SOUTHERN DISTRIC	T OF NEW YORK	v
ROBERTO MATA, vs.	Plaintiff,	: Civil Action No. 22-cv-1461 : NOTICE OF REMOVAL
AVIANCA, INC.,	Defendant.	: : : : :

LINITED STATES DISTRICT COLIRT

Defendant AVIANCA, INC. (hereinafter "Avianca"), by and through its attorneys, Condon & Forsyth LLP, hereby removes this action to the United States District Court for the Southern District of New York, pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446. In support of this Notice of Removal, Avianca states as follows:

- 1. On or about February 2, 2022, plaintiff ROBERTO MATA commenced this action against defendant Avianca by filing a Verified Complaint in the Supreme Court of the State of New York, New York County. On or about January 31, 2022, before the action was commenced, Plaintiff had sent a courtesy copy of the proposed Verified Complaint by email to the undersigned as counsel for Avianca. Plaintiff then mailed a copy of the Summons and Complaint to the undersigned counsel on or about February 7, 2022. A copy of the Summons and Verified Complaint is attached as Exhibit A. No further proceedings have been had in this action.
- 2. The Verified Complaint seeks damages for personal injuries sustained on board an Avianca flight that was traveling from El Salvador to New York on August 27, 2019.
- 3. Based on the allegations in the Verified Complaint, this Court has original jurisdiction over this action because of the existence of a federal question pursuant to 28 U.S.C. §

1331 and, accordingly, it is one which may be removed to this Court pursuant to 28 U.S.C. § 1441(a).

- 4. Based on the allegations in the Verified Complaint, the transportation out of which the subject matter of this action arose was "international carriage" within the meaning of a treaty of the United States known as the Montreal Convention. Convention for the Unification of Certain Rules Relating to International Carriage by Air, Done at Montreal, Canada, on 28 May 1999, reprinted in S. Treaty Doc. 106-45, CCH Av. L. Rep. ¶ 27,400-59, 1999 WL 33292734 (1999). Accordingly, the rights and liabilities of the parties to this action are governed exclusively by the provisions of the Montreal Convention.
- 5. Because this action arises under a treaty of the United States, the action may be removed to this Court pursuant to 28 U.S.C. §§ 1331 and 1441(a).
- 6. Alternatively, this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332 based upon diversity of citizenship because Plaintiff is a citizen of New York, Avianca is a foreign corporation duly organized and existing under the laws of Colombia, and, upon information and belief, the amount in controversy exceeds \$75,000, exclusive of interest and costs.
- 7. Pursuant to 28 U.S.C. § 1446(a), this Notice of Removal is filed in the United States District Court for the Southern District of New York, which is the District in which the state court action is pending.
- 8. This Notice of Removal is timely filed with this Court pursuant to 28 U.S.C. § 1441(d).
- 9. Avianca will promptly provide all parties with written notice of the filing of this Notice of Removal and shall file a copy of the Notice of Removal with the Clerk of the Supreme Court of the State of New York, New York County, as required by 28 U.S.C. § 1446(d).

WHEREFORE, defendant AVIANCA, INC., prays that this action now pending in the Supreme Court of the State of New York for New York County be removed therefrom to this Court.

Dated: February 22, 2022 New York, New York

Respectfully submitted,

CONDON & FORSYTH LLP

By /s/Bartholomew J. Banino
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Attorneys for Defendant AVIANCA, INC.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK) ss: COUNTY OF NEW YORK)

Beatriz Romero, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides in Monroe, New York. That on the 22nd day of February 2022 deponent served the within Notice of Removal with Civil Cover Sheet upon:

Steven Schwartz, Esq. LEVIDOW, LEVIDOW & OBERMAN, P.C. 299 Broadway-Suite 1800 New York, New York 10007

at the address designated by said attorneys for that purpose by depositing same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Beatriz Romero

Sworn to before me this 22nd day of February 2022

Notary Public

ZOILA CEDENO
Notary Public, State of New York
No. 01CE5004983
Qualified in Queens County
Commission Expires March 6, 2023

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