

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re : **Chapter 11 Case No.**
REPUBLIC AIRWAYS HOLDINGS INC., et al., : **16-10429 (SHL)**
Debtors.¹ : **(Jointly Administered)**

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**DECLARATION OF PAUL KINSTEDT IN SUPPORT OF DEBTORS' MOTION
PURSUANT TO SECTIONS 105(a) AND 363(b) OF THE BANKRUPTCY CODE AND
BANKRUPTCY RULE 6004 FOR APPROVAL OF (I) MERGER OF SHUTTLE
AMERICA CORPORATION INTO REPUBLIC AIRLINE INC., AND (II) SURRENDER
OF THE SHUTTLE AMERICA CORPORATION AIR CARRIER CERTIFICATE**

I, Paul Kinstedt, hereby declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the Chief Operating Officer ("COO") and Senior Vice President of Republic Airways Holdings Inc. ("RAH") and its wholly-owned direct and indirect debtor subsidiaries (collectively with RAH, "Republic" or the "Debtors"). I have been employed by Republic since January 2002. I joined Republic as Director of System Operations Control and I have served as a Senior Vice President and COO of Republic since August 2015. My duties as COO and Senior Vice President include: (1) together with other members of senior management, developing the strategic direction of Republic including its restructuring strategies; (2) managing Republic's operations, including as that relates to Republic's operations with its Codeshare Partners under its codeshare agreements; and (3) achieving the operational objectives of Republic.

2. I am knowledgeable about and familiar with the business and financial affairs of the Debtors and I am authorized to submit this Declaration. This Declaration is submitted in

1. The Debtors in these chapter 11 cases are the following entities: Republic Airways Services, Inc.; Shuttle America Corporation; Republic Airline Inc.; Republic Airways Holdings Inc.; Midwest Air Group, Inc.; Midwest Airlines, Inc.; and Skyway Airlines, Inc. The Debtors' employer tax identification numbers and addresses are set forth in their respective chapter 11 petitions.

support of the Debtors' Motion Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 6004 for Approval of (i) Merger of Shuttle America Corporation into Republic Airline Inc., and (ii) Surrender of the Shuttle America Corporation Air Carrier Certificate (the "Motion," ECF No. 1165).²

3. Except as otherwise indicated, the facts in this Declaration are based upon my personal knowledge, information and belief, including my review of relevant documents, information provided to me by colleagues at Republic, or my opinion based upon experience, knowledge, and information concerning the operations of Republic, the financial terms and contractual relationships with Republic's Codeshare Partners and the airline industry generally. If called upon to testify, I would testify under penalty of perjury to the facts set forth in this declaration.

Background

4. RAH is a holding company that provides scheduled regional passenger services through its wholly-owned operating air carrier subsidiaries, Shuttle America Corporation ("Shuttle America") and Republic Airline Inc. ("Republic Airline"). Republic offers approximately 900 flights daily to 97 cities in 36 states, Canada, Mexico, the Caribbean, and Central and South America through Republic's fixed-fee codeshare agreements with American, Delta, and United, operating under the designations of American Eagle, Delta Connection, and United Express, including service out of the Codeshare Partners' respective hubs and focus cities. Republic's operational fleet consists of approximately 170 aircraft.

5. As required by regulations promulgated by the Federal Aviation Administration (the "FAA"), the Debtors' operating subsidiaries, Shuttle America and Republic Airline, each

2. Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Motion.

operate under a separate FAA-issued Air Carrier Certificate (“ACC”). Though Shuttle America and Republic Airline have always been distinct legal entities, the Debtors have been working over the past 18 months to integrate their flying operations under a single ACC. The Debtors are required to provide notice to the Codeshare Partners at least sixty (60) days in advance of operational consolidation under a single ACC to permit the Codeshare Partners to adjust their flying schedules and take other operational and technological steps necessary to ensure a smooth transition.³ To obtain the maximum benefit for their estates, the Debtors have determined that they should complete the Merger, under which Shuttle America, an Indiana corporation, will be merged into Republic Airline, also an Indiana corporation, and consolidation under a single ACC on January 31, 2017. The achievement of this goal requires Court approval of the Motion by November 30, 2016, which will provide sufficient time for the sixty-day notice to the Codeshare Partners.

6. The Debtors’ chapter 11 cases were commenced against the backdrop of a growing national shortage of qualified pilots in the United States, and an acute shortage of qualified regional airline pilots. This shortage is primarily a result of Congressional legislation enacted in 2010, which became effective in August 2013 and January 2014, that imposed more restrictive “time and duty rest” requirements resulting in an increase in the number of pilots that the Debtors historically needed to operate their schedules, and raised flight hour requirements thereby dramatically decreasing the pool of qualified and competent new pilots available for hire. The shortage made it increasingly difficult to maintain the necessary pilot staffing levels needed to sustain reliable performance requirements under the Debtors’ codeshare agreements with its Codeshare Partners. As a result of the pilot shortage, the Debtors were forced to ground

3. The Debtors utilize integrated IT systems that are connected to their Codeshare Partners.

operating aircraft and reduce scheduled flying for each of the Codeshare Partners. In addition, the pilot shortage drove significant increases in the cost of collectively bargained wages, benefits, and work rules for pilot labor, which adversely affected the Debtors' financial position and cash flows from operations.

7. Concurrently with the pilot labor shortage, the Debtors' collective bargaining agreement with the International Brotherhood of Teamsters (the "IBT"), the union which represents the Debtors' pilots, became amendable in October 2007, just as the United States was heading into a deep recession and financial crisis. The Debtors entered protracted and very difficult negotiations with the IBT that ultimately extended over a period of eight years. Over the course of the eight years of bargaining, the Debtors' pilot labor agreement had fallen behind its peer group within the regional airline industry.

8. During the height of the labor dispute and largely because of the Debtors' inferior pilot labor agreement, the Debtors experienced unprecedented pilot attrition and severely challenged new pilot hiring. Hiring and retention headwinds peaked following the July 2015 lawsuit filed by officials of the IBT challenging the Debtors' compensation practices of providing recruitment bonuses to new hires and overtime pay to pilots. These factors adversely affected the Debtors' ability to operate their flight schedule and required the Debtors to reduce their level of operations based on available crew resources. The problems associated with the Debtors' limited crew resources were compounded by the fact that Shuttle America and Republic Airline each operate under separate ACCs, which prevents the Debtors from sharing their crew resources efficiently and cost-effectively.

9. In late September 2015, the Debtors and the IBT reached a new three-year pilot labor agreement. Under the terms of the Debtors' new pilot labor agreement, the Debtors are

contractually obligated to permit an increasing number of pilots, as of October 29, 2015, to transfer between the Shuttle America and Republic Airline ACCs without affecting the pilots' seniority and all transfer restrictions will be eliminated by April 2018. This contractual obligation will be devastating if the Debtors do not consolidate their flying operations under a single ACC, as it would impose serious operational and financial burdens on the Debtors, including frequent retraining requirements that must be complied with every time a pilot moves across ACCs, regardless of the pilot's previous training and experience with any particular aircraft.

10. After its pilot agreement was ratified, Republic stepped up efforts to reach agreements with each of the Codeshare Partners to increase payments under the fixed-fee codeshare agreements to compensate Republic for its true cost of flying, which was essential to restoring operations and achieving normalized levels of flying. Thus, the single most important aspect of the Debtors' chapter 11 cases—and the gating item to the Debtors' ability to successfully emerge from bankruptcy as a going concern—was the prompt negotiation and implementation of new codeshare agreements with the Debtors' Codeshare Partners. The Debtors have successfully obtained restructured codeshare and related agreements with each of their Codeshare Partners, clearing the pathway for a successful emergence from chapter 11. The Debtors' amended codeshare agreements with Delta, United and American each contemplate the consolidation of the Debtors' flying operations under a single Republic Airline ACC. Although the majority of the Debtors' operating aircraft are currently operating under the Republic Airline ACC (132), the Debtors operate 38 aircraft under the Shuttle America ACC, 30 of which are dedicated to flying for Delta, 7 of which are dedicated to flying for United, and 1 of which is an unassigned spare.

11. The Debtors began the process of transitioning their flying operations to Republic Airline well before the commencement of their chapter 11 cases. The transition has involved a comprehensive collaboration among the Debtors, the FAA and outside industry experts to align Shuttle America's and Republic Airline's procedures and operations. Following the commencement of the Debtors' chapter 11 cases, in the spring of 2016, the Debtors streamlined their operations by returning out-of-favor Q400 aircraft. The Debtors negotiated amendments to their codeshare and related agreements with Delta that provided for the wind-down of the Debtors' flying of out-of-favor ERJ-145 aircraft and contemplated the Debtors' consolidation of their flying operations under the Republic Airline ACC. The Debtors negotiated amendments to their codeshare and related agreements with United that provide for the complete transition of aircraft from Shuttle America to Republic Airline. The Debtors also negotiated amendments to their codeshare and related agreements with American, under which Republic Airline will continue to operate all the aircraft for American, and American agreed to allow for interior modifications to aircraft that are necessary for consolidation under a single ACC commencing in December 2016.

12. As of the Commencement Date, Shuttle America operated 32 aircraft dedicated to flying under the United Express Agreement, dated as of December 28, 2006, United Contract # 172884 by and among United, Republic Airline and Shuttle America (as amended by the Fourteenth Amendment to the United Express Agreement, dated May 27, 2016 (the "Restructured United Express Agreement," and as previously restated, supplemented or otherwise modified, the "United Express Agreement"). Beginning in the summer of 2015, the Debtors began the process of transitioning flying under the United Express Agreement from Shuttle America to Republic Airline. In the Restructured United Express Agreement, Shuttle

America exercised its rights under the United Express Agreement to assign the United Express Agreement to Republic Airline. The Restructured United Express Agreement provides for the complete transition of all aircraft flown for United from the Shuttle America ACC to the Republic Airline ACC in 2017. The Debtors intend to transition the remaining 7 aircraft flown under the Restructured United Express Agreement from the Shuttle America ACC to the Republic Airline ACC by January 31, 2017.

13. Under the Delta Connection Agreement dated and effective January 13, 2005 by and among Delta, Shuttle America and RAH (as amended by Amendment Number Fourteen to the Dual Class Agreement, dated March 23, 2016, the “Restructured Delta Dual Class Agreement,” and as previously amended, restated, supplemented or otherwise modified, the “Delta Dual Class Agreement”), Delta agreed that Shuttle America may assign all of its rights, title, interest, and obligations under the Agreement to Republic Airline. Following the Merger, Republic Airline, as the surviving entity, will replace Shuttle America under the Restructured Delta Dual Class Agreement.

14. Under FAA regulations, within 30 days of the Debtors’ consolidation of operations under the single Republic Airline ACC, the Debtors are required to surrender the Shuttle America ACC to the FAA. With respect to the 59 aircraft owned, debt-financed, or leased by Shuttle America, the Debtors are in the process of obtaining waivers from their aircraft finance counterparties concerning certain covenants in the financing agreements to allow Shuttle America to merge into Republic Airline without breaching the agreements. To date, the Debtors have received waivers from 6 of their 20 aircraft finance counterparties and expect to receive waivers from the remaining 14 counterparties before effectuating the Merger on January 31, 2017. Following the Merger, the Debtors will deliver to Shuttle America’s aircraft finance

counterparties the documentation necessary to confirm Republic Airline's assumption of Shuttle America's obligations under the financing agreements. The Debtors also intend to transfer the approximately 470 pilots, 500 flight attendants, and 140 other employees currently working for Shuttle America from Shuttle America to Republic Airline on or before January 31, 2017. After the Merger and the Debtors' consolidation of their operations under the Republic Airline ACC, in accordance with FAA regulations, the Debtors will surrender the Shuttle America ACC to the FAA.

Streamlining the Debtors' Flying Operations Under a Single Republic Airline ACC Is Highly Beneficial to the Debtors' Estates and Their Creditors

15. Consolidation of the Debtors' flying operations through the Merger under a single Republic Airline ACC will result in significant economic benefits and operational efficiencies for the Debtors that will begin to accrue immediately upon the Merger, and are essential to the Debtors' ability to optimize their crew resources, which is crucial to their success following their emergence from chapter 11. Consolidating operations under a single ACC also will significantly improve the Debtors' ability to recruit and retain new pilots. The Debtors' business plan anticipates cost savings and efficiencies associated with reduced human capital requirements, the elimination of costly training events for crews transitioning between ACCs, and other operational efficiencies and cost avoidances, as well as significant non-monetary benefits to the Debtors.

16. Among other things, consolidation of the Debtors' flying operations under a single ACC is critical to the Debtors' ability to comply with their new pilot labor agreement. Under the terms of the labor agreement, the Debtors are obligated to allow an increased number of pilots to transfer between Shuttle America and Republic Airline without impact on their seniority until April 2018, at which time all pilots will be permitted to transfer between entities

without restrictions. With no restrictions to pilot transfers, the rate of transfers will increase significantly as pilots seek better opportunities without regard to operator costs. However, operating under two ACCs, the Debtors would be required under FAA regulations to retrain a pilot each time she or he transfers from one ACC to the other. Retraining pilots each time they transition between ACCs will impose significant financial burdens and operational inefficiencies on the Debtors and significant disruption to their operations.

17. Operating a single ACC will improve the Debtors' operations, increase efficiencies, and generate significant cost savings. Following the consolidation of their operations under a single ACC, the Debtors will be able to operate under a single dispatch and operational control structure. Currently, under regulations promulgated by the FAA, the Debtors are required to independently staff certain management and supporting staff positions for each of the Shuttle America and Republic Airline ACCs. For example, Republic must employ directors of safety, flight operations, and maintenance for each ACC. Following the Merger and the consolidation of the Debtors' operations under the Republic Airline ACC, they will be able to eliminate or significantly reduce these duplicative positions.

18. In addition, consolidation of the Debtors' flying operations under a single Republic Airline ACC will allow the Debtors to eliminate inefficiencies that occur when they transition aircraft between ACCs under the Restructured United Express Agreement. Currently, the Debtors are required to undertake an administratively burdensome process that includes obtaining FAA approval and, for certain aircraft, notification to aircraft financiers before aircraft can be transitioned between ACCs. This process typically takes approximately three days. Streamlining operations under a single ACC will allow the Debtors to eliminate this administrative inefficiency and the associated costs.

19. Moreover, the Merger and consolidation of the Debtors' flying operations under a single Republic Airline ACC will not harm the creditors of either Shuttle America or Republic Airline. Under the Court's orders approving the United and American settlements, Delta's, United's and American's claims against Shuttle America and Republic Airline, aggregating \$615.1 million, will be allocated between Shuttle America and Republic Airline such that the percentage recoveries to general unsecured creditors from the Shuttle America and Republic Airline estates will be equal or as nearly equal as possible. The Debtors' claim settlement with the Embraer Parties,⁴ which is currently pending before the Court, provides for a similar allocation between Republic Airline and Shuttle America of the Embraer Parties' proposed \$99 million of allowed claims. Thus, neither creditors of Republic Airline nor Shuttle America will be prejudiced by the Merger of the two entities as it will not affect their ultimate recoveries. To the contrary, the value of the cost savings and efficiencies that will result from the Merger will accrue to the benefit of all creditors of Shuttle America and Republic Airline. For this reason, among others, the Official Committee of Unsecured Creditors, the members of which, including Delta as an *ex officio* member, are estimated to hold approximately 75 percent of the value of general unsecured claims against the Debtors, supports the relief sought in the Motion.

20. As discussed above, the need to consolidate the Debtors' operations arises in large part from the national shortage of qualified pilots and acute national shortage of qualified regional airline pilots. As a result of this shortage and regulatory prohibitions on the Debtors' ability to allocate their crew resources between ACCs that create inefficiencies in the Debtors' business, it is critical to the Debtors' future operations to consolidate the Debtors' flying

4. The term "Embraer Parties" is defined in the Debtors' Motion for an Order Pursuant to 11 U.S.C. §§ 362, 363 & 365(a) and Fed. R. Bankr. P. 6004, 6006 & 9019 (I) Approving the Letter of Intent Between Certain Debtors and Embraer S.A., (II) Authorizing the Debtors to Assume Amended Purchase Agreement, EAMS Maintenance Agreement, and Amended EPool Agreement, (III) Approving Allowed Claims, and (IV) Granting Related Relief, filed on November 15, 2016 (ECF No. 1181).

operations under a single ACC to optimize their crew resources. Consolidating operations under a single ACC also will significantly enhance the Debtors' ability to retain existing and recruit new pilots, and will substantially simplify the Debtors' operations by operating a single aircraft type under a single dispatch and operational control system, and will increase efficiency throughout the Debtors' operations, including by eliminating costly pilot training events for pilots transitioning between entities, and the need to maintain duplicative management support structures for two independent ACCs. In that regard, the amended agreements that the Debtors negotiated with Delta, United, and American each contemplate the consolidation of the Debtors' flying operations under a single Republic Airline ACC, as does the new collective bargaining agreement the Debtors reached with their pilots in late 2015. For all these reasons, the merger of Republic Airline and Shuttle America, and the consolidation of operations under a single ACC, is a sound exercise of the Debtors' business judgment and critical to achieving the Debtors' strategic business, operational, and financial objectives in these chapter 11 cases.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of November, 2016.

A handwritten signature in black ink, appearing to read "Paul Kinstedt", written over a horizontal line.

Paul Kinstedt
Senior Vice President and Chief Operating
Officer