

Blake Kim
2309 Hillside Drive
Burlingame, CA 94010
Tel: (650) 393-4782
Fax: (650) 276-7477
Email: blakekim@burlingameinvest.com

Pro Se, Blake W Kim Rollover IRA, Creditor

Christopher Shenfield, Esq. (CA Bar No. 184374)
533 Airport Blvd, Suite 400
Burlingame, CA 94010
Tel: (650) 373-2054
Email: chris@shenfieldlaw.com

*Attorney for Burlingame Investment Partners, LP,
William B Meier IRA, David M. Kang SEP IRA, and
Im Jo Degerman Rollover IRA, Creditors*

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

In re:

AVIANCA HOLDINGS S.A., et al.,

Debtors

Case No. 20-11133 (MG)
Chapter 11 (Jointly Administered)
Related Docket No. 1981, 2334

**APPELLANT'S DESIGNATION OF
RECORD AND STATEMENT OF
ISSUES ON APPEAL FROM
BANKRUPTCY COURT**

JUDGE: Hon. Martin Glenn

//

//

//

//



//

DESIGNATION OF RECORD

Bankruptcy Docket Number	Date Entered in the Bankruptcy Docket	Brief Description of the Document or Transcript
2300	11/2/2021	Order (I) Confirming Further Modified Joint Chapter 11 Plan of Avianca Holdings S.A. and its Affiliated Debtors and (II) Granting Related Relief
2294	10/29/2021	[Proposed] Findings of Fact and Conclusions of Law re: Joint Chapter 11 Plan of Avianca Holdings S.A. and its Affiliated Debtors (Filed by Blake Kim)
2281	10/26/2021	Notice of Filing of Exhibits B and C to the Preliminary Objection of Burlingame Investment Partners LP, Willaim B Meier IRA, David M Kang SEP IRA, Blake W Kim Rollover IRA, and Im Jo Degerman Rollover IRA to Confirmation of the Proposed “Joint Plan of Reorganization of Avianca Holdings S.A. and its Debtor Affiliates (“Avianca”) Under Chapter 11 of the Bankruptcy Code (Filed by Blake Kim)
2227	10/19/2021	Preliminary Objection of David M Kang SEP IRA to Confirmation of the Proposed “Joint Plan of Reorganization of Avianca Holdings S.A. and its Debtor Affiliates (“Avianca”) Under Chapter 11 of the Bankruptcy Code (Filed by David M. Kang)
2222	10/18/2021	Preliminary Objection of Im Jo Degerman Rollover IRA to Confirmation of the Proposed Joint Plan of Reorganization of Avianca Holdings S.A. and its Debtor Affiliates (“Avianca”) Under Chapter 11 of the Bankruptcy Code (Filed by Im Jo Degerman)
2218	10/18/2021	Preliminary Objection of Burlingame Investment Partners LP, Willaim B Meier IRA, David M Kang SEP IRA, Blake W Kim Rollover IRA, and Im Jo Degerman Rollover IRA to Confirmation of the Proposed “Joint Plan of Reorganization of Avianca Holdings S.A. and its Debtor Affiliates (“Avianca”) Under Chapter 11 of the Bankruptcy Code (Filed by Blake Kim)
2215	10/14/2021	Preliminary Objection of Blake W Kim Rollover IRA to Confirmation of the Proposed “Joint Plan of Reorganization of Avianca Holdings S.A. and its Debtor Affiliates (“Avianca”) Under Chapter 11 of the Bankruptcy Code (Filed by Blake Kim)
2215	10/14/2021	Preliminary Objection of Blake W Kim Rollover IRA to Confirmation of the Proposed “Joint Plan of Reorganization of Avianca Holdings S.A. and its Debtor Affiliates (“Avianca”) Under Chapter 11 of the Bankruptcy Code (Filed by Blake Kim)

2214	10/14/2021	Preliminary Objection of William B Meier IRA to Confirmation of the Proposed "Joint Plan of Reorganization of Avianca Holdings S.A. and its Debtor Affiliates ("Avianca") Under Chapter 11 of the Bankruptcy Code (Filed by William B. Meier)
2067	08/31/2021	Notice of Filing of (I) Exhibits C and D to the Disclosure Statement Relating to the Joint Chapter 11 Plan of Avianca Holdings S.A. and its Affiliated Debtors and (II) Additional Financial Materials (Filed by Evan R. Fleck on Behalf of Avianca Holdings S.A.)
1983	8/10/2021	Debtors' Motion for Entry of an Order (I) Approving the Disclosure Statement; (II) Approving Solicitation and Voting Procedures; (III) Approving Forms of Ballots; (IV) Establishing Procedures for Allowing Certain Claims for Voting Purposes; (V) Scheduling a Confirmation Hearing; and (VI) Establishing Notice and Objection Procedures and Notice of Hearing <i>[with hearing to be held on 9/14/2021 at 10:00 AM at Videoconference (ZoomGov) (MG) Objections due by 9/7/2021]</i> (Filed by Evan R. Fleck on Behalf of Avianca Holdings S.A.)
1982	8/10/2021	Disclosure Statement for Joint Chapter 11 Plan of Avianca Holdings S.A. and its Affiliated Debtors (Filed by Evan R. Fleck on Behalf of Avianca Holdings S.A.)
1017	10/03/2020	Notice of Filing of Revised DIP Credit Agreement (Filed by Evan R. Fleck on Behalf of Avianca Holdings S.A.)
964	09/21/2020	NOTICE OF HEARING ON DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING, AND (B) GRANT LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (II) MODIFYING THE AUTOMATIC STAY, AND (III) GRANTING RELATED RELIEF
2070	09/01/2021	NOTICE OF HEARING ON DEBTORS' (I) REQUEST FOR EXPEDITED DETERMINATION; AND (II) MOTION FOR AN ORDER (A) AUTHORIZING ENTRY INTO THE EQUITY CONVERSION AND COMMITMENT AGREEMENT AND (B) GRANTING RELATED RELIEF
2239	10/19/2021	CERTIFICATION OF P. JOSEPH MORROW IV WITH RESPECT TO THE TABULATION OF VOTES ON THE JOINT CHAPTER 11 PLAN OF AVIANCA HOLDINGS S.A. AND ITS AFFILIATED DEBTORS
2134	09/15/2021	NOTICE OF RE-FILING OF (A) DEBTORS' MOTION FOR AN ORDER (I) AUTHORIZING ENTRY INTO THE EQUITY CONVERSION AND COMMITMENT AGREEMENT AND (II) GRANTING RELATED RELIEF AND (B) DECLARATION OF JOHN E. LUTH IN SUPPORT OF THE SAME
2138	09/15/2021	DISCLOSURE STATEMENT FOR JOINT CHAPTER 11 PLAN OF AVIANCA HOLDINGS S.A. AND ITS AFFILIATED DEBTORS

2137	09/15/2021	JOINT CHAPTER 11 PLAN OF AVIANCA HOLDINGS S.A. AND ITS AFFILIATED DEBTORS
1031	10/05/2020	FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING, AND (B) GRANT LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (II) MODIFYING THE AUTOMATIC STAY, AND (III) GRANTING RELATED RELIEF
2032	08/18/2021	FINAL ORDER (I) AUTHORIZING THE DEBTORS TO ENTER INTO AMENDMENTS TO THEIR POSTPETITION DIP CREDIT DOCUMENTS AND ENTER INTO ADDITIONAL DOCUMENTS IN FURTHERANCE THEREOF, (II) GRANTING AND REAFFIRMING LIENS, (III) GRANTING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (IV) MODIFYING THE AUTOMATIC STAY, AND (V) GRANTING RELATED RELIEF
2263	10/24/2021	DECLARATION OF ADRIAN NEUHAUSER IN SUPPORT OF CONFIRMATION OF JOINT CHAPTER 11 PLAN OF AVIANCA HOLDINGS S.A. AND ITS AFFILIATED DEBTORS
2262	10/24/2021	DECLARATION OF GINGER HUGHES IN SUPPORT OF CONFIRMATION OF JOINT CHAPTER 11 PLAN OF AVIANCA HOLDINGS S.A. AND ITS AFFILIATED DEBTORS
2071	09/01/2021	DECLARATION OF JOHN E. LUTH IN SUPPORT OF DEBTORS' MOTION FOR AN ORDER AUTHORIZING ENTRY INTO THE EQUITY CONVERSION AND COMMITMENT AGREEMENT; AND (II) GRANTING RELATED RELIEF
869	09/08/2020	SCHEDULES OF ASSETS AND LIABILITIES FOR AVIANCA HOLDINGS S.A., (CASE NO. 20-11133)
1668	05/11/2021	AMENDED STATEMENT OF FINANCIAL AFFAIRS FOR AVIANCA HOLDINGS S.A., (CASE NO. 20-11133)
857	09/20/2020	SCHEDULES OF ASSETS AND LIABILITIES FOR AEROVÍAS DEL CONTINENTE AMERICANO S.A. AVIANCA, (CASE NO. 20-11134)
861	09/08/2020	SCHEDULES OF ASSETS AND LIABILITIES FOR AV INTERNATIONAL HOLDCO S.A., (CASE NO. 20-11145)
863	09/08/2020	SCHEDULES OF ASSETS AND LIABILITIES FOR AV INTERNATIONAL INVESTMENTS S.A., (CASE NO. 20-11147)
865	09/08/2020	SCHEDULES OF ASSETS AND LIABILITIES FOR AV INVESTMENTS ONE COLOMBIA S.A.S., (CASE NO. 20-11135)
866	09/08/2020	SCHEDULES OF ASSETS AND LIABILITIES FOR AV INVESTMENTS TWO COLOMBIA S.A.S., (CASE NO. 20-11136)
884	09/08/2020	SCHEDULES OF ASSETS AND LIABILITIES FOR REGIONAL EXPRESS AMÉRICAS S.A.S., (CASE NO. 20-11137)
887	09/08/2020	SCHEDULES OF ASSETS AND LIABILITIES FOR SERVICIOS AEROPORTUARIOS INTEGRADOS SAI S.A.S., (CASE NO. 20-11138)
875	09/08/2020	SCHEDULES OF ASSETS AND LIABILITIES FOR AVIFREIGHT HOLDING MEXICO, S.A.P.I. DE C.V., (CASE NO. 20-11155)
855	09/08/2020	SCHEDULES OF ASSETS AND LIABILITIES FOR AERO TRANSPORTE DE CARGA UNIÓN, S.A. DE C.V., (CASE NO. 20 - 11140)
890	09/08/2020	SCHEDULES OF ASSETS AND LIABILITIES FOR

		TACA INTERNATIONAL AIRLINES S.A., (CASE NO. 20-11168)
857	09/08/2020	SCHEDULES OF ASSETS AND LIABILITIES FOR AEROVÍAS DEL CONTINENTE AMERICANO S.A. AVIANCA, (CASE NO. 20-11134)
2211	10/13/2021	ORDER STRIKING OBJECTION TO CONFIRMATION FILED BY BURLINGAME INVESTMENT GROUP LLC
		Transcripts of Disclosure Statement Hearing, Chapter 11 Plan Hearing, and other Hearings.

//

//

//

STATEMENT OF ISSUES

1. Whether the Bankruptcy Court erred in finding that the 2023 Noteholders, who were originally senior secured creditors, are fairly treated, even though Debtors waived the doctrine of equitable marshalling in the final Debtor-in-Possession (“DIP”) financing such that the collateral securing the 2023 Notes was wiped out, converting 2023 Noteholders into general unsecured creditors receiving pennies on the dollar as members of the general unsecured creditor class (“GUC”), and despite the fact that all other secured creditors received 100% recovery.

2. Whether the Bankruptcy Court erred in holding that the 2023 Noteholders were fairly treated by the Final DIP Order, which waived the doctrine of equitable marshalling to the prejudice of 2023 Noteholders, because appealing creditors were not made fully aware of the ramification of the waiver of equitable marshalling in the Final DIP Order until the Final Disclosure Statement and the Plan were presented.

3. Whether the Bankruptcy Court erred in finding that the chapter 11 plan did not violate Section 506, even though Debtors did not perform a complete valuation, including a waterfall

analysis, of the collateral securing the 2023 Notes, instead relying solely on a declaration by Debtors' Chief Executive Officer based on DIP Tranche B conversion to equity.

4. Whether the Bankruptcy Court erred in finding that Debtors did not violate Section 548, even though Appellant produced evidence to the Court that Debtors' holding company, which issued the 2023 Notes, made tens of millions of dollars in insurance payments for its affiliates in one month.

5. Whether the Bankruptcy Court erred in finding that the debtors did not violate Section 1122(a) even though the Plan approved of Debtors' substantive consolidation of disparate classes of debtors to the prejudice of the 2023 Note Holders.

6. Whether the Bankruptcy Court erred in finding that 2023 Noteholders are fairly treated even though Debtors' offer to roll up the 2023 Noteholders' debt to DIP required a substantial, material reduction in principal to said Noteholders, whereas the Ad Hoc Group of 2023 Noteholders that initiated the RSA with the Debtors were proven to have little to no reduction in their principal in the DIP roll-up.

Dated: November 25, 2021	Signed: <u>/s/ Blake W. Kim</u> <i>Pro Se, Blake W. Kim</i> <i>Blake W. Kim Rollover IRA, Creditor</i>
Dated: November 25, 2021	Signed <u>/s/ Christopher Shenfield</u> <i>Christopher Shenfield, Esq.,</i> <i>Attorney for Burlingame</i> <i>Investment Partners, LP, William B Meier IRA,</i> <i>David M. Kang SEP IRA, and Im Jo Degerman</i> <i>Rollover IRA, Creditors</i>

CERTIFICATE OF SERVICE

In re: AVIANCA HOLDINGS S.A., et al., Debtors, Case No: 20-11133 (MG), Ch. 11, SDNY

I, the undersigned, declare: I am a resident of the State of California and over the age of eighteen years, and not a party to this action. My business address is SHENFIELD & ASSOCIATES, 1453 Sherman Drive, Benicia, CA 94510. I served, or caused to be served, the following:

APPELLANT'S DESIGNATION OF RECORD AND STATEMENT OF ISSUES ON APPEAL FROM BANKRUPTCY COURT

- x by electronically serving a true copy of the document(s) listed above at the email address(es) set forth below.
- by placing a true copy of the document(s) listed above in a sealed envelope, with postage fully prepaid, into U.S. Mail addressed as set forth below.
- by causing personal delivery of the document(s) listed above to the person(s) at the address(es) as set forth below.
- by Federal Express for delivery the following business day by placing it for collection in a Federal Express Deposit Box/Office to the business address set forth below.

Counsel for Debtors
Email: ddunne@milbank.com;
EFleck@milbank.com; bschak@milbank.com
Dennis F. Dunne, Evan R. Fleck, Benjamin M. Schak
MILBANK LLP
55 Hudson Yards
New York, New York 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

Counsel for Debtors
Email: gbray@mailbank.com
Gregory A. Bray
MILBANK LLP
2029 Century Park East, 33rd Floor
Los Angeles, CA 90067
Telephone: (424) 386-4000
Facsimile: (213) 629-5063

Pro Se, Blake W Kim Rollover IRA, Creditor
Email: blakekim@burlingameinvest.com
Blake Kim
2309 Hillside Drive
Burlingame, CA 94010
Tel: (650) 393-4782
Fax: (650) 276-7477

Counsel for Burlingame Investment Partners, LP, William B Meier IRA, David M. Kang SEP IRA; Im Jo Degerman Rollover IRA, Creditors
Email: chris@shenfieldlaw.com
Christopher Shenfield, Esq.
Shenfield & Associates
1453 Sherman Drive
Benicia, CA 94510

I declare under penalty of perjury under the laws of the United States of America the above is true and correct. Executed on November 17, 2021, at Benicia, California.

/s/ Christopher Shenfield
Christopher Shenfield

