

**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.*,<sup>1</sup> : Case No. 20-11133 (MG)  
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Debtors. : (Jointly Administered)  
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**FINAL ORDER PURSUANT TO SECTIONS 363(B), 507, AND 105(A) OF THE  
BANKRUPTCY CODE (I) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS  
TO (A) PAY PREPETITION WAGES, COMPENSATION AND EMPLOYEE BENEFITS  
AND (B) CONTINUE PAYMENT OF WAGES, COMPENSATION, EMPLOYEE  
BENEFITS AND RELATED ADMINISTRATIVE OBLIGATIONS IN THE ORDINARY  
COURSE OF BUSINESS; AND (II) AUTHORIZING AND DIRECTING APPLICABLE  
BANKS AND FINANCIAL INSTITUTIONS TO PROCESS AND PAY ALL  
CHECKS PRESENTED FOR PAYMENT AND TO HONOR ALL  
FUNDS TRANSFER REQUESTS MADE BY THE DEBTORS**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors-in-possession (the “Debtors”), seeking entry of an order pursuant to sections 363(b), 507, and 105(a) of the Bankruptcy Code (i) authorizing, but not directing, the Debtors to (a) pay certain prepetition wages, compensation and employee benefits; and (b) continue payment of wages,

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



compensation and certain employee benefit programs in the ordinary course of business; and (iii) authorizing and directing applicable banks and other financial institutions to process and pay all checks presented for payment and to honor all funds transfer requests made by the Debtors relating to the foregoing, 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 Orders*, dated as of 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 terms of this Order, the Debtors are hereby authorized, but not directed, to pay, in their sole discretion, the Prepetition Employee Obligations; provided, however, that absent a subsequent order of the Court, the Debtors shall not make any payments with respect

to: (i) the Long Term Incentive Plan (as set forth in Exhibit E-8 to the Debtors' reply in support of the Motion [Docket No. 238] (the "Reply")), or (ii) the Retention Plan for any Employee listed on Exhibit F to the Reply with a base salary of greater than \$200,000.

3. Subject to the other terms of this Order, the Debtors are hereby authorized, but not directed, (i) to pay and/or honor the Employee Obligations that become due and owing during the pendency of these Chapter 11 Cases and (ii) to continue their practices, programs, and policies with respect to the Employees (and, where applicable, Retired Employees) as such practices, programs and policies were in effect as of the Petition Date.

4. No payment to any Employee may be made pursuant to this Order to the extent that it is a transfer in derogation of section 503(c) of the Bankruptcy Code; provided, that absent further order of the Court, the Debtors' ability to make payments under any retention or incentive plan shall be limited to the following: (a) retention payments to non-insider Employees for service during Q3 and Q4 of 2020, and (b) incentive payments to non-insider Employees that were fully accrued prior to the Petition Date.

5. To the extent the Debtors seek to pay any Employee (including any Furloughed Employee) more than \$13,650 on account of prepetition claims that are subject to the priority cap of section 507(a)(4) of the Bankruptcy Code, the Debtors shall provide the U.S. Trustee and the Committee with at least five (5) business days' prior notice (or as much notice as is reasonably practicable under the circumstances) and the Committee's right to object to any such payment shall not be prejudiced by entry of the Interim Order or this Final Order; provided, that the Debtors shall not, without further order of the Court, (a) make any payment of Prepetition Employee Obligations that are in excess of the priority cap of section 507(a)(4) of the Bankruptcy Code to any insider (as that term is defined in section 101 of the Bankruptcy Code) (a "Statutory Insider"), or (b) make

any severance payment to any Statutory Insider. The Debtors will provide at least five (5) business days' notice (or as much notice as is reasonably practicable under the circumstances) to the U.S. Trustee prior to making any severance payment to any Employee in excess of \$5,000.

6. Pursuant to section 362(d) of the Bankruptcy Code, Employees are authorized to proceed with their claims under the Workers' Compensation Plan in the appropriate judicial or administrative forum and the Debtors are authorized to continue the Workers' Compensation Plan and pay all prepetition amounts relating thereto in the ordinary course. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Plan.

7. All applicable Disbursement Banks and other financial institutions are authorized and directed, when requested by the Debtors in the Debtors' sole discretion, to receive, process, honor, and pay any and all prepetition and postpetition checks issued or to be issued, and fund transfers requested or to be requested, by the Debtors on account of the Prepetition Employee Obligations that were not honored or paid as of the Petition Date, whether those checks were presented or fund transfers requested prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

8. Authorization to pay and/or honor all Prepetition Employee Obligations shall not affect the Debtors' right to contest the amount or validity of any Prepetition Employee Obligations, including without limitation the Payroll Tax Obligations that may be due to any taxing authority.

9. The Debtors are authorized, but not directed, to re-employ any and all Furloughed Employees postpetition without further order of this Court.

10. Nothing contained in this Order or the Motion shall constitute a rejection or assumption by the Debtors of any executory contract or unexpired lease by virtue of reference to any such contract or lease in the Motion.

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

12. The Debtors shall provide the Committee with at least five (5) business (or as much notice as is reasonably practicable under the circumstances) days prior notice before: (a) making any material changes to any employee benefit plans or other benefits described in the Motion, (b) materially modifying the wages, salaries, incentives, commissions or other compensation paid to any Statutory Insider, or (c) seeking any relief to modify any collective bargaining agreement.

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

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

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

**IT IS SO ORDERED.**

Dated: June 17, 2020  
New York, New York

/s/ Martin Glenn  
MARTIN GLENN  
United States Bankruptcy Judge