

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

CASE NO. 21-cv-60462-BLOOM/VALLE

CCUR AVIATION FINANCE, LLC, and
CCUR HOLDINGS, INC.,

Plaintiffs,

v.

SOUTH AVIATION, INC. and
FEDERICO A. MACHADO,

Defendants.

METROCITY HOLDINGS, LLC,
a Wyoming limited liability company,

Intervenor Plaintiff,

v.

SOUTH AVIATION, INC. and
FEDERICO A. MACHADO,

Defendants.

**COMPLAINT OF INTERVENOR PLAINTIFF
METROCITY HOLDINGS, LLC**

Intervenor Plaintiff Metrocity Holdings, LLC ("Metrocity") files this Complaint against Defendants South Aviation, Inc. ("South Aviation") and Federico A. Machado ("Machado") (collectively, "Defendants") and alleges as follows:

NATURE OF ACTION

1. Metrocity sues Defendants for perpetrating a fraudulent scheme to victimize Metrocity while disguising the operation as a series of legitimate business transactions. Metrocity

is in the business of financing the purchase of aircraft. South Aviation held itself out to be a prospective buyer of aircraft. In order to secure an aircraft purchase contract, a buyer was typically required to place substantial refundable deposits into escrow accounts with a third party escrow agent. Defendants represented to Metrocity that they needed financing to fund escrow deposits for the purchase of certain aircraft. Relying on those representations, Metrocity signed several agreements with South Aviation and provided millions of dollars in financing to Defendants that were used to fund the deposits in an escrow account. According to the agreements, after Metrocity funded the deposits, and after certain due diligence was conducted, South Aviation would refund, or cause the escrow agent to refund, deposits to Metrocity. As part of the scheme, South Aviation signed two promissory notes under which it promised to pay Metrocity the amounts loaned for the escrow deposits, plus interest accrued. Machado, as owner of South Aviation, personally guaranteed those promissory notes by executing and delivering guaranty agreements to Metrocity.

2. Notwithstanding such documentation, the business transactions were in fact a façade with no real sellers of aircraft and in some cases no real aircraft, with South Aviation unlawfully keeping Metrocity's money. The Defendants and other interested, non-party collaborators created an association-in-fact for one common purpose—to defraud victims; divert the proceeds of the unlawful scheme; and add a patina of legitimacy to the scheme. Defendants furthered this purpose through multiple instances of wire fraud, money laundering, and conspiracy to commit money laundering. As a direct and proximate result of Defendants' conduct, Metrocity has been injured in its business and property in the amount of approximately \$29 million in damages.

PARTIES, JURISDICTION, AND VENUE

3. Metrocity is a limited liability company organized and existing under the laws of the State of Wyoming with its principal place of business in Plantation, Florida.

4. Metrocity's ultimate sole member is an individual domiciled in Florida.

5. South Aviation, Inc. is a corporation organized and existing under the laws of the State of Florida, and is headquartered in Fort Lauderdale, Florida.

6. Federico A. Machado is an individual domiciled in the State of Florida, and is therefore a citizen of Florida.

7. Because this action is based upon a federal question—Defendants' violations of RICO, 18 U.S.C. §§ 1961, *et seq.*—this Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331. Additionally, this Court has supplemental jurisdiction over all other claims herein pursuant to 28 U.S.C. § 1367(b) because such claims are so related to the RICO claims that they form part of the same case or controversy under Article III of the United States Constitution. The amount in controversy in the present case exceeds \$75,000, exclusive of interest and costs.

8. Pursuant to 28 U.S.C. § 1391, venue properly lies in the Southern District of Florida because a substantial part of the events giving rise to Metrocity's claims, including the negotiation of the transactions at issue, occurred in the Southern District of Florida.

9. This Court has personal jurisdiction over the Defendants, pursuant to Fla. Stat. § 48.193, because they, personally or through agents:

(a) committed tortious acts in this state;

(b) breached a contract in this state by failing to perform acts required by the contract to be performed in this state; and

(c) engaged in substantial and not isolated activity within this state.

RELEVANT NON-PARTIES

10. Wright Brothers Aircraft Title, Inc. ("Wright Brothers") is a corporation organized and existing under the laws of the State of Oklahoma with its principal place of business in Oklahoma City, Oklahoma.

11. Upon information and belief, Debra Mercer-Erwin ("Mercer-Erwin") is an individual residing in Oklahoma City, Oklahoma.

12. Upon information and belief, Kayleigh Moffett ("Moffett") is an individual residing in Oklahoma City, Oklahoma.

GENERAL FACTUAL ALLEGATIONS

The Structure of the Transactions

13. Metrocity was deceived by the perceived legitimacy of multiple escrow agreements and promissory notes between itself, South Aviation, and others. Following the execution of these agreements and based on them, Metrocity wired money into an escrow account. From there, Machado was given immediate access to and control over the deposited funds, which Defendants then used for their own benefit. South Aviation and Machado took the proceeds and laundered the money in the course of conducting financial transactions affecting interstate and foreign commerce. The escrow agreements were central to Defendants' scheme.

The Purported Escrow Agreements

14. Metrocity is in the business of providing financing to buyers of commercial aircraft. Wright Brothers is in the business of providing closing and escrow services for aircraft purchase and finance transactions. Mercer-Erwin is the president and owner of Wright Brothers. Moffett is an officer of Wright Brothers.

15. Since July 2016, Wright Brothers and Metrocity (and/or Metrocity's sister entity) have entered into numerous escrow agreements relating to aircraft purchase and sale transactions. Pursuant to these escrow agreements, Metrocity, on behalf of the buyer of the subject aircraft, wired funds (the "Deposit") to Wright Brothers to be held in an escrow account at Bank of America with an account number ending in *9094 (the "Escrow Account") until the closing (or other termination) of the transaction, at which time Wright Brothers was required to disburse the Deposit to the rightful party (the "Escrow Transaction").

16. The purpose of the Escrow Transaction was to provide the seller of the subject aircraft with some security while also providing the buyer a period of time to inspect the aircraft (the "Inspection Period"). If the buyer was satisfied with the subject aircraft, it was required to deliver to Wright Brothers a fully authenticated Notice of Technical Acceptance of Aircraft ("Notice") by a specified date (the "Inspection Period Deadline"). Among other things, the Notice signified that the buyer had inspected the aircraft, accepted it, and was ready to proceed to closing of the sale. In the event that Wright Brothers did not receive a fully executed Notice prior to the Inspection Period Deadline, Wright Brothers was required to return the Deposit to Metrocity without any further action. Furthermore, under the terms of the escrow agreements, Metrocity had the unilateral right before the Inspection Period Deadline to demand Wright Brothers return the Deposit to Metrocity without any further action. Until recently, Wright Brothers and Metrocity conducted business with each other in this manner without issue.

17. Metrocity financed six aircraft purchase transactions between South Aviation as buyer, and various alleged sellers of commercial aircraft in which Wright Brothers served as the escrow and closing agent for each transaction. Metrocity, Wright Brothers, and South Aviation signed six escrow agreements. Two agreements were executed on December 13, 2019. The other

four agreements were signed on August 14, 2020. Under each agreement, Metrocity wired money to the Wright Brothers' Escrow Account, which could only be released to a third party upon receipt of a fully authenticated Notice by the Inspection Period Deadline defined in each escrow agreement.

18. Each agreement expressly prohibited Wright Brothers from disbursing any portion of the respective deposit to any party other than Metrocity prior to the inspection period deadline for that agreement. Not only that, each agreement required that Wright Brothers return the refundable deposits without further action if they did not receive the Notice within the timeframes outlined in the agreements. In total, Metrocity deposited a total sum of \$29,000,000.00 in the Escrow Account (the "Escrowed Funds") in connection with the following escrow agreements:

- a. Escrow Agreement 35160, dated December 13, 2019, involved the sale of a 2007 Boeing 777-35 (ER) by Air Services, Inc. ("Air Services"), as seller, to South Aviation as buyer, for a total purchase price of \$28 million. Pursuant to the terms of EA 35160, Metrocity, on behalf of South Aviation, deposited \$4.5 million with Wright Brothers to be held in the Escrow Account;
- b. Escrow Agreement 35162, dated December 13, 2019, involved the sale of a 2007 Boeing 777-35 (ER) by Air Services, as seller, to South Aviation, as buyer, for a total purchase price of \$28 million. Pursuant to the terms of EA 35162, Metrocity, on behalf of South Aviation, deposited \$4.5 million with Wright Brothers to be held in the Escrow Account;
- c. Escrow Agreement 29062, dated August 14, 2020, involved the sale of a 1999 Boeing 777-31H by Innovative Aerospace Leasing, LLC ("Innovative"), as seller, to South Aviation, as buyer, for a total purchase price of \$18 million. Pursuant to

the terms of EA 29062, Metrocity, on behalf of South Aviation, deposited \$5 million with Wright Brothers to be held in the Escrow Account;

d. Escrow Agreement 29157, dated August 14, 2020, involved the sale of a 1999 Boeing 777-2J6 by Innovative, as seller, to South Aviation, as buyer, for a total purchase price of \$18 million. Pursuant to the terms of EA 29157, Metrocity, on behalf of South Aviation, deposited \$5 million with Wright Brothers to be held in the Escrow Account;

e. Escrow Agreement 29908, dated August 14, 2020, involved the sale of a 1999 Boeing 777-2Q8 by Innovative, as seller, to South Aviation, as buyer, for a total purchase price of \$18 million. Pursuant to the terms of EA 29908, Metrocity, on behalf of South Aviation, deposited \$5 million with Wright Brothers to be held in the Escrow Account; and

f. Escrow Agreement 30214, dated August 14, 2020, involved the sale of a 1999 Boeing 777-222 (ER) by Innovative, as seller, to South Aviation, as buyer, for a total purchase price of \$18 million. Pursuant to the terms of EA 30214, Metrocity, on behalf of South Aviation, deposited \$5 million with Wright Brothers to be held in the Escrow Account.

The Promissory Notes

19. As part and parcel of the transactions with the Escrow Agreements, Metrocity and South Aviation entered into two promissory notes under which South Aviation promised to pay Metrocity the amount of the corresponding Deposits required by the Escrow Agreements plus interest accrued (the "Promissory Notes"). Machado, as owner of South Aviation, personally guaranteed the Promissory Notes by executing and delivering guaranty agreements.

The 2019 Note and 2019 Guaranty

20. On December 13, 2019, Metrocity and South Aviation entered into the first Promissory Note (the “2019 Note”). Under the terms of the 2019 Note, Metrocity loaned South Aviation the principal sum of \$9 million to be used solely for the Deposits owed for the aircraft transactions referenced in EA 35160 and EA 35162 (the “2019 Loan”). In exchange, South Aviation promised to pay Metrocity the principal sum of \$9 million with interest thereon.

21. On December 13, 2019, Machado executed and delivered a Guaranty in favor of Metrocity, pursuant to which Machado unconditionally guaranteed to pay the obligations of South Aviation under the 2019 Note (the “2019 Guaranty”).

22. The 2019 Note included language that provided an extension which allowed South Aviation a single option to extend the term of the 2019 Loan for an additional six (6) months pursuant to the same terms and conditions so long as South Aviation met certain conditions, including providing Metrocity with 15 days’ notice of the desire to renew and paying Metrocity all interest due for such extension period as well as Metrocity’s attorney’s fees and costs relating to the 2019 Loan.

23. On June 13, 2020, South Aviation and Metrocity executed a renewal of the 2019 Note, which extended the maturity date thereof to December 13, 2020.

24. On December 13, 2020, South Aviation and Metrocity executed a second renewal of the 2019 Note, which extended the maturity date thereof to March 13, 2021 (the “2019 Note Maturity Date”).

25. All unpaid principal, interest thereon and all other amounts due and owing under the 2019 Note were payable in full on the 2019 Note Maturity Date.

The 2020 Note and 2020 Guaranty

26. On August 14, 2020, Metrocity and South Aviation entered into the second Promissory Note (the “2020 Note”). Under the terms of the 2020 Note, Metrocity loaned South Aviation the principal sum of \$20 million to be used solely for the Deposits owed for the aircraft transactions referenced in EA 29062, EA 29157, EA 29908, and EA 30214 (the “2020 Loan”). In exchange, South Aviation promised to pay Metrocity the principal sum of \$20 million with interest thereon.

27. On August 14, 2020, Machado executed and delivered a Guaranty in favor of Metrocity, pursuant to which Machado unconditionally guaranteed to pay the obligations of South Aviation under the 2020 Note (the “2020 Guaranty”).

28. On December 14, 2020, South Aviation and Metrocity executed a renewal of the 2020 Note, which extended its maturity date to April 14, 2021 (the “2020 Note Maturity Date”).

29. All unpaid principal, interest thereon and all other amounts due and owing under the Note is payable in full on the 2020 Note Maturity Date.

Discovery of the Ponzi Scheme

30. While Wright Brothers held the Escrowed Funds in the Escrow Account, Metrocity sought and received periodic written assurances from Bank of America that the Escrow Account held a balance of more than \$29 million.

31. On or about January 7, 2021, Metrocity learned that, on or about December 18, 2020, the federal government had seized the funds in the Escrow Account in the course of an investigation into Machado and others.

32. In conjunction with the seizure of the Escrow Account, Metrocity also learned that Mercer-Erwin was arrested in Cleveland County, Oklahoma under a sealed indictment from the

United States District Court for the Eastern District of Texas in connection with the federal government's investigation into alleged criminal conduct by Mercer-Erwin.

33. On the same day, upon learning that the federal government had seized the Escrow Account and that Mercer-Erwin had been criminally indicted, Metrocity made written demand on Wright Brothers for the immediate return of the Escrowed Funds pursuant to the terms of the Escrow Agreements.

34. Despite repeated efforts to contact Wright Brothers for information, it wholly failed and refused to provide Metrocity with any explanation regarding the status of the Escrowed Funds, the freeze upon the Escrow Account, the nature of the indictment against Mercer-Erwin, and whether Wright Brothers would honor its contractual obligation to return the Escrowed Funds. Metrocity's request for information was met with total silence and indifference.

35. On the afternoon of Friday, February 26, 2021, the United States Attorney's Office for the Eastern District of Texas unsealed the Third Superseding Indictment filed February 24, 2021 in *United States v. Debra Lynn Mercer-Erwin, et al.*, Case No. 4:20-CR-212 (the "Indictment"). The Indictment reveals a massive conspiracy and Ponzi-style scheme perpetrated by Machado and several other co-conspirators and includes, *inter alia*, charges against Mercer-Erwin, Moffett, and Machado for conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h), conspiracy to commit export violations in violation of 18 U.S.C. § 371, and conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349.

36. As described in the Indictment, Wright Brothers, Mercer-Erwin, and Moffett worked with fraudulent buyers, including South Aviation, to trick investors into depositing money into the Escrow Account based on the representation that such funds would be used for the purchase of an aircraft. However, the sale of the aircraft was never actually consummated because

the aircraft either did not exist or belonged to someone else. While the Indictment does not specifically mention Metrocity's dealings with Machado, Metrocity strongly believes that they were part of the Ponzi scheme exposed therein.

37. The Indictment breaks down Machado's Ponzi-style scheme into the following four steps:

a. Step 1: The lender [e.g., Metrocity] agrees to lend the fraudulent buyer [e.g., South Aviation] a refundable deposit. The buyer secures a loan and now owes the lender interest.

b. Step 2: The lender's money [e.g., the Escrowed Funds] is placed into an escrow account which is controlled by Wright Brothers but is secretly designated by the fraudulent buyer [e.g., the Escrow Account].

c. Step 3: The fraudulent buyer never inspects the aircraft because it either does not exist¹ or is not actually for sale.² Nevertheless, Wright Brothers transfers the refundable deposit into accounts designated by the fraudulent buyer to be used for other purposes, and not for the purchase of the designated aircraft. Wright Brothers is compensated for these fraudulent transactions with money taken from the escrow account as well.

d. Step 4: The fraudulent buyer then secures another loan from another lender for the purchase of a different unsellable aircraft. This loan pays for the principal and interest owed to the previous lender for the previous aircraft transaction involving Wright Brothers and the fraudulent buyer.

¹ The Indictment suggests that several of these fraudulent transactions were for aircraft that had been decommissioned.

² The Indictment suggests that the subject aircraft may have been owned by third-parties who were unaware of the fraudulent transactions.

38. The Indictment describes that, in furtherance of the Ponzi-like scheme, Mercer-Erwin and Moffett would direct funds from the Wright Brothers escrow account to Machado within hours of the lender depositing such funds.

39. The Indictment describes that the purpose of the conspiracy was “to defraud victim investors, illegally funnel investment money designated for aircraft purchases into foreign investments, and to conceal from the victim investors that their investment funds were not being used to purchase aircraft.”

40. Upon information and belief, Wright Brothers, Mercer-Erwin, and Moffett allowed Machado unfettered access to the Escrow Account. As a result, Machado and South Aviation through Machado, either directly or through Mercer-Erwin and Moffett, transferred funds from the Escrow Account, including the Escrowed Funds, to other accounts for the personal use of South Aviation and/or Machado.

CLAIMS FOR RELIEF

COUNT I – CIVIL RICO, 18 U.S.C. § 1962

41. Metrocity incorporates the allegations paragraphs 1 through 40 as if fully realleged.

42. At all relevant times, Metrocity is a person within the meaning of 18 U.S.C. §§1961(3) and 1962(c).

43. At all relevant times, South Aviation, Wright Brothers, Machado, Mercer-Erwin, and Moffett are persons within the meaning of 18 U.S.C. §§1961(3) and 1962(c).

44. South Aviation and Machado are a group of persons associated together in fact for the common purpose of carrying out an ongoing criminal enterprise using Wright Brothers, Mercer-Erwin, and Moffett (the “Enterprise”) within the meaning of 18 U.S.C. §§1961(4) and 1962(c). The Enterprise’s purpose was to defraud victim creditors, illegally funnel the proceeds

of the scheme into foreign investments to obscure the source, nature, and origins of the funds, and then conceal the fraud from the victim creditors.

45. Defendants participated and otherwise facilitated the Enterprise's purpose by conspiring to engage in a scheme to defraud and transmitted or caused to be transmitted writings, signs, signals, pictures, sounds, or electronic communications (e.g. phone, texts, or fax) in interstate or foreign commerce, in violation of 18 U.S.C. §1343; by agreeing to engage in a financial transaction that they knew involved funds that were the proceeds of some unlawful activity and that those funds were in fact the proceeds of that unlawful activity, in violation of 18 U.S.C. §1956; and by knowingly engaging in a monetary transaction in criminally derived property of a value greater than \$10,000 and that the property was derived from specified unlawful activity, in violation of 18 U.S.C. §1957. These acts constitute a pattern of racketeering activity, within the meaning of 18 U.S.C. §1962(a).

46. The Enterprise's scheme to defraud, perpetrated by Defendants, included intentional misrepresentations (i) that Defendants were engaged in legitimate aircraft purchase agreements that required substantial deposits; (ii) that the funds advanced under the Promissory Notes would be used as a deposit for the purchase of such aircraft; (iii) that the funds advanced under the Promissory Notes would remain in the Escrow Account controlled by Wright Brothers and would not be used for any other purpose; (iv) that the funds advanced under the Promissory Notes would be repaid before the maturity dates thereof; and (v) that Machado would personally guaranty South Aviation's repayment of the funds advanced pursuant to the Promissory Notes. By asserting these misrepresentations and fraudulent statements, Defendants acquired Metrocity's deposited funds.

47. At all relevant times, the Enterprise was engaged in, and its activities affected interstate and foreign commerce within the meaning of 18 U.S.C. §1962(c).

48. The Enterprise was closed-ended in that the escrow agreements, which were the mechanism employed by Defendants to orchestrate the scheme, were executed on December 13, 2019, and on August 14, 2020.

49. As a direct and proximate result of Defendants' orchestration and operation of the Enterprise, Metrocity has been injured in its business and property. There is a direct relation between Defendants' conduct and Metrocity's injuries. Defendants' fraudulent misrepresentation that it had identified particular sellers of aircraft was a substantial factor in Metrocity's decision to place \$29 million into an escrow account. The direct victim of Defendants' RICO violations was Metrocity.

50. Pursuant to 18 U.S.C. §1964(c), Metrocity is entitled to recover \$29 million—the amount it lost as a result of the Enterprise—along with treble damages, the cost of bringing the suit, pre-judgment and post-judgment interest, and reasonable attorney's fees.

WHEREFORE, Metrocity requests that this Court enter judgment in favor of Metrocity and jointly and severally against the Defendants awarding Metrocity compensatory damages, treble damages, reasonable attorney's fees and costs, pre-judgment and post-judgment interest in the maximum amounts allowed by law, and any and all other relief to which Metrocity may be entitled at law or in equity.

COUNT II – CONSPIRACY TO VIOLATE CIVIL RICO, 18 U.S.C. § 1962(d)

51. Metrocity incorporates the allegations of paragraphs 1 through 50 as if fully realleged.

52. Upon information and belief, the Defendants agreed to conduct or participate, directly or indirectly, in the conduct, management, or operation of the Enterprise's affairs through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c).

53. Upon information and belief, the Defendants knew that they were engaged in a conspiracy to commit the predicate acts, and they knew that the predicate acts were part of such racketeering activity, and the participation and agreement of each of them was necessary to allow the commission of this pattern of racketeering activity.

54. The Defendants have unlawfully, knowingly, and willfully combined, conspired, confederated, and agreed together and with others to violate 18 U.S.C. § 1962(c) as described above, in violation of 18 U.S.C. § 1962(d).

55. Upon information and belief, the Defendants agreed to the overall objective of the conspiracy—to defraud victim investors, illegally funnel investment money designated for aircraft purchases into foreign investments, and to conceal from the victim investors that their investment funds were not being used to purchase aircraft.

56. Defendants agreed to the commission of at least two predicate acts. Specifically, they agreed to engage in: (i) a scheme to defraud by transmitting or causing to be transmitted writings, signs, signals, pictures, or sounds in interstate or foreign commerce, as proscribed by 18 U.S.C. § 1343, in violation of 18 U.S.C. § 1349; and (ii) a financial transaction that they knew involved funds that were the proceeds of some unlawful activity and that those funds were in fact the proceeds of that unlawful activity, in violation of 18 U.S.C. § 1956; which was a monetary transaction in criminally derived property of a value greater than \$10,000 that was derived from specified unlawful activity, in violation of 18 U.S.C. § 1957. These acts constitute a pattern of racketeering activity, within the meaning of 18 U.S.C. § 1962(a).

57. The Defendants agreed on multiple occasions to receive a wire of Metrocity's refundable deposit placed in the Escrow Account.

58. The Defendants agreed on multiple occasions to launder the proceeds of the illegal acts through financial transactions that had an effect on interstate and foreign commerce.

59. As a direct and proximate result of Defendants' conspiracy, the acts of racketeering activity of the Enterprise, the overt acts taken in furtherance of that conspiracy, and violations of 18 U.S.C. § 1962(d), Metrocity has been injured in its business and property, including loss of funds, loss of financial opportunity related to those funds and damage to Metrocity's reputation and goodwill, the attorney's fees and costs associated with exposing Defendants' pervasive fraud and in recovering the funds stolen by Defendants.

60. Pursuant to 18 U.S.C. § 1964(c), Metrocity is entitled to recover \$29 million—the amount it lost as a result of the Enterprise—along with treble damages, the cost of bringing the suit, pre-judgment and post-judgment interest, and reasonable attorney's fees.

WHEREFORE, Metrocity requests that this Court enter judgment in favor of Metrocity and jointly and severally against the Defendants awarding Metrocity compensatory damages, treble damages, reasonable attorney's fees and costs, pre-judgment and post-judgment interest in the maximum amounts allowed by law, and any and all other relief to which Metrocity may be entitled at law or in equity.

COUNT III - FRAUD

61. Metrocity incorporates the allegations of paragraphs 1 through 40 as if fully realleged.

62. Pursuant to the terms of the 2019 Note and the 2020 Note (collectively, the “Promissory Notes”), South Aviation represented to Metrocity that the funds it advanced would be used solely for the purchase of the aircraft specified in each Promissory Note.

63. Pursuant to the terms of the 2019 Guaranty and the 2020 Guaranty (collectively the “Guaranties”), Machado agreed to unconditionally guarantee and pay the obligations of South Aviation under the Promissory Notes.

64. In the weeks leading up to execution of each Promissory Note and Guaranty, South Aviation, acting through its owner and president, Machado, affirmatively represented to Metrocity that (i) South Aviation was engaged in legitimate aircraft purchase agreements that required substantial deposits; (ii) the funds advanced by the Promissory Notes would be used for the purchase of such aircraft; (iii) the funds advanced by the Promissory Notes would remain in the Escrow Account controlled by Wright Brothers and would not be used for any other purpose; (iv) the funds advanced by the Promissory Notes would be repaid before their maturity dates; and (v) Machado would personally guaranty South Aviation’s repayment of the funds advanced by the Promissory Notes pursuant to the Guaranties.

65. Metrocity justifiably and reasonably relied upon these representations by the Defendants and, in reliance thereon, deposited the Escrowed Funds with Wright Brothers in furtherance of the transactions contemplated by the Promissory Notes, the Guaranties, and the Escrow Agreements.

66. In light of the allegations and charges in the Indictment and the extent and nature of the vast scheme in which Defendants were engaged since at least 2016, at the time the Defendants made the above representations, neither had any intention of performing their contractual duties pursuant to the Promissory Notes and related Guaranties.

67. Instead, at all relevant times, South Aviation and/or Machado intended to use the Escrowed Funds for their own benefit, convert them to their own use, or use the funds to refund deposits made by other depositors in furtherance of their apparent Ponzi-like scheme.

68. As a direct and proximate result of the multiple fraudulent misrepresentations by the Defendants, Metrocity has sustained actual damages in an amount to be proven at trial, but believed to be at least \$29,000,000.00, exclusive of interest, attorney's fees, and costs.

69. The Defendants' conduct was wanton, reckless, and willful, thus entitling Metrocity to an award of exemplary damages under applicable law.

WHEREFORE, Metrocity requests that this Court enter judgment in favor of Metrocity and jointly and severally against Defendants, awarding Metrocity compensatory damages, punitive damages, costs, pre-judgment and post-judgment interest in the maximum amounts allowed by law, and any and all other relief to which Metrocity may be entitled at law or in equity.

COUNT IV - BREACH OF CONTRACT (2019 NOTE)

70. Metrocity incorporates the allegations of paragraphs 1 through 40 as if fully realleged.

71. Pursuant to the terms of the 2019 Note, all unpaid principal, interest thereon, and all other amounts due and owing under the 2019 Note were due on the 2019 Note Maturity Date.

72. To date, South Aviation has failed and refused to pay Metrocity all amounts due and owing under the 2019 Note, including at least \$9,000,000.00, exclusive of interest, attorney's fees, and costs.

73. South Aviation's failure and refusal to pay Metrocity the amounts due and owing under the 2019 Note constitutes a material breach of the 2019 Note.

74. As a direct and proximate result of South Aviation's material breach of the 2019 Note, Metrocity has sustained actual damages in an amount to be proven at trial, but believed to be at least \$9,000,000.00, exclusive of interest, attorney's fees, and costs.

WHEREFORE, Metrocity requests that this Court enter judgment in favor of Metrocity and against South Aviation for breach of the 2019 Note, awarding Metrocity compensatory damages, costs, pre-judgment and post-judgment interest in the maximum amounts allowed by law, and any and all other relief to which Metrocity may be entitled at law or in equity.

**COUNT V - BREACH OF CONTRACT (2019 GUARANTY)
(Against Machado)**

75. Metrocity incorporates the allegations of paragraphs 1 through 40 as if fully realleged.

76. On December 13, 2019, Machado executed and delivered the 2019 Guaranty in favor of Metrocity, pursuant to which Machado unconditionally guaranteed to pay the obligations of South Aviation under the 2019 Note.

77. Pursuant to the terms of the 2019 Note, all unpaid principal, interest thereon, and all other amounts due and owing under the 2019 Note were due on March 13, 2021, the 2019 Note Maturity Date.

78. To date, South Aviation has failed and refused to pay Metrocity all amounts due and owing under the 2019 Note, including at least \$9,000,000.00, exclusive of interest, attorney's fees, and costs.

79. South Aviation's failure and refusal to pay Metrocity the amounts due and owing under the 2019 Note constitutes a material breach of the 2019 Guaranty. Under the 2019 Guaranty, Machado is responsible for all damages incurred by Metrocity.

80. As a direct and proximate result of Machado's material breach of the 2019 Guaranty, Metrocity has sustained actual damages in an amount to be proven at trial, but believed to be at least \$9,000,000.00, exclusive of interest, attorney's fees, and costs.

81. Under the 2019 Guaranty, Machado is responsible for all damages incurred by Metrocity related to the 2019 Note.

WHEREFORE, Metrocity requests that this Court enter judgment in favor of Metrocity and against Machado for breach of the 2019 Guaranty, awarding Metrocity compensatory damages, costs, pre-judgment and post-judgment interest in the maximum amounts allowed by law, and any and all other relief to which Metrocity may be entitled at law or in equity.

COUNT VI - BREACH OF CONTRACT (2020 NOTE)

82. Metrocity incorporates the allegations of paragraphs 1 through 40 as if fully realleged.

83. Pursuant to the terms of the 2020 Note, all unpaid principal, interest thereon, and all other amounts due and owing under the 2020 Note were due on the 2020 Note Maturity Date.

84. To date, South Aviation has failed and refused to pay Metrocity the remaining amounts due and owing under the 2020 Note, including at least \$20,000,000.00, exclusive of interest, attorney's fees, and costs.

85. South Aviation's failure and refusal to pay Metrocity the amounts due and owing under the 2020 Note constitutes a material breach of the 2020 Note.

86. As a direct and proximate result of South Aviation's material breach of the 2020 Note, Metrocity has sustained actual damages in an amount to be proven at trial, but believed to be at least \$20,000,000.00, exclusive of interest, attorney's fees, and costs.

WHEREFORE, Metrocity requests that this Court enter judgment in favor of Metrocity and against South Aviation for breach of the 2020 Note, awarding Metrocity compensatory damages, costs, pre-judgment and post-judgment interest in the maximum amounts allowed by law, and any and all other relief to which Metrocity may be entitled at law or in equity.

**COUNT VII - BREACH OF CONTRACT (2020 GUARANTY)
(Against Machado)**

87. Metrocity incorporates the allegations of paragraphs 1 through 40 as if fully realleged.

88. On August 14, 2020, Machado executed and delivered the 2020 Guaranty in favor of Metrocity, pursuant to which Machado unconditionally guaranteed to pay the obligations of South Aviation under the 2020 Note.

89. Pursuant to the terms of the 2020 Note, all unpaid principal, interest thereon, and all other amounts due and owing under the 2020 Note were due on April 14, 2021, the 2020 Note Maturity Date.

90. To date, South Aviation has failed and refused to pay Metrocity the remaining amounts due and owing under the 2020 Note, including at least \$20,000,000.00, exclusive of interest, attorney's fees, and costs.

91. South Aviation's failure and refusal to pay Metrocity the amounts due and owing under the 2020 Note constitutes a material breach of the 2020 Guaranty. Under the 2020 Guaranty, Machado is responsible for all damages incurred by Metrocity.

92. As a direct and proximate result of South Aviation's material breach of the 2020 Note, Metrocity has sustained actual damages in an amount to be proven at trial, but believed to be at least \$20,000,000.00, exclusive of interest, attorney's fees, and costs.

93. Under the 2020 Guaranty, Machado is responsible for all damages incurred by Metrocity related to the 2020 Note.

WHEREFORE, Metrocity requests that this Court enter judgment in favor of Metrocity and against Machado for breach of the 2020 Guaranty, awarding Metrocity compensatory damages, costs, pre-judgment and post-judgment interest in the maximum amounts allowed by law, and any and all other relief to which Metrocity may be entitled at law or in equity.

COUNT VIII - UNJUST ENRICHMENT

94. Metrocity incorporates the allegations of paragraphs 1 through 40 as if fully realleged.

95. Metrocity conferred a benefit upon the Defendants in the form of \$29 million.

96. The Defendants took appreciation of that benefit when they signed numerous agreements memorializing that benefit.

97. It would be inequitable for the Defendants to accept and retain such benefits of under these circumstances without payment of value. Specifically, the Defendants demonstrated inequitable conduct when they defrauded Metrocity and misappropriated and converted Metrocity's refundable escrow-backed deposits.

98. Based on this unjust enrichment, Metrocity has sustained actual damages in an amount to be proven at trial, but believed to be at least \$29,000,000.00, exclusive of interest, attorney's fees, and costs.

WHEREFORE, Metrocity respectfully requests that this Court enter judgment in favor of Metrocity and jointly and severally against the Defendants, awarding Metrocity the amount that the Defendants were unjustly enriched, costs, pre-judgment and post-judgment interest in the

maximum amounts allowed by law, and any and all other relief to which Metrocity may be entitled at law or in equity.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Metrocity Holdings, LLC prays that the Court:

(A) enter judgment in its favor and against Defendants as set forth herein, in an amount to be proven at trial, but at least \$29,000,000.00, plus treble damages as to the RICO claims, punitive damages as to the fraud claim, pre-judgment interest, post-judgment interest, and attorney's fees and costs of this suit as allowed by law and the terms of the respective Promissory Notes and Guaranties; and

(B) award such further relief that this Court deems equitable and just.

Dated: April 16, 2021

Respectfully submitted,

GENOVESE JOBLOVE & BATTISTA, P.A.

/s/ Paul J. Battista

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Attorneys for

Intervenor Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on April 16, 2021, I electronically filed the foregoing Complaint with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record and that I mailed the foregoing by first class U.S. mail, postage prepaid, to the following: South Aviation, Inc.'s registered agent, Vincent E. Schindler, 2000 Glades Rd., Ste. 312, Boca Raton, FL 33431; and Federico A. Machado, 900 N.W. 4th St., Boca Raton, FL 33486.