

Counsel to PLM Premier, S.A.P.I. de C.V.

In re:

)
) Chapter 11
)
) Case No. 20-11563 (SCC)
)
) (Jointly Administered)
)
) Ref. ECF No. 1103

(“**PLM**”) filed the *Motion of PLM for Entry of an Order Authorizing PLM to Partially Redact Certain Club Premier Agreements* (the “**Motion**”). A hearing on the Motion will be held on **May 21, 2021, at 10:00 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 and debtors-in-possession (the “**Debtors**”) in the above-captioned jointly-administered chapter 11 cases (the “**Bankruptcy Cases**”), along with each Debtor’s registration number in the applicable jurisdiction, are as follows: Grupo Aeroméxico, S.A.B. de C.V. (“**Grupo Aeroméxico**”) 286676; Aerovías de México, S.A. de C.V. (“**Aerovías**”) 108984; Aerolitoral, S.A. de C.V. 217315; and 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 you may 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.

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 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 [ECF No. 79], so as to be

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>.

filed and received no later than **May 14, 2021 at 4:00 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, PLM 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.

[Remainder of page intentionally left blank]

Dated: April 22, 2021
New York, NY

/s/ Michael H. Torkin

SIMPSON THACHER & BARTLETT LLP

Michael H. Torkin
Bryce L. Friedman
David R. Zylberberg
425 Lexington Avenue
New York, New York 10017
Telephone: (212) 455-2000
Facsimile: (212) 455-2502
Email: michael.torkin@stblaw.com
bfriedman@stblaw.com
david.zylberberg@stblaw.com

Counsel to PLM Premier, S.A.P.I. de C.V.

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Debtors. ¹)	(Jointly Administered)
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PLM Premier, S.A.P.I. de C.V. (“**PLM**”) respectfully represents as follows in support of this motion (the “**Motion**”):

1. By this Motion, PLM respectfully requests entry of an order, pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Rule 9018 of the Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rule 9018-1, substantially in the form attached hereto as **Exhibit**

¹ The debtors and debtors-in-possession (the “**Debtors**”) in the above-captioned jointly-administered chapter 11 cases (the “**Bankruptcy Cases**”), along with each Debtor’s registration number in the applicable jurisdiction, are as follows: Grupo Aeroméxico, S.A.B. de C.V. (“**Grupo Aeroméxico**”) 286676; Aerovías de México, S.A. de C.V. (“**Aerovías**”) 108984; Aerolitoral, S.A. de C.V. 217315; and 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.

A (the “**Proposed Order**”), (i) authorizing PLM to partially redact the filed versions of the Club Premier Agreements (as defined herein) and submit the unredacted versions under seal and (ii) granting certain related relief.

GENERAL BACKGROUND

2. On June 30, 2020, the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “**Bankruptcy Code**”) in the United States District Court for the Southern District of New York (the “**Bankruptcy Court**”).

JURISDICTION AND VENUE

3. The Bankruptcy Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. Venue of this matter is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b), and, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), PLM consents to entry of a final order by the Bankruptcy Court in connection with this Motion to the extent that it is later determined that the Bankruptcy Court, absent consent of the parties, cannot enter a final order or judgment consistent with Article III of the United States Constitution.

SPECIFIC BACKGROUND

4. On the date hereof, PLM filed the *Motion of PLM for an Order Pursuant to Fed. R. Bankr. P. 9019 Approving the Stipulation Among the Debtors, PLM, and Aimia* [ECF No. 1103] (the “**9019 Motion**”). In the 9019 Motion, PLM referred to the Club Premier Agreements (as defined in the 9019 Motion) and attached certain Club Premier Agreements as exhibits to the 9019 Motion (the “**Club Premier Agreements**”).

THE CONFIDENTIAL INFORMATION

5. PLM is seeking only to partially redact the Club Premier Agreements. The Club Premier Agreements set forth, among other things, certain fees and pricing terms and performance benchmarks during the terms contemplated thereby (the “**Confidential Commercial Information**”). Disclosure of this Confidential Commercial Information would prejudice PLM (and, by extension, the Debtors) in negotiating commercial arrangements with its current and future commercial counterparties.

6. The Club Premier Agreements also contain contact information, signatures, and other identifying data and information personal to parties to the agreements and other individuals (the “**Confidential Personal Information**” and, together with the Confidential Commercial Information, the “**Confidential Information**”). Disclosure of the Confidential Personal Information to the public is a serious privacy risk to those affected.

BASIS FOR RELIEF

Redaction of the Confidential Commercial Information

7. Section 105(a) of the Bankruptcy Code codifies the Bankruptcy Court’s inherent equitable powers to “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). Furthermore, pursuant to section 107(b)(1) of the Bankruptcy Code, the Bankruptcy Court may authorize PLM to redact the Confidential Commercial Information from the filed versions of the Club Premier Agreements and file the unredacted Club Premier Agreements under seal. *See* 11 U.S.C. § 107(b). Specifically, section 107(b) provides, in relevant part:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may—(1)

protect an entity with respect to a trade secret or confidential research, development, or commercial information

8. Bankruptcy Rule 9018 sets forth the procedures by which a party may obtain a protective order authorizing the filing of a document under seal. Bankruptcy Rule 9018 provides that “[o]n motion, or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information” Fed. R. Bankr. P. 9018.

9. The Second Circuit has acknowledged that section 107(b) of the Bankruptcy Code creates an exception to the general rule that court records are open to examination by the public. *See Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994). However, the court has also acknowledged that, unlike its counterpart Rule 26(c) of the Federal Rules of Civil Procedure, section 107(b) of the Bankruptcy Code does not require the entity seeking protection to demonstrate “good cause.” *Id.* Rather, if the material sought to be protected satisfies one of the categories identified in section 107(b), the court is required to protect the requesting party and has no discretion to deny the request. *Id.* at 27 (holding that, once the court determines that a party is seeking protection of information that falls within the ambit of section 107(b), “the court is required to protect a requesting interested party and has no discretion to deny the application”).

10. Thus, under section 107(b) of the Bankruptcy Code, an interested party has to show only that the information it wishes to protect is “‘confidential’ and ‘commercial’ in nature.” *Id.*

Such information, however, need not rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. *Id.* at 28.

11. Courts have also held that the sealing order under section 107(b) should be as broad as “justice requires.” *In re Glob. Crossing, Ltd.*, 295 B.R. 720, 724 (Bankr. S.D.N.Y. 2003). Indeed, the courts’ “authority goes not just to the protection of confidential documents, but to other confidentiality restrictions that are warranted in the interests of justice.” *Id.* “Courts have supervisory powers over their records and files and may deny access to those records and files to prevent them from being used for an improper purpose.” *In re Kaiser Aluminum Corp.*, 327 B.R. 554, 560 (D. Del. 2005).

12. The Confidential Commercial Information is both “commercial” and “confidential,” and thus falls within the scope of information that is protected by section 107(b)(1) of the Bankruptcy Code and Bankruptcy Rule 9018. In granting motions to seal “commercial information,” courts have defined this term as “information which would result in an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.” *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (internal quotes and citation omitted); *see also Glob. Crossing*, 295 B.R. at 725 (finding that the purpose of Bankruptcy Rule 9018 is to “protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury”). Here, disclosure of the Confidential Commercial Information could reasonably be expected to cause harm to PLM and the Debtors by permitting counterparties and competitors to gain insight into the pricing and other commercial terms used by PLM and the Debtors in their agreements.

13. Significantly, the proposed redactions are limited and tailored to protect only specific information whose publication could reasonably be expected to have adverse

consequences to PLM and the Debtors in ongoing and future negotiations. This will serve to both minimize the quantity of redacted information while protecting PLM and the Debtors from releasing commercially sensitive terms.

Redaction of the Confidential Personal Information

14. Section 107(c)(1) of the Bankruptcy Code provides:

The bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or individual's property: (A) any means of identification (as defined in section 1028(d) of title 18) contained in a paper filed, or to be filed, in a case under this title. . . .

Section 1028(d) of title 18 of the U.S. Code defines "means of identification" to include any "name or number that may be used, alone or in conjunction with any other information, to identify a specific individual. . . ." 18 U.S.C. § 1028(d).

15. Additionally, section 105(a) of the Bankruptcy Code authorizes the Bankruptcy Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." "Courts have supervisory powers over their records and files and may deny access to those records and files to prevent them from being used for an improper purpose." *Kaiser Aluminum*, 327 B.R. at 560.

16. The Confidential Personal Information contains "means of identification" as defined in 18 U.S.C. § 1028(d), and section 105(a) of the Bankruptcy Code authorizes the Bankruptcy Court to utilize its supervisory powers to prevent information from being used improperly. PLM submits that good cause exists to redact contact information, signatures, and other identifying data and information from the Club Premier Agreements. Contact information, signatures, and other identifying data and information lend themselves to being used for an

improper purpose. Additionally, PLM submits that there is no countervailing benefit to not redacting the Confidential Personal Information.

Filing of Unredacted Copies

17. PLM proposes to file unredacted copies of the Club Premier Agreements with the Bankruptcy Court under seal and to share the unredacted version, with (a) the Office of the United States Trustee for the Southern District of New York, (b) the Debtors and (c) counsel to the Official Committee of Unsecured Creditors, in each case on a strictly confidential basis.

NOTICE

18. Notice of this Motion is being provided will be provided 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/case/aeromexico/info>), (b) the U.S. Trustee, (c) the Debtors, (d) the Official Committee of Unsecured Creditors and (d) any person or entity with a particularized interest in the subject matter of this Motion. PLM respectfully submits that no further notice is required.

NO PRIOR REQUEST

19. PLM has not previously sought the relief requested herein from the Bankruptcy Court or any other court.

WHEREFORE, PLM respectfully requests that the Bankruptcy Court enter the Proposed Order, substantially in the form attached hereto, granting the relief requested herein and such other and further relief as the Bankruptcy Court deems just and proper.

[Remainder of page intentionally left blank.]

Dated: April 22, 2021
New York, NY

/s/ Michael H. Torkin

SIMPSON THACHER & BARTLETT LLP

Michael H. Torkin
Bryce L. Friedman
David R. Zylberberg
425 Lexington Avenue
New York, New York 10017
Telephone: (212) 455-2000
Facsimile: (212) 455-2502
Email: michael.torkin@stblaw.com
bfriedman@stblaw.com
david.zylberberg@stblaw.com

Counsel to PLM Premier, S.A.P.I. de C.V.

EXHIBIT A

Proposed Order

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

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In re:)	Chapter 11
)	
GRUPO AEROMÉXICO, S.A.B. de C.V., <i>et al.</i> ,)	Case No. 20-11563 (SCC)
)	
Debtors. ¹)	(Jointly Administered)
)	
)	Ref. ECF No. 1103

**ORDER AUTHORIZING PLM TO PARTIALLY REDACT
CLUB PREMIER AGREEMENTS**

Upon the motion (the “**Motion**”)² of PLM Premier, S.A.P.I. de C.V. (“**PLM**”), pursuant to Bankruptcy Rule 9019, for entry of an order (this “**Order**”) authorizing PLM to partially redact certain Club Premier Agreements, all as more fully described in the Motion; and the Bankruptcy Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and Amended Standing Order of Reference M-431, dating January 21, 2012 (Preska, C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and sufficient notice of the Motion having been provided in accordance with the Bankruptcy Court’s Case Management Order dated July 8, 2020 [ECF No. 79]; and it appearing that no other or further notice need be provided; and the Bankruptcy Court having held a hearing to consider the relief requested in the Motion (the “**Hearing**”); and

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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.

the appearances of all interested parties having been noted in the record of the Hearing; and upon all of the proceedings had before the Bankruptcy Court; and upon the record of the Hearing; and the Bankruptcy Court having found and determined that the relief sought in the Motion is in the best interests of the all parties in interest, and that the legal and factual bases set forth in the Motion and the papers in support thereof establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is hereby granted as set forth herein.
2. PLM is authorized (a) to file the Club Premier Agreements on the public docket of this case in their redacted form and (b) to file unredacted versions of the Club Premier Agreements by delivering to the Clerk of the Bankruptcy Court a copy of this Order and a hard copy of the Club Premier Agreements, in each case clearly labeled “TO BE FILED UNDER SEAL.”
3. The unredacted Club Premier Agreements shall remain confidential and shall not be made available to anyone without the prior written consent of PLM other than (a) the Office of the United States Trustee for the Southern District of New York, (b) the Debtors and (c) counsel to the Official Committee of Unsecured Creditors, in each case on a strictly confidential basis.
4. PLM, the Debtors and any party authorized to receive the Club Premier Agreements pursuant to this Order shall be authorized and are hereby directed, subject to Local Rule 9018-1(c), to redact specific references to information included in the Club Premier Agreements from any pleadings filed on the public docket of these Bankruptcy Cases.
5. Entry of this Order is without prejudice to the rights of any party in interest in the Bankruptcy Cases or the U.S. Trustee to seek an order of this Court unsealing all or part of the Club Premier Agreements or Confidential Information.

6. The Clerk of the Bankruptcy Court is authorized to destroy the Club Premier Agreements at the conclusion of these Bankruptcy Cases.

7. This Order is without prejudice to the rights of any party interest, including the U.S. Trustee, to seek to unseal the Club Premier Agreements, or any part thereof.

8. PLM is authorized to take all actions necessary to effectuate the relief granted in this Order.

9. The Bankruptcy 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
_____, 2021

THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE