Docket #0031 Date Filed: 5/31/2022

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ATTORNEYS

May 31, 2022

VIA ECF

Hon. Vernon S. Broderick
United States District Judge
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *In re Avianca Holdings S.A.*, Case No. 21-cv-10118-VSB

Dear Judge Broderick:

We represent Appellants in the above-referenced action and write in brief response to Appellees' letter, dated May 31, 2022, submitting a recent Ninth Circuit Court of Appeals opinion regarding equitable mootness, *McDonald v. PG&E Corp.*, 2022 WL 1657452 (9th Cir. May 25, 2022). This decision has no application to the present appeal because it arises from the same confirmation proceedings at issue in the case Appellees submitted to the Court on March 31, 2022, and is distinguishable for the same reasons. *See* Dkt. 28 (submitting *In re Pac. Gas and Elec. Co.*, 2022 WL 911780 (9th Cir. Mar. 29, 2022)); *see also* Dkt. 29 (Appellants' response letter). As such, the Court should disregard it.

As we advised in our letter dated March 31, 2022 (Dkt. 29), the cases Appellees rely on are distinguishable because the debtors had already substantially consummated reorganization plans by disbursing "more than $42 billion to more than 2,800 creditors and other parties in interest," including creating "fully funded" trusts that paid out claims to individuals. *In re Pac. Gas and Elec. Co.*, 2022 WL 911780, *2; *McDonald*, 2022 WL 1657452. In contrast, Appellants demonstrated that Appellees failed to meet their threshold burden to show that the Plan has been substantially consummated. Instead, Appellees made conclusory assertions that they engaged in a handful of allegedly "complex," but unidentified, transactions, while, tellingly, failing to even claim that they had completed numerous "key steps" identified in the Plan as necessary to substantially consummate the Plan. Dkt. 18 pp. 14-18.

Moreover, Appellants demonstrated in their opposition brief that in the Second Circuit, failing to seek a stay is not fatal to an appeal even if a plan has been substantially consummated. Indeed, all a creditor must show is that it would not be inequitable to fashion relief for the creditor, which Appellants amply demonstrated. *Id.* pp. 23-24. It is thus entirely irrelevant whether the Ninth Circuit employs a different standard.

We thank the Court for its time and continued attention to this matter.

Respectfully submitted,

/s/ Glen Lenihan

Glen Lenihan

cc: Appellees' counsel (*via* ECF)

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