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April 26, 2023

VIA ECF

Honorable P. Kevin Castel
United States District Judge
United States District Court
Southern District Of New York
500 Pearl Street
New York, New York 10007

Re: Roberto Mata v. Avianca, Inc.
Civil Action No.: 22-cv-1461 (PKC)

Dear Judge Castel:

The undersigned represent Defendant Avianca, Inc. (“Avianca”). We write to address certain issues relating to the documents filed with Plaintiff’s attorney’s affidavit.

In its orders of April 11, 2023 [Dkt. 25], and April 12, 2023 [Dkt. 27], the Court directed Plaintiff’s attorney to file an affidavit annexing copies of certain cases cited in Plaintiff’s submission opposing Defendant’s motion to dismiss. On April 25, 2023, Plaintiff’s counsel submitted an affidavit annexing certain documents which he identifies as the cases in question.

Defendant respectfully submits that the authenticity of many of these cases is questionable. For instance, the “Varghese” and “Miller” cases purportedly are federal appellate cases published in the Federal Reporter. [Dkt. 29; 29-1; 29-7]. We could not locate these cases in the Federal Reporter using a Westlaw search. We also searched PACER for the cases using the docket numbers written on the first page of the submissions; those searches resulted in different cases.

Similarly, the “Petersen” case [Dkt. 29-3] purportedly is published in the Federal Supplement, yet we could not locate this case in the Federal Supplement using a Westlaw search, and a search on PACER for the docket number leads to a different case.

As asserted in our Reply brief [Dkt. 24], we could not locate the “Martinez” case [Dkt. 29-4] or the “Durden” case [Dkt. 29-5] using the Westlaw citations provided in Plaintiff’s opposition. A Lexis Courtlink search using the docket number written on the first page of the “Martinez” case



Honorable P. Kevin Castel
April 26, 2023
Page 2

leads to a different case. (There was no docket number on the “Durden” submission.) We remain unable to locate the “Shaboon” case [Dkt. 26-2], which Plaintiff asserts is “unpublished.”

With respect to the *Ehrlich* case [Dkt. 29-6] and the *In re Air Crash Disaster Near New Orleans* case [Dkt. 29-8], Defendant has always agreed that these cases do exist but submits that they address issues entirely unrelated to the principles for which Plaintiff cited them in opposition to Defendant’s motion.¹ (The *Ehrlich* and *In re Air Crash Disaster* cases are the only ones submitted in a conventional format.).

We thank the Court for its consideration.

Respectfully submitted,

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¹ Plaintiff has attributed *Ehrlich* to the New Jersey Appellate Division, when it is actually a Second Circuit case.