

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X Civil Action No.: 22-cv-1461 (PKC)

ROBERTO MATA,

Plaintiff,

-against-

***AFFIDAVIT IN RESPONSE
TO ORDER OF MAY 4, 2023***

AVIANCA, INC.,

Defendant(s).

-----X

Peter LoDuca, Esq., in response to the Order of Hon. P. Kevin Castel dated May 4, 2023 states as follows:

1. Your affiant is associated with the firm of Levidow, Levidow, & Oberman, P.C.

Roberto Mata became a client of this firm having signed a retainer prior to February of 2022.

The firm was representing Mr. Mata for injuries he sustained while a passenger on defendant Avianca Airlines, due to the negligence of one of their employees. This matter was assigned to Steven Schwartz, Esq. an attorney with Levidow, Levidow, & Oberman, P.C. Mr. Schwartz opened the file and handled the representation of Mr. Mata.

2. Mr. Schwartz conducted the investigation of this file, filing a Summons and Complaint and commencing this action in Supreme Court, New York County on February 2, 2022, for a second time after the defendant had emerged from bankruptcy. Shortly thereafter, a Notice of Removal was filed by counsel representing Avianca Inc. to have this matter moved to the United States District Court, Southern District of New York. The Notice of Removal was granted.

3. Mr. Schwartz had been handling this matter from its outset and was thoroughly familiar with same. However, Mr. Schwartz is not admitted to practice in the Southern District of New York. Therefore, it was decided that Mr. Schwartz would continue to perform intra office legal work on the matter and any document filing would be handled by your affiant who was admitted

to the Southern District of New York and had access to the ECF filing system.

4. Your affiant did not personally conduct any of the legal research involved in the drafting of the affirmation in opposition in question nor did he have personal knowledge of how the same was conducted.

5. Your affiant was familiar with the circumstances of this matter and the issues involved based upon his conversations with Mr. Schwartz.

6. Your affiant commenced employment with Levidow, Levidow, & Oberman, P.C., in June of 1996. Mr. Schwartz had already been employed by the firm at that time, and has been practicing law in the state of New York for over 30 years. A circumstance as is the subject of the Court's Order has never arisen before involving your affiant nor Mr. Schwartz. In your affiant's many years of practice, he has never made a deliberate false statement nor had the intention to deceive any Court or defendant. During the entire time that your affiant has known and been employed alongside Mr. Schwartz in the practice of law, a period of over twenty five years, I have never been made aware of him making a deliberate false statement to a defendant, or of him having any intention to deceive or ever mislead any Court.

7. Your affiant, in reviewing the affirmation in opposition prior to filing same, simply had no reason to doubt the authenticity of the case law contained therein. Furthermore, your affiant had no reason to a doubt the sincerity of Mr. Schwartz's research. Mr. Schwartz will obviously be a witness at the forthcoming hearing to explain the basis of his research and how he located the cited cases which were contained in the affirmation in opposition. Your affiant has attached an affidavit prepared by Mr. Schwartz representing the information that will be presented at the hearing and which offers an explanation of the research performed.

8. It is, therefore, based upon all of the foregoing, contended by your affiant that sanctions are not appropriate in this instance as there was no bad faith nor intent to deceive either the Court

or the defendant.

Dated: New York, New York
May 24, 2023



PETER LODUCA

To: (Via ECF)

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Attorneys for Defendant
AVIANCA, INC.

Sworn to before me this 24th day of
May 2023



