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

In re

GRUPO AEROMÉXICO, S.A.B. de C.V., *et al.*,¹

Debtors.

Chapter 11

Case No. 20-11563 (SCC)

(Jointly Administered)

**SUPPLEMENTAL STATEMENT OF DELTA AIR LINES, INC.
REGARDING DEBTORS' AIRLINE AGREEMENTS MOTION**

Delta Air Lines, Inc. ("Delta"), by and through the undersigned counsel, submits this statement ("Statement") regarding (1) the *Motion of Debtors for Interim and Final Orders (i) Authorizing Debtors to Honor Interline Agreements, Clearinghouse Agreements, Alliance Agreements, Delta Airlines Agreements, Club Premier Loyalty Program Agreements and Prepetition Obligations Related Thereto*, (ii) *Modifying the Automatic Stay Solely to the Extent Necessary to Effectuate the Intended Relief* and (iii) *Authorizing Financial Institutions to Honor*

1. The Debtors in these cases, along with each Debtor's registration number in the applicable jurisdiction, are as follows: Grupo Aeroméxico, S.A.B. de C.V. 286676; Aerovías de México, S.A. de C.V. 108984; Aerolitoral, S.A. de C.V. 217315; Aerovías Empresa de Cargo, S.A. de C.V. 437094-1. The Debtors' corporate headquarters is located at Paseo de la Reforma No. 243, piso 25 Colonia Cuauhtémoc, Mexico City, C.P. 06500.

and Process Related Checks and Transfers [ECF No. 11] (the “Airline Agreements Motion”) filed by the debtors (the “Debtors”) as it relates to the Debtors’ contracts with Delta as further described in the Airline Agreements Motion (the “Delta Contracts”). In support of this Statement, Delta respectfully states as follows:

Statement

1. Pursuant to the Airline Agreements Motion, the Debtors seek authority to pay amounts due under certain prepetition agreements that enable coordination and facilitate cooperation among various parties within the airline business (the “Critical Airline Agreements”).

2. The Airline Agreements Motion recognized the critical nature of the Delta Contracts, which relate to nearly every facet of the Debtors’ business. The Debtors devoted a full section and a dedicated exhibit of the Airline Agreements Motion specifically describing the necessity of Delta Contracts to the Debtors’ seamless operations. *See* Airline Agreements Motion, ECF No. 11 ¶¶ 31-32; Exhibit G. The Court approved the relief sought in the Airline Agreements Motion, including the relief as to the Delta Contracts, on an interim basis.² Thereafter, the Debtors and Delta cooperatively engaged in a reconciliation process regarding the Delta Contracts that would be subject to a final order approving the Airline Agreements Motion.³

2. *See* Interim Order (I) Authorizing Debtors to Honor the Critical Airline Agreements and Prepetition Obligations Related Thereto, (II) Modifying the Automatic Stay Solely to the Extent Necessary to Effectuate the Intended Relief and (III) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers (ECF No. 34).

3. *See* Statement of Delta Air Lines, Inc. Regarding Motion of Debtors for Interim and Final Orders (I) Authorizing Debtors to Honor Interline Agreements, Clearinghouse Agreements, Industry Agreements, Protection Agreements, Alliance Agreements, Delta Airlines Agreements, Club Premier Loyalty Program Agreements and Prepetition Obligations Related Thereto, (II) Modifying the Automatic Stay Solely to the Extent Necessary to Effectuate the Intended Relief and (III) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers (ECF No. 172).

3. Now at the eleventh hour, the Debtors, through a revised proposed final order shared with Delta and annexed hereto as Exhibit A, seek to carve Delta — alone among the Debtors’ contracting partners — out of the final order. Specifically, the Debtors now seek a final order that provides “that no payments will be made pursuant to prepetition obligations under any agreement with Delta.” Exhibit A, ¶ 6.

4. The Debtors have provided no basis for the disparate treatment of Delta compared to all other counterparties to Critical Airline Agreements. While Delta holds a substantial equity interest in Grupo Aeroméxico, S.A.B. de C.V., it does not have dominion or control over the Debtors. Delta designated two of Grupo Aeroméxico, S.A.B. de C.V.’s current fifteen board members, as further described in the declaration of David S. Cartee (“Cartee Decl.”), filed contemporaneously herewith. (Cartee Decl. ¶ 3.) Moreover, there has been no allegation whatsoever that the Delta Contracts are in any way more favorable to Delta than they would be absent Delta’s equity ownership.

5. The Delta Contracts are ordinary course, arm’s length, bargained-for contracts with standard industry terms and rates whereby Delta has transferred valuable consideration to the Debtors and Delta has been left with significant unpaid amounts. In many cases, the Delta Contracts are industry form contracts with only such modifications as are customary in the industry or more favorable to the Debtors. Many of the Delta Contracts predate the filing of these bankruptcy cases by years. (Cartee Decl. ¶ 4.)

6. Delta is not asking for a most favored nation provision or the like. Delta merely seeks to be treated like other critical Debtor counterparties. There is recent precedent for the equal treatment Delta seeks here in the LATAM chapter 11 cases pending in this District, where Delta is also an equityholder of the debtors. The LATAM Court recently entered an order relating to

continued performance of contracts that treated Delta the same as other contract counterparties, subject to an overall cap. *See* Final Order (I) Authorizing But Not Directing the Debtors to (A) Assume Certain Critical Airline Agreements Pursuant to 11 U.S.C. §§ 105(a) and 365(a), (B) Honor Certain Prepetition Obligations, Pursuant to 11 U.S.C. §§ 105(a) and 363(b) and (II) Modifying the Automatic Stay to the Extent Necessary to Effectuate the Requested Relief Pursuant to 11 U.S.C. § 362, *In re LATAM Airlines Group S.A., et al.*, Case No. 20-11254 (JLG) (Bankr. S.D.N.Y. July 14, 2020), ECF No. 543 (authorizing payment “provided that the aggregate amount of such payments shall not exceed \$10 million to Delta Air Lines, Inc., Qatar Airways, or any of the Debtors’ insiders without further order...” (the “LATAM Order”).

7. Delta is optimistic that the parties will reach a consensual resolution of this issue on terms similar to those set forth in the LATAM Order prior to the hearing on the Airline Agreements Motion. Irrespective of the terms of the final order entered by the Court as to the Airline Agreements Motion, Delta is committed to continuing to cooperate with the various parties to these bankruptcy cases.

Dated: August 18, 2020
New York, New York

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Exhibit A

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

In re:

**GRUPO AEROMÉXICO, S.A.B. de C.V., et
al.,**

Debtors.¹

Chapter 11

Case No. 20-11563 ()

(Joint Administration Pending)

**FINAL ORDER (I) AUTHORIZING DEBTORS TO HONOR THE CRITICAL AIRLINE
AGREEMENTS AND PREPETITION OBLIGATIONS RELATED THERETO,
(II) MODIFYING THE AUTOMATIC STAY SOLELY TO THE EXTENT NECESSARY
TO EFFECTUATE THE INTENDED RELIEF AND (III) AUTHORIZING FINANCIAL
INSTITUTIONS TO HONOR AND
PROCESS RELATED CHECKS AND TRANSFERS**

Upon the motion (the “**Motion**”)² of Grupo Aeroméxico, S.A.B. de C.V. and its affiliates that are debtors and debtors in possession in these cases (collectively, the “**Debtors**”) for entry of an interim order and a final order (this “**Order**”) authorizing (i) the Debtors to honor their prepetition obligations under the Critical Airline Agreements and to continue performing and exercising their respective rights and obligations (whether prepetition or postpetition) under each in the ordinary course of business, and (ii) to modify the automatic stay to the extent necessary to effectuate the requested relief, all as set forth more fully in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the relief requested therein being a core

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² Each capitalized term used herein but not otherwise defined herein shall have the meaning ascribed to it in the Motion.

proceeding under 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion and held a hearing to consider the relief requested in the Motion on a final basis (the “**Hearing**”); and upon the Sánchez Declaration, filed contemporaneously with the Motion, and the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and the Court having determined that the relief granted herein is in the best interests of the Debtors, their estates, creditors and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is hereby granted on a final basis as set forth herein.
2. The Debtors are authorized (but not required) to assume the Critical Airline Agreements pursuant to the assumption procedures set forth in paragraph 3 of this Order (the “**Assumption Procedures**”) as the Debtors deem, in their reasonable discretion, to be in the best interest of their estates.
3. The Debtors are authorized, upon determining in their reasonable discretion that assumption of a Critical Airline Agreement is in the best interest of their estates, to (a) submit a proposed order (the “**Assumption Order**”) to the Court approving the specific assumption of the Critical Airline Agreement, which Assumption Order shall provide, pursuant to section 365(e) of the Bankruptcy Code, such counterparty (the “**Counterparty**”) may not demand any deposit or other form of security from the Debtors, and (b) serve a notice containing the Assumption Order

on (i) the applicable Counterparty to such Critical Airline Agreement submitted to the Court for approval, and (ii) the Official Committee of Unsecured Creditors (the “**Committee**”), which notice shall be filed to the docket. The notice shall state that any party in interest, including the Committee, will have 21 days from service of the proposed order to object, and such objections shall be filed to the docket. If there are no objections to the assumption of the Critical Airline Agreement timely filed, served and received, then the Debtors shall, on or after the objection deadline, submit to the Court a final order granting the assumption as to such Critical Airline Agreement. If there is an objection timely filed, served and not consensually resolved by the parties, then the Debtors shall file a separate motion to assume the Critical Airline Agreement and a hearing shall be scheduled for the Court to resolve any issue identified in the objection.

4. The Debtors shall provide the Committee with five (5) business days’ prior notice (or as much notice as is reasonably practicable under the circumstances) before any material renewal, amendment, supplement, modification or extension of any Critical Airline Agreement.

5. The Debtors are authorized, but not directed, to pay or otherwise honor their prepetition obligations under the Critical Airline Agreements in the ordinary course of the Debtors’ business, provided that such authority shall not be deemed to be an assumption by the Debtors of any agreement or contract; provided, further, that the aggregate amount of payments made by the Debtors pursuant to this Order shall not exceed \$[_____] during the pendency of these cases absent further order of the Court.

6. For the avoidance of doubt (a) no payments will be made pursuant to prepetition obligations under any agreement with Delta, nor shall any corresponding agreements be assumed absent further order from the Court, and (b) no prepetition payments in connection with the

Tarifa de Uso Aeroportuario (“TUA”) shall be paid, nor shall any Mexican Airport Agreements with Concessionaires be assumed, absent further order from the Court.

7. The Debtors shall also provide the Committee, within 30 days of the prior month’s end, monthly reporting of (a) all payments made under the Critical Airline Agreements, including payments pursuant to any Industry Agreements and Alliance Agreements, during the prior month on a category-by-category basis, and (b) the total amount of payments made under the Critical Airline Agreements, including payments pursuant to any Industry Agreements and Alliance Agreements, since the Petition Date on a category-by-category basis, in each case including identifying the entities for whose benefit such payments were made.

8. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby modified solely to the extent necessary to enable the Debtors and the Counterparties to the Critical Airline Agreements to participate in routine billings, settlements and adjustments related to the Critical Airline Agreements and the Prepetition Obligations in accordance with the terms of such contracts in the ordinary course of business.

9. All applicable banks and other financial institutions are hereby authorized to receive, process, honor and pay any and all checks, drafts, wires, check transfer requests or automated clearinghouse transfers evidencing amounts paid by the Debtors under this Order whether presented prior to, on or after the Petition Date to the extent the Debtors have good funds standing to their credit with banks or other financial institutions. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtors’ instructions.

10. Nothing in this Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to Bankruptcy Code section 365, and all of the Debtors' rights with respect to such matters are expressly reserved.

11. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

12. Nothing in this Order or the Motion shall be construed as prejudicing the rights of the Debtors to dispute or contest the amount of or basis for any claims against the Debtors in connection with or relating to the Critical Airline Agreements.

13. Nothing in this Order nor the Debtors' payment of claims pursuant to this Order shall be construed as (a) an agreement or admission by the Debtors as to the validity or priority of any claim on any grounds, (b) a waiver or impairment of any of the Debtors' rights to dispute any claims on any grounds, (c) a promise by the Debtors to pay any claim or (d) an implication or admission by the Debtors that such claim is payable pursuant to this Order.

14. The rights of the Committee (a) to seek additional disclosures in consultation with the Debtors and (b) to challenge, after obtaining requisite standing, any payment or assumption made outside the scope of this Order by the Debtors, respectively, are expressly reserved and shall not be prejudiced by entry of the Interim Order or this Order.

15. Any Bankruptcy Rule (including, but not limited to, Bankruptcy Rule 6004(h)) or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective immediately and enforceable upon its entry.

16. The contents of the Motion and the notice procedures set forth therein are good and sufficient notice and satisfy the Bankruptcy Rules and the Local Bankruptcy Rules for the Southern District of New York, and no other or further notice of the Motion or the entry of this Order shall be required.

17. The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Order.

18. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and enforcement of this Order.

Dated: New York, New York
_____, 2020

UNITED STATES BANKRUPTCY JUDGE