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

-----X	:	
In re:	:	Chapter 11
	:	
AVIANCA HOLDINGS S.A., <i>et al.</i> , ¹	:	Case No. 20-11133 (MG)
	:	
Debtors and Reorganized Debtors.	:	(Confirmed)
	:	
-----X		

**NOTICE OF PRESENTMENT
OF MOTION FOR FINAL DECREE
CLOSING CHAPTER 11 CASE**

PLEASE TAKE NOTICE that upon the annexed motion of the above-referenced Reorganized Debtors, the undersigned will present the attached proposed order to the Honorable Martin Glenn, Chief U.S. Bankruptcy Judge, for signature on May 24, 2024, at 12:00 noon.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the proposed order must be made in writing and received in the Bankruptcy Judge's chambers and by the undersigned not later than 11:30 a.m. on May 24, 2024. The ECF docket number to which the filing relates shall be included in the upper right-hand corner of the caption of all objections. Unless objections are

¹ A complete list of each of the Debtors and Reorganized Debtors in these chapter 11 cases may be obtained on the website of the claims and noticing agent at <http://www.kccllc.net/avianca>. The Debtors' and Reorganized Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



received by that time, the order may be signed without further notice or hearing. If an objection is filed, you may be notified of a hearing to consider the requested relief.

PLEASE TAKE FURTHER NOTICE that copies of the motion and proposed order 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.

Dated: New York, New York
May 17, 2024

/s/ Evan R. Fleck
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To: U.S. Trustee
Master Service List

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Debtors and Reorganized Debtors.	:	(Confirmed)
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**MOTION FOR FINAL DECREE
CLOSING CHAPTER 11 CASE**

Avianca Holdings S.A. and its reorganized debtor affiliates in these proceedings (collectively, the “Reorganized Debtors”), hereby submit this motion (the “Motion”) for entry of a final decree closing the remaining chapter 11 case captioned above. In support of this Motion, the Reorganized Debtors respectfully state as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 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 January 31, 2012. This matter is a core proceeding within

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the meaning of 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.

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

3. The statutory bases for the relief requested herein are section 350(a) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 3022 of Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 3022-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

Relief Requested

4. By this Motion, the Reorganized Debtors respectfully request entry of a final decree (the “Final Decree”), substantially in the form attached to this Motion as **Exhibit A**, closing the chapter 11 case of *Avianca Holdings, S.A.*, Case No. 20-11133 (the “Lead Case”).

Background

5. On May 10, 2020, and on September 21, 2020, the Reorganized Debtors’ predecessors in interest (the “Debtors”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors’ chapter 11 cases were 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].

6. On November 2, 2021, the Court entered the *Order (I) Confirming Further Modified Joint Chapter 11 Plan of Avianca Holdings S.A. and Its Affiliated Debtors and (II) Granting Related Relief* [Docket No. 2300] (the “Confirmation Order”), which confirmed the *Further Modified Joint Chapter 11 Plan of Avianca Holdings S.A. and Its Affiliated Debtors and*

(II) *Granting Related Relief* [Docket No. 2259] (the “Plan”). Pursuant to the Plan, all of the Debtors’ estates were substantively consolidated, except for those of Avifreight Holding Mexico, S.A.P.I. de C.V. (“Avifreight”), Aero Transporte de Carga Unión, S.A. de C.V. (“Aerounión”), and Servicios Aeroportuarios Integrados SAI S.A.S. (“SAI”).

7. On November 16, 2021, Udi Baruch Guindi, David Baruch, Soshana Baruch, Habib Mann, Golan LP and Isaak Baruch filed a notice of appeal appealing the Court’s entry of the Confirmation Order (the “Confirmation Appeal”). The Confirmation Appeal was docketed with the United States District Court for the Southern District of New York (the “District Court”) and, since then, has been fully briefed. Given that the Plan has already been consummated and the transactions undertaken pursuant to the Plan cannot be unwound, the Debtors believe that the appeal is equitably moot and have moved to dismiss the Confirmation Appeal on that basis. *See Memorandum of Law in Support of Appellees’ Motion to Dismiss Appeals as Equitably Moot*, Nos. 1:21-cv-10004-AJN, 1:21-cv-10118-AJN (S.D.N.Y. Jan. 4, 2022) [Docket No. 14] (the “Motion to Dismiss”).

8. On September 12, 2022, the Reorganized Debtors filed the *Motion for Final Decree Closing Certain Chapter 11 Cases* [Docket No. 2621]. A final decree closing thirty-seven cases was entered on September 16, 2022 [Docket No. 2626]. On February 21, 2023, the Reorganized Debtors filed another *Motion for Final Decree Closing Certain Chapter 11 Cases* [Docket No. 2724]. Subsequently, a final decree closing three of the remaining cases, the cases of non-consolidated Reorganized Debtors SAI, Avifreight, and Aerounión, was entered on February 28, 2023 [Docket No. 2728]. As a result, the chapter 11 case of just one of the Debtors remains open: the Lead Case.

9. On February 9, 2023, the Reorganized Debtors filed a notice of appeal appealing the Court's entry of the Court's *Decision Resolving (I) Burnham Sterling and Company LLC and Babcock & Brown Securities LLC's Motion to Compel Compliance with 11 U.S.C. §§ 365(d)(5) and 503(b) and (II) Reorganized Debtors' Twenty-Fourth and Twenty-Fifth Omnibus Objections to Proofs of Claim* [Docket No. 2707] entered January 26, 2023 and the *Order Granting in Part Burnham Sterling and Company LLCs and Babcock & Brown Securities LLC's Motion to Compel Compliance with 11 U.S.C. §§ 365(d)(5) and 503(b) and Overruling in Part Reorganized Debtors' Twenty-Fourth and Twenty-Fifth Omnibus Objections to Proofs of Claim* [Docket No. 2714] entered January 31, 2023 (the "Babcock & Burnham Claims Appeal," and, together with the Confirmation Appeal, the "Appeals"). *See Notice of Appeal* [Docket No. 2720]. On December 29, 2023, the District Court issued an opinion and order upholding this Court's decision and order that were the subject of the Babcock & Burnham Claims Appeal. *See Opinion and Order*, 23 Civ. 1211 (KPF) (S.D.N.Y. Dec. 29, 2023) [Docket No. 12]. On January 25, 2024, the Reorganized Debtors filed a notice of appeal appealing the District Court's opinion and order to the United States Court of Appeals for the Second Circuit. *See Notice of Appeal*, 23 Civ. 1211 (KPF) (S.D.N.Y. Jan. 25, 2024) [Docket No. 14]. The Reorganized Debtors' appeal is pending with the United States Court of Appeals for the Second Circuit.

Basis for Relief Requested

10. Section 350(a) of the Bankruptcy Code provides that "[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case." 11 U.S.C. § 350(a). Bankruptcy Rule 3022, which implements section 350(a) of the Bankruptcy Code, further provides that "[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree

closing the case.” Fed. R. Bankr. P. 3022. “Courts have wide discretion in determining whether to close a chapter 11 case and ‘Bankruptcy Rule 3022 is intended to allow bankruptcy courts flexibility in determining whether an estate is fully administered.’” *In re Motors Liquidation Co.*, 625 B.R. 605, 614 (Bankr. S.D.N.Y. 2021) (citing *In re Federated Dep’t Stores, Inc.*, 43 F. App’x 820, 823 (6th Cir. 2002)).

11. Although the phrase “fully administered” is not defined in the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules, the Advisory Committee Notes to Bankruptcy Rule 3022 (the “Committee Notes”) set forth the following non-exclusive list of factors to be considered in determining whether an estate has been fully administered:

- a. whether the order confirming the plan has become final,
- b. whether deposits required by the plan have been distributed,
- c. whether the property proposed by the plan to be transferred has been transferred,
- d. whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan,
- e. whether payments under the plan have commenced, and
- f. whether all motions, contested matters, and adversary proceedings have been finally resolved.

Fed. R. Bankr. P. 3022, Advisory Committee Note (1991 Amendment). The Committee Notes further provide the “[e]ntry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed” and “[t]he court should not keep the case open only because of the possibility that the court’s jurisdiction may be invoked in the future.” *Id.*

12. Courts generally use the above six factors to determine whether a case has been fully administered. *See, e.g., In re Aquatic Dev. Grp., Inc.*, 352 F.3d 671, 676 (2d Cir. 2003); *In re*

Kliegl Bros. Universal Elec. Stage Lighting Co., Inc., 238 B.R. 531, 542 (Bankr. E.D.N.Y. 1999).

These six factors, however, are merely guidelines that aid a court's determination, and each of the factors need not be present before a court enters a final decree. *See In re Motors Liquidation Co.*, 625 B.R. at 615 ("Although courts should apply and weigh the factors, no one factor is dispositive. Rather, these factors act as mere guidelines to aid a court in its determination"); *Kliegl Bros.*, 238 B.R. at 542 ("The factors set forth in the [Committee] Note are plainly an aid or checklist that serves to insure that there is no unfinished business before the Court or in the case."); *In re Mold Makers, Inc.*, 124 B.R. 766, 768-69 (Bankr. N.D. Ill. 1990) ("[A]ll of the factors in the Committee Note need not be present before the Court will enter a final decree.").

13. In addition to the factors set forth in the Committee Notes, courts have also considered an estate "fully administered" if the plan of reorganization has been substantially consummated. *See, e.g., In re Gates Cmty. Chapel*, 212 B.R. 220, 224 (Bankr. W.D.N.Y. 1997) ("[S]everal courts have concluded that a Chapter 11 case should be considered 'fully administered' when it reaches the point of substantial consummation as defined in Section 1101(2)") (citations omitted); *see also Walnut Assocs. v. Saidel*, 164 B.R. 487, 493 (E.D. Pa. 1994) (same). The Bankruptcy Code defines the term "substantial consummation" as:

- a. Transfer of all or substantially all of the property proposed by the plan to be transferred;
- b. Assumption by the debtor or by the successor to the debtor under the plan of business or of the management of all or substantially all of the property dealt with by the plan; and
- c. Commencement of distribution under the plan.

See 11 U.S.C. § 1101(2).

14. The foregoing factors weigh strongly in favor of closing the Lead Case. The Plan has been substantially consummated in accordance with section 1101 of the Bankruptcy Code, the

terms of the Plan, and the Confirmation Order. The Reorganized Debtors have emerged from chapter 11 under a newly organized top-level holding company, have distributed nearly all of the equity in that holding company, and have commenced distributions to each class of claims under the Plan, completing 99.99% of cash distributions and 99.84% of equity distributions. The only outstanding distributions to general unsecured creditors are those subject to the Babcock & Burnham Appeal (discussed below) and equity distributions to certain Class 11 claimants who elected to receive equity, but who have not provided the information necessary for the Debtors to make the distributions. The Debtors stand ready to make such distributions and do not believe they need the Lead Case to remain open to accomplish these distributions. Furthermore, the pre-emergence top-level holding entity that filed the Lead Case has completed its liquidation under Panamanian law.

15. On the other hand, section 1930(a)(6) of title 28 of the U.S. Code requires that quarterly fees be paid to the Office of the United States Trustee (the “U.S. Trustee”) even after the consummation of a chapter 11 plan until the case is closed. Thus, unless and until the Court enters the Final Decree, quarterly fees will continue to be payable to the U.S. Trustee on account of the Lead Case, constituting a cost to the Reorganized Debtors that otherwise could be used in the Reorganized Debtors’ operations.

16. The pending Appeals should not preclude entry of the Final Decree. The Babcock & Burnham Appeal will result in a conclusive determination as to whether the claims of Babcock & Brown Securities LLC and Burnham Sterling and Company LLC are entitled to administrative status. If so, Avianca will make a cash payment to those claimants, for which Avianca has already reserved; if not, Avianca will make a much smaller distribution of equity. In either case, the Debtors can accomplish this limited remaining distribution without keeping the Lead Case open.

Additionally, the Confirmation Appeal and the Motion to Dismiss have both been fully briefed since March 16, 2022, and the Debtors have received no indication as to when the Confirmation Appeal will be disposed of. In the unlikely event that the Confirmation Order is reversed, the chapter 11 cases can be reopened, as necessary, to provide further relief. *See* 11 U.S.C. § 350(b) (“[a] case may be reopened in the court in which such case was closed . . . to accord relief to the debtor[.]”); Bankruptcy Rule 5010.

17. Furthermore, bankruptcy courts have entered final decrees or otherwise permitted the closing of chapter 11 cases (including in this case) while an appeal, including an appeal of a confirmation order, was still pending. *See, e.g., In re Avianca Holdings S.A.*, No. 20-11133, Dkt. No. 2626 (Bankr. S.D.N.Y. Sept. 16, 2022); *In re Fiorano Tile Imports, Inc.*, No. 8:10-77406, Dkt. No. 275 (Bankr. E.D.N.Y. Jan. 27, 2014); *In re Transwest Resort Props.*, No. 4:10-bk-37134, Dkt. No. 939 (Bankr. D. Ariz. Sept. 25, 2012).

18. Accordingly, the Reorganized Debtors submit that closing the Lead Case is warranted in accordance with section 350(a) of the Bankruptcy Code and Bankruptcy Rule 3022.

Notice

19. Notice of this Motion has been provided in accordance with the procedures set forth in the *Order Implementing Certain Notice and Case Management Procedures* [Docket No. 47]. The Reorganized Debtors respectfully submit that no further notice is required.

No Prior Request

20. No prior motion for the relief requested herein has been made to this or any other court.

[Remainder of page intentionally left blank]

WHEREFORE, based on the foregoing, the Reorganized Debtors respectfully request that this Court (a) enter the Final Decree, substantially in the form attached hereto as **Exhibit A**, and (b) grant such other and further relief as the Court may deem just and appropriate.

Dated: New York, New York
May 17, 2024

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*Counsel for Debtors and
Reorganized Debtors*

Exhibit A to Motion

Proposed Order

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

-----X	:	
	:	
In re:	:	Chapter 11
	:	
AVIANCA HOLDINGS S.A., <i>et al.</i> , ¹	:	Case No. 20-11133 (MG)
	:	
Debtors and Reorganized Debtors.	:	(Confirmed)
	:	
-----X		

**ORDER OF FINAL DECREE
CLOSING CHAPTER 11 CASE**

Upon the Motion² of the Reorganized Debtors, pursuant to section 350(a) of the Bankruptcy Code and Bankruptcy Rule 3022, for entry of a final decree (this “Final Decree”) closing the Lead Case, as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 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 January 31, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having reviewed the Motion and determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having found that the relief requested in the Motion is in the best interests of the Reorganized Debtors, their estates and creditors, and other parties in

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² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

interest; and upon all of the proceedings had before this 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. The following case is hereby closed, effective immediately: *Avianca Holdings, S.A.*, Case No. 20-11133.
3. The Reorganized Debtors shall pay the U.S. Trustee any quarterly fees due pursuant to 28 U.S.C. § 1930, together with any applicable interest due pursuant to 31 U.S.C. § 3717, within 25 days of the entry of this Order of Final Decree. Within 20 days after the entry of the Order, the Debtors shall provide to the U.S. Trustee an affidavit indicating cash disbursements through the first quarter of 2024 and for any additional period concluding on or before the date that the Final Decree is entered by the Bankruptcy Court.
4. Kurtzman Carson Consultants (“KCC”) shall (a) prepare final claim registers for the clerk’s office, pursuant to the guidelines for implementing 28 U.S.C. § 156(c), and (b) box and transport all claims to the Federal Archives at the direction of the office of the Clerk of Court. The services of KCC as the official claims and noticing agent for the Debtors, pursuant to 28 U.S.C. § 156(c) and prior order of this Court, are hereby terminated and released.
5. Following entry of this Order, the Reorganized Debtors shall file a consolidated closing report with respect to all of the Debtors, pursuant to Local Rule 3022-1.
6. Entry of this Final Decree is without prejudice to the rights of the Reorganized Debtors or any party in interest to seek to reopen the Lead Case for cause pursuant to section 350(b) of the Bankruptcy Code.

7. The Reorganized Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Decree.

8. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Final Decree. Furthermore, the Court shall retain jurisdiction over any matter in these chapter 11 cases, including with respect to all matters described in Article XII of the Plan.

Dated: _____, 2024
New York, New York

THE HONORABLE MARTIN GLENN
CHIEF UNITED STATES BANKRUPTCY JUDGE