

**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. : (Joint Administration Requested)

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**ORDER AUTHORIZING RETENTION AND APPOINTMENT
OF KCC AS CLAIMS AND NOTICING AGENT UNDER 28 U.S.C. § 156(c),
11 U.S.C. § 105(a), AND S.D.N.Y. L.B.R. 5075-1 NUNC PRO TUNC
TO THE PETITION DATE AND GRANTING RELATED RELIEF**

Upon consideration of the application (ECF Doc. # 23) (the “Application”)² of the above-captioned debtors and debtors-in-possession (the “Debtors”), for entry of an order (this “Order”) authorizing the retention and appointment of Kurtzman Carson Consultants LLC (“KCC”) as

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). The Debtors’ principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Application.



claims and noticing agent under 28 U.S.C. §156(c), section 105(a) of the Bankruptcy Code, and S.D.N.Y. LBR 5075-1 to, among other things, (i) distribute required notices to parties in interest; (ii) receive, maintain, docket, and otherwise administer the proofs of claim filed in the Debtors' Chapter 11 Cases; and (iii) provide such other administrative services—as required by the Debtors—that would fall within the purview of services to be provided by the Clerk's Office; and upon the Jordan Declaration submitted in support of the Application; and the Debtors having estimated that there are in excess of a thousand creditors in these Chapter 11 Cases, many of which are expected to file proofs of claim, and it appearing that the receiving, docketing and maintaining of proofs of claim would be unduly time consuming and burdensome for the Clerk; and the Court being authorized under 28 U.S.C. §156(c) to utilize, at the Debtors' expense, outside agents and facilities to provide notices to parties in title 11 cases and to receive, docket, maintain, photocopy and transmit proofs of claim; and the Court being satisfied that KCC has the capability and experience to provide such services and that KCC does not hold an interest adverse to the Debtors or the estates respecting the matters upon which it is to be engaged; and good and sufficient notice of the Application having been given; and no other or further notice being required; and it appearing that the employment of a claims and noticing agent is in the best interest of the Debtors, their estates and creditors; and sufficient cause appearing therefor; it is hereby

ORDERED that the Application is approved solely as set forth in this Order; and it is further

ORDERED that the Debtors are authorized to retain KCC effective *nunc pro tunc* to the Petition Date under the terms of the Services Agreement, and KCC is authorized and directed to perform noticing services and to receive, maintain, record and otherwise administer the proofs of

claim filed in these Chapter 11 Cases, and all related tasks, as described in the Application and as modified herein, by the Bankruptcy Rules or other orders of this Court; and it is further

ORDERED that should KCC agree, upon the Debtors' request, to provide additional service not set forth in the Application, KCC shall file a notice on the docket detailing such additional services; and it is further

ORDERED that KCC shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in these Chapter 11 Cases and is authorized and directed to maintain official claims registers for each of the Debtors, to provide public access to every proof of claim unless otherwise ordered by the Court and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk; and it is further

ORDERED that KCC is authorized and directed to provide an electronic interface for filing proofs of claim and to obtain a post office box or address for the receipt of proofs of claim; and it is further

ORDERED that KCC is authorized to take such other action to comply with all duties set forth in the Application; and it is further

ORDERED that the Debtors are authorized to compensate KCC in accordance with the terms of the Services Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by KCC and the rates charged for each, and to reimburse KCC for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for KCC to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses; and it is further

ORDERED that prior to any increase in KCC's billing rates, KCC shall file an affidavit with the Court and provide ten business days' notice to the Debtors, the United States Trustee

and any official committee, which supplemental affidavit shall explain the basis for the requested rate increase and state whether the Debtors have consented to such rate increase. The United States Trustee retains all rights to object to any rate increase and all rates and rate increases are subject to review by the Court.

ORDERED that KCC shall maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the Debtors, the office of the United States Trustee, counsel for the Debtors, counsel for any official committee, if any, and any party-in-interest who specifically requests service of the monthly invoices; and it is further

ORDERED that the parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Services Agreement or monthly invoices, and that the parties may seek resolution of the matter from the Court if resolution is not achieved; and it is further

ORDERED that, pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of KCC under this Order shall be an administrative expense of the Debtors' estates; and it is further

ORDERED that KCC may apply its retainer to all pre-petition invoices, which retainer shall be replenished to the original retainer amount, and thereafter, KCC may hold its retainer under the Services Agreement during these Chapter 11 Cases as security for the payment of fees and expenses incurred under the Services Agreement; and it is further

ORDERED that the Debtors shall indemnify KCC under the terms of the Services Agreement; and it is further

ORDERED that to the extent applicable in the Services Agreement, all requests by KCC for the payment of indemnification or attorney fees shall be made by means of an application to

the Court and shall be subject to review by the Court to ensure that payment of such indemnity conforms to the terms of the Services Agreement and is reasonable under the circumstances of the litigation or settlement in respect of which indemnity is sought, *provided, however*, that in no event shall KCC be indemnified in the case of its own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct; and it is further

ORDERED that notwithstanding anything in this Order, the Motion or the Services Agreement to the contrary, paragraph IX(B) of the Services Agreement is hereby stricken and of no force and effect; and it is further

ORDERED that in the event KCC is unable to provide the services set out in this order, KCC will immediately notify the Clerk and Debtors' attorney and cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and Debtors' attorney; and it is further

ORDERED that the Debtors may submit a separate retention application, pursuant to 11 U.S.C. § 327 and/or any applicable law, for services that are to be performed by KCC that are not specifically authorized by this Order; and it is further

ORDERED that the Debtors and KCC are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application; and it is further

ORDERED that, notwithstanding any term in the Services Agreement to the contrary, the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order; and it is further

ORDERED that KCC shall not cease providing claims processing services during the chapter 11 case(s) for any reason, including nonpayment, without an order of the Court; and it is further

ORDERED that in the event of any inconsistency between the Services Agreement, the Application and the Order, the Order shall govern.

IT IS SO ORDERED.

Dated: May 13, 2020
New York, New York

/s/ Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge