruptcy Rule 6004(h).

Notice

26. Notice of this Motion has been provided in accordance with the procedures set for in the *Order Implementing Certain Notice and Case Management Procedures* [Docket No. 47]. Notice has been provided to the Aircraft Counterparties in accordance with paragraph C of the Second Stipulation. Furthermore, the Debtors have provided notice of the Motion and **Exhibits 1** and **2** to all the parties listed on **Exhibits 1 and 2**. The Debtors respectfully submit that no further notice is required.

WHEREFORE, the Debtors respectfully request entry of the proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: New York, New York
July 6, 2021

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Counsel for Debtors and Debtors-in-Possession

Exhibit A

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

ORDER AUTHORIZING DEBTORS TO (I) ENTER INTO NEW AIRCRAFT LEASE AND LETTER OF INTENT AND (II) REJECT PRE-PETITION AIRCRAFT LEASE WITH WILMINGTON TRUST COMPANY (MSN 7928) AND CERTAIN RELATED AGREEMENTS

Upon the motion (the "Motion")[2] of the Debtors, pursuant to sections 105(a), 363(b), and 365(a) of the Bankruptcy Code, authorizing the Debtors to i) enter into the New Aircraft Lease and the New Guarantee, and ii) reject the Pre-Petition Lease and Related Agreements; and the Court having jurisdiction to decide the Motion and the grant the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant

[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); Nicaragüense 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.

[2] Capitalized terms not otherwise defined herein are shall be given the meanings ascribed to them in the Motion.

to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the relief sought in the Motion having been provided in accordance with the Case Management Order, such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having held a hearing to consider the relief requested in the Motion (the "Hearing"); and upon the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion and granted herein is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Motion is granted to the extent set forth herein.

2. Pursuant to section 365 of the Bankruptcy Code and Rule 6006, and subject to the terms of this Order, the Pre-Petition Lease more fully described in **Exhibit 1** attached hereto and Related Agreements listed on **Exhibit 2** attached to the Motion (solely to the extent such Related Agreements constitute executory contracts or unexpired leases) shall be rejected, effective as of the Rejection Date (as defined in the Motion).

3. The Debtors shall file notice of the Rejection Date with the Court promptly upon entry into the New Aircraft Lease.

4. The Debtors are authorized to enter into and perform under the LOI and the New Aircraft Lease in the ordinary course pursuant to section 363(c) of the Bankruptcy Code.

5. The Lessee and the Guarantor are authorized to enter into and perform their respective obligations under the LOI in form substantially identical to those attached to the Motion. Entry into and performance under the LOI is in the best interest of the Debtors and their estates.

6. The Lessee and the Guarantor are authorized to enter into and perform their obligations under the New Aircraft Lease, the New Guarantee and any related transaction documents (on the terms consistent with those set forth in the corresponding LOI), including leasing and operating the aircraft identified therein. Entry into and performance of each of the New Aircraft Lease, the New Guarantee and any related transaction documents is in the best interest of the Debtors and their estates.

7. The Debtors are authorized to execute all documentation necessary to enter into the New Aircraft Lease, the New Guarantee, any related transaction documents and the LOI, and to effectuate and perform their obligations thereunder.

8. The automatic stay under section 362(a) of the Bankruptcy Code is modified to the extent necessary to implement the terms and conditions set forth in the New Aircraft Lease, the New Guarantee and any related transaction documents. Subject to the terms and conditions in the New Aircraft Lease, upon the occurrence of an event of default thereunder and the expiration of any applicable grace period, the Lessor thereunder may file with the Court and deliver to the Lessee a written notice (a "Termination Notice") effective as of five business days after its filing and delivery (the "Remedies Period"). Upon the expiration of the Remedies Period, the automatic stay shall be deemed lifted and the Lessor may undertake any enforcement actions provided for under the applicable New Aircraft Lease without the need for any further authorization from this Court or further notice (other than as expressly provided for under the New Aircraft Lease). During the Remedies Period, the Debtors may seek an emergency hearing at which they may contest the fact that an event of default under the applicable New Aircraft Lease has occurred and is continuing. The Remedies Period shall automatically extend to the conclusion of such a hearing and the issuance of a ruling on the matters contested thereat.

9. Except as otherwise provided in the LOI or the New Aircraft Lease, the New Guarantee and any related transaction documents, the Lessee's and the Guarantor's obligations under the New Aircraft Lease, the New Guarantee and any other related transaction documents, shall be administrative expenses pursuant to sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code, *provided* that nothing herein waives the Debtors' right to contest any claims that are subject to bona fide dispute or any available defenses.

10. The Lessor Parties shall file any proof of claim for damages arising from the rejection of the Pre-Petition Lease no later than thirty (30) days after the Rejection Date. Nothing herein or in the New Aircraft Lease, the New Guarantee or any related transaction documents shall prejudice any parties' rights with respect to the rejected Pre-Petition Lease or Related Agreements, or the Second Stipulation, as applicable; provided, that the parties agree (i) that the end of the Stipulation Period (as such period is defined in the Second Stipulation) shall be deemed the date of entry into the New Aircraft Lease and (ii) to enter into the New Aircraft Lease rather than return the Aircraft upon rejection of the Pre-Petition Lease.

11. The Lessor Parties are entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code and any reversal or modification on appeal of the authorization provided herein to consummate the lease of the Aircraft shall not affect the validity of the leasing of the Aircraft from each of the Lessors, as lessor, to the Lessee, as lessee.

12. Except as expressly set forth herein, in the LOI, or in the New Aircraft Lease, this Order is without prejudice to the rights and remedies of each party in interest under the Second Stipulation.

13. Notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, this Order shall be binding in all respects upon, and shall inure to the

benefit of, the Debtors, their estates and their creditors, their respective affiliates, successors, and assigns; and any affected third parties, including, but not limited to, the Lessors, all other persons asserting interests in the relevant aircraft.

14. To the extent that there may be any inconsistency between the terms of the Motion and the express terms of this Order, the express terms of this Order shall govern.

15. Notice of the Motion is adequate under Bankruptcy Rule 6004(a).

16. Notwithstanding the provisions of Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

17. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order.

18. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: _____, 2021
New York, New York

THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1
Pre-Petition Lease

Reg. No.	MSN	Aircraft Mfr. & Model	Engine Mfr. & Model	ESN #1	ESN #2	Lessee Entity	Lessor Counterparty; Sublessor Counterparty (if applicable)[7]	Lessor Address	Owner (if different than Lessor)	Security Trustee/ Security Agent	Is the Lessee the Operator? (Y/N). If not, list Operator.	Is there any sublease to a non-affiliated entity? (Y/N)
N765AV	7928	Airbus A320-251N	CFM International Inc. Model LEAP-1A26	598380	598382	Aerovías del Continente Americano S.A. Avianca (Sublessee)	Los Katios Leasing Co., Ltd., as Lessor Wilmington Trust Company, not in its individual capacity but solely as owner trustee for Avianca JOLCO II Trust	Los Katios Leasing Co., Ltd. c/o Sumitomo Mitsui Finance and Leasing Company, Limited 1-3-2- Marunouchi Chiyoda-ku, Tokyo 100-8287 Japan Attn: General Manager of Aviation Business Department Tel: +81 (0)3 5219 6395 Fax: +81 3 5219 6576 Wilmington Trust Company, as Owner Trustee for Avianca JOLCO II Trust 1100 North Market St. Wilmington, DE 19890 Fax: +1 302 676 4140 Tel: +1 302 676 6000 Email: mbosnjak@wilmingtontrust.com Attn: Corporate Trust Admin/Matthew C. Bosnjak With a copy to: Barbra R. Parlin, Esq. Holland & Knight LLP 31 West 52nd Street New York, NY 10019 212-513-3210 Barbra.parlin@hklaw.com	N/A	Sumitomo Mitsui Banking Corporation, New York Branch	Y; Aerovías del Continente Americano S.A. Avianca (Sublessee)	N

[7] Sublessor information to be included if the transaction structure has a head lease / sublease structure wherein the sublessee is the operating airline.

Exhibit 2

List of Pre-Petition Lease Transaction Documents

[Redacted from Public Filing]

Exhibit B

LOI for New Aircraft Lease

[Redacted from Public Filing]