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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.,
Debtors.¹**

Chapter 11

Case No. 20-11563 (SCC)

(Jointly Administered)

**NOTICE OF HEARING ON THE MOTION OF THE DEBTORS FOR ENTRY OF AN
ORDER (I) AUTHORIZING THE DEBTORS TO MAKE PAYMENTS TO CERTAIN
NON-INSIDER, FLIGHT ATTENDANTS AND (II) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that on October 14, 2020, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Pay Severance to Certain Non-Insider, Flight Attendants and (II) Granting Related Relief* (the “**Motion**”). A hearing on the Motion will be held on **October 27, 2020, at 11:00 a.m. (Prevailing Eastern Time)** (the “**Hearing**”) before the Honorable Judge Shelley C. Chapman, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”), or at such other time as the

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.

Bankruptcy Court may determine.

PLEASE TAKE FURTHER NOTICE that, in accordance with General Order M-543, dated March 20, 2020 (Morris, C.J.) (“**General Order M-543**”),² the Hearing will be conducted telephonically. Any parties wishing to participate must do so telephonically by making arrangements through CourtSolutions, LLC (www.court-solutions.com). Instructions to register for CourtSolutions, LLC are attached to General Order M-543.

PLEASE TAKE FURTHER NOTICE that copies of the Motion may be obtained free of charge by visiting the website of Epiq Corporate Restructuring, LLC at <https://dm.epiq11.com/aeromexico>. You may also obtain copies of any pleadings by visiting the Bankruptcy Court’s website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

PLEASE TAKE FURTHER NOTICE that the Hearing may be continued or adjourned thereafter from time to time without further notice other than an announcement of the adjourned date or dates at the Hearing or a later hearing. The Debtors will file an agenda before the Hearing, which may modify or supplement the motions to be heard at the Hearing.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion shall be in writing, shall comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, shall be filed with the Bankruptcy Court (a) by attorneys practicing in the Bankruptcy Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov), and (b) by all other parties in interest, in accordance with the customary

² A copy of the General Order M-543 can be obtained by visiting <http://www.nysb.uscourts.gov/news/general-order-m-543-court-operations-under-exigent-circumstances-created-covid-19>.

practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and shall be served in accordance with General Order M-399 and the *Order Establishing Certain Notice, Case Management, and Administrative Procedures*, entered on July 8, 2020 [D.I. 79], so as to be filed and received no later than **Friday, October 23, 2020 at 12:00 p.m. (Prevailing Eastern Time)** (the “**Objection Deadline**”).

PLEASE TAKE FURTHER NOTICE that any objecting parties are required to telephonically attend the Hearing, and failure to appear may result in relief being granted upon default.

PLEASE TAKE FURTHER NOTICE that if no Objections are timely filed and served with respect to the Motion, the Debtors may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be entered without further notice or opportunity to be heard.

Dated: October 14, 2020
New York, New York

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**GRUPO AEROMÉXICO, S.A.B. de C.V., et
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Chapter 11

Case No. 20-11563 (SCC)

(Jointly Administered)

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER
(I) AUTHORIZING THE DEBTORS TO MAKE PAYMENTS TO CERTAIN
NON-INSIDER, FLIGHT ATTENDANTS AND (II) GRANTING RELATED RELIEF**

Grupo Aeroméxico, S.A.B. de C.V. (“**Grupo Aeroméxico**”) and its affiliates that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”; the Debtors collectively with their direct and indirect non-Debtor subsidiaries, the “**Company**” or “**Aeroméxico**”) hereby move (this “**Motion**”) this Court for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Order**”), granting the relief described below. In further support of the Motion, the Debtors contemporaneously submit (a) the *Declaration of Ricardo Javier Sánchez Baker in Support of the Motion of the Debtors for Entry of an Order (I) Authorizing*

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 (“**Aerovías**”); Aerolitoral, S.A. de C.V. 217315 (“**Aerolitoral**”); 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.

the Debtors to Make Payments to Certain Non-Insider, Flight Attendants and (II) Granting Related Relief, attached hereto as **Exhibit B**, and (b) the *Declaration of Alejandro Sainz in Support of the Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Make Payments to Certain Non-Insider, Flight Attendants and (II) Granting Related Relief*, attached hereto as **Exhibit C**, and further represent as follows:

Jurisdiction and Venue

1. The Court has jurisdiction to consider this matter 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.). This is a core proceeding pursuant to 28 U.S.C. § 157(b) and, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedures (the “**Bankruptcy Rules**”), the Debtors consent to entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter a final order or judgment consistent with Article III of the United States Constitution. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. On June 30, 2020 (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case (these “**Chapter 11 Cases**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On July 13, 2020, the United States Trustee for the Southern District of New York appointed a statutory committee of unsecured creditors (the “**Committee**”) in these Chapter 11 Cases. No trustee or examiner has been appointed in these Chapter 11 Cases.

3. These Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* [ECF No. 30] entered

by the Court in each of the Chapter 11 Cases. Additional information about the Debtors' businesses and the events leading up to the Petition Date can be found in the *Declaration of Ricardo Javier Sanchez Baker in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [ECF No. 20].

4. As part of the Debtors' first-day relief, on July 2, 2020 the Court granted the *Motion of Debtors for an Order Authorizing (I) Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits and Other Compensation and (B) Maintain Employee Benefits Programs and Pay Related Administrative Obligations, (II) Employees and Retirees to Proceed with Outstanding workers' Compensation Claims and (III) Financial Institutions to Honor and Process Related Checks and Transfers* (the "**Wages Motion**") on an interim basis [ECF No. 48]. Thereafter, on July 30, 2020 the Court entered an order (the "**Final Wages Order**") approving the Wages Motion on final basis [ECF No. 216]. As part of this relief, the Debtors are permitted to, among other things, pay severance to non-insider employees that is earned in the ordinary course of business by such employees and as is required under Mexican law.²

The Flight Attendant Severance Scheme

5. Aeroméxico is the leading airline in Mexico and, entering 2020, was sufficiently capitalized to continue its operational initiatives and take advantage of its strategic partnerships. However, due to the worldwide travel restrictions and a collapse in consumer demand due to the effects of the COVID-19 pandemic, the Debtors' have had to quickly pivot and modify their

² Pursuant to the Wages Motion, the Debtors have "certain obligations under their severance programs (the '**Severance Obligations**')," which include, among other things, severance payable due to Mexican labor laws. And therein, the Debtors sought "authority, but not direction, to continue the Severance Obligations and make any payments attribute to the Severance Obligations . . . in the ordinary course of business." Moreover, pursuant to the Final Wages Order, the "Debtors are authorized, but not directed to, in their reasonable discretion, continue to pay and honor their obligations arising under or related to their plans, practices, programs and policies for their Employees and Retirees as set forth in the Motion, including without limitation, those giving rise to the Prepetition Employee Obligations." And the Prepetition Employee Obligations include, among other things, the Severance Obligations.

operations and business plans for a post-COVID world. This involves right-sizing the Debtors' workforce for a global aviation market that looks significantly different, at least in the short-term, than it did just a year ago. And while the Debtors have attempted a variety of strategies, including company-wide salary reductions for a time, more definitive and sustainable savings are now necessary. The first of multiple steps towards achieving these more sustainable savings through right-sizing the Debtors' workforce includes implementing the Severance Scheme (as defined herein).

6. As a market-leading, global airline the Debtors operate a network of domestic and international flights that relies on high-quality, best-in-class employees. One important subset of the Debtors' employees are their flight attendants. The Debtors' flight attendants interact with the Debtors' customers on a constant basis. With this context in mind, the Debtors have spent the past several weeks negotiating with its two flight attendant unions, the Aeroméxico ASSA Union (the "**AM Union**") and the Aeroméxico Connect STIA Union (the "**Connect Union**," and together with the AM Union, the "**Flight Attendant Unions**"), on how to effectively and responsibly reorganize the Debtors' staff of flight attendants, without unnecessarily interfering with customer service.

7. In close consultation with the Flight Attendant Unions, and in accordance with the requirements of the Flight Attendant Unions' collective bargaining agreements (the "**AM Union CBA**" or the "**Connect Union CBA**," as applicable, and together, the "**CBAs**") and Mexican labor laws, the Debtors have negotiated agreements (the "**Severance Agreements**") with the Flight Attendant Unions on how to reduce their flight attendant staff to a level that is appropriate for a post-COVID world. The Severance Agreements provide that up to 766 flight attendants (the "**Total Severed Flight Attendants**") will be laid off in 2020. Of the Total Severed Flight

Attendants, up to 616 will be AM Union flight attendants and up to 150 will be AM Connect Union flight attendants.³

8. The Severance Agreements provide for, in the aggregate, approximately \$6,200,000 in severance benefits to laid-off flights attendants. On average, an AM Union affiliated flight attendant will receive approximately \$8,279 in severance and a Connect Union affiliated flight attendant will receive approximately \$7,333 in severance. Notwithstanding these averages, a flight attendant's specific amount of severance will depend on their level of seniority and union affiliation.⁴

9. For example, AM Union flight attendants with less than nine (9) years of seniority (the "**Junior AM Flight Attendants**") will receive (the "**Junior AM Union Severance Scheme**") only what is required by the AM Union CBA, which is equal to (a) four (4) months of pay plus (b) 20 days of pay (base salary plus cash benefits) for every year they worked for the Company (the "**Defined Severance Amount**"). AM Union flight attendants with greater than nine (9) years of seniority (the "**Senior AM Union Flight Attendants**," and together with the Junior AM Union Flight Attendants, the "**AM Union Flight Attendants**") will receive the Defined Severance Amount and twelve (12) days of base salary (exclusive of benefits) per year they worked for the Company (as long as they have been working for the Company for more than 15 years) plus a buy-out amount (the "**Buy-Out**") equal to one month of base salary (the "**Senior AM Union Severance Scheme**" and together with the Junior AM Union Severance Scheme, the "**AM Union Severance**

³ The exact number of Junior AM Flight Attendants and Senior AM Flight Attendants that will make up the 616 of AM Union employees that will be laid-off depends on the number of Senior AM Flight Attendants that opt in to the Severance Scheme.

⁴ The maximum amount a Flight Attendant would be entitled to receive under the Severance Scheme is approximately \$27,000, which is inclusive of the Buy-Out (as defined herein), and the minimum amount would be approximately \$3,300.

Scheme”). Whereas, the Connect Union flight attendants (the “**Connect Union Flight Attendants**,” and together with the AM Union Flight Attendants, the “**Flight Attendants**”) will only receive the Defined Severance Amount and twelve (12) days of base salary (exclusive of benefits) per year they worked for the Company (as long as they have been working for the Company for more than 15 years) (the “**Connect Union Severance Scheme**,” and together with the AM Union Severance Schemes, the “**Severance Scheme**”).

10. The Severance Scheme is almost entirely a product of Mexican labor law and the CBAs. For example, normally the Mexican Federal Labor Law (*Ley Federal del Trabajo*) requires that whenever a full-time employee is laid-off, she or he shall receive (a) three (3) months of pay plus (b) 20 days of pay (base salary plus cash benefits) for every year they worked for an employer and (c) twelve (12) days of base salary (exclusive of benefits) per year they worked for an employer (as long as they have been working for the employer for more than 15 years) ((a)-(c) collectively, the “**Statutory Severance**”). However, pursuant to the AM Union CBA, the Debtors must provide the AM Union Flight Attendants with four (4) months of severance instead of three (3) months. And while the Connect Union CBA does not explicitly require anything beyond the Statutory Severance, the Debtors have historically treated the Connect Union Flight Attendants the same as the AM Union Flight Attendants, which they intend and are obligated to do here since such severance has become an accrued right of the Connect Union Flight Attendants under applicable Mexican law.⁵ Therefore, with the exception of the Buy-Out Amount, the Severance Scheme

⁵ Since the Debtors have historically treated both the AM Union Flight Attendants and the Connect Union Flight Attendants the same, and the Company’s common practice has historically been to pay all Flight Attendants four (4) months of severance instead of three (3), such severance right has now become an “acquired right” for the Connect Union Flight Attendants, which cannot be waived by the employees nor breached by the Company, as provided in Article 33 of the Mexican Federal Labor Law.

represents the minimum amounts of severance the Debtors can pay their Flight Attendants without being in breach of Mexican labor laws and/or their CBAs.

11. As noted, the Debtors are only permitted to lay-off a certain number of Flight Attendants (i.e., 766) pursuant to the Severance Agreements. Absent the provisions of the Buy-Out, the Flight Attendants would normally be severed according to a last-in-first-out system, meaning the newest Flight Attendant would be the first one severed (the “**LIFO System**”) and so forth. However, this type of system does not inure the greatest benefit to the Debtors’ estates. Instead, a system that incentivizes Senior AM Union Flight Attendants to make up a greater proportion of the Total Severed Flight Attendants does, because, on average, the Senior AM Union Flight Attendants earn more than the Junior AM Union Flight Attendants. Therefore, if a larger portion of the Total Severed Flight Attendants are Senior AM Union Flight Attendants rather than Junior AM Flight Attendants, then the Debtors will achieve greater total savings. Therefore, the Debtors have determined that the Buy-Out could help increase the number of Senior AM Union Flight Attendants that opt-into the set of the Total Severed Flight Attendants.⁶

12. Furthermore, the presence of the Buy-Out within the larger framework of the Severance Scheme provides a distinct benefit to the Debtors’ estates. Normally, Mexican labor laws and the CBAs require that the LIFO System apply, so the most senior, and highest earning, Flights Attendants remain employed by the Debtors. However, the Buy-Out seeks to minimize the applicability of the LIFO System by incentivizing Flight Attendants that would not otherwise be subject to lay-offs at first (the Senior AM Union Flight Attendants) to opt-into the pool of Total Severed Flight Attendants—and hopefully make up a larger proportion of the Flight Attendants

⁶ While the Debtors seek to have a greater proportion of the Total Severed Flight Attendants be Senior AM Union Flight Attendants rather than Junior AM Union Flight Attendants, Senior AM Union Flight Attendants cannot make up more than 80% of the Total Severed Flight Attendants.

therein. This way the Debtors are able to capture a larger set of savings than would normally be the case under a strict LIFO System. And these benefits are significant.

13. The Severance Scheme, of which the Buy-Out is an integral part, is estimated to save the Debtors up to approximately \$33,000,000 annually or \$2,700,000 monthly. And while the Buy-Out is in addition to what is ordinary course severance and obligated under Mexican labor law and the CBAs, it will only cost (the **“Buy-Out Cost”**) the Debtors at most approximately \$400,000 to implement. Yet, the Buy-Out Cost is more than fully mitigated by the approximate \$4,700,000 of incremental annual savings that the Buy-Out will provide to the Debtors if taken by the estimated number of Senior AM Union Flight Attendants.⁷ Therefore, while the Severance Scheme (including the Buy-Out) may cost \$6,200,000 upfront, it will pay for itself in less than three months in the form of permanent savings.

Relief Requested

14. Pursuant to this Motion, the Debtors request that the Court enter the Order, pursuant to sections 105(a), 363(b), 363(c) and 503(c) of the Bankruptcy Code, authorizing the Debtors to pay severance to the Flight Attendants in the manner set forth herein. This relief is compelled by the unique facts and circumstances of these Chapter 11 Cases, and in particular the benefits and considerations related to maintaining the Debtors’ uninterrupted ability to access a pool of talented flight-attendants for its domestic and international flights.

⁷ In short, if the Buy-Out is not implemented at all, the estimated annual savings of up to approximately \$33,000,000 will decrease by approximately \$4,700,000. These estimates are calculated with the assumption that 46% of the Total Severed Flight Attendants will be Junior AM Union Flight Attendants or Connect Union Flight Attendants, and 54% will be Senior AM Union Flight Attendants.

15. By this Motion, and pursuant to Bankruptcy Code sections 105(a), 363(c) and Rule 9013-1 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”), the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A**.

Basis for Relief

A. The Buy-Out Is a Reasonable Exercise of the Debtors’ Business Judgment

16. As noted, the Debtors seek to offer its Senior AM Flight Attendants a package that includes (a) the Buy-Out and (b) the Defined Severance Amount, or together the Senior AM Flight Attendant Severance Scheme. The purpose of this scheme is to incentivize Senior AM Flight Attendants to voluntarily elect to be among the set of Total Severed Flight Attendants, which for the reasons noted above, can provide important benefits to the Debtors’ estates. Nonetheless, given that the Buy-Out is beyond what has historically been ordinary course severance for the Debtors, the Debtors through this Motion respectfully request approval of the Buy-Out.

17. Courts routinely hold that transactions should be approved under section 363(b) when they are supported by the reasonable judgment of the Debtors’ management. Section 363(b) is a broad provision, vesting significant discretion in the bankruptcy court. The Second Circuit has adopted a flexible approach to the application of section 363(b). *See Comm. Of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.3d 1063 (2d Cir. 1983) (“To further the purposes of Chapter 11 reorganization, a bankruptcy judge must have substantial freedom to tailor [her] orders to meet differing circumstances. This is exactly the result a liberal reading of § 363(b) will achieve”). The Second Circuit standard is well-establish by case law: a debtor’s decision to sell or use assets outside the ordinary course of business must be based upon sound business judgment. *See, e.g., Licensing by Paolo, Inc. v. Sinatra (In re Gucci)*, 126 F.3d 380, 387 (2d Cir. 1997); *Official Comm. Of Unsecured Creditors of LTV Aerospace and Defense Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141 (2d Cir. 1992); *In re MF Glob. Inc.*, 535 B.R. 596, 605

(Bankr. S.D.N.Y. 2015); *In re Genco Shipping & Trading, Ltd.*, 509 B.R. 455, 464 (Bankr. S.D.N.Y. 2014) (the “[s]tandard used for judicial approval of use of estate property outside the ordinary course of business is business judgment of debtor”); *see also Off. Comm. Of Subordinated Bondholders v. Integrated Resources Inc. (In re Integrated Resources Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (law vests the debtor’s decision to use property outside of the ordinary course with a strong “presumption that in making a business decision, the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company”).

18. Section 105(a) of the Bankruptcy Code further provides that a court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Pursuant to section 105(a), bankruptcy courts have broad equitable powers. *In re Prudential Lines Inc.*, 928 F.2d 565 (2d Cir.), *cert. denied*, 502 U.S. 821, 112 S.Ct. 82, 116 L. Ed. 2d 55 (1991). *See, e.g., Momentum Mfg. Corp. v. Employee Creditors Comm. (In re Momentum Mfg. Corp.)*, 25 F.3d 1132, 1136 (2d Cir. 1994) (“It is well settled that bankruptcy courts are courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process”).

19. The Debtors’ respectfully submit that approval of the Buy-Out is warranted under sections 363(b) and 105(a) of the Bankruptcy Code. The Buy-Out is critical to the overall Severance Scheme because such additional severance will ensure that the Debtors are able to maximize the number of Senior AM Union Flight Attendants that will opt-into the set of Total Severed Flight Attendants. This would lead to approximately of \$4,700,000 of savings—more than ten times the cost of the Buy-Out—if a sufficient proportion of Senior AM Union Flight

Attendants opt-into the Severance Scheme in contravention of the otherwise prevailing LIFO System.

B. The Payment of Defined Severance Amount to the Flight Attendants Is an Allowed Administrative Expense

20. The severance payments to the Flights Attendants are also likely an administrative expense that must be paid in full during these Chapter 11 Cases. In this Circuit, severance pay “is not earned from day to day and does not ‘accrue’ so that a proportionate part is payable under any circumstances . . . [instead,] severance pay is compensation for termination of employment and since the employment of the[] claimants was terminated as an incident of the administration of the bankruptcy’s estate, severance pay [is] an expense of administration and is entitled to priority as such an expense.” *Straus-Duparquet v. Local Union No. 3, Int’l Brotherhood of Electrical Worker*, 386 F.2d 649, 650-651 (2d Cir. 1967); *see also Amalgamated Insurance Fund v. Kessler*, 55 B.R. 735, 740 (S.D.N.Y. 1985) (“[w]hen termination occurs during the bankruptcy proceeding, claims for severance pay are entitled to administrative expense status”); *In re Golden Distributors*, 152 B.R. 35, 36 (S.D.N.Y. 1992) (finding that the severance sought was administrative even if the “service [] was primarily pre-petition”); *In re Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey*, 160 B.R. 882, 890 (Bankr. S.D.N.Y. 1993) (“[i]n the Second Circuit, severance pay arising from postpetition termination of an employee is generally entitled to an administrative priority, even if severance pay is calculated according to the length of prepetition employment”); *In re Bethlehem Steel Corp.* 479 F.3d 167, 175 (2d Cir. 2007) (if the severance “payment is a new benefit earned at termination . . . [it] is an administrative expense of the debtor-in-possession”). In short, severance pay that is earned at termination and is meant to compensate for the hardship of an employee’s termination receives administrative priority.

21. The severance plan at issue in *Straus-Duparquet* provided “employees who have been in the employ of the company one year but under three years, one week’s severance pay. To those over three years, two week’s severance pay, provided, however, they were discharged through no fault of their own.” *Straus-Duparquet*, 386 F.2d at 650. Here, the Severance Scheme (excluding the Buy-Out) follows a similar payment structure and rationale. The Severance Scheme is similarly based-off of the employee’s seniority, and the severance they will receive is (a) a function of the Debtors’ having to operate and successfully emerge from bankruptcy and (b) meant to compensate for the employee’s hardship that they may endure due to their termination—it is not a benefit that is earned or accrues, rather it is almost exclusively a statutory right. Therefore, given the similarity between the Severance Scheme and the debtors’ severance plan in *Strauss-Duparquet*, the Severance Scheme is also likely severance that must be paid during the pendency of these Chapter 11 Cases.

C. The Severance Scheme Complies with Section 503(c) of the Bankruptcy Code

22. Section 503(c) of the Bankruptcy Code has three key provisions: (a) a general prohibition against retention plans for insiders; (b) limitations on severance payments for insiders; and (c) standards governing other transfers to certain employees, among others, that are outside of the ordinary course of business. See 11 U.S.C. § 503(c). The Debtors submit that the first two subsections of section 503(c) are inapplicable to the requested relief herein because the Flight Attendants are, without question, not insiders of the Debtors. First, the Flight Attendants are statutorily not insiders. Section 101(31)(B) of the Bankruptcy Code defines an “insider” of a corporate debtor as someone who is a “(i) director the debtor, (ii) officer of the debtor, (iii) person in control of the debtor, (iv) partnership in which the debtor is a general partner; (v) general partner of the debtor; or (vi) relative of a general partner, director, officer, or person in control of the

debtor.” No Flight Attendant serves as an officer or director of the debtor, no Flight Attendant is otherwise in control of the debtor (as more clearly outlined below) and no Flight Attendant is a relative of one of the foregoing.

23. Second, the Flight Attendants are not insiders as the term is used under applicable case law. The Flight Attendants do not exercise control or authority over the Debtors’ affairs, business operations as a whole, dictate the Debtors’ corporate policies, sit on the Debtors’ board of directors or a committee thereto, do not report to the same or attend meetings of the same, and similarly do not report to the Debtors’ CEO or CFO. *See In re Borders Grp., Inc.*, 453 B.R. 459, 469 (Bankr. S.D.N.Y. 2011) (an insider employee must “exercise sufficient authority over the debtor so as to unqualifiably dictate corporate policy and the disposition of corporate assets.”) (internal citations omitted); *see also In re Dana Corp.*, 351 B.R. 96, 103 (Bankr. S.D.N.Y. 2006) (insider status depends on the extent to which an individual is in control of a debtor); *In re LSC Communications, Inc. et. al*, No. 20-10950 (Bankr. S.D.N.Y. June, 2020) (noting that one of the talismans of whether or not someone is an insider is whether they are a member of the debtor’s board or a committee thereto). And while an employee’s title is not dispositive of whether that person is an insider, the Flight Attendants do not even have titles that would otherwise indicate that they may be insiders. *See, e.g., In re Glob. Aviation Holdings, Inc.*, 478 B.R. 142, 144 (Bankr. E.D.N.Y. 2012) (“[t]he label an employer choses to attach to a position is not dispositive for purposes of insider analysis”); *see also In re Border Grp. Inc.*, 453 B.R. at 469 (an “individual’s title, by itself, is insufficient to establish that an individual is a director or officer”). Their working and/or formal titles are either flight attendant (*sobrecargo*) or purser (*ejecutivo de servicio a bordo*).

24. Section 503(c)(3) of the Bankruptcy Code, however, applies both to insider and non-insider employees and prohibits transfers “outside of the ordinary course” that are not justified by the “facts and circumstances” of the case. 11 U.S.C. § 503(c)(3). The standard for approving payments under subsection (c)(3) is equivalent to the business judgment standard for approving transactions under section 363(b)(1) of the Bankruptcy Code. *See In re Dana Corp.*, 358 B.R. 567, 576 (Bankr. S.D.N.Y. 2006), *citing In re Nobex Corp.*, 2006 WL 4063024; 2006 Bankr. LEXIS 417 (Bankr. D. Del. Jan. 19, 2006) (section 503(c)(3) of the Bankruptcy Code is nothing more than a reiteration of the standard under section 363 of the Bankruptcy Code). Moreover, even if a higher standard than the business judgment rule were to apply, and this Court had to make its own determination that the Severance Scheme and Buy-Out will serve the interests of creditors and the Debtors’ estates, it is clear that the Severance Scheme and Buy-Out will do just that. As set forth above, the implementation of the Severance Scheme has a sound business purpose—to right-size the Debtors’ staff of Flight Attendants for the post-COVID market at lower average cost per Flight Attendant, which could save the Debtors’ estates approximately \$33,000,000 annually. This equates to over five (5) dollars in savings for every dollar spent. And, if the Buy-Out is taken up by enough Senior AM Union Flight Attendants, then the Buy-Outs could provide an even greater benefit on a dollar-for-dollar basis—for every dollar spent on the Buy-Outs, the Debtors could save approximately ten (10) dollars. Given the foregoing, the Debtors’ respectfully submit that to the extent 503(c)(3) applies, the Severance Scheme amply satisfies section 503(c)(3) of the Bankruptcy Code because its implementation has a sound business purpose that is more than justified by the facts and circumstances of the Chapter 11 Cases.

Notice

25. Notice of this Motion will be provided as to (a) the entities on the Master Service List (as defined in the Case Management Order and available on the Debtors' case website at <https://dm.epiq11.com/aeromexico>), (b) counsel to the Flight Attendant Unions, (c) counsel to the Committee, and (d) counsel to Apollo Management Holdings, L.P. The Debtors respectfully submit that no further notice is required.

No Previous Request

26. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

Dated: New York, New York
October 14, 2020

By: /s/ Timothy Graulich
450 Lexington Avenue
New York, New York 10017
Tel: (212) 450-4000
Fax: (212) 607-7983
Marshall S. Huebner
Timothy Graulich
James I. McClammy
Stephen D. Piraino (admitted *pro hac vice*)
Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Order

**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 (SCC)

(Jointly Administered)

**ORDER (I) AUTHORIZING THE DEBTORS TO MAKE PAYMENTS TO CERTAIN
NON-INSIDER, FLIGHT ATTENDANTS AND (II) GRANTING RELATED RELIEF**

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**”), pursuant to sections 105(a) and 365(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) and rule 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for an order (this “**Order**”) authorizing the Debtors to pay severance and the Buy-Out to certain non-insider, Flight Attendants; and the Court having jurisdiction to decide the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157(a)-(b) and 1334(b) and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding pursuant to 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 relief requested in the Motion having been provided; such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having held a hearing to consider the relief requested in the Motion on

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.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

October 27, 2020 (the “**Hearing**”); and upon the record of the Hearing, and upon all of the proceedings had before the Court; and after due deliberation the Court having determined that the legal and factual bases set forth in the Motion establish good and sufficient cause for the relief granted herein; and is in the best interests of the Debtors, their estates, their creditors, and all parties in interest,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as extent set forth herein.
2. The Debtors are authorized, but not directed, to implement the Severance Scheme, which for the avoidance of doubt, includes payment of the Buy-Out, as described in the Motion.
3. The Debtors are authorized to pay approximately \$6,200,000 in severance benefits, which for the avoidance of doubt includes the Buy-Out Cost, to the Flight Attendants.
4. Nothing in this Order shall be deemed to authorize the payment of any severance payments to insiders of the Debtors or that are otherwise subject to sections 503(c)(1) or 503(c)(2) of the Bankruptcy Code.
5. Nothing contained in the Motion or this Order, nor any payment made pursuant to the authority granted by this Order is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtor, (ii) a waiver of any of the Debtor’s or any appropriate party in interest’s rights to dispute the amount of, basis of, or validity of any claim against the Debtor, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption or rejection of any agreement, contract, lease, program or policy between the Debtors and any third party under section 365 of the Bankruptcy Code. Furthermore, any payment made by the Debtors pursuant to this Order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of any of the Debtors’ rights to dispute such claim.

6. 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 Rules, and no other or further notice of the Motion or the entry of this Order shall be required.

7. Nothing in this Order shall be deemed to constitute (i) a grant of third-party beneficiary status or bestowal of any additional rights on any third party or (ii) a waiver of any rights, claims or defenses of the Debtors.

8. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

9. The provisions and effect of this Order shall survive the conversion, dismissal and/or closing of these Chapter 11 Cases, appointment of a trustee herein, confirmation of a plan of reorganization, and/or the substantive consolidation of these Chapter 11 Cases with any other case or cases.

10. Notwithstanding the possible applicability of Bankruptcy rule 6004(h) or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

11. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2020
New York, New York

THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Sanchez Declaration

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 701-5800
Marshall S. Huebner
Timothy Graulich
James I. McClammy
Stephen D. Piraino (admitted *pro hac vice*)

*Counsel to the Debtors
and Debtors in Possession*

**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 (SCC)

(Jointly Administered)

**DECLARATION OF RICARDO JAVIER SÁNCHEZ BAKER IN SUPPORT OF THE
MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER (I) AUTHORIZING THE
DEBTORS TO MAKE PAYMENTS TO CERTAIN NON-INSIDER, FLIGHT
ATTENDANTS AND (II) GRANTING RELATED RELIEF**

I, Ricardo Javier Sánchez Baker, hereby declare that the following is true to the best of my knowledge, information and belief:

1. I am the Chief Financial Officer of Grupo Aeroméxico, S.A.B. de C.V. (“**Grupo Aeroméxico**,”) and its affiliates that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”; the Debtors collectively with their direct and indirect non-Debtor subsidiaries, the “**Company**” or “**Aeroméxico**”). I have held several other positions at the

¹ The Debtors in these cases, along with the last four digits of each Debtor’s registration number in the applicable jurisdiction, are as follows: Grupo Aeroméxico, S.A.B. de C.V. 286676; Aerovías de Mexico, 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.

Company since 2006, including serving as advisor to the Chief Executive Officer and Director of Revenue Management. I have been the chairman of the board of directors of the SABRE Corporation, a member of the SEAT Technical Committee, and a member of the Aeromexpress CECAM and PLM boards of directors. I have held various positions within the Federal Public Administration (*Administración Pública Federal*), including deputy director general of public debt for the Ministry of Finance and Public Credit on 2003 and 2005. I hold a bachelor's degree in economics from the Universidad Iberoamericana, a diploma in finance from Instituto Tecnológico Autónomo de México, and master's and doctorate degrees in economics from the University of California, Los Angeles. I am familiar with the day-to-day operations, business, and financial affairs of the Debtors.

2. I submitted the *Declaration of Ricardo Javier Sánchez Baker in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [ECF No. 20] (the “**Original Sánchez Declaration**”). I submit this declaration (the “**Declaration**”) in support of the *Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Pay Severance to Certain Non-Insider, Flight Attendants and (II) Granting Related Relief* (the “**Motion**”)² filed contemporaneously herewith. I have reviewed the Motion or have otherwise had its contents explained to me, and the Motion is to the best of my knowledge accurate.

3. Except as otherwise indicated, all facts set forth in the Motion and the Declaration are based upon my personal knowledge, my review of relevant documents, information provided to me by employees working under my supervision, or my opinion based upon experience, knowledge, and information concerning the operations of the Debtors and the aviation industry as

²Capitalized terms used but not defined herein shall have the meanings set forth in the Motion.

a whole. If called upon to testify, I would testify competently to the facts set forth herein and in the Motion.

4. Aeroméxico is the leading airline in Mexico and, entering 2020, was sufficiently capitalized to continue its operational initiatives and take advantage of its strategic partnerships. However, due to the worldwide travel restrictions and a collapse in consumer demand due to the effects of the COVID-19 pandemic, the Debtors' have had to quickly pivot and modify their operations and business plans for a post-COVID world. This involves right-sizing the Debtors' workforce for a global aviation market that looks significantly different, at least in the short-term, than it did just a year ago. And while the Debtors have attempted a variety of strategies, including company-wide salary reductions for a time, more definitive and sustainable savings are now necessary. The first of multiple steps towards achieving these more sustainable savings through right-sizing the Debtors' workforce includes implementing the Severance Scheme (as defined herein).

5. As a market-leading, global airline the Debtors operate a network of domestic and international flights that relies on high-quality, best-in-class employees. One important subset of the Debtors' employees are their flight attendants. The Debtors' flight attendants interact with the Debtors' customers on a constant basis. With this context in mind, the Debtors have spent the past several weeks negotiating with its two flight attendant unions, the Aeroméxico ASSA Union (the "**AM Union**") and the Aeroméxico Connect STIA Union (the "**Connect Union**," and together with the AM Union, the "**Flight Attendant Unions**"), on how to effectively and responsibly reorganize the Debtors' staff of flight attendants, without unnecessarily interfering with customer service.

6. In close consultation with the Flight Attendant Unions, and in accordance with the requirements of the Flight Attendant Unions' collective bargaining agreements and Mexican labor laws, the Debtors have negotiated certain agreements with the Flight Attendant Unions on how to reduce their flight attendant staff to a level that is appropriate for a post-COVID world. The Severance Agreements provide that up to 766 flight attendants (the "**Total Severed Flight Attendants**") will be laid off in 2020. Of the Total Severed Flight Attendants, up to 616 shall be AM Union flight attendants and up to 150 shall be AM Connect Union flight attendants.³

7. The Severance Agreements provide for, in aggregate, approximately \$6,200,000 in severance benefits to laid-off flight attendants. On average, an AM Union affiliated flight attendant will receive approximately \$8,279 in severance and a Connect Union affiliated flight attendant will receive approximately \$7,333 in severance. Notwithstanding these averages, a flight attendant's specific amount of severance will depend on their level of seniority and union affiliation.⁴

8. For example, the Junior AM Union Flight Attendants will receive only what is required by the AM Union CBA, which is equal to (i) four (4) months of pay plus (ii) 20 days of pay (base salary plus cash benefits) for every year they worked for the Company. The Senior AM Union Flight Attendants will receive the Defined Severance Amount and twelve (12) days of base salary (exclusive of benefits) per year they worked for the Company (as long as they have been working for the Company for more than 15 years) plus a buy-out amount (the "**Buy-Out**") equal to one month of base salary. Whereas, the Connect Union Flight Attendants will only receive the

³ The exact number of Junior AM Flight Attendants and Senior AM Flight Attendants that will make up the 616 of AM Union employees that will be laid-off depends on the number of Senior AM Flight Attendants that opt in to the Severance Scheme.

⁴ The maximum amount a Flight Attendant would be entitled to receive under the Severance Scheme is approximately \$27,000, which is inclusive of the Buy-Out, and the minimum amount would be approximately \$3,300.

Defined Severance Amount and twelve (12) days of base salary (exclusive of benefits) per year they worked for the Company (as long as they have been working for the Company for more than 15 years).

9. As noted, the Debtors are only permitted to lay-off a certain number of Flight Attendants (i.e., 766) pursuant to the Severance Agreements. Absent the provisions of the Buy-Out, the Flight Attendants would normally be severed according to a last-in-first-out system, meaning the newest Flight Attendant would be the first one severed (the “**LIFO System**”) and so forth. However, this type of system does not inure the greatest benefit to the Debtors’ estates. Instead, a system that incentivizes Senior AM Union Flight Attendants to make up a greater proportion of the Total Severed Flight Attendants does, because, on average, the Senior AM Union Flight Attendants earn more than the Junior AM Union Flight Attendants. Therefore, if a larger portion of the Total Severed Flight Attendants are Senior AM Union Flight Attendants rather than Junior AM Flight Attendants, then the Debtors will achieve greater total savings. Therefore, the Debtors have determined that the Buy-Out could help increase the number of Senior AM Union Flight Attendants that opt-into the set of the Total Severed Flight Attendants.⁵

10. Furthermore, the presence of the Buy-Out within the larger framework of the Severance Scheme provides a distinct benefit to the Debtors’ estates. Normally, Mexican labor laws and the CBAs require that the LIFO System apply, so the most senior, and highest earning, Flights Attendants remain employed by the Debtors. However, the Buy-Out seeks to minimize the applicability of the LIFO System by incentivizing Flight Attendants that would not otherwise be subject to lay-offs at first (i.e., the Senior AM Union Flight Attendants) to opt-into the pool of

⁵ While the Debtors seek to have a greater proportion of the Total Severed Flight Attendants be Senior AM Union Flight Attendants rather than Junior AM Union Flight Attendants, Senior AM Union Flight Attendants cannot make up more than 80% of the Total Severed Flight Attendants.

Total Severed Flight Attendants—and hopefully make up a larger proportion of the Flight Attendants therein. This way the Debtors are able to capture a larger set of savings than would normally be the case under a strict LIFO System. And these benefits are significant.

11. The Severance Scheme, of which the Buy-Out is an integral part, is estimated to save the Debtors up to approximately \$33,000,000 annually or \$2,700,000 monthly. And while the Buy-Out is in addition to what is ordinary course severance and obligated under Mexican labor law and the CBAs, it will only cost (the “**Buy-Out Cost**”) the Debtors at most approximately \$400,000 to implement. Yet, the Buy-Out Cost is more than fully mitigated by the approximate \$4,700,000 of incremental annual savings that the Buy-Out will provide to the Debtors if taken by the estimated number of Senior AM Union Flight Attendants.⁶ Therefore, while the Severance Scheme (including the Buy-Out) may cost \$6,200,000 upfront, it will pay for itself in less than three months in the form of permanent savings.

12. Given the significant benefits financial and productivity benefits that the Severance Scheme, and in particular the Buy-Out, are estimated to provide, the Severance Scheme provides distinct benefits to the Debtors. Moreover, the success of a severance scheme that right-sizes the Debtors’ staff of flight attendants is critical to the implementation of the Debtors’ business plan. It is for these reasons that the implementation of the Severance Scheme, and in particular the Buy-Out, is in the best interests of the Debtors.

13. In addition to the foregoing, while the Flight Attendants provide important contributions to the Company, they do not participate in running the Company’s operations. They

⁶ In short, if the Buy-Out is not implemented at all, the estimated annual savings of up to approximately \$33,000,000 will decrease by approximately \$4,700,000. These estimates are calculated with the assumption that 46% of the Total Severed Flight Attendants will be Junior AM Union Flight Attendants or Connect Union Flight Attendants, and 54% will be Senior AM Union Flight Attendants.

do not exercise control or authority over the Company's financial or operational affairs. The Flight Attendants do not dictate the Company's corporate or operational policies. They do not report directly to the board of directors, a committee thereto, the CEO or myself. Further, they do not participate in or attend meetings of the board of directors or any committee thereto. Moreover, the Flight Attendants do not have a title that would suggest they play a role that wields control over the Company's operations or finances. Their working and/or formal titles are either flight attendant (*sobrecargo*) or purser (*ejecutivo de servicio a bordo*).

14. I am authorized to submit this Declaration on behalf of the Debtors. In my opinion, and for the reasons set forth in the Declaration and the Motion, the relief sought in the Motion is a critical element in the success of the Chapter 11 Cases.

Conclusion

15. Pursuant to 28 U.S.C § 1746, I declare under penalty of perjury under the laws of the United States that to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Executed: October 14, 2020

By: /s/ Ricardo Javier Sánchez Baker
Ricardo Javier Sánchez Baker
Chief Financial Officer

Exhibit C

Sainz Declaration

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Marshall S. Huebner
Timothy Graulich
James I. McClammy
Stephen D. Piraino (admitted *pro hac vice*)

*Counsel to the Debtors
and Debtors in Possession*

**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 (SCC)

(Jointly Administered)

**DECLARATION OF ALEJANDRO SAINZ IN SUPPORT OF THE MOTION OF THE
DEBTORS FOR ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTORS TO
MAKE PAYMENTS TO CERTAIN NON-INSIDER, FLIGHT ATTENDANTS AND
(II) GRANTING RELATED RELIEF**

I, Alejandro Sainz, hereby declare that the following is true to the best of my knowledge, information and belief:

1. I am an attorney duly admitted to practice in Mexico. I am a senior partner at Cervantes Sainz, S.C. (“**Cervantes Sainz**”), as well as the head of the firm’s Insolvency and Restructurings Practice Group, and a member of the Mergers and Acquisitions Practice Group located at Torre del Bosque, Blvd. M. Avila Camacho 24, 20th floor, Lomas de Chapultepec, 11000

¹ The Debtors in these cases, along with the last four digits of each Debtor’s registration number in the applicable jurisdiction, are as follows: Grupo Aeroméxico, S.A.B. de C.V. 286676; Aerovías de Mexico, 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.

Mexico City. Cervantes Sainz is serving as Mexican counsel to Grupo Aeroméxico, S.A.B. de C.V. (“**Grupo Aeroméxico**”) and its affiliates that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”; the Debtors collectively with their direct and indirect non-Debtor subsidiaries, the “**Company**” or “**Aeroméxico**”).

2. I submitted the *Declaration of Alejandro Sainz in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* [ECF No. 21] (the “**Original Sainz Declaration**”). I submit this declaration (the “**Declaration**”) in support of the *Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Pay Severance to Certain Non-Insider, Flight Attendants and (II) Granting Related Relief* (the “**Motion**”)² filed contemporaneously herewith. I have reviewed the Motion or have otherwise had its contents explained to me, and the Motion is to the best of my knowledge accurate.

3. I am over the age of eighteen (18) and, except as otherwise indicated, all facts set forth in the Motion and the Declaration are based upon my personal knowledge, my review of relevant documents, information provided to me by employees working under my supervision, or my opinion based upon experience, knowledge, and information concerning the operations of the Debtors and the aviation industry as a whole. If called upon to testify, I would testify competently to the facts set forth herein and in the Motion.

4. This Declaration comprises matters that reflect my view of Mexican law or statements of fact. Where the matters stated in this Declaration are statements regarding Mexican law, such statements represent my view of Mexican law as an attorney admitted and authorized to practice in Mexico. Where the matters stated in this Declaration are statements of fact that are within my personal knowledge, they are true. Where the matters stated in this Declaration that are

²Capitalized terms used but not defined herein shall have the meanings set forth in the Motion.

statements of fact are not within my personal knowledge, they are derived, as appropriate, from other sources and are true to the best of my knowledge, information and belief.

5. The Severance Scheme is almost entirely a product of Mexican labor law and the CBAs. For example, the Mexican Federal Constitution (*Constitución Política de los Estados Unidos Mexicanos*) establishes, among other things, that all salaries, accrued salaries from the previous year and severance shall have preference in payment over any other claim in any Mexican insolvency (a *concurso*) or bankruptcy proceeding.³ Additionally, the Mexican Federal Labor Law (*Ley Federal del Trabajo*), including, among others, articles 33⁴, 50⁵, 162⁶ and 439⁷, requires that whenever a full-time employee is laid-off, they shall receive three (3) months of pay plus (ii) 20 days of pay (base salary plus cash benefits) for every year they worked for an employer and (iii)

³ Article 123, A, XXIII of the Mexican Federal Constitution provides that “[a]ll credits in favor of employees related to salaries and accrued salaries in the last year, and severances, shall have preference over any other credit in cases of *concurso* and bankruptcy.”

⁴ Article 33 provides that “any waiver made by the employees to their accrued salaries, severances and any other kind of compensation that derive from the services provided by said employees, whatever the form or name that is given to said compensation, shall be deemed as void. Any agreement or compensation, in order to be valid, must be made in writing and contain a detailed description of the facts that motivate its execution, as well as the employee’s rights contained thereof. Said agreement or compensation must be ratified before the Conciliation Centers or the Court, as appropriate, and must be approved provided that said agreement or compensation does not include a waiver of any of the employee’s rights. When the agreement is executed without the intervention of the authorities, the nullity of said agreement can be requested before the Court, only regarding the waiver of the employee’s right, while the remaining clauses will continue to be valid.”

⁵ Article 50 provides that “[b]esides the indemnification referred in the previous sections, the amount equivalent to three months of pay and the payment of due wages and interest, in its case, under the terms provided in Article 48 of this Law.”

⁶ Article 162 provides that “[a]ll full time employees have the right to a seniority compensation according to the following rules: I. The seniority compensation will consist of the amount equivalent to twelve days of salary for each working year; . . . III. The seniority compensation shall be paid to employees . . . that are separated from their jobs, whatever the reason or lack thereof for such separation may be . . . VI. The seniority compensation referred to in this article shall be paid to the employees or their beneficiaries regardless of any other compensation that said employees are entitled to.”

⁷ Article 439 provides that “[w]hen . . . new working procedures result in personnel terminations, in absence of an agreement, the employer must obtain authorization of the Court, according to the special procedure set forth in article 897 and the subsequent articles of this Law. The terminated employees shall have the right to be compensated with a compensation of four months of salary plus twenty days for each working year or the amount set forth in the collective bargaining agreement if said amount is higher and the seniority compensation refer[ed] to on article 162.”

twelve (12) days of base salary (exclusive of benefits) per year they worked for an employer (as long as they have been working for the employer for more than 15 years). However, pursuant to the AM Union CBA, the Debtors must provide the AM Union Flight Attendants with four (4) months of severance instead of three (3) months. And while the Connect Union CBA does not explicitly require anything beyond the Statutory Severance, the Debtors have historically treated the Connect Union Flight Attendants the same as the AM Union Flight Attendants, which they intend and are obligated to do here since such severance has become an accrued right of the Connect Union Flight Attendants under applicable Mexican law.⁸ Therefore, with the exception of the Buy-Out Amount, the Severance Scheme represents the minimum amounts of severance the Debtors can pay their Flight Attendants without being in breach of Mexican labor laws and/or their CBAs.

Conclusion

6. Pursuant to 28 U.S.C § 1746, I declare under penalty of perjury under the laws of the United States that to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

⁸ Since the Debtors have historically treated both the AM Union Flight Attendants and the Connect Union Flight Attendants the same, and the Company's common practice has historically been to pay all Flight Attendants four (4) months of severance instead of three (3), such severance right has now become an "acquired right" for the Connect Union Flight Attendants, which cannot be waived by the employees nor breached by the Company, as provided in Article 33 of the Mexican Federal Labor Law.

Executed: October 14, 2020

By: /s/ Alejandro Sainz
Alejandro Sainz
CERVANTES SAINZ, S.C.