

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

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.

**TEMPORARY RECEIVER’S MOTION TO APPROVE
THE PROPOSED NOTICING AND CLAIMS PROCESS**

Barbara Martinez, Esq., by and through undersigned counsel, as the Temporary Receiver (the “Temporary Receiver”) over Defendant South Aviation, Inc. (“South Aviation”), and its respective affiliates, subsidiaries, successors, and assigns (excluding Defendant Machado individually) (collectively, the “Receivership Estates”), moves for an order approving the Temporary Receiver’s proposed noticing and claims administration procedures and the form of the notice to be sent to potential claimants (the “Claims Process”). In support of this Motion, the Temporary Receiver states as follows:

FACTUAL AND PROCEDURAL BACKGROUND

1. Appointment and Duties of the Temporary Receiver

On April 16, 2021, the United States District Court for the Southern District of Florida (the “Court”) entered the *Order on Plaintiffs’ Verified Amended Expedited Motion for Appointment of Temporary Receiver* (ECF 43) (the “Appointment Order”). The Appointment Order requires the Temporary Receiver to:

confirm what assets South Aviation previously had and currently has; confirm what South Aviation's creditors are currently owed; freeze assets to ensure South Aviation's creditors are repaid; marshal, safeguard, and liquidate assets; ensure that preferential payments to creditors and insiders do not occur at the expense of other creditors; ensure that South Aviation's creditors are repaid in a fair and equitable manner; and file and prosecute ancillary actions to recover monies or assets for the benefit of South Aviation's creditors[.]

Appointment Order, at 2. Upon appointment, the Temporary Receiver was given authority, among other things, to:

[i]mmediately take custody, control and possession of all of South Aviation's property and records relevant thereto; to sue for and collect, recover, receive and take into possession from third parties all property of South Aviation and records relevant thereto.

Id. at 4.

In her reports filed in this matter, the Temporary Receiver has advised the Court that she would provide a proposed plan for a Claims Process based on the unique assets and circumstances of this case. Accordingly, the Temporary Receiver proposes the Claims Process detailed herein. The Temporary Receiver anticipates filing and seeking approval of a proposed distribution plan (the "Distribution Plan") at a later date, when the total amount of assets available for ultimate distribution on account of approved claims of creditors of the Receivership Estates has been determined. A more detailed description of the Temporary Receiver's efforts to date with respect to the marshalling and liquidation of assets and investigation of claims held by the Receivership Estates may be found in the *Temporary Receiver's First 30-Day Report* and the *Temporary Receiver's Second Status Report*, filed on May 16, 2021 and August 30, 2021, respectively. ECF 52, 111.

KNOWN INVESTORS AND CREDITORS OF THE RECEIVERSHIP ESTATES

The Temporary Receiver has sent numerous emails to all known investors and putative creditors of the Receivership Estates, informing them of the commencement of the enforcement action and the receivership, providing general information regarding the case, keeping them informed by conducting status conferences, inviting them to contact the Temporary Receiver with any additional questions and concerns, and responding to such inquiries, requests for additional information, and addressing investor concerns to the fullest extent possible.

THE PROPOSED NOTICING AND CLAIMS PROCESS

A. The Noticing Process and Claims Documentation

The Temporary Receiver will use her best efforts to notify all known investors and creditors of the Receivership Estates using the proposed Legal Notice and Proof of Claim Form, attached hereto as **Exhibits A and B** (collectively, the “Claims Package”), by email to all known email addresses as contained in South Aviation’s business records and as provided by the putative creditors and parties in interest, and their counsel, as applicable, that have contacted the Temporary Receiver since her appointment. For any known creditors that only have a physical mailing address on record with South Aviation, the Temporary Receiver will mail them the Notice and Proof of Claim Form by U.S. Mail.

Additionally, upon request from any party that believes it may be a creditor of the Receivership Estates, the Temporary Receiver will provide an electronic copy of the Claims Package. Such request should be sent by email to SouthAviationReceivership@hklaw.com (subject line: Request for Claims Package). The Temporary Receiver will also make the Claims Package available to download from the receivership website, accessible at:

<https://www.hklaw.com/en/general-pages/receiverships-and-class-actions/south-aviation-inc-receivership>.

The Legal Notice will apprise the potential claimants of how the Claims Process was created, who is eligible to submit a claim in order to ultimately receive to a monetary distribution from Receivership Estates, the process by which eligible claimants can submit a claim, and the process by which the Temporary Receiver will determine which eligible claimants have Allowed Claims and thus are entitled to receive a distribution from the Receivership Estates. *See* Exhibit A.

The Proof of Claim Form will ask claimants to provide, among other things: (i) the nature of the claim; (ii) a copy of the agreement(s) or other document evidencing or giving rise to the claim; (iii) the amount of the asserted claim against the Receivership Estates; and (iv) the amount of any transfer of funds that the claimant or any of its representatives received from South Aviation, Machado, or any of their affiliates, or any persons or entities on behalf of the foregoing, in connection with the asserted claim. The Proof of Claim Form will also require the claimant to, *inter alia*, certify the accuracy of the information provided and certify that each of the three factors of an Allowed Claim, set forth *infra*, are satisfied. *Id.*

B. The Claims Process

After analysis of the equities, expenses, and likely recovery to the Receivership Estates, the Temporary Receiver proposes a Claims Process in which holders of Allowed Claims may participate in a pool of recovered funds, the distribution of which will be provided pursuant to a Distribution Plan subject to Court approval.

The Temporary Receiver is aware that certain creditors may have already been repaid their full debt in connection with the fraudulent scheme that is the subject of this action, and are therefore “net winners.”

Accordingly, the attached Proof of Claim Form requests that claimants establish that they are “net losers” prior to having an Allowed Claim (as defined *infra*). The Temporary Receiver requests that the Court permit the Temporary Receiver to determine which claimants hold Allowed Claims, in her sole discretion, without further order of this Court.¹ The Temporary Receiver will ask the Court to approve the amount and timing of any monetary distribution that she seeks to make, upon collection and liquidation of assets of the Receivership Estates.

1. Proposed Eligibility of Claimants

For purposes of ensuring a full and fair notice and claims process, the Temporary Receiver intends to distribute the Claims Package, which will include an approved form of Legal Notice, Proof of Claim Form, to each party that has appeared or otherwise participated in this proceeding. For the avoidance of doubt, receipt of a Claims Package does not constitute admission by the Temporary Receiver that such party is in fact a creditor of South Aviation. Upon the dissemination of the Claims Package, the Temporary Receiver will file a Notice of Distribution of Claims Package on the docket. To the extent that an alleged creditor believes it has a claim and has not received a Claims Package, such alleged creditor may request a Claims Package by email to the Temporary Receiver at: SouthAviationReceivership@hklaw.com (subject line: Request for Claims Package). Additionally, the Claims Package will be available to download from the receivership website, accessible at: <https://www.hklaw.com/en/general-pages/receiverships-and-class-actions/south-aviation-inc-receivership>.

2. Proposed Definition of “Allowed Claim” and Basis for Distribution

The claim of a creditor will be allowed (an “Allowed Claim”), such that the creditor will be entitled to receive a monetary distribution based on the amount still owed to the creditor,

¹ Claims that are denied in whole or in part will be subject to an appeals process detailed below.

provided that the creditor sufficiently demonstrates to the satisfaction of the Temporary Receiver through documentation and/or sworn statements, among other things:

- (i) that the Receivership Estates incurred a debt to such creditor, and such debt remains unpaid in whole or in part;

AND

- (ii) that such creditor is not: (a) Defendant Federico A. Machado, or a member of his family, including without limitation a spouse, child, parent, sibling or parent or sibling of Defendant Machado's spouse, or any entity directly or indirectly controlled by them or a trust established for their benefit; (b) a person who was employed by or contracted to the Receivership Estates or Defendant Machado at any time; or (c) a person or entity affiliated with, or under common control with, the Receivership Estates;

AND

- (iii) that the total amount of funds that such creditor paid to or on behalf of the Receivership Estates exceeds the total amount of funds that the Receivership Estates or their affiliates transferred back to such creditor, or that the total value of the goods or services that the creditor provided to the Receivership Estates exceeds the total amount that the Receivership Estates paid to such creditor for those goods and services.

The Temporary Receiver may consider other factors in determining whether a claim is an Allowed Claim.² If a creditor cannot prove all three of the foregoing factors, that creditor's claim will be disallowed and such creditor will receive no monetary distribution on account of such alleged claim.³

If a creditor makes the requisite showing regarding his/her/its claim and the Temporary Receiver determines that such claim is an Allowed Claim, then, and only then, will the creditor be entitled to a recovery from the Receivership Estates. **The Temporary Receiver will propose a method for monetary distribution on account of Allowed Claims for approval by the Court**

² Notwithstanding these factors for determining whether a claim should be allowed, the Temporary Receiver will analyze each claim individually, the circumstances surrounding each creditor's payment to and involvement with South Aviation and each creditor's dealings and relationship with Defendants, and the Temporary Receiver reserves the right to object to and seek to disallow any claim.

³ To the extent a creditor received funds from South Aviation or another entity on behalf of South Aviation in excess of South Aviation's total debt to such creditor, such that the creditor profited from the fraud, the Temporary Receiver reserves the right to pursue a claim against such creditor for the return of the profit received and any other appropriate relief.

after sufficient assets have been recovered and/or liquidated to warrant a distribution. The Temporary Receiver will not include within her calculation for distributions any interest or profit that was promised to such claimants.

3. Proposed Sequence and Timing of Claims Submission Process

The Temporary Receiver proposes that the claims process proceed in accordance with the following schedule:

- a. Claims Process Approval: The date upon which this Court grants this Motion and approves the Temporary Receiver's proposed Claims Process shall be referred to herein as the "Claims Process Approval Date";
- b. Temporary Receiver's Mailing of Claims Package: The Temporary Receiver would send the Claims Package to known creditors of South Aviation via email or first-class mail, within fifteen (15) days (the "Claims Package Mailing Date") after the Claims Process Approval Date;
- c. Date by Which Claims are Requested to be Submitted: Claimants would then have until six (6) weeks after the Claims Package Mailing Date (the "Claims Submission Date") to return the completed Proof of Claim Form to the Temporary Receiver. Any completed Proof of Claim Form postmarked after the Claims Submission Date will be allowed only for good cause shown.

4. Adjudication of Claims and Proposed Distribution of Funds to Creditors with Allowed Claims

Upon conclusion of the claims submission process, the Temporary Receiver will update the Court and all claimants regarding a proposed timeline for the adjudication of claims, which will include a post-adjudication process to request reconsideration of the Temporary Receiver's

determination of the allowance or disallowance, in whole or in part, of any particular Proof of Claim, as well as a process to appeal the Temporary Receiver's final determination to this Court.

The Temporary Receiver and her counsel will review all Proof of Claim Forms received from investors and creditors as of the Claims Submission Date, and determine the total monetary amount of the Allowed Claims. The Temporary Receiver will continue to liquidate assets recovered from Defendants and prepare to make a monetary distribution, the amount of which will be determined by the amount of funds raised by the asset liquidations or as a result of claims against third parties.

Once an amount is set for the monetary distribution, the Temporary Receiver will determine what percentage of the total Allowed Claims is represented by the proposed distribution amount and propose a method for distribution based on the total Allowed Claims, amount available in the distribution fund and other pertinent factors. The Temporary Receiver will submit a proposed Distribution Plan to the Court for approval prior to any distributions being made thereunder. Further distributions may be made upon Court approval as additional distributions become possible; however, holders of Allowed Claims need not resubmit any claims.

LEGAL AUTHORITY FOR CLAIMS PROCESS

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in its administration is extremely broad. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). "A district court has summary jurisdiction over receivership proceedings and may deviate from the Federal Rules of Civil Procedure in favor of exercising its broad powers and wide discretion to determine relief." *S.E.C. v. Torchia*, 922 F.3d 1307, 1316 (11th Cir. 2019) (internal quotations omitted). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Bendall v.*

Lancer Mgmt. Grp., LLC, 523 F. App'x 554, 557 (11th Cir. 2013) (citing *Elliott*, 953 F.2d at 1566). The relief sought by the Temporary Receiver falls squarely within those powers. In receivership proceedings, “[e]very person who has any claim or demand against the estate or property in the custody of the court through the receiver, . . . must assert such claim or demand in the court in which such receiver was appointed.” Ralph E. Clark, *Clark on Receivers* § 646, at 1132 (3rd ed. 1992); *see also S.E.C. v. Morriss*, 2014 WL 585395, at *3 (E.D. Mo. Feb. 14, 2014) (holding that claimant forfeited his right to either claim or object to a distribution by failing to submit a claim). One way for claimants to assert a claim is for claimants to be authorized “under a general order of the appointing court [to file their] claim with the receiver.” *Clark on Receivers* § 646, at 1132. The receiver may agree or disagree with the claim, which claim is ultimately approved or disapproved by the court. *Id.*; *see also S.E.C. v. Founding Partners Capital Mgmt.*, 2014 WL 2993780, at *1 (M.D. Fla. July 3, 2014) (agreeing with and adopting the receiver’s recommendations concerning investor claims). “The claims should be definite enough to enable the receiver to pass on their validity, fairness and legality and to place them in their proper and legal category of claims for preference, if any.” *Clark on Receivers* § 651, at 1142. In addition to approving the proof of claim form, it is not unusual for a court overseeing a receivership to enter an order limiting the time within which claims must be presented. *See S.E.C. v. Onix Capital, LLC*, 2018 WL 1124435 (S.D. Fla. 2018) (“among these broad powers is the power to establish proof of claim procedures and set an effective claims bar date”) (citations omitted). An order limiting the time within which claims must be submitted has been deemed to be necessary to “lay the foundation for the court to order payments to creditors and distribution to those entitled to receive.” *Clark on Receivers* § 651, at 1142.

Furthermore, a court with jurisdiction over a receivership, by advertisement and by proper notices by mail, by publication and otherwise should take measures to notify interested parties affected by the receivership. *Id.* § 652, at 1143; *see also S.E.C. v. Neal*, 2007 WL 1231790, at *1 (D. Or. Apr. 24, 2007) (denying claimant’s objection to the denial of his claim filed after the claims bar date despite claimant’s assertion that he never received notice where notice to claimants was published in newspapers and online).

Under the terms and conditions of the Appointment Order, the Temporary Receiver, *among other things*, is authorized, empowered, and directed to (a) administer the assets of the Receivership Estates and (b) determine the extent of liabilities the Temporary Receiver believes to be the legal obligations of the Receivership Entities. *See* ECF 43. In exercising her duties, the Temporary Receiver has determined that it is reasonable, advisable, and in the best interest of the Receivership that the Court approve the claims administration procedure, including the Proof of Claim Form, and the Claims Process Instructions set forth in this motion and in the attached exhibits.

CERTIFICATION OF CONFERRAL

Pursuant to Local Rule 7.1, the Temporary Receiver’s counsel conferred with counsel for Plaintiffs CCUR Aviation Finance, LLC and CCUR Holdings, Inc.; Intervenors WBIP Aviation One, LLC and WBIP Aviation Two, LLC; and Intervenor Metrocity Holdings, LLC (collectively, the “**Plaintiffs and Intervenors**”) regarding the relief requested herein. Counsel for the Plaintiffs and Intervenors do not object to the requested relief.

CONCLUSION

WHEREFORE, the Temporary Receiver, respectfully requests that this Court enter an order similar in form to the proposed Order attached hereto as **Exhibit C**: (1) approving and

authorizing the Temporary Receiver to implement the Claims Process proposed herein or a process and plan that is substantially similar in form, effect and cost as the Temporary Receiver may determine, in her sole discretion, is necessary, appropriate and in the best interest of the Receivership Estates; (2) authorizing the Temporary Receiver to carry out the noticing and claims processes pursuant to the Legal Notice attached as **Exhibit A** and the Proof of Claim Form attached as **Exhibit B**; (3) authorizing the Temporary Receiver to send the Claims Package by email to all eligible claimants except to the extent that she only has a physical address for an eligible claimant; and (4) granting such other relief as this Court deems just and appropriate.

Dated: December 3, 2021

Respectfully submitted,

By: s/Sydney B. Alexander

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of December, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. I also certify that the foregoing document is being served on this day on counsel identified on the attached Service List via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Sydney B. Alexander _____
Sydney B. Alexander

SERVICE LIST

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<p>1200 Four Seasons Tower 1441 Brickell Avenue Miami, Florida 33131 Phone: (305) 350-5139 <i>Counsel for Objecting Parties to the Fee Application</i></p>	
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EXHIBIT A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

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.

_____ /

**LEGAL NOTICE OF
CLAIMS ADMINISTRATION PROCESS**

IF YOU ARE A CURRENT CREDITOR OF SOUTH AVIATION, INC. ("SOUTH AVIATION") AND/OR ITS RESPECTIVE AFFILIATES, SUBSIDIARIES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RECEIVERSHIP ESTATES")¹, YOU MAY BE ENTITLED TO PARTICIPATE IN MONETARY RECOVERY FROM THE ASSETS RECOVERED IN THIS ACTION.

SUBMISSION OF ALL CREDITOR CLAIMS TO THE TEMPORARY RECEIVER, AS DEFINED HEREIN, REQUESTED BY: _____, 2022.

¹ For the avoidance of doubt, the term "Receivership Estates" excludes Defendant Federico A. Machado individually.

INTRODUCTION

On April 16, 2021, the United States District Court for the Southern District of Florida (the “Court”) entered the *Order on Plaintiffs’ Verified Amended Expedited Motion for Appointment of Temporary Receiver* (ECF 43) (the “Appointment Order”), in the above-captioned action, appointing Barbara Martinez, Esq., as the Temporary Receiver (the “Temporary Receiver”) over Defendant South Aviation, Inc. (“South Aviation”), and its respective affiliates, subsidiaries, successors, and assigns (excluding Defendant Machado individually) (collectively, the “Receivership Estates”). The Appointment Order, among other things, empowered the Temporary Receiver to marshal all assets of the Receivership Estates, including locating, taking custody, possession and control of, safeguard, and liquidate all such assets, and ensure fair and equitable repayment of creditors of South Aviation.

On _____, 2021, the Temporary Receiver filed with the Court a *Motion to Approve Noticing and Claims Administration Process* (ECF ____). On _____, 2021, the Court entered the *Order Approving the Noticing and Claims Administration Process* (ECF __) (the “Claims Procedure Order”), pursuant to which the “Eligible Claimants” (defined below) shall file the Proof of Claim Form attached hereto for recovery of such Eligible Claimant’s allowed claim against the Receivership Estates. Upon collection, review, and allowance of timely and properly submitted Proofs of Claim, the Temporary Receiver intends to file a motion with the Court seeking (i) approval of a plan of distribution (the “Distribution Plan”), (ii) authority to create a settlement fund (the “South Aviation Fund”), and (iii) authority to distribute the proceeds of the South Aviation Fund in accordance with such Distribution Plan, after payment of administrative expenses of the Receivership Estates, to holders of claims deemed to be an “Allowed Claim” (defined below) by the Temporary Receiver.

LEGAL NOTICE

If you are a creditor of the Receivership Estates, you may be an Eligible Claimant entitled to file a Proof of Claim, and you may have an Allowed Claim. Accordingly, you may be entitled to a distribution from the South Aviation Fund. If you are an Eligible Claimant, you must fill out and return the Proof of Claim Form enclosed herein to the Temporary Receiver in accordance with the instructions below **ON OR BEFORE** _____, **2022**.

Who is an Eligible Claimant?

Creditors are eligible to participate in the Claims Process, and are encouraged to submit a claim, if the Receivership Estates incurred a debt to them that remains unpaid in whole or in part. Such Creditors are “Eligible Claimants” in this Claims Process.

What is Required to Establish Existence of an Allowed Claim?

The claim of an Investor or Creditor will be allowed (an “Allowed Claim”), such that the Creditor will be entitled to receive a distribution based on the amount that Receivership Estates still owe to the Creditor, provided that the Creditor sufficiently demonstrates to the satisfaction of the Temporary Receiver through documentation and/or sworn statements, among other things:

- (i) that the Receivership Estates incurred a debt to such Creditor, and such debt remains unpaid in whole or in part;

AND

- (ii) that such Creditor is not: (a) Defendant Federico A. Machado, or a member of his family, including without limitation a spouse, child, parent, sibling or parent or sibling of Defendant Machado’s spouse, or any entity directly or indirectly controlled by them or a trust established for their benefit; (b) a person who was employed by or contracted to the Receivership Estates or Defendant Machado at any time; or (c) a person or entity affiliated with, or under common control with, the Receivership Estates;

AND

- (iii) that the total amount of funds that such Creditor paid to or on behalf of the Receivership Estates exceeds the total amount of funds that the Receivership Estates or their affiliates transferred back to such Creditor, or that the total value of the goods or services that the Creditor provided to the Receivership Estates exceeds the total amount that the Receivership Estates paid to such Creditor for those goods and services.

The Temporary Receiver may consider other factors in determining whether a claim is an Allowed Claim.²

² Notwithstanding these factors for determining whether a claim should be allowed, the Temporary Receiver will analyze each claim individually, the circumstances surrounding each Creditor’s payment to and involvement with the Receivership Estates and each Creditor’s dealings and relationship with Defendants, and the Temporary Receiver reserves the right to object to and seek to disallow any claim.

If a Creditor cannot prove all three of the foregoing factors, that Creditor's claim will be disallowed and such Creditor will receive no monetary distribution on account of such alleged claim.³

If a Creditor makes the requisite showing regarding his/her/its claim and the Temporary Receiver determines that such claim is an Allowed Claim, then and only then, will the Creditor be entitled to a recovery from the Receivership Estates. The Temporary Receiver will propose a method for monetary distribution on account of Allowed Claims for approval by the Court after sufficient assets have been recovered and/or liquidated to warrant a distribution.

How Does an Eligible Claimant Submit a Claim?

To submit a claim and participate in the Claims Process and Distribution Plan, you must fill out and submit the Proof of Claim Form, attached to this Legal Notice and available: (1) on the Court's Electronic Case Filing System, which can be accessed from the Court's website at <https://ecf.flsd.uscourts.gov> (a PACER login and a password are required to retrieve a document); (2) upon email request to the Temporary Receiver's counsel addressed to: SouthAviationReceivership@hklaw.com (subject line: Request for Claims Package); and (3) on the receivership website, accessible at: <https://www.hklaw.com/en/general-pages/receiverships-and-class-actions/south-aviation-inc-receivership>.

The Proof of Claim Form requests information required to participate in the Claims Process and to receive a distribution from the South Aviation Fund if you are determined to have an Allowed Claim. You will be required to submit all requested supporting documentation with your Proof of Claim Form. Claims that lack requested supporting documentation will not be considered. For technical support in completing the Proof of Claim Form, please contact the Temporary Receiver by email to SouthAviationReceivership@hklaw.com (please include subject line: "Technical Support for Claims Process").

All Proof of Claim Forms must be returned to the Temporary Receiver **ON OR BEFORE** _____, **2022** by email, together with all supporting documentation to SouthAviationReceivership@hklaw.com. **Please include subject line: [Name of Claimant] Proof of Claim Submission.**

³ To the extent a Creditor received funds from the Receivership Estates or another entity on behalf of the Receivership Estates (including from Machado) on account of and in excess of the Receivership Estates' total debt to such Creditor, such that the Creditor profited from the fraud, the Temporary Receiver reserves the right to pursue a claim against such Creditor for the return of the profit received and any other appropriate relief.

TIMELINE FOR CLAIMS PROCESS

_____, 202_	Notice of Claims Process sent out by Temporary Receiver
_____, 2022	Date by Which Submission of Claims is Requested

Upon conclusion of the claims submission process, the Temporary Receiver will update the Court and all claimants regarding a proposed timeline for the adjudication of claims, which will include a post-adjudication process to request reconsideration of the Temporary Receiver’s determination of the allowance or disallowance, in whole or in part, of any particular Proof of Claim, as well as a process to appeal the Temporary Receiver’s final determination to the Court.

EXHIBIT B

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

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.

_____ /

PROOF OF CLAIM FORM

IF YOU TRANSFERRED FUNDS TO OR ON BEHALF OF SOUTH AVIATION, INC. (“SOUTH AVIATION”) AND/OR ITS RESPECTIVE AFFILIATES, SUBSIDIARIES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE “RECEIVERSHIP ESTATES”)¹ OR ARE OTHERWISE A CURRENT CREDITOR OF THE RECEIVERSHIP ESTATES (A “CREDITOR”), YOU MAY BE ENTITLED TO PARTICIPATE IN MONETARY RECOVERY FROM THE ASSETS RECOVERED IN THIS ACTION.

SUBMISSION OF ALL CREDITOR CLAIMS TO THE TEMPORARY RECEIVER, AS DEFINED HEREIN, REQUESTED BY: _____, 2022.

¹ For the avoidance of doubt, the term “Receivership Estates” excludes Defendant Federico A. Machado individually.

GENERAL INSTRUCTIONS

1. In order to recover funds to which you may be entitled as an Eligible Claimant (as defined in the Legal Notice of Claims Administration Process (the "Legal Notice") (ECF) in the above-captioned proceeding with respect to South Aviation, Inc. ("South Aviation"), you must complete this Proof of Claim Form and sign it under penalty of perjury where indicated on page 11 of this document. Completed Proof of Claim Forms, together with all necessary supporting documentation (as discussed herein) must be returned to the Temporary Receiver by [***Claims Submission Date***], 2022 (the "Claims Submission Date"). Any completed Proof of Claim Form postmarked after the Claims Submission Date will be allowed only for good cause shown.

2. Submission of this Proof of Claim Form, however, does not assure that you will share in the proceeds of the settlement fund, or that if you do receive a distribution, that you will be fully compensated for any claim you may have against South Aviation. The Temporary Receiver is providing the Proof of Claim Form in connection with this Claims Process and encourages all Creditors, who are Eligible Claimants (as defined in the Legal Notice), to submit a claim against the Receivership Estates.

3. You must send by email your completed and signed Proof of Claim Form with all supporting documentation to the Temporary Receiver on or before [***Claims Submission Date***], 2022 to the following address: SouthAviationReceivership@hklaw.com. **Please include subject line: [*Name of Claimant*] Proof of Claim Submission.**

4. The Temporary Receiver shall conduct one Claims Process for all creditors of the Receivership Estates. Upon completing her determinations as to the Allowed status of each filed claim, the Temporary Receiver shall then complete the asset recovery and liquidation phases of the Receivership to raise funds to make a distribution to all creditors holding Allowed Claims. Such distribution will be the subject of separate approval by the Court.

5. If you are NOT an Eligible Claimant, as that term is defined in the Legal Notice, DO NOT submit a Proof of Claim.

INSTRUCTIONS FOR CLAIM FORM

1. If you are a Creditor, please provide in Section I entitled "Claimant Information" all information regarding the Creditor and appropriate contact information to be used in connection with this Claims Process.

2. If you are a Creditor, please provide in Section II entitled "Description of Debt" all information related to any debt owed to you by the Receivership Estates, including (i) the nature of the claim; (ii) a copy of the agreement(s) or other document evidencing or giving rise to the claim; (iii) evidence of your performance under such agreement (i.e. provision of funds, goods, services, etc.); (iv) the amount of your asserted claim against the Receivership Estates; and (v) the amount of any transfer of funds that you or any of your representatives received from the Receivership Estates, Defendant Federico A. Machado ("Machado"), or any of their affiliates, or any other person or entity on behalf of the foregoing, in connection with this claim.

3. Read carefully and execute the Certification in Section III.
4. Failure to report accurately any detail related to your claim may result in the rejection of your claim.
5. In addition to filling out and signing the Proof of Claim Form, you should attach any and all documentation you have supporting the information you are providing, including without limitation all correspondence, emails, statements, confirmations, and other documents relating to your transactions, dealings and communications with South Aviation, Machado and their affiliates, whether those documents are in hard copy or electronic form. Failure to provide such documentation could delay verification of your claim and/or result in rejection of your claim.

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CHECKLIST FOR PROOF OF CLAIM FORM

1. Complete the Claimant Information (Section I below).
2. Complete the Description of Debt (Section II below).
3. Complete and sign the Certification (Section III below).
4. Detach and send the completed and signed Proof of Claim Form (pages 5-11 of this

document), together with a copy of all supporting documentation, by email to the Temporary Receiver at SouthAviationReceivership@hkllaw.com with the subject line *[Name of Claimant] Proof of Claim Submission, no later than [Claims Submission Date], 2022*. Please keep a copy of your completed and signed Proof of Claim Form and supporting documentation for your records. If you have any questions regarding the Proof of Claim Form, please contact the Temporary Receiver at:

Barbara Martinez, Esq., Temporary Receiver
South Aviation, Inc. Receivership Estate
c/o Holland & Knight LLP
Attn: Warren E. Gluck, Esq.
31 West 52nd Street
New York, New York 10019
Telephone: (212) 513-3200
Facsimile: (212) 385-9010
SouthAviationReceivership@hkllaw.com

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PROOF OF CLAIM FORM

I. CLAIMANT INFORMATION (please print or type)

Check here if this is a corrected or amended Proof of Claim: _____

Date(s) of prior Proof of Claim filings: _____

1. _____
Name of Claimant (If an individual, enter Last, First and Middle)

2. _____
If Claimant is an entity, Claimant's Taxpayer Identification Number

3. _____
Name of Joint Claimant, if applicable. (If an individual, enter Last, First and Middle)

4. _____
If Joint Claimant is an entity, that entity's Taxpayer Identification Number

5. _____

Claimant's Street Address, including City, State and Zip Code

Claimant's Foreign Province or Foreign Country (if applicable)

6. _____
Email address for Claimant

7. _____
Telephone Number for Claimant

8. _____

Street Address, including City, State, and Zip Code for Claimant's counsel, if any

9. _____
Email address for Claimant's Counsel, if any

10. _____

Address where Notices related to this claim should be sent

11.

Address where payments to the claimant should be sent

II. DESCRIPTION OF CLAIM

1. **What is the amount of the claim?** \$ _____

a. Does this amount include interest or other charges?

No.

Yes. Attach statement itemizing interest, fees, expenses, or other amounts other than principal included in the amount of the claim.

2. **What is the basis of the claim?** (Examples: money loaned, services performed, goods sold). Attach copies of supporting documentation of the claim.

3. **Is all or part of the claim secured?** No.

Yes.

Nature of property securing the claim: _____

Basis for perfection: _____

Attach copies of documents, if any, that show evidence of perfection of a security interest (i.e. a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded).

Value of property: \$ _____

Amount of the claim that is secured: \$ _____

Amount of the claim that is unsecured: \$ _____

4. **Have you received any funds from the Receivership Estates or from any other person or entity on behalf of the Receivership Estates (including from Machado) in connection with your asserted claim?**

No.

Yes.

If yes, provide the amount of funds received: \$ _____

Entity or person providing the funds: _____

5. **Does this claim amend one already filed?**

No.

Yes. Provide date previous claim was filed
and _____ claimant:

6. **Has this claim been acquired from someone else?**

No.

Yes. Person/entity from whom claim was
acquired:

III. CERTIFICATION

Each of the undersigned separately represents and certifies that each such person or entity:

1. Did not receive from the Receivership Estates, Machado OR their affiliates, an amount equal to or in excess of: (a) the amount such Creditor transferred to or on behalf of the Receivership Estates, or (b) the value of the goods and/or services that such person or entity provided to the Receivership Estates underlying the debt that arose during such time period.

2. Certifies that Section II of this Proof of Claim Form accurately reflects, to the best of the undersigned's knowledge and understanding, (a) all transfers to and receipts from or on behalf of Receivership Estates and/or their affiliates, or (b) all debts that the Receivership Estates incurred to such Creditor.

3. Is not (a) Defendant Machado, or a member of his family, including without limitation a spouse, child, parent, sibling or parent or sibling of Defendant Machado's spouse, or any entity directly or indirectly controlled by them or a trust established for their benefit; (b) a person who was employed by or contracted to the Receivership Estates or Defendant Machado at any time; or (c) a person or entity affiliated with, or under common control with, the Receivership Estates or Defendant Machado.

4. Did not knowingly assist any Defendant or any affiliate of any Defendant to effectuate, perpetuate or promote the fraud subject of this enforcement action *at any time*, or have knowledge of its fraudulent nature at the time undersigned (a) made any transfer for the purposes upon which this claim is based, or (b) provided the goods and/or services to the Receivership Estates giving rise to the debt upon which this claim is based.

5. If executing this Proof of Claim Form on behalf of a corporation, partnership, limited liability company, or other entity, possesses all requisite power and authority to execute

this form, and to do all other things necessary and appropriate in connection with the submission of this Proof of Claim Form.

6. Consents to the Temporary Receiver's and her agents' use of any of the information provided herein including, but not limited to, email address, name, address, telephone number, and bank account information in any way deemed appropriate for verification of the claim.

7. Submits to the jurisdiction of the United States District Court for the Southern District of Florida (the "Court") in connection with any matter relating to the administration of the Receivership Estates and the processing and disposition of this Proof of Claim Form; waives trial by jury, to the extent such a right exists; and agrees to the Court's disposition of the determination of the validity or the amount of the claim made by this Proof of Claim Form.

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Each of the undersigned declares under penalty of perjury under the laws of the United States of America (and the applicable laws of any other jurisdiction) that the statements made and the answers given in this Proof of Claim Form are true and correct, and that the documents submitted herewith are true and genuine.

Executed on this _____ day of _____ (Month), 202_, in _____ (City, State, Country)

CLAIMANT (Individuals, Corporations, Partnerships, Other Entities)

Signature of Claimant or Authorized Signatory

Print or Type Name of Claimant

Capacity of person signing above (e.g., Beneficial Owner, Executor, Administrator, Other)

Signature of Joint Claimant (if any)

Print or Type Name of Joint Claimant (if any)

Capacity of person signing above (e.g., Beneficial Owner, Executor, Administrator, Other)

EXHIBIT C

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

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.

**ORDER GRANTING TEMPORARY RECEIVER'S
AGREED EMERGENCY MOTION TO
EXPAND RECEIVERSHIP TO INCLUDE RECENTLY DISCOVERED ASSETS**

THIS CAUSE comes before the Court again upon the Temporary Receiver's Motion to Approve the Proposed Noticing and Claims Process (the "Claims Process Motion") filed December 3, 2021. In the Motion, the Temporary Receiver sought entry of an order approving the Temporary Receiver's proposed noticing and claims administration procedures and the form of the notice to be sent to potential claimants (the "Claims Process").

The Court finds that the Temporary Receiver has made a sufficient and proper showing in support of the relief requested. Accordingly, it is hereby:

ORDERED AND ADJUDGED that the Temporary Receiver's Claims Process Motion is **GRANTED** as follows:

1. The Claims Process as proposed in the Claims Process Motion (ECF __) is **APPROVED** in its entirety.

2. The forms of the “Legal Notice of Claims Administration Process” and the “Proof of Claim and Release Form” attached to the Claims Process Motion as Exhibits A and B are APPROVED in their entirety.

3. The Temporary Receiver is authorized to commence the Claims Process by, among other things, sending the Legal Notice of Claims Administration Process and the Proof of Claim Form to all Eligible Claimants (as defined in the Legal Notice).

4. Distributions on account of Allowed Claims (as defined in the Legal Notice) are subject to further Court order.

DONE AND ORDERED in the Southern District of Florida on the ___ day of _____, 2021.

JUDGE BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:

Counsel of Record