

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

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IN RE :
: Civil Case No. 21-10004 (AJN)
AVIANCA HOLDINGS S.A., *et al.* : Civil Case No. 21-10118 (AJN)
: Debtors and Reorganized Debtors. : Appeals arising from
: Bankruptcy Case No. 20-11133 (MG)
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BLAKE W. KIM ROLLOVER IRA, *et al.*, :
UDI BARUCH GUINDI, *et al.*, :
: Appellants, :
v. :
AVIANCA HOLDINGS S.A., *et al.*, :
: Appellees. :
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**DECLARATION OF RICHARD GALINDO IN SUPPORT OF
APPELLEES' MOTION TO DISMISS APPEALS AS EQUITABLY MOOT**

I, Richard Galindo, pursuant to section 1746 of title 28 of the United States Code, hereby declare under penalty of perjury as follows:

1. I serve as Legal Vice President and General Counsel for Avianca Group International Limited and its affiliated entities, and have served in this position since December 1, 2021. Prior thereto, I served as Legal Vice President and General Counsel for Avianca Holdings S.A. ("Avianca Holdings") and its affiliated debtor entities (collectively, the "Debtors") since November 2020. At Avianca Holdings, I previously served as Associate General Counsel beginning in October 2019 and prior thereto as Legal Director beginning in February 2017. I have more than 20 years of experience in the legal market focused on the airline industry, corporate matters, and international contracts. Prior to joining the Avianca



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enterprise, I served as director of the corporate and mergers and acquisitions practice group of a law firm in Colombia.

2. I am generally familiar with the Debtors' and the Reorganized Debtors'¹ day-to-day operations, financial affairs, business affairs, and books and records. Except as otherwise indicated, all facts set forth in this declaration (the "Declaration") are based upon my personal knowledge; my review of relevant documents; or my opinion based upon my experience, knowledge, and information concerning the Debtors' and the Reorganized Debtors' operations and legal affairs. I am authorized to submit this Declaration on behalf of the Appellees, and if called upon to testify, I would testify to the facts set forth herein.

3. I submit this Declaration in support of the *Appellees' Motion to Dismiss Appeals as Equitably Moot* and the *Memorandum of Law in Support of Appellees' Motion to Dismiss Appeals as Equitably Moot*. I have overseen, and am generally familiar with, the actions taken to consummate the Debtors' confirmed plan of reorganization (the "Plan"). As described further herein, because of the steps the Debtors have taken to carry out the Plan and the resulting transactions that have occurred over the past two months, the Plan has been consummated and a comprehensive change of circumstances for the Reorganized Debtors has occurred.

Background

4. On May 10, 2020 (the "Petition Date"), the Debtors filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code. Avianca Holdings is a company organized under the laws of Panama and was the ultimate parent company of the remaining Debtors and their non-Debtor affiliates (collectively, "Avianca").

¹ Capitalized terms used but not defined herein have the meanings ascribed to such terms in the *Memorandum of Law in Support of Appellees' Motion to Dismiss Appeals as Equitably Moot*, filed contemporaneously herewith.

5. Approximately 16 months after filing for bankruptcy protection, the Debtors succeeded in obtaining widespread creditor support for the Plan. The Plan was the culmination of the Debtors' restructuring and was the product of extensive good-faith, arm's-length negotiations with the Debtors' stakeholders. The Plan allowed the Debtors to achieve their key restructuring goals: reducing costs, restructuring their balance sheet, overhauling their business plan, and obtaining access to additional liquidity and long-term financing.

Confirmation Order and Substantial Consummation of the Plan

6. The United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") approved the Plan and entered an order confirming the Plan (the "Confirmation Order") on November 2, 2021. Thereafter, the Debtors and their constituents worked tirelessly to effectuate the complicated steps of their reorganization in an effort to maximize recoveries for their stakeholders and to emerge as a refocused entity.

7. The Plan implementation process was complex given the nature of the Debtors' business and the Debtors' corporate structure, including the fact that the Debtors' business involves companies in various countries around the world. The process of going effective with the Plan involved numerous parties, including lenders, investors, creditors, aircraft lessors, vendors, new shareholders and warrant holders, and required the drafting and negotiation of extensive documentation and the planning and implementation of a variety of complex corporate transactions in several jurisdictions. The Debtors implemented numerous transactions, as described herein, to effectuate a corporate restructuring of their businesses.

8. The many actions taken by the Debtors and Reorganized Debtors following entry of the Confirmation Order, and culminating in the Debtors' emergence from Chapter 11 as the Reorganized Debtors on December 1, 2021 (the "Effective Date"), included the establishment of

an entirely new holding company incorporated under the laws of England and Wales under the name Avianca Group International Limited (“Reorganized AVH”). A new Board of Directors of Reorganized AVH has been appointed, a new budget for Reorganized AVH has been approved and implemented, and the Reorganized Debtors have taken duly authorized corporate actions (including in connection with operating Avianca’s significant air travel and cargo services). In addition, Reorganized AVH has acceded as guarantor of certain of the Reorganized Debtors’ obligations, and all estate property has vested in the Reorganized Debtors.

9. Avianca also established a new holding company structure and formed seven new entities (the “New Entities”) in various foreign jurisdictions, in order to facilitate the restructuring of the organizational structure of the Reorganized Debtors:

- a *sociedad anónima* organized under the laws of Panama under the name AVN Corporate Ventures S.A.;
- a *sociedad anónima* organized under the laws of Panama under the name AVN Corporate Investments S.A.;
- a private limited company incorporated under the laws of England and Wales under the name AVN Flight International Limited;
- a private limited company incorporated under the laws of England and Wales under the name Avianca MidCo 1 Limited;
- a private limited company incorporated under the laws of England and Wales under the name Avianca MidCo 2 Limited;
- an exempted company organized under the laws of the Cayman Islands under the name AVN Flight Cayman Limited; and
- a private limited company incorporated under the laws of England and Wales under the name Avianca Group (UK) Limited.

10. Following entry of the Confirmation Order, Avianca also executed (i) an Internal Reorganization Agreement pursuant to which the equity interests owned by Avianca Holdings in certain of its subsidiaries were ultimately transferred, through certain corporate transactions, to

Avianca Group (UK) Limited, and (ii) an Intercompany Balances and Cash Transfer Agreement pursuant to which certain intercompany balances and cash of Avianca Holdings were ultimately transferred to Avianca MidCo 2 Limited, which thereafter released certain of the intercompany balances. Certain contracts and certain intellectual property from Avianca Holdings have been transferred to subsidiaries of Reorganized AVH. In addition, Reorganized AVH has adopted new organizational documents and has submitted such documents to relevant authorities for filing or recording.

11. Other steps taken by the Debtors and Reorganized Debtors following entry of the Confirmation Order include the consummation of the Bankruptcy Court-approved Equity Conversion and Commitment Agreement (the “ECCA”), pursuant to which approximately \$837 million of debtor-in-possession financing loans (the “Tranche B Loans”) was converted into equity interests in Reorganized AVH, and pursuant to which 23 financial institutions and other entities located in countries around the world contributed nearly \$200,000,000 (to date) of new cash to Reorganized AVH. Pursuant to the ECCA, Reorganized AVH issued more than 31,000,000 ordinary shares in Reorganized AVH to the Tranche B lenders—who entered into a shareholders’ agreement with Reorganized AVH—and issued equity warrants to United Airlines, Inc. (“United”). Those warrants have since been converted into shares, and on December 29, 2021, approximately 6.5 million ordinary shares in Reorganized AVH were issued to United. Reorganized AVH has also executed a warrant instrument for the issuance of equity warrants to certain electing general unsecured claimholders of the Debtors.

12. Also among the numerous complex actions taken by the Debtors and Reorganized to consummate the Plan, the Reorganized Debtors have entered into amendments in respect of credit facilities and issued new long-term debt, including (i) the conversion of approximately

\$1.67 billion of debtor-in-possession financing notes to seven-year exit notes; (ii) an amendment to a revolving credit facility for up to \$100 million led by Citibank; (iii) a comprehensive amendment to a \$66.7 million credit card securitization facility; and (iv) an amendment to a \$52.2 million engine loan facility from Credit Agricole.

13. The Debtors' and Reorganized Debtors' actions and steps taken to consummate the Plan also included the following:

- Payment in full of all invoiced DIP Facility Fees and Expenses.
- Commencement of distributions of cash to holders of administrative, priority, and certain secured claims.
- Negotiation of and entry into complex international leases, or amendments thereof, for 142 aircraft with approximately 32 different counterparties.
- Assumption of thousands of executory contracts and unexpired leases, and rejection of numerous other contracts and leases.

14. The Debtors' and Reorganized Debtors' actions taken, and transactions completed, since the entry of the Confirmation Order have resulted in a comprehensive change of circumstances for the Avianca enterprise.

15. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: January 4, 2022

/s/ Richard Galindo
Richard Galindo