

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK

KINGSLAND HOLDINGS LTD.,

Plaintiff,

vs.

SYNERGY AEROSPACE CORP., AVIANCA  
 HOLDINGS S.A., GERMÁN EFROMOVICH, JOSÉ  
 EFROMOVICH, and UNITED AIRLINES, INC.,

Defendants.

Index No.:

**COMPLAINT**

Plaintiff Kingsland Holdings Limited (“Kingsland”), by its undersigned counsel, for its complaint against defendants Synergy Aerospace Corporation (“Synergy”), Avianca Holdings S.A. (“Avianca” or the “Company”), Germán Efromovich (“Efromovich”), José Efromovich (together with Efromovich, the “Efromoviches”), and United Airlines, Inc. (“United”) (collectively, “Defendants”), alleges on knowledge as to itself and upon information and belief with respect to all other matters as follows:

**NATURE OF THE ACTION**

1. Kingsland is the owner of 21.9% of the voting shares and 14.46% of the total shares of Avianca, a leading airline in Latin America and member of the Star Alliance. Avianca serves over 100 destinations in 28 countries in North and South America and Europe. Synergy, the Company’s controlling shareholder with 78.1% of the voting shares and 51.5% of the total outstanding equity shares of the Company, is controlled by Efromovich, who also is the Chairman of the Avianca Board of Directors (the “Board”). The remaining 34.04% of Avianca’s shares constitute non-voting preferred stock that trades publicly in Colombia and, through

American Depositary Shares (“ADSs”), in the United States on the New York Stock Exchange (“NYSE”).

2. Kingsland brings this action principally to enjoin an egregiously one-sided proposed transaction (the “United Transaction”) that Efromovich secretly negotiated with United for his own benefit at the expense of Avianca and all of its other shareholders. That deal circumvented a strategic recapitalization process (the “Strategic Process”) that was undertaken by the Board – with Efromovich’s apparent support – to address widely reported liquidity needs that had been caused by Efromovich’s past misconduct and to maximize shareholder value. The Strategic Process sought a significant equity infusion and a strategic partnership with a world class airline and included retaining Bank of America–Merrill Lynch (the “Financial Advisor”) as financial advisor to the Board and soliciting interest from a broad array of potential strategic partners. Although the Strategic Process produced offers from two major international airlines on far better terms for Avianca, Efromovich has forced Avianca to pursue the United Transaction because it provides much greater benefits to him personally.

3. The sweetheart United deal is the most recent in a long series of self-dealing transactions in which Efromovich and Synergy have misused Avianca’s assets to shore up Efromovich’s other financially-strapped business concerns. Efromovich’s other companies are bleeding financially due to soured energy investments, bad bets on speculative aircraft purchases, poorly performing investments in Brazilian shipyards, and perennial losses at OceanAir Linhas Aereas S.A. d/b/a Avianca Brasil (“OceanAir”), a Brazilian entity controlled by his brother, José Efromovich. Faced with these losses, Efromovich has sought to fend off financial ruin by plundering Avianca and his misconduct has forced Avianca into a highly leveraged and strained liquidity situation.

4. Although Efromovich repeatedly declared, without prompting, that he was not engaging in discussions outside of the Strategic Process, that was a lie. He torpedoed the Strategic Process by clandestinely negotiating a transaction with United that was not within the parameters set by the Board. Rather than Avianca and its stockholders receiving 100% of the consideration and benefits flowing from a transaction, the United Transaction diverts the vast majority of the consideration United is paying for a partnership with Avianca – a valuable asset that may provide United with an estimated annual profit in excess of \$75 million – to Efromovich’s financially shaky affiliates.

5. Efromovich’s motivation to divert Avianca’s corporate opportunities to himself is clear: Synergy has pledged or traded away a substantial majority of its economic interest and potential upside in Avianca to third parties, including an investment fund affiliated with Elliott Management Corporation (“Elliott”). Having traded away most of their financial upside in Avianca, a strategic transaction that would substantially increase Avianca’s value would give Efromovich and Synergy little economic benefit, while continued control of Avianca enables them to extract value through self-dealing transactions.

6. Efromovich’s repeated self-dealing, including the United Transaction, not only violates his fiduciary duties, but also breaches the plain terms of a shareholders’ agreement entered into among Avianca, Synergy and Kingsland on September 11, 2013 (as amended March 24, 2015) (the “Joint Action Agreement” or “JAA”).<sup>1</sup> One of Kingsland’s primary protections under the JAA is its right to consent to or veto (i) related party transactions involving Avianca and Synergy or its affiliates, and (ii) transfers or encumbrances such as pledges of Synergy’s

---

<sup>1</sup> The JAA provides that it shall be governed by and construed in accordance with New York law.

Avianca stock. Efromovich has repeatedly breached these protections, including by causing the Company to enter into self-dealing transactions and by encumbering Synergy's holdings of Avianca stock without following the consent process set forth in the JAA.

7. These self-dealing transactions have benefitted Efromovich and his affiliated companies at the expense of Avianca and its stockholders. In just the past two years, Efromovich has caused the Company and its subsidiaries to enter into at least 30 related party transactions which diverted corporate resources and assets to benefit him and his affiliated companies.

8. Recent self-dealing transactions have included: (i) licensing Avianca's name and trademarks to the Efromoviches' affiliate airlines for no consideration; (ii) leasing unneeded aircraft to Avianca on unfavorable terms; and (iii) causing Avianca to place an exorbitantly large and unnecessary order for Airbus A-320 aircraft (which saddled Avianca with billions of dollars of liabilities) in order to induce Airbus to renegotiate Synergy's obligations and defaults with Airbus.

9. Kingsland brings this action seeking injunctive relief to prevent Defendants from consummating the self-dealing United Transaction and to recover damages for the injuries inflicted on Kingsland by Efromovich's other misconduct involving Avianca and his affiliates.

### **THE PARTIES**

10. Plaintiff Kingsland is a company organized under the laws of the Commonwealth of the Bahamas. As further alleged in paragraph 34 below, Kingsland is a special purpose company incorporated to manage the share ownership in Avianca held by the Kriete family. Kingsland's principal place of business is Winterbotham Place, Marlborough and Queen Streets, Nassau, Commonwealth of the Bahamas. Kingsland currently owns 21.9% of Avianca's voting

common shares, which constitutes 14.5% of the total outstanding equity shares, and is Avianca's second largest shareholder.

11. Defendant Synergy is organized under the laws of the Republic of Panama. Synergy's principal place of business is located at Prof.<sup>a</sup> Heloísa Carneiro, 21, CEP 04630-050, São Paulo, SP. Synergy is controlled by Germán Efromovich and his brother José Efromovich.

12. Synergy owns approximately 78.1% of Avianca's voting common shares, which constitutes 51.5% of the total outstanding equity shares. Synergy is Avianca's largest and controlling shareholder. Pursuant to the JAA, Synergy currently has the right to select nine out of the eleven directors that serve on the Board (including five purportedly independent directors).

13. Defendant Avianca is an airline holding company incorporated in Panama. Avianca is the parent company of airlines operating in Latin America, including Colombia, Peru, Ecuador, Costa Rica and Nicaragua, as well as operating international routes serving North and South America, Europe and the Caribbean. Avianca's subsidiaries directly serve more than 100 cities and provide one of the largest passenger and cargo network routes in Latin America. Avianca is a member of the Star Alliance which connects its passengers to more than 1,300 destinations worldwide. Avianca's principal place of business is in Bogotá, Colombia.

14. In May 2011, Avianca completed an initial public offering ("IPO") of non-voting preferred stock, which is publicly traded on the Colombian Stock Exchange. In November 2013, Avianca completed an IPO in the United States and listed ADSs with respect to the non-voting preferred stock on the NYSE. Public shareholders hold an approximate 34% stake in the Company.

15. Defendant Germán Efromovich has served as Chairman of Avianca's Board since August 2013 and as a director since February 2010. He also serves as director and executive

officer of Synergy Group Corp., which has a 100% ownership interest in Synergy. Efromovich was appointed to the Board as a Synergy director. He is a citizen of Bolivia, Brazil, Colombia and Poland and currently resides in Brazil.

16. Defendant José Efromovich has served as an Avianca director since February 2010. He is also a director and executive officer of Synergy Group Corp., controls Synergy with Efromovich, and has served as President and CEO of OceanAir. José Efromovich was appointed to the Board as a Synergy director. He is a citizen of Brazil and Colombia.

17. Defendant United is a domestic business corporation organized under the laws of Delaware and registered as a foreign business corporation with the New York State Department of State that conducts business in the County of New York and the State of New York. United's principal place of business is 233 South Wacker Drive, Chicago, Illinois 60606.

#### **NON-PARTY DIRECTORS**

18. Non-party Alexander Bialer has served as a director of Avianca since February 2010. Bialer serves as a member of the investment committee of Efromovich/Silva Capital Partners ("E/S Partners"), a hedge fund run by Efromovich. Bialer was appointed to the Board as a Synergy director. He is a citizen of Brazil.

19. Non-party Raul Campos has served as a director of Avianca since April 2015. Campos previously served as Chief Financial Officer of Synergy. Campos was appointed to the Board as a Synergy director. He is a citizen of Brazil.

20. Non-party Alvaro Enrique Jaramillo has served as a purportedly independent director since his appointment by Synergy in February 2010. Jaramillo previously served as President of Aerovias del Continente Americano S.A. Avianca, Avianca's main operating

subsidiary. He served as Avianca's Interim Chief Executive Officer from January 17, 2016 to April 4, 2016. He is a citizen of Colombia.

21. Non-party Juan Guillermo Serna has served as a purportedly independent director since his appointment by Synergy in February 2010. Serna is a member of the Audit Committee. He is a citizen of Colombia.

22. Non-party Monica Aparicio Smith served as a purportedly independent director from her appointment by Synergy in August 2013 until her resignation from the Board in September 2016. Aparicio was a member of the Audit Committee. She is a citizen of Colombia.

23. Non-party Ramiro Valencia has served as a purportedly independent director since his appointment by Synergy in February 2010. He is a citizen of Colombia.

24. Non-party Isaac Yanovich has served as a purportedly independent director since his appointment by Synergy in February 2010. Yanovich serves as a member of the investment committee of Efromovich's hedge fund, E/S Partners. Yanovich's daughter previously worked for E/S Partners. Yanovich is a member of the Audit Committee. He is a citizen of Colombia.

25. Non-party Roberto Kriete has served as a director since February 2010. Kriete is a beneficial owner and chairman of Kingsland. He is a citizen of El Salvador and Colombia.

26. Non-party Oscar Dario Morales has served as an independent director since 2012. Morales was appointed to the Board by Kingsland. Morales is a member of the Audit Committee. He is a citizen of Colombia.

### **JURISDICTION AND VENUE**

27. The Court has jurisdiction over Avianca based on its continuous and systematic course of doing business in New York. Avianca transacts business in the U.S. through its U.S.-based subsidiary, Avianca Inc. Avianca Inc. is registered in the New York State Department of

State's Division of Corporations database as a domestic business corporation, and acts as a promotion and sales agent for passenger and cargo transportation services, including operating ticket offices. Through its subsidiaries, Avianca operates approximately 60 flights per week to and from John F. Kennedy International Airport, carrying over 400,000 passengers annually. Avianca Inc. is Avianca's authorized agent for service of process and is located at 122 East 42nd Street, Ste. 2525, New York, New York 10168.

28. The Court has jurisdiction over United based on its continuous and systematic course of doing business in New York, including by operating hundreds of flights out of New York City weekly, employing thousands of New York employees and maintaining offices at 125 Park Avenue, New York, New York 10017, as well as at LaGuardia Airport and airports in and around Albany, Buffalo, Rochester and Syracuse. United has consented to jurisdiction by registering to do business in New York, consenting to the designation of the New York Secretary of State as its agent for service of process, and designating CT Corporation System located at 111 Eighth Avenue, New York, New York 10011 as its local registered agent for service of process.

29. The Court has jurisdiction over all Defendants pursuant to CPLR 302(a)(1) and (2) because they purposefully transacted business in New York that bears a substantial relationship and an articulable nexus to the misconduct that forms the basis of the Complaint.

30. The Court has jurisdiction over the Efromoviches, Synergy and United with respect to the claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and tortious interference. The Efromoviches and Synergy have come to New York on numerous occasions in connection with the United Transaction, the pledge of their Avianca stock to Elliott, and, upon information and belief, the prior related party transactions. These meetings typically

have been held in the offices of Elliott or the Efromoviches' and Synergy's counsel, Simpson Thacher & Bartlett LLP ("Simpson Thacher"), in New York. These meetings and related telephonic communications and emails with Elliott or Simpson Thacher in New York were in furtherance of the tortious misconduct pled herein, including: (i) conceiving, structuring, and negotiating the United Transaction by meeting on numerous occasions with potential strategic partners and the committee formed by the Board to oversee the Strategic Process (the "Horizon Committee") at Elliott's and Simpson Thacher's offices in New York; (ii) negotiating the pledge to Elliott and others; and (iii) discussing, effectuating and negotiating the prior self-dealing transactions. In addition, the Efromoviches and Synergy's New York contacts include having purposefully availed themselves of New York's financial markets to further their scheme by causing Avianca to list its ADSs on the NYSE and otherwise raising capital in New York, including by meeting with Elliott and other creditors in New York to negotiate and consummate the illegal pledge of shares, and by transacting their unlawful loans with New York entities. By raising capital in New York, the Efromoviches and Synergy were able to implement their unlawful scheme to finance the United Transaction and the prior self-dealing transactions. United aided and abetted the Efromoviches' breaches of fiduciary duties and tortiously interfered with the JAA by attending meetings in New York and otherwise communicating with the Efromoviches and Synergy's lenders or counsel in New York regarding the United Transaction.

31. The Court has jurisdiction over Avianca and Synergy with respect to the breach of contract and implied covenant of good faith and fair dealing claims under CPLR 302(a)(1). Avianca and Synergy negotiated the JAA in New York through their New York counsel, Simpson Thacher, and also directed communications to New York regarding the negotiations of the JAA. Moreover, Synergy consented to jurisdiction in New York courts in the JAA.

32. The Commercial Division of this Court has jurisdiction over this action pursuant to Section 202.70 of the Rules of the Commercial Division because the matter in controversy exclusive of punitive damages, interest, costs, disbursements and counsel fees claimed exceeds \$500,000, and involves breaches of contractual and fiduciary duties.

33. Venue is proper in this Court pursuant to CPLR 503 because United has designated New York County as its residence in the State of New York, and because substantial conduct that forms the basis of the Complaint occurred within New York County.

### **BACKGROUND**

#### **A. Kingsland's Contractual Rights Under the JAA**

34. Kingsland's interest in Avianca was acquired in 2010, when Grupo TACA Holdings Limited ("TACA") merged with a subsidiary of Avianca. Prior to the merger, the Kriete family was TACA's majority owner, and Roberto Kriete served as the CEO of TACA. The transaction was structured as a merger of equals, providing Kingsland with substantial corporate governance rights. As consideration for the merger, the Kriete family, through Kingsland, received 214 million shares of Avianca stock. Equally important, the parties entered into shareholder agreements for the management of Avianca after the merger. The contract presently in effect is the JAA, which was executed on September 11, 2013, by Avianca, Synergy and Kingsland, and amended March 24, 2015. The JAA is incorporated by reference herein and a copy is attached as Exhibit A.

35. The JAA provides Kingsland with significant protections and rights as a minority shareholder, including rights to representation on the Board and consent rights for transactions that may affect Avianca's business plan and capitalization, related party transactions and share transfers or encumbrances.

### 1) Transactions Subject to Kingsland's Consent Rights

36. Pursuant to Section 3.07 of the JAA, Avianca and its subsidiaries are prohibited from taking certain actions (“Special Approval Matters”) without Kingsland’s consent, including (i) any merger or sale of substantially all of the assets of Avianca, (ii) any issuance or sale of any voting equity interest, (iii) any contract with any “Affiliate” of Efromovich, and (iv) any acquisition or equity investment in a joint venture related to the airline industry that is greater than \$30 million in any single instance or \$75 million in the aggregate in any fiscal year.

37. The JAA sets forth an approval procedure with timing and information requirements that must be followed in order to properly initiate the consent process. The first step is for Avianca to provide Kingsland with a request for approval (an “Approval Request”) for a Special Approval Matter at least fifteen days prior to a Board meeting where directors will consider the proposed transaction. JAA § 3.07(c).

38. The Approval Request must provide information sufficient for Kingsland to make an appropriately informed evaluation of the Special Approval Matter, including “any materials that will be presented to the Board or stockholders in respect of the subject Special Approval Matter(s).” JAA 3.07(c). Without such information, any purported Approval Request is without effect and does not initiate the approval or veto process required under the JAA.

39. Upon receipt of an Approval Request, Kingsland has fifteen days to deliver a “Disapproval Notice” if it opposes and intends to veto the proposed transaction. If no Disapproval Notice is delivered, the Special Approval Matter is deemed approved by Kingsland. JAA § 3.07(c).

## 2) Synergy's Buyout Right

40. In the event that Kingsland vetoes a proposed transaction, the JAA gives Synergy the right to buy out Kingsland's equity stake in Avianca (the "Buyout Right") by following certain procedures set forth in Section 3.08(a) of the JAA.

41. The price for a buyout is based on a 10% premium to the volume weighted average price ("VWAP") of Avianca ADSs on the NYSE for the 60-day period immediately preceding the date that Kingsland delivered its Disapproval Notice. JAA § 3.08(b)-(c).

42. Due in large part to Efromovich's misconduct, the price of Avianca stock has been severely depressed in recent years. As a result, Kingsland's veto rights under the JAA present a Hobson's choice. If Kingsland exercises a veto, Efromovich and Synergy would have the right to buy out Kingsland's shares at a fire-sale price, thereby rewarding their bad faith conduct and inflicting further injury on Kingsland. Indeed, it appears that Efromovich has proposed related party transactions in bad faith as a pretext to squeeze out Kingsland by forcing it to exercise its veto right. As a result of this inequitable misconduct and violation of the JAA's implied covenant of good faith and fair dealing, Efromovich and Synergy should be estopped from using Kingsland's consent in defense of claims for breach of the JAA or enforcing a buyout right.

## 3) Restrictions on Sale and Encumbrance of Shares

43. The JAA imposes restrictions on the sale, transfer, assignment or encumbrance of the parties' equity stakes in Avianca. The JAA defines "encumbrance" to include "any security interest, pledge, mortgage, lien, charge, adverse claim of ownership or use, or other encumbrance of any kind." JAA § 1.01. In general terms, all parties must consent in writing to such a transaction, which can only be made with an affiliate or family member of a party. JAA §

7.13(c). The JAA further provides that any attempt to sell or encumber shares in violation of the JAA “shall be null and void and of no force and effect.” *Id.* § 4.03.

**B. Efromovich Benefits Himself and Synergy Through His Domination of the Avianca Board to the Detriment of Kingsland**

44. The United Transaction has resulted from Efromovich’s domination of the Avianca Board, and judicial intervention is required to remedy the breaches of Efromovich and Synergy’s contractual and fiduciary obligations.

**1) Efromovich Dominates the Avianca Board**

45. As directors of a Panamanian corporation, the Efromoviches owe fiduciary duties to the Company and its shareholders that arguably are even more exacting than duties owed under Delaware law, including the “diligence of a good family man,” which requires them to provide the same degree of care to Avianca that they would apply to their own business. In disregard of these duties, the Efromoviches have treated Avianca as if it was their “own business” without any other owners.

46. Pursuant to Article 8 of Avianca’s Social Pact (the equivalent of U.S. bylaws), the Board consists of eleven directors. Under the Social Pact and Section 3.03 of the JAA, Efromovich and Synergy, as controlling shareholder, appoint four Synergy directors, currently Germán Efromovich, José Efromovich, Bialer, and Campos, and five purportedly independent directors, currently Jaramillo, Serna, Valencia, and Yanovich, with one vacancy – the seat previously filled by Aparicio, who resigned in September 2016. Kingsland appoints one Kingsland director, Kriete, and one independent director, Morales. Accordingly, Efromovich and Synergy appoint nine of the Board’s eleven members.

47. Board meetings bear little resemblance to the appropriately informed and deliberative discussions expected by shareholders of modern public companies, instead more

closely resembling a corporate politburo rubberstamping Efromovich's initiatives without advance notice, deliberation, independent judgment or hesitation.

48. There is ample evidence of Efromovich's domination of the Board. For example, Kriete has frequently requested that conflicted parties leave the room during discussions concerning related party transactions. Those requests go unheeded and the discussions are dominated by Efromovich, the conflicted party. Synergy-appointed directors often attend Audit Committee meetings when discussions concerning the related party transactions occur. Based on Efromovich's directives, the related party transactions often are approved by the Board at meetings without adequate notice or proper identification on the agenda, without deliberation and without directors being provided the documents governing or terms of the transactions.

49. Official Board minutes compiled at Efromovich's direction do not accurately reflect the reality of what occurred at Board meetings. Rather, the minutes describe "deliberations" that have not occurred, leave out critical information that was discussed and describe formal Board votes that never happened. Kriete has often objected to the minutes as drafted either for failing to include information or distorting the discussion that took place, but the Board has adopted them anyway. At Efromovich's insistence, the minutes are sterilized for his benefit and not revised to reflect what actually took place at the meeting, and finalized minutes are not distributed to the Board.

50. Efromovich and Synergy have also caused the Company to ignore Kingsland and Kriete's valid requests for corporate records. For example, on July 18, 2016, Kriete sent an email to Elisa Murgas de Moreno, Avianca's then-General Secretary and Vice President of Legal Affairs, requesting a copy of the recordings of Board meetings maintained by the Company. Despite Kriete's rights as a director to inspect the books and records of the Company, and

Kingsland's right under Avianca's Articles of Incorporation, Murgas refused to provide these Company records to Kriete. Instead, Kriete was told that he would need to go to Bogotá, Colombia to review these documents in-person due to "information security" concerns, notwithstanding that Avianca has sophisticated technology to securely share the documents electronically. More recently, Avianca has not responded to Kriete's request to Avianca's management to obtain a copy of the exclusivity agreement that Efromovich instructed them to sign with United on behalf of the Company.

51. Efromovich also controls attendance at Board meetings. At Efromovich's direction, Kriete's requests to bring financial and legal advisors to Board meetings are routinely denied. Efromovich, however, has installed one of his creditors, Elliott, as a participant at both meetings of the Board and the Horizon Committee.

## **2) Efromovich's Financially Troubled Businesses**

52. Efromovich's struggling empire, which includes debt-ridden airlines, bankrupt shipyards, and money-losing hotels and energy businesses, has been driven to the brink by the worst recession that Brazil has faced in the past 25 years. Media reports indicate that the Efromoviches' affiliates also have been harmed by losing bets that Efromovich placed in the energy industry before oil prices plummeted.

53. Efromovich's investment in shipyards has proved particularly disastrous. In June 2015, he closed one of his Brazilian shipyards due to a lack of financing necessary to complete the vessels. And on December 14, 2015, Efromovich's Brazilian shipbuilder, Estaleiro Ilha S.A. (EISA), filed for bankruptcy, laying off 3,000 workers with half-finished tankers sitting uncompleted in the shipyard.

54. Efromovich's affiliate OceanAir, the Brazilian airline controlled by José Efromovich, is similarly troubled, as it has lost over \$200 million between 2012 and 2016. Efromovich has repeatedly attempted to unload OceanAir on an unsuspecting buyer, including, on several occasions, Avianca.

55. On October 14, 2016, Synergy and OceanAir were sued by Wells Fargo Bank Northwest, N.A. ("Wells Fargo") in connection with allegations that they had failed to pay Wells Fargo approximately \$4.5 million owed as guarantors of an airline lease.

56. As a result of Efromovich's financial distress, he secretly entered into several transactions in which he pledged approximately 97% of his equity stake in Avianca to third parties as collateral for loans, including to Elliott. These transactions were entered into without Kingsland's knowledge or consent in violation of the JAA.

57. Efromovich and Synergy have since defaulted on these loans, and have received notices of such default from their creditors. Efromovich and Synergy thus stand in imminent risk of losing control of the Company to their creditors upon the creditors' exercise of foreclosure rights.

58. On information and belief, the nature of Synergy's pledge to Elliott is a total return swap under which Synergy has contracted away most of its rights to receive any increase in the value of its Avianca shares. In other words, Synergy has given away most of its economic interest and potential upside in Avianca to these third parties, regardless of whether the loans are foreclosed. Should the Efromoviches and Synergy lose control of Avianca through a transaction entered into pursuant to the Strategic Process, or if the lenders were to foreclose, the Efromoviches and Synergy would lose the remaining benefit from their Avianca investment, *i.e.*, the ability to improperly divert its resources to Synergy and its affiliates.

C. **The United Transaction**

59. With roots tracing back to 1919, the Avianca brand is known for being a market leader in the commercial airline business. The Avianca brand maintains a reputation for exceptional service, a sterling safety record and one of the most modern commercial fleets in Latin America. Avianca has been the recipient of numerous awards, including recognition as the “best company in the aviation sector” and “best airline in South/Latin America.”

60. While Avianca’s operations are profitable, Avianca has been placed in a difficult financial position with liquidity concerns in large part due to the one-sided related party transactions forced upon it by the Efromoviches. Avianca is suffering under the weight of billions of dollars of liabilities incurred as a result of Efromovich causing Avianca to take on unnecessary financial obligations through non-arm’s length leases and aircraft purchases (*i.e.*, 100 A-320 new Airbus planes and the A-330 freighter aircraft). Efromovich caused the Company to enter into these unnecessary transactions to curry favor with and obtain forbearance from his creditors, including Airbus, a major OceanAir and Synergy creditor.

61. The United Transaction represents Efromovich’s latest attempt to remedy his dire financial situation.

1) **Avianca Determines to Pursue a Partnership with Another Airline**

62. By early 2016, the Company’s stakeholders concluded that it was in the best interests of the Company and its shareholders to partner with a world class airline to strengthen its ability to operate in an increasingly competitive market.

63. Accordingly, at the Board’s direction and with Efromovich’s apparent agreement, Avianca initiated the Strategic Process by instructing its Financial Advisor to solicit proposals. The Financial Advisor solicited interest from numerous strategic partners and in August 2016,

the Company received preliminary, non-binding proposals from three airlines: Airline A, Airline B and United (collectively, the “Bidders”).

64. The Horizon Committee,<sup>2</sup> which had been formed in July 2016 by the Board to oversee the Strategic Process, began negotiations with respect to the proposals.<sup>3</sup> To provide further guidance to the Bidders, the Financial Advisor outlined the structure of bids that would address the Company’s needs.

65. On November 30, 2016, the Bidders submitted revised proposals. According to a report in *The New York Times* on December 5, 2016, Delta Air Lines, Inc. (“Delta”) and Copa Airlines, Inc. (“Copa”) submitted premium offers under structures that were predicated on the buyout and removal of the Efromoviches and Synergy as controlling shareholder. According to the report, the Delta offer valued Avianca at \$1.9 billion and contemplated a \$1 billion investment in the Company, a majority of which would buy out Synergy’s investment and remove Efromovich as Chairman. *The New York Times* also reported that Copa proposed a merger that would value Avianca at more than \$2 billion, or a 150 percent premium to its recent share price. In a transaction structure described by *The New York Times*, Efromovich and

---

<sup>2</sup> The members of the Horizon Committee initially included Efromovich and Kriete and members of management, including Hernán Rincón, Avianca’s CEO, and Gerardo Grajales, Avianca’s then CFO. In September 2016, the Horizon Committee was expanded to include a nominally “independent” director, Yanovich, and Elliott. Virtually all subsequent Horizon Committee meetings took place in Elliott’s New York offices.

<sup>3</sup> Although the Board, as part of the Strategic Process, also formed a Special Committee of independent directors in August 2016 to provide “independence and transparency” in the assessment of bids and to “present an absolute and final recommendation to the Board of Directors,” in fact the Special Committee abdicated these responsibilities and provided no oversight or check on Efromovich or Synergy. The Special Committee has undertaken none of the steps that a Special Committee normally would take in connection with a strategic process, particularly where the controlling shareholder was deeply involved. For example, the Special Committee did not retain any external legal or financial advisors, hold any meetings, let alone meetings to discuss the merits of entering into a transaction with any of the Bidders, or provide any reports to the Board. Upon information and belief, the Special Committee also failed to review any analysis provided by the Financial Advisor and did not attempt to inform itself about the merits of the various proposals.

Synergy would have to surrender control over the Company. *The New York Times* further reported that United proposed a \$500 million loan to Avianca and potentially one of its investors (presumably Efromovich and Synergy).

**2) Efromovich Secretly Negotiates the United Transaction**

66. Rather than wait for an improved bid from United through the Strategic Process, or continue discussions with Airline A or Airline B, Efromovich proceeded to engage in secret negotiations with United – without informing the Board or the Company’s legal and financial advisors – for a side deal that would divert hundreds of millions of dollars from Avianca and its stockholders to Efromovich and his affiliates.

67. At this time, Efromovich’s fiduciary duties required him to devote his efforts to obtaining a value-maximizing transaction for all Avianca shareholders. Instead, however, he was plotting to usurp the Company’s opportunity for himself and his affiliates while circumventing the Strategic Process, hoping to cure his own financial defaults and delay a potential foreclosure. For its part, United purposefully remained silent and did not inform the Horizon Committee, Avianca management, Kingsland or even the Financial Advisor that it was negotiating directly with Efromovich for an investment in Synergy in consideration for a highly profitable strategic relationship with Avianca.

68. While Avianca’s financial and legal advisors were negotiating with Airline A and Airline B, including commenting on drafts of definitive agreements, Efromovich took steps designed to impede the negotiations, including by cancelling meetings and issuing contradictory proclamations as to his willingness to sell. On January 17, 2017, for instance, Efromovich attempted to derail the Strategic Process with a statement to the Horizon Committee that he was in the process of secretly negotiating a side transaction between the Efromoviches’ affiliate,

OceanAir, and a major Brazilian airline. He also declared that the Airline A and Airline B offers were unacceptable because he no longer was willing to contemplate a sale of control. At his instruction, the Financial Advisor asked Airline A for a revised offer that would not require the sale of Efromovich's stake. Airline A refused and threatened to withdraw from the Strategic Process, because according to Airline A, any transaction where Efromovich remained in control would be unacceptable.

### 3) Efromovich Reveals the United Transaction

69. At the end of a Board meeting on January 31, 2017, Efromovich for the first time disclosed that he had secretly negotiated the United Transaction. Prior to the meeting, Efromovich had never disclosed his side deal to any of his fellow directors, the Company's legal advisors, or Elliott. In fact, the Company's CEO and Financial Advisor were only informed of the deal on the day of the meeting and provided with only the most basic information about the transaction.

70. Efromovich's bad faith was evident in his timing: at the end of a full day of meetings and after the Financial Advisor had left the meeting following its presentation on the status of the Strategic Process – as to which the Efromoviches made no comment. Efromovich presented the United Transaction as a *fait accompli* and provided few details to the Board, stating vaguely that financially strapped Synergy somehow would make capital contributions to Avianca of \$200 million and to OceanAir of \$130 million, that OceanAir would be merged with Avianca, and that Avianca would enter into a strategic partnership with United. Efromovich did not provide any terms for the proposed transactions, nor did he explain how Synergy suddenly had \$330 million to invest. Also without providing any terms, Efromovich declared that Avianca would enter into a strategic partnership with United. The only justification that Efromovich

provided for the United alliance was that United is not a competitor to *the Efromoviches'* affiliates in the Mexico, Argentina and Brazil markets. Efromovich then declared that Avianca would enter into a 30-day exclusivity arrangement with United to negotiate a joint venture.

71. On the basis of his undocumented secret side deal to obtain financing from United for himself, Efromovich declared that Avianca no longer required the equity infusions contemplated by the Strategic Process and said that Avianca should abandon talks with Airline A and Airline B. Because it is a secret side deal, Kingsland does not know the full details of the United Transaction, including the terms of the loan(s) that Synergy negotiated from United.

72. Based on information from a participant in the Strategic Process, Kingsland understands that the United Transaction consists of approximately \$800 million in loans from United to Synergy secured by Synergy's equity stakes in Avianca and OceanAir, half of which is allocated to pay down Synergy's existing debt to third parties, including Elliott. Though \$200 million is purportedly allocated for an investment in Avianca (through Synergy and not directly by United), that amount falls far short of the amount reportedly necessary to alleviate the Company's reported liquidity problems (caused by Efromovich's misconduct). Indeed, according to media reports, including in *The Wall Street Journal* on June 2, 2016, and *El Tiempo* on June 5, 2016, the Company sought \$500 million to shore up its balance sheet. Moreover, Efromovich intends to use the United loan proceeds "allocated" to Avianca only to backstop a rights offering, leaving the possibility that none of the proceeds will actually benefit the Company.

73. In short, the United Transaction contemplates that United will pay approximately \$800 million to Synergy and the Efromoviches in return for the benefits of a strategic partnership with Avianca, but only somewhere between zero and \$200 million of that amount is intended to

flow to Avianca even indirectly through Synergy. Synergy and the Efromovichs will receive the benefit of \$600-\$800 million in value. In so doing, they are further exacerbating Avianca's poor liquidity position.

74. For its part, United has exploited Efromovich's compromised position to obtain a no-lose deal outside of the Strategic Process. Regardless of whether Efromovich and his cash-strapped affiliates honor the terms of the debt facility, United will see its principal repaid through the benefits of the joint venture with Avianca, which is expected to provide United with an estimated annual profit in excess of \$75 million. Further, the United Transaction ensures that Avianca does not instead enter into a strategic alliance with one of United's competitors and leave United's Star Alliance, which would be detrimental to United. And should Efromovich once again default, United can foreclose on its collateral, *i.e.*, Synergy's Avianca shares, and effectively achieve control of Avianca for a fraction of what the other Bidders purportedly offered and without providing any consideration directly to the Company or its shareholders, including Kingsland.

75. Efromovich's coup de grace was the announcement of his goal to force Avianca into a merger with OceanAir – a nearly insolvent regional airline whose only “qualification” is that it is owned and managed by the Efromovichs and Synergy.

76. Indeed, according to OceanAir's financial statements, it has lost over \$200 million over the past five years. What is more, other Brazilian airlines, including Gol Airlines and Azul Linhas Aereas Brasileiras, offer far greater synergies to Avianca. An analyst, articulating a view widely shared among the investment community, stated in 2015, “[s]imply put, [an acquisition of OceanAir] would rank as the most unintelligent strategic decision available to [Avianca] in the near to medium term.”

#### 4) Events Following Efromovich's January 31, 2017 Disclosure to the Board

77. In an attempt to lock up the United Transaction by scaring away other potential partners, Efromovich caused Avianca to sign the 30-day exclusivity deal with United and release an announcement vaguely stating that the Company “intends to pursue a strategic commercial alliance with United Airlines whose terms and conditions are yet to be negotiated.” Avianca also disclosed that “Synergy intends to make a capital contribution to [Avianca] of up to \$200,000,000” and that “Synergy also informed [Avianca] of Synergy’s intention to seek all necessary approvals for the eventual combination of [Avianca] with [OceanAir], a Brazilian airline controlled by Synergy, on fair and reasonable terms for both companies.”

78. On February 1, 2017, United issued its own vague press release announcing its commitment to work with Avianca and OceanAir “to enhance and deepen the companies’ commercial and strategic relationships.”

79. The market reaction to the surprise announcement that the Strategic Process had apparently concluded without achieving any of its goals was swift and severe. The revelation of Efromovich’s actions caused Avianca’s share price on the NYSE to plummet 9% on the first trading day after the announcement, from a close of \$8.50 on January 31, 2017 to a close of \$7.74 on February 1, 2017. This represented a significant discount from the premium offers that Avianca reportedly received from Airline A and Airline B.

80. The media and other minority shareholders also were highly skeptical of the United Transaction. An article published on February 14, 2017, in *Portafolio*, a prominent Colombian newspaper, warned that, instead of seizing an opportunity to reduce Avianca’s debt, the United Transaction will cause Avianca to continue to carry one of the highest levels of debt of any comparable airline. *Portafolio* also noted that Synergy’s purported capital infusion of

\$200 million would account for only 4% of Avianca's adjusted net debt, and would dilute the shares held by Kingsland and the public rather than provide them with a premium. *Portafolio* raised the obvious question: how can Avianca explain to the market that it was better to have the Company continue to be run by Synergy instead of a world-class airline, particularly when the non-United Bidders wanted to remove Synergy as the controlling group.

81. On February 23, 2017, Avianca announced that the Board approved a proposal to pay dividends to shareholders in respect of earnings for fiscal year 2016. The proposal includes a dividend of approximately \$27 million, to be paid in two equal installments on July 31, 2017 and October 31, 2017, roughly \$14 million of which would go to Synergy as the Company's majority shareholder (an amount that happens to coincide with the amount of a loan owed to the Company by Synergy). The Board, at the direction of Efromovich and over the objection of Kriete, approved the dividend – which represents almost 10% of the Company's available cash reserves – despite the fact that the Company is in the midst of a reported liquidity crunch that it sought to remedy through the Strategic Process. Again, Efromovich is putting his own liquidity crisis and debt obligations ahead of the Company's needs.

#### **5) The United Transaction Violates the JAA**

82. The United Transaction contemplates a series of interconnected related party transactions, including Synergy's recapitalization of Avianca, United's related loan to Synergy, a merger between Avianca and OceanAir, and a proposed United partnership with the combined entity as payment by Avianca for United's loan to Synergy. The entire transaction therefore constitutes a related party transaction under the JAA. Defendants – including United – simply ignored Kingsland's rights by announcing the United Transaction without Kingsland's consent and without providing basic details to the detriment of Kingsland, the Company and its public

shareholders. Because the JAA is public, United was fully aware of its terms and requirements when it secretly negotiated the United Transaction with Efromovich.

83. Pursuant to the JAA, Avianca must provide written notice of an Approval Request for the United Transaction to Kingsland at least fifteen days prior to a Board meeting that will consider the proposed transaction. Such Approval Request must provide Kingsland with sufficient information to make an appropriately informed evaluation as to whether it should approve the United Transaction. No such information was provided to Kingsland and no such approval was sought prior to the January 31, 2017 Board meeting.

84. By letter dated February 1, 2017, Kingsland advised Avianca and Synergy that the proposed transaction was clearly a related party transaction subject to Kingsland's consent right and that the proposed transaction must follow the steps set forth in the JAA. To date, the Board has not taken any steps to comply with the JAA's approval procedures with respect to the United Transaction.

85. Moreover, Avianca's CEO asserted that the "proposed alliance with United Airlines and \$200 million capital contribution potentially represent the successful culmination of a months-long, competitive process." This statement disregards the fact that the United Transaction was not part of the "multi-month" process of the Horizon Committee (which, along with the Company's legal and financial advisors, did not have knowledge of any discussions between Efromovich and United), but was negotiated secretly by Efromovich for the benefit of himself and Synergy, to the detriment of Avianca, Kingsland and the public shareholders.

**D. The History Of Self-Dealing and Corporate Waste By Efromovich and Synergy**

86. The United Transaction is only the latest in a long line of related party transactions that Efromovich has caused Avianca to enter into, burdening the Company with

billions of dollars of liabilities through non-arm's length transactions that have transferred value to himself and Synergy and money-losing deals to provide relief to Synergy's poor investments.

87. Since Avianca's IPO in the United States in 2013, the Efromoviches and Synergy have caused Avianca and its subsidiaries to enter into approximately 30 related party transactions (the "Disclosed Related Party Transactions") that Kingsland is aware of, often on the basis of materially inadequate and misleading information, that have proven to be one-sided. Moreover, upon information and belief, Efromovich and Synergy have caused Avianca to enter into additional transactions in which they hid the fact that the transactions were not at arm's length, but instead were related party transactions (the "Undisclosed Related Party Transactions, together with the Disclosed Related Party Transactions, the "Prior Related Party Transactions"). All such transactions have been foisted upon Avianca as a result of Efromovich and Synergy desperately needing to be bailed out of their significant debts. Set forth below are a few examples of these Prior Related Party Transactions.

**1) Synergy's Macair Transaction**

88. One such related party transaction involved Avianca licensing its valuable brand name to Synergy's affiliate Macair Jet S.A. ("Macair"), a small charter airline operating in Argentina with no significant commercial passenger activities. Efromovich and Synergy caused Avianca to enter into the Macair transaction (the "Macair Transaction) in violation of the JAA.

89. Efromovich submitted the Macair Transaction to the Board for its approval at a Board meeting held on June 8, 2016. Like the United Transaction, this submission was premature and in violation of the approval procedures set forth in the JAA because Kingsland was not provided fifteen days' notice to determine whether to veto the transaction or the materials relevant to the transaction, including the materials to be presented to the Board.

90. The Board itself was not given the proposed Macair agreement or information with respect to the financial aspects of the transaction or the risks of entering into a transaction with a small charter airline. The Board also received no information on alternative partners if the Board were to conclude that expansion into Argentina was attractive.

91. Efromovich pitched the transaction to the Board as being similar to Avianca's licensing arrangement with Synergy and OceanAir. Even this disclosure demonstrated the one-sided nature of the licensing proposal because under the OceanAir license, OceanAir pays no economic consideration, but receives the substantial value of the Company's trademark and other services, including advice concerning design, marketing and merchandising strategies for OceanAir.

92. Kingsland refused to blindly approve the Macair Transaction and demanded that Avianca comply with the approval procedures set forth in the JAA, including providing sufficient information to make a reasoned decision whether it was in Avianca's best interests.

93. On June 27, 2016, Avianca delivered to Kingsland a purported approval request for the Macair Transaction. The request was inadequate on its face because it did not provide basic information necessary for Kingsland to make an informed evaluation, including a copy of the licensing agreement or summary of its terms, a copy of the business plan, any information relating to Macair's safety record, or any explanation as to how the operation would have the financial ability to operate given that its owner, Synergy, was in default with many of its lenders and unable to pay its debts to Avianca. In response to Kingsland's demand for this information, Efromovich and Synergy sent a purported buyout notice for Kingsland's shares. By sending a buyout notice with respect to a transaction as to which no pertinent information was provided,

Efromovich and Synergy sought to force Kingsland to choose between approving an inadequately disclosed and unfair transaction or the buyout of its shares at a fire-sale discount.

94. The Board held a meeting on August 17, 2016 to consider the Macair Transaction. Efromovich commenced the meeting with the declaration that there was no need to discuss the Macair Transaction because, according to Efromovich, the transaction already had been approved by the Board. This statement was false because the Board had not voted to approve the transaction at prior meetings.

95. Without any discussion, however, the Board accepted Efromovich's position. Once again, Efromovich had forced through a one-sided related party transaction that benefited himself at the expense of Avianca's shareholders.

**2) The Board Approves Repeated Extensions of Avianca's Loan to Synergy Without Demanding Any Consideration In Return**

96. On November 16, 2016, the Board authorized an extension of Avianca's loan to Synergy notwithstanding Synergy's three previous defaults.

97. The debt arose from a 2009 transaction in which Synergy guaranteed the obligations of OceanAir to repay working capital loans from Avianca. In June 2010, Synergy became obligated to pay \$61 million under the guarantee.

98. On December 30, 2010, the parties entered into an agreement to restructure Synergy's debt in exchange for an up-front payment by Synergy, followed by annual payments through December 31, 2013. When Synergy was unable to meet those obligations, Efromovich instructed the Synergy-controlled directors to further amend the repayment schedule on December 30, 2011 and again on February 28, 2012, extending the payments through December 31, 2014. As part of the security for this loan, the Efromoviches provided a personal guarantee. Despite these extensions, Synergy failed to make the final payment of \$22.6 million due on

December 31, 2014. However, based on Efromovich's directives, notwithstanding Synergy's financial troubles and history of failing to repay debts, the agreement was restructured once again to allow payment of \$11 million in October 2015, with the remaining \$14 million including interest due on October 31, 2016. Avianca received no consideration for these loan payment extensions, nor did it seek to enforce the guarantee against the Efromoviches.

99. During the October 19, 2016 Board meeting, Efromovich advised the Board that Synergy was suffering liquidity problems, was unable to pay the \$14 million, and requested yet another extension.

100. Because this self-dealing transaction is subject to Kingsland's approval rights under the JAA, on October 21, 2016, Avianca provided Kingsland with an Approval Request to extend the due date until the earlier of October 31, 2017 or completion of the Strategic Process. The Approval Request did not disclose any other repayment terms or penalties or consideration to be provided to Avianca for the extension.

101. In response to the Approval Request, on November 7, 2016, Kingsland advised that in order to properly evaluate the proposed loan extension and to understand the risks to Avianca posed by Synergy's current financial predicament, it would be necessary to have insight into Synergy's financial health, including utilizing outside counsel and independent accountants to review Synergy's financials. Kingsland further advised that because it had not been given sufficient information, the Approval Request was not valid.

102. During the November 16, 2016 Board meeting, despite never requesting or obtaining the basic information identified by Kingsland, and over Kriete's objection, the Synergy-controlled Board rubberstamped the extension. Although the Board required Synergy to repay overdue interest by December 6, 2016, it did not seek any additional collateral or an

increased interest rate. Synergy ultimately paid the interest eighteen days late on December 24, 2016, without penalty. The Board's failure to submit the further extension of this payment of interest – effectively an amendment to the loan – also constituted a Special Approval Matter that should have been submitted to Kingsland for evaluation and consent.

103. Notably, at or around the same time of the loan extension, Synergy publicly announced the purchase of 49% of Aeromar Airlines, a Mexican regional carrier, for \$100 million. The Board did not question or inquire into how Synergy could afford to invest in another carrier, but continue to default on its payments to Avianca.

104. Accordingly, despite Avianca facing its own liquidity crisis, the Efromoviches caused the Board to extend Synergy's loan without cost or penalty and without providing basic information concerning the likelihood of further defaults.

### **3) Avianca's Bailouts of Synergy's Unprofitable Speculation**

105. Efromovich and Synergy have caused Avianca to take billions of dollars in plane orders to cover Synergy's debts as a result of its speculative aircraft orders. Synergy routinely purchases aircraft with the intention to sell or lease the aircraft to other third parties to generate profit. However, when Synergy cannot find a counterparty to enter into a transaction, it resorts to forcing these unwanted planes on Avianca, generating substantial profits as well as debt relief for itself, but considerable liabilities for Avianca.

106. In November 2014, the Board approved a Special Approval Matter that authorized Avianca and its subsidiaries to step in and relieve Synergy of an obligation to purchase an A-330 cargo aircraft from Airbus worth millions of dollars. The transaction was approved on the basis of a business plan presented by the Company that reflected a supposed need for an A-330 aircraft to service a freighter route in Brazil. Notably, while Avianca already was operating another

plane whose lease could have been extended and was suitable for this route (a Boeing 767F), Avianca purchased the A-330 cargo plane at Efromovich's direction at significantly higher costs to Avianca. The Company has incurred significant losses on account of purchasing an unnecessary plane that provided much needed relief to Synergy.

107. The 2014 A-330 purchase followed other similar purchases that allowed Synergy to siphon money out of the Company and into its coffers to satisfy its own debts. For example, between 2012 and 2013, Avianca also stepped into the shoes of Synergy to purchase five A-330 cargo planes to satisfy Efromovich and Synergy's debt obligations. Upon information and belief, there was no business justification for Avianca to purchase these planes, which purchases included above-market terms that had been negotiated between Synergy and Airbus, and not directly between Avianca and Airbus. Despite these purchases involving related party transactions between Avianca and Synergy, it was not presented to Kingsland for its approval in violation of the JAA or the original shareholders agreement between the parties that provided similar consent rights to Kingsland.

108. Moreover, in 2010, Avianca purchased seven A-330 passenger aircraft that were also originally purchased by Synergy. When Synergy could not find a buyer for these planes, it offloaded them onto Avianca. Upon information and belief, Avianca did not need an order of this size and could have obtained better terms if it was negotiating with a true third party. This related party transaction also was not presented to Kingsland for its approval in violation of the original shareholders agreement.

109. In total, Efromovich and Synergy have caused the Company to incur over \$1 billion in liabilities for these aircraft purchases, many of which were unnecessary and did not

comply with Kingsland's contractual approval rights, and all of which were undertaken without Avianca being able to negotiate more favorable terms.

#### **4) Avianca's Excessive Order of 100 Airbus Planes**

110. In 2015, Efromovich and Synergy caused Avianca to enter into an extraordinary multibillion dollar purchase of 100 A-320 airplanes from Airbus, at least double the Company's needs given its size and growth profile.

111. Upon information and belief, Efromovich concealed the true nature of the transaction and did not disclose that he and Synergy obtained relief from their existing obligations to Airbus in connection with Avianca's order.

112. Indeed, according to an individual familiar with the transaction, Efromovich and Synergy were in default on payments owed to Airbus and leveraged this large order for relief in connection with their default.

113. While the 100 aircraft order was presented to the Board for approval, it was not presented to Kingsland for its consent as a Special Approval Matter, in violation of the JAA.

114. As a result of this transaction, Efromovich and Synergy have caused Avianca to take on billions of dollars of debt so that they could once again divert consideration to themselves.

#### **5) The One-Sided Synergy Plane Leases**

115. In January 2014, Efromovich and Synergy caused Avianca to lease two A-330 aircraft. Kingsland was misled by Synergy and Efromovich to approve a Special Approval Matter that authorized the transaction on the basis of information provided by Efromovich and Synergy that the leasing arrangement provided "commercial advantages" at "equivalent" terms to the Company's existing leasing arrangement for A-330 aircraft with Aviation Capital Group

(“ACG”). According to a business plan prepared at the direction of Efromovich and Synergy, the leasing of the two Synergy aircraft was superior to maintaining the existing leasing arrangement because it would allow the Company to “increas[e] capacity worldwide” and “provide better service.” The business plan materially misstated these advantages and did not disclose the relative advantages of the competing options.

116. Moreover, upon information and belief, Synergy had purchased six aircraft from Airbus, but in lieu of risking default on their payments, Synergy assigned its purchase obligations with respect to two of the planes to a leasing company on the condition of a long-term lease with OceanAir and a short-term lease to Avianca of the other plane.

117. Upon information and belief, the remaining four aircraft are sitting dormant in the Spanish desert because Synergy has been unable to locate a third-party willing to enter into a leasing arrangement.

118. Subsequent to approving this Special Approval Matter, Kingsland learned that the ACG leasing arrangement was in fact far more advantageous for Avianca than the Synergy/OceanAir arrangement, with the Synergy proposal costing hundreds of thousands of dollars more per month. Making matters worse, the Synergy planes were delivered approximately three to six months late, despite Efromovich’s representation that the planes were ready to be transferred immediately, without any penalties being imposed on Synergy as would be appropriate in any arm’s length transaction, and required expensive retrofitting to conform to Avianca’s fleet standards.

119. As a result of this related party transaction, Avianca and its shareholders incurred millions of dollars of damages because Synergy did not pay for the reconfiguration of the

airplane or compensate the Company for the delay as would occur in a true arm's length transaction.

**6) Synergy-owned Transportation Services Riddled With Fraud**

120. In 2014, Kingsland and the Board approved a Special Approval Matter authorizing Avianca to renew its contract with Empresariales S.A.S ("Empresariales"), an affiliate of Synergy, whereby Empresariales would provide ground transportation for Avianca's pilots, flight attendants and other professionals for another three years.

121. In 2015, the services provided by Empresariales were subject to an internal audit. The audit's findings included numerous irregularities and instances of fraud, including findings that Empresariales submitted service orders with false information, falsified route control sheets, and submitted and collected on receipts for fictitious services. The audit also concluded that Empresariales violated several statutes and regulations and the terms of its contract with Avianca.

122. When Avianca received the results of this audit, it did not promptly disclose the results to the Board. It was only through the insistence of Kingsland, which belatedly learned of the audit, that the audit's findings were disclosed to the Board. Despite the serious nature of the audit findings, Avianca took no action and did not investigate further. Beyond repayment of the overcharges by Empresariales, neither Avianca nor Synergy took action to terminate the contract or hold Empresariales accountable for its fraudulent conduct.

123. Kingsland's approval of this Special Approval Matter was induced by the intentionally misleading statements by Empresariales, made at the behest and under control of Efromovich and Synergy.

## 7) Synergy Piggy Backs on Avianca's Purchase of Aircraft

124. In 2014, Avianca purchased 16 ATR-72 aircraft. Unbeknownst to Avianca, upon information and belief, at the same time that it was purchasing these planes, Synergy received options to purchase other ATR-72 aircraft on similar terms that were provided to Avianca.

125. Upon information and belief, Synergy was able to receive options by exploiting Avianca's confidential information and goodwill. Efromovich did not seek or obtain approval from either Avianca or Kingsland to piggy back his ATR-72 purchase on to Avianca's purchases, in violation of the JAA.

### **E. Kingsland's Demands for An Accounting of Efromovich's Related Party Transactions Are Repeatedly Refused**

126. In light of the poor performance of Synergy's related party transactions and Synergy's persistent introduction of new related party transactions, Kingsland has repeatedly demanded an accounting of all such transactions. For example, on September 28, 2015, Kriete sent a letter to Avianca requesting "the information provided to the Avianca Board of directors and/or Kingsland with respect to the projected future costs and benefits of [each] such transaction, including the projected impact on Avianca's earnings, at the time such transaction was approved" and "a comparison of the actual performance of such transaction against the projection so provided."

127. On November 5, 2015, July 18, 2016, and December 14, 2016, Kingsland reiterated its request for an analysis of related party transactions.

128. On information and belief, Efromovich caused the Board to deny each such request.

129. After more than a year of requests by Kriete, Efromovich finally purported to agree to an accounting of the related party transactions.

130. Following the August 17, 2016 Board meeting, Efromovich approached Kriete and offered to allow Kriete to audit these transactions. Kriete informed Efromovich that he would like to bring in outside accountants to conduct an audit of all related party transactions. Efromovich agreed to the outside audit.

131. On August 21, 2016, Efromovich confirmed his agreement to allow an outside audit by email to Kriete. However, Efromovich now demanded that the audit be conducted consistent with an undefined procedure approved by the Board.

132. Kingsland retained AlixPartners, LLP, a highly respected financial advisory firm with significant experience in the airline industry, to perform the audit.

133. At a Board meeting held on September 7, 2016, however, the Board cursorily rejected the agreed-upon independent audit. The Board claimed that AlixPartners was somehow an inappropriate choice and advised that the Company's internal auditors would instead conduct the analysis of related party transactions.

134. To date, Avianca, at the direction of Efromovich, has not conducted the promised internal review. Thus Efromovich's offer was exposed as yet another charade to oppress Kingsland and delay it from enforcing its rights under the JAA.

135. Kingsland is entitled to and seeks an accounting with respect to the Prior Related Party Transactions.

**F. Synergy's Encumbrances of its Avianca Shares Violate the JAA**

136. Besides the improper United Transaction and the Prior Related Party Transactions, Synergy has also violated the JAA by improperly pledging its Avianca shares to third parties.

137. Synergy's pledge of its shares to third parties, including Elliott, violates the JAA in two respects. First, Synergy failed to seek or obtain Kingsland's consent to the pledge of shares to third parties, as expressly required by the JAA. Second, upon information and belief, none of the third parties, including Elliott, are permitted transferees under the JAA because they are not affiliates or family members of Synergy. Accordingly, Synergy's pledge of its Avianca shares to third parties, including Elliott, is invalid.

138. Because United is engaged in a business that competes with Avianca and is not a permitted transferee of Synergy's shares under the JAA, under no circumstances can Synergy assign any of its rights or obligations, or transfer, sell or pledge its shares to United.

### **IRREPARABLE HARM**

139. The United Transaction poses a grave risk of causing irreparable harm to Kingsland, Avianca and its stockholders. Efromovich and Synergy repeatedly have breached the JAA by depriving Kingsland of its consent/veto rights under the JAA, including with respect to the United Transaction. Denial of contractually bargained-for consent/veto rights constitutes irreparable harm as a matter of law, and the JAA itself provides "that irreparable damage would occur in the event any provision of this Agreement was not performed in accordance with the terms hereof and that the parties hereto shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or in equity." JAA § 7.11.

140. By agreeing to an exclusivity period in the context of the proposed United Transaction, Avianca, under Efromovich's control, already has chilled the bidding process and threatens to permanently scare away bidders and deprive the Company and its shareholders, including Kingsland, of a value-maximizing transaction. Once consummated, the United Transaction will be difficult to unwind.

141. The United Transaction does not provide Avianca with new capital and does nothing to alleviate its liquidity needs. While Synergy has indicated it may use up to \$200 million of United's investment to backstop a rights offering, there is no assurance it will do so. As a result, the United Transaction may foreclose Avianca's ability to obtain capital while also thwarting a value-maximizing strategic partnership with a world class airline. The United Transaction must be enjoined to preserve the status quo and to prevent irreparable harm to Avianca and its shareholders, including Kingsland.

142. Kingsland has no adequate remedy at law.

### **CLAIMS FOR RELIEF**

### **FIRST CAUSE OF ACTION**

#### **Breach of Contract against Avianca and Synergy Concerning the United Transaction and Prior Related Party Transactions (JAA §§ 3.07)**

143. Kingsland re-alleges and incorporates by reference the allegations set forth in the foregoing paragraphs.

144. The JAA is a binding and enforceable contract and was supported by adequate consideration.

145. Kingsland has fully performed all of its obligations under the JAA. Compliance with the dispute resolution procedure in Section 7.10(b) of the JAA is excused on the basis of the repeated material breaches of the JAA by Synergy and Avianca, and because in light of the course of conduct alleged herein, it would be futile.

146. Avianca and Synergy materially breached the JAA by failing to comply with the approval procedures set forth in the JAA. The JAA obligates Avianca and Synergy to submit Special Approval Matters to Kingsland for its informed approval before submitting such matters to the Board. In connection with this process, the JAA requires Avianca and Synergy to provide

information sufficient for Kingsland to make an appropriately informed evaluation of the proposed Special Approval Matter.

147. The United Transaction is a Special Approval Matter because it involves benefits to Efromovich and Synergy and its affiliates at the expense of Avianca's stockholders, including Kingsland. For similar reasons, the Prior Related Party Transactions are also Special Approval Matters.

148. Avianca and Synergy disregarded the approval process set forth in the JAA for the United Transaction and the Prior Related Party Transactions and failed to provide Kingsland with valid Approval Requests and sufficient information to make an informed evaluation. Without a valid Approval Request and consent from Kingsland, the JAA prohibited Avianca and Synergy from submitting the United Transaction (and actually entering into an exclusivity arrangement with respect thereto) and the Prior Related Party Transactions to the Board for its approval.

149. By forcing through Board approval of the Prior Related Party Transactions without Kingsland's approval, as well as attempting to do the same with respect to the United Transaction, Avianca and Synergy have materially breached the JAA and deprived Kingsland of its bargained-for consent rights.

150. The JAA provides "that irreparable damage would occur in the event any provision of this Agreement was not performed in accordance with the terms hereof and that the parties hereto shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or in equity." JAA § 7.11. Kingsland also has suffered and continues to suffer irreparable injury by the breach of its approval rights under the JAA.

151. With respect to the United Transaction, the breaches of the JAA are causing irreparable harm to the Company and its shareholders including Kingsland by potentially foreclosing Avianca's ability to consummate a strategic transaction with another airline and further threatening the Company's already strained liquidity situation.

152. Kingsland has no adequate remedy at law with respect to the United Transaction.

153. Kingsland is entitled to injunctive relief to prevent Avianca and Synergy from proceeding further with and consummating the United Transaction.

154. With respect to the Prior Related Party Transactions, Kingsland has been damaged by Avianca and Synergy through their material breach of the JAA, in denying Kingsland its bargained-for consent rights in an amount to be determined at trial that exceeds \$500,000.

## **SECOND CAUSE OF ACTION**

### **Breach of Contract against Synergy for its Improper Pledge of Shares (JAA §§ 4.02, 4.03, 7.13(c))**

155. Kingsland re-alleges and incorporates by reference the allegations set forth in the foregoing paragraphs.

156. Synergy's secret pledge of its Avianca shares to third parties materially breached the JAA because it failed to comply with the JAA's provisions restricting the sale and encumbrance of shares in JAA § 7.13(c).

157. First, Synergy did not request, nor did it receive, Kingsland's "express written consent" to Synergy's pledge of shares, as required by JAA § 7.13(c) in connection with a direct or indirect assignment of rights and obligations under the JAA.

158. Second, none of the third parties to which Synergy pledged its shares is a "Permitted Transferee" under JAA § 1.01.

159. In addition, as part of the United Transaction, Synergy is now seeking to pledge shares to United, which is a “Non-Permitted Holder” under JAA § 1.01.

160. Pursuant to Section 4.03 of the JAA, Synergy’s improper pledges are “null and void and no force and effect.”

161. The JAA provides “that irreparable damage would occur in the event any provision of this Agreement was not performed in accordance with the terms hereof and that the parties hereto shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or in equity.” JAA § 7.11. Kingsland also has suffered and continues to suffer irreparable injury by breach of its approval rights under the JAA.

162. Kingsland has no adequate remedy at law with respect to the improper pledges.

163. Kingsland seeks an order unwinding and invalidating Synergy’s unlawful transfer or pledge of its shares that have already taken place and an injunction to prevent any pledge, sale, or transfer of Synergy’s shares to United.

### **THIRD CAUSE OF ACTION**

#### **Breach of Implied Covenant of Good Faith and Fair Dealing against Avianca and Synergy by Thwarting Kingsland’s Approval Rights**

164. Kingsland re-alleges and incorporates by reference the allegations set forth in the foregoing paragraphs.

165. The JAA contains an implied covenant of good faith and fair dealing which requires Avianca and Synergy to act in good faith and deal fairly with Kingsland, including a duty to avoid any action that would deprive Kingsland of the benefit of its bargain or frustrate Kingsland’s contractual expectations.

166. A fundamental premise of the JAA, and a material aspect of Kingsland’s bargain with Avianca and Synergy, is Kingsland’s right to consent to Special Approval Matters, and the

right to receive information sufficient to make an appropriately informed decision with respect to each Special Approval Matter. Kingsland bargained for these rights to, among other things, understand potentially problematic transactions entered into by Synergy and to have the ability to protect its investment in Avianca by withholding consent for transactions that may jeopardize the interests of Kingsland and other shareholders.

167. The implied covenant also requires Avianca and Synergy to submit only Special Approval Matters that they believed are in the best interests of the Company and its shareholders, and prohibits submissions of Special Approval Matters in bad faith for the purpose of provoking a veto by Kingsland and triggering Synergy's buyout rights under the JAA at a depressed price. The parties intended, agreed and reasonably expected that Avianca and Synergy would not submit Special Approval Matters in bad faith for the purpose of triggering Synergy's buyout rights.

168. The failure of Avianca and Synergy to submit the United Transaction as a Special Approval Matter materially breaches the implied covenant of good faith and fair dealing. Among other things, the United Transaction further threatens the Company's strained liquidity situation and destroys the bargain struck by Kingsland because Avianca is conferring valuable partnership rights on United in exchange for little or no consideration, while United is providing significant benefits to Synergy, including loans for the recapitalization of OceanAir and repayment of Synergy's debt to third parties.

169. The submission by Avianca and Synergy of improper requests for Special Approval Matters, including without providing sufficient information for Kingsland to make an informed evaluation, and submission of Special Approval Matters in bad faith for the purpose of triggering Synergy's buyout rights with respect to the Prior Related Transactions, violates the

reasonable expectations of the parties and subverts a fundamental purpose of the JAA by depriving Kingsland of the benefit of the bargain that it struck with respect to approval of the Prior Related Party Transactions.

170. Kingsland has no adequate remedy at law with respect to the United Transaction.

171. Kingsland is entitled to injunctive relief to prevent Avianca from improperly consummating the United Transaction.

172. With respect to the Prior Related Party Transactions, Kingsland has been damaged in an amount to be determined at trial that exceeds \$500,000.

#### **FOURTH CAUSE OF ACTION**

##### **Tortious Interference with the JAA against (i) United and Efromovich Concerning the United Transaction and (ii) Efromovich for the Prior Related Party Transactions**

173. Kingsland re-alleges and incorporates by reference the allegations set forth in the foregoing paragraphs.

174. The JAA obligates Avianca and Synergy to submit Special Approval Matters to Kingsland for its informed approval before submitting such matters to the Board.

175. Efromovich is aware of the JAA and its terms because he negotiated and caused Synergy to enter into the JAA. United is also aware of the JAA and its terms because it was provided with the JAA in connection with the Strategic Process.<sup>4</sup> Accordingly, Efromovich and United were aware of Kingsland's approval rights and the corresponding obligation of Avianca and Synergy to submit the United Transaction to Kingsland for its approval with sufficient information.

---

<sup>4</sup> The JAA was also disclosed publicly in Avianca's SEC filings, including as Exhibit 4.3 to Avianca's Form F-1/A, filed September 19, 2013 and in Avianca's Form 20-F, filed April 29, 2016.

176. In violation of the JAA's procedures, Efromovich intentionally caused Avianca and Synergy not to submit the United Transaction to Kingsland for its approval, let alone provide sufficient information for an informed evaluation.

177. United intentionally and secretly negotiated the United Transaction with Efromovich and Synergy and intentionally concealed those negotiations from Kingsland, Avianca's management and the Financial Advisor. United purported to agree to the United Transaction notwithstanding the absence of approval by Kingsland pursuant to the JAA.

178. But for the intentional interference of United and Efromovich in creating and forcing through the United Transaction, the Board would not have approved the United Transaction in breach of the JAA's procedures.

179. As a result of Efromovich and United's improper interference with Kingsland's right to approve the United Transaction, Kingsland has suffered irreparable harm.

180. The Prior Related Party Transactions also involved Special Approval Matters, as to which Efromovich intentionally caused Avianca and Synergy to fail to provide sufficient and accurate information to enable Kingsland to exercise its approval rights under the JAA. Efromovich further caused the Company's directors to approve the Prior Related Party Transactions without providing the directors with sufficient and accurate information to fulfill their fiduciary duties in understanding and approving those transactions. When Kingsland made reasonable requests for additional information concerning the Prior Related Party Transactions, Efromovich did not allow Avianca to provide material information, thereby causing Avianca to breach its duties under the approval provisions of the JAA.

181. But for Efromovich's interference with Avianca's duties under the JAA approval procedures, Avianca would have complied with the JAA, including by providing Kingsland with adequate material information to exercise its approval rights as required by the JAA.

182. Kingsland has no adequate remedy at law with respect to the United Transaction.

183. Kingsland is entitled to injunctive relief to prevent Efromovich and United from continuing their unlawful interference with the JAA.

184. With respect to the Prior Related Party Transactions, Kingsland has been damaged by United and Efromovich's misconduct as alleged herein in an amount to be determined at trial that exceeds \$500,000.

### **FIFTH CAUSE OF ACTION**

#### **Tortious Interference With the JAA against Efromovich for the Improper Pledge**

185. Kingsland re-alleges and incorporates by reference the allegations set forth in the foregoing paragraphs.

186. Efromovich is aware that the JAA requires that Synergy obtain Kingsland's consent with respect to any transfer or encumbrance of its Avianca shares to third parties.

187. Synergy materially breached the JAA by failing to obtain Kingsland's express written consent to transfer or encumber its shares in connection with loans from Elliott and others.

188. Efromovich intentionally caused Synergy to surreptitiously transfer or encumber its shares in violation of the JAA. Efromovich acted for the sole purpose of frustrating Kingsland's right to approve or withhold consent to such action, which would have exacerbated Efromovich's financial troubles.

189. Kingsland has no adequate remedy at law and seeks an order invalidating Synergy's unlawful transfer or encumbrance of its shares and unwinding all such transactions.

### **SIXTH CAUSE OF ACTION**

#### **Breach of Fiduciary Duty against Efromovich and José Efromovich Concerning the United Transaction and Against Efromovich for the Prior Related Party Transactions (Article 444 of Panama's Code of Commerce)**

190. Kingsland re-alleges and incorporates by reference the allegations set forth in the foregoing paragraphs.

191. Kingsland is a shareholder of Avianca, was a shareholder of Avianca at the time of the wrongdoing alleged herein, and has been a shareholder of Avianca continuously since that time.

192. Avianca is a company organized under the laws of Panama and its internal affairs are governed under Panamanian law. As courts in the United States have recognized, the Panamanian Corporation Code is based on Delaware law.

193. As directors of Avianca, the Efromoviches owe fiduciary duties of loyalty, candor and good faith to the Company and its shareholders, including Kingsland. Moreover, under Panamanian law, the Efromoviches owe fiduciary duties, including acting with the "diligence of a good family man," which requires them to provide the same degree of care to Avianca that they would apply to their own business. Article 444 of the Panama Code of Commerce provides a basis for "third parties," such as Kingsland, to assert liability against directors for breaches of fiduciary duties.

194. With respect to the United Transaction, the Efromoviches breached their fiduciary duties of loyalty to the Company by engaging in self-dealing and diverting hundreds of millions of dollars from the Company and its shareholders to themselves and their affiliates, and denying

Kingsland the opportunity to consider fairly a strategic opportunity within the scope of the Strategic Process.

195. Efromovich violated his duty of candor by misrepresenting his intentions to support the Strategic Process and giving Kingsland false assurances that he would pursue a value-maximizing transaction even if that meant losing voting control.

196. However, Efromovich secretly negotiated a transaction with United that unlawfully diverted to himself the consideration United was willing to provide for a strategic partnership with Avianca. In doing so, Efromovich has caused the Company to give away a valuable asset – its brand and an alliance estimated to be in excess of \$75 million in profits annually.

197. As a result, Efromovich deprived the Company of the opportunity for a much needed liquidity infusion and strategic partnership that would benefit all of the Company's shareholders, including Kingsland.

198. Efromovich and José Efromovich's misconduct and disloyalty to Avianca threatens to foreclose Avianca's ability to enter into a transaction through the Strategic Process, threatening irreparable harm to the Company and its shareholders by further jeopardizing its strained liquidity situation.

199. Efromovich and José Efromovich also breached their fiduciary duty of loyalty to the Company by failing to recuse themselves from considering the United Transaction with Synergy and OceanAir and allowing only the disinterested directors of Avianca to consider the transaction.

200. Regarding the Prior Related Party Transactions, Efromovich breached his fiduciary duty of loyalty by causing the Board to approve and the Company to enter into the

Prior Related Party Transactions in order to benefit Synergy and his affiliates. Notwithstanding Efromovich's knowledge that these transactions were not in the best interests of the Company, Efromovich used these one-sided transactions to divert the Company's resources for his benefit.

201. Efromovich further breached his fiduciary duties through his disloyal manipulation and domination of the Company's resources for his own selfish purposes. Efromovich purposefully failed to provide the Board specific details of Prior Related Party Transactions and then caused the directors to approve the transactions without understanding their terms. When Kingsland refused to blindly approve the Prior Related Party Transactions and made reasonable requests for information and for an accounting of Prior Related Transactions, Efromovich caused the Company to refuse to respond and attempted to bully Kingsland into abandoning its rights under the JAA to review the Prior Related Party Transactions.

202. Kingsland has no adequate remedy at law with respect to the United Transaction.

203. Kingsland is entitled to injunctive relief to enjoin the Efromoviches from continuing to breach their fiduciary duties, including by taking any action to consummate the United Transaction or to continue their improper interference with the Strategic Process.

204. With respect to the Prior Related Party Transactions, Kingsland has been damaged in an amount to be determined at trial that exceeds \$500,000. Additionally, Kingsland is entitled to a full accounting of the Prior Related Party Transactions.

**SEVENTH CAUSE OF ACTION**

**Aiding and Abetting Breach of Fiduciary Duty against  
Synergy and United Concerning the United Transaction  
(Article 1644 of Panama's Civil Code)**

205. Kingsland re-alleges and incorporates by reference the allegations set forth in the foregoing paragraphs.

206. Kingsland is a shareholder of Avianca, was a shareholder of Avianca at the time of the wrongdoing alleged herein, and has been a shareholder of Avianca continuously since that time.

207. Avianca is a company organized under the laws of Panama and its internal affairs are governed under Panamanian law. As courts in the United States have recognized, the Panamanian Corporation Code is based on Delaware law.

208. Article 1644 of the Panama Civil Code provides that anyone who causes damages to another person due to negligence or fault is required to repair the damages caused. Consequently, Article 1644 provides a basis to hold Synergy and United accountable for their tortious conduct.

209. As directors of Avianca, the Efromoviches breached their fiduciary duties owed to the Company as set forth above.

210. Synergy, the Company's controlling shareholder, knowingly participated in the Efromoviches' breach of their fiduciary duties, including by unreasonably and unfairly exploiting its control over Avianca to cause Avianca to permit the United Transaction to go forward and to cause the Synergy-controlled directors to agree to the 30-day exclusivity agreement with United without having basic information regarding the United Transaction, let alone information sufficient for them to make an informed decision. Similarly, Synergy

knowingly participated in Efromovich's breach of his fiduciary duties by causing the Board and the Company to enter into the Prior Related Party Transactions in order to benefit Synergy and its affiliates.

211. United also knowingly participated in the Efromoviches' breaches of their fiduciary duties with respect to the United Transaction by knowingly providing financial incentives to the Efromoviches' affiliates to induce the Efromoviches to ignore their fiduciary obligations. United further knowingly agreed to participate in and benefit from a scheme pursuant to which the Efromoviches would divert hundreds of millions of dollars in value from the Company and its shareholders to themselves and their affiliates and deny Kingsland and the Company the ability to fairly consider a strategic opportunity within the scope of the Strategic Process.

212. United knowingly participated in the Efromoviches' breaches by agreeing to a transaction whereby about half of United's approximately \$800 million investment will be used to pay down Synergy's existing debt to third parties, including Elliott, and \$130 million will be used as a side payment to OceanAir. Moreover, the terms of the United Transaction are egregiously unfair because if Efromovich defaults on the United loan, United would take control of Avianca (and OceanAir) for an amount far below the Company's true value – including as established by the Airline A and Airline B bids – and will still see the loan repaid based on the expected annual profit that it will receive from the strategic alliance with Avianca.

213. Synergy and United's unlawful conduct has harmed the Company's shareholders, including Kingsland.

214. Kingsland has no adequate remedy at law with respect to the United Transaction.

215. Kingsland is entitled to injunctive relief to prevent Synergy from taking further steps to consummate the United Transaction.

216. With respect to the Prior Related Party Transactions, Kingsland has been damaged as alleged herein in an amount to be determined at trial that exceeds \$500,000.

**RELIEF DEMANDED**

WHEREFORE, plaintiff Kingsland Holdings Limited respectfully requests that this Court award the following relief:

A. Preliminarily and permanently enjoining Defendants from taking any action to complete the United Transaction or undertake other related party transactions without fully complying with the requirements of the JAA and fulfilling their fiduciary duties;

B. Preliminarily and permanently enjoining Defendants from continuing to take actions to unlawfully impede, interfere with, or undermine the Strategic Process;

C. Preliminary and permanently enjoining any transfer or encumbrance of Synergy's shares of Avianca to United;

D. Invalidating and unwinding the transfers and encumbrances of Synergy's shares of Avianca that have been made in violation of the JAA;

E. Ordering that a full, independent accounting be undertaken of the Prior Related Party Transactions;

F. Awarding damages to Kingsland in an amount to be determined at trial that exceed \$500,000;

G. Granting Kingsland costs and disbursements, including reasonable attorneys' fees and expenses incurred in connection with this action; and

H. For such other and further relief as the Court deems just and proper.

Dated: New York, New York  
February 28, 2017

BOIES SCHILLER FLEXNER LLP

CADWALADER, WICKERSHAM & TAFT LLP

By: /s/ Nicholas A. Gravante, Jr.  
Nicholas A. Gravante, Jr.  
David A. Barrett  
Robert J. Dwyer

By: /s/ Jason M. Halper  
Jason M. Halper  
Nathan M. Bull  
Jared Stanisci  
Jared L. Facher

575 Lexington Avenue  
New York, New York 10022  
(212) 446-2300

200 Liberty Street  
New York, New York 10281  
Tel. No.: (212) 504-6000

David Boies

Attorneys for Plaintiff Kingsland Holdings  
Limited

333 Main Street  
Armonk, New York 10504  
(914) 749-8200

Attorneys for Plaintiff  
Kingsland Holdings Limited