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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	**Chapter 11**
GRUPO AEROMÉXICO, S.A.B. de C.V., *et al.*,	**Case No. 20-11563 (SCC)**
Debtors.[1]	**(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 EMPLOYEES AND (II) GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that on June 24, 2021, 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 Make Payments to Certain Non-Insider Employees and (II) Granting Related Relief* (the "**Motion**"). A hearing on the Motion will be held on **July 8, 2021, 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 Bankruptcy Court

[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; 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.

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 [ECF No. 79], so as to be filed and received no later than **Tuesday, July 6, 2021 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: June 24, 2021
New York, New York

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UNITED STATES BANKRUPTCY COURT
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In re:	**Chapter 11**
GRUPO AEROMÉXICO, S.A.B. de C.V., *et al.*,	**Case No. 20-11563 (SCC)**
Debtors.[1]	**(Jointly Administered)**

MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTORS TO MAKE PAYMENTS TO CERTAIN NON-INSIDER EMPLOYEES 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 Sergio Allard Barroso in Support of the Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors*

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to Make Payments to Certain Non-Insider Employees and (II) Granting Related Relief ("**Allard Decl.**"), 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 Employees and (II) Granting Related Relief* ("**Sainz Decl.**"), 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 Procedure (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 Sánchez Baker in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [ECF No. 20].

The Debtors' Labor Savings and Previous Severance Schemes

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. And while the Debtors' business continues to improve as COVID-related restrictions ease, definitive and sustainable labor savings remain necessary.

5. The Debtors have already made significant progress in right-sizing their global workforce. On October 15, 2020, the Debtors filed 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* [ECF No. 534] (the "**Flight Attendant Severance Motion**"). This Court entered an order grating the relief requested in the Flight Attendant Severance Motion on October 27, 2020 [ECF No. 583].

6. In addition, on November 3, 2020, the Debtors filed the (a) *Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Make Payments to Certain Non-Insider, Unionized Employees and (II) Granting Related Relief* [ECF No. 608] (the "**First Unionized Employee Severance Motion**") and (b) *Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Make Payments to Certain Non-Insider, Non-Unionized Employees*

and (II) Granting Related Relief [ECF No. 609] (the "**First Non-Unionized Severance Motion**"). This Court entered orders granting the relief requested in the First Unionized Severance Motion and the First Non-Unionized Severance Motion on November 17, 2020 [ECF Nos. 645, 646].[2]

7. On March 3, 2021, the Debtors filed two additional severance motions, the (a) *Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Make Payments to Certain Non-Insider, Non-Unionized Employees and (II) Granting Related Relief* [ECF No. 943] (the "**Second Non-Unionized Employee Severance Motion**") and (b) *Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Make Severance Payments to Certain Retiring Pilots and (II) Granting Related Relief* [ECF No. 941] (the "**Pilot Severance Motion**"). This Court entered orders granting the relief requested in the Second Non-Unionized Employee Severance Motion and the Pilot Severance Motion on March 15, 2021 [ECF Nos. 976, 977].

8. More recently, on May 18, 2021, the Debtors filed the *Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Make Payments to Certain Retiring Pilots and (II) Granting Related Relief* [ECF No. 1202] (the "**Pilot Early Retirement Motion,**" and together with the Flight Attendant Severance Motion, First Unionized Employee Severance Motion, First Non-Unionized Severance Motion, the Second Non-Unionized Severance Motion and the Pilot Severance Motion, the "**Severance Motions**"). This Court entered an order granting the relief requested in the Pilot Early Retirement Motion on June 1, 2021 [ECF No. 1243].

9. As a result of the labor savings in the Severance Motions, the Debtors anticipate saving approximately $86 million per annum.

[2] The First Non-Unionized Severance Motion was granted in part on November 17, 2020. Subsequently, on December 7, 2020, the Court entered an order granting the remaining relief requested [ECF No. 699].

The Union Negotiations and the Severance Scheme

10. On April 6, 2021, the Debtors filed the *Motion of the Debtors for Entry of an Order Pursuant to 11 U.S.C. §§ 363(b) and 105(a) and Fed. R. Bankr. P. 9019(a) Authorizing Entry Into Agreements Establishing New Labor Conditions with ASPA, ASSA, STIA, and Independencia* [ECF No. 1058] (the "**CBA Motion**"). Pursuant to the CBA Motion, the Debtors sought, among other things, an order authorizing the Debtors to enter into new collective bargaining agreements with Independencia (the "**New Independencia CBA**"). This Court granted the relief requested in the CBA Motion on April 22, 2021 [ECF No. 1101] (the "**CBA Order**").

11. As part of the New Independencia CBA, the Debtors and Independencia agreed that, among other things, the Debtors could migrate (the "**Independent Specialized Contractor Migration**") certain airport terminal and tarmac (ground) related jobs currently performed by Independencia-represented union employees to independent specialized contractors. Allard Decl. ¶ 5. In consideration for the savings from the Independent Specialized Contractor Migration and the other savings from the New Independencia CBA, the Debtors agreed that Independencia would be entitled to an allowed general, non-priority unsecured claim in these Chapter 11 Cases of (a) $44,090,000 against Aerovías, (b) $2,530,000 against Aeroméxico Connect and (c) $1,110,000 against Cargo, so long as Independencia adheres to the requirements and conditions of the Bankruptcy Protection Covenant (as defined in the CBA Order and attached thereto) applicable to the pilot's union. *Id*.

12. Now, through the Motion, the Debtors seek to take the first step in implementing the Independent Specialized Contractor Migration by proceeding with severing certain Independencia-represented Debtor employees (the "**Unionized Employees**") and other non-unionized Debtor employees (the "**Non-Unionized Employees**" and together with the Unionized

Employees, the "**Employees**"). All of the Employees' titles are (a) Passenger Service Agent, (b) Passenger Service Representative and (c) Operations Coordinator. Allard Decl. ¶ 6. The Passenger Service Agent and Representative provide check-in and departure gate services to passengers and the Operations Coordinators distribute and allocate tasks to ground workers that perform operational activities such as operating aircraft ramps. *Id.* None of the Employees are an insider of the Debtors and none of the Employees have a title that would even suggest they could be an insider of the Debtors.

13. Pursuant to the relief requested herein, the Debtors seek to lay-off 365 Unionized Employees and 1 Non-Unionized Employee and pay them an amount of severance that is legally required to be paid under Mexican law, as described below. Allard Decl. ¶ 7; Sainz Decl. ¶¶ 5-6. In total, once the lay-offs commence later this year and into next year, the severance that will be owed to the Unionized Employees and Non-Unionized Employees will equal approximately $9.38 million and $20,000 (together, the "**Severance Cost**"), respectively. Allard Decl. ¶ 7. The highest and lowest severance payments are equal to approximately $66,200 and $19,400, respectively, and the average severance payment is equal to approximately $25,669. *Id.* Notwithstanding the cost, the Severance Scheme (as defined below) is expected to save the Debtors approximately $9.26 million on a recurring annual basis. *Id.*

14. Additionally, the Severance Scheme is part of a larger workforce rationalization that also involves certain non-debtor employees. Allard Decl. ¶ 8. In addition to the Employees, non-debtor employees employed by non-debtor affiliate, Sistem, will also be laid-off as part of the Independent Specialized Contractor Migration. *Id.* In total, Sistem plans to sever 515 unionized employees and 224 non-unionized employees. *Id.* The severance cost associated with Sistem's layoffs total approximately $5.94 million for unionized employees and approximately $4.02

million for non-unionized employees. *Id.* The savings associated with the Sistem layoffs equal approximately $8.95 million on a recurring annual basis.

15. The Employees will only be paid severance as required under Mexican law. Allard Decl. ¶ 9; Sainz Decl. ¶¶ 5-6. The Unionized Employees will be paid severance as set forth in the New Independencia CBA, which amounts are owed and protected by Mexican labor law as a matter of public policy. Sainz Decl. ¶¶ 5-6. Therefore, the Unionized Employees will receive severance equal to (a) four (4) months of pay (salary as defined in the New Independencia CBA),[3] plus (b) twenty (20) days of pay (salary as defined in the New Independencia CBA)[4] for every year they worked for the Company, plus (c) a seniority premium of twelve (12) days of salary (exclusive of benefits, capped at up to two times the applicable legal minimum wage of Mexico City) for each year they worked for the Company (the "**Unionized Severance Scheme**"). Allard Decl. ¶ 9; Sainz Decl. ¶¶ 5-6.

16. Additionally, the Non-Unionized Employees will receive severance in accordance with the Mexican Federal Labor Law (*Ley Federal del Trabajo*), which obligates the Debtors to pay severed employees (a) three (3) months of pay (integrated salary), plus (b) twenty (20) days of pay (integrated salary) for every year the employee has worked for the Company, plus (c) a

[3] Articles Seven and Eight of the Independencia collective bargaining agreement provides as follows: "Due to the fact that this agreement implies modifications to the current Collective Labor Agreement, the Company hereby agrees to pay the settlement to workers who do not accept the changes agreed therein, taking as a reference the existing October 2020 factors, which consist of (a) payment of 4 (four) months of integrated salary (b) payment of 20 (twenty) days per year of integrated salary (c) payment of seniority premium (d) payment of corresponding settlement," (Seven: "*Debido a que el presente convenio implica modificaciones al Contrato Colectivo de Trabajo vigente la Empresa se compromete a pagar la liquidación a los trabajadores que no acepten las modificaciones pactadas en el mismo, teniendo como referencia los factores existentes en octubre del 2020, la liquidación consistirá en (a) pago de 4 (cuatro) meses de salario integrado (b) pago de 20 (veinte) días de por año de salario integrado (c) pago de prima de antiguedad (d) pago de finiquto correspondiente*"); (Eight:"Empresa y Sindicato establecen que si por alguna razon (Ajuste Operativo,Tercerización,Ajuste Operacional, etc.) no imputable al trabajador este resulta afectado,se considerará la liquidación conforme a la clausula que antecede.

[4] *Id.*

seniority premium of twelve (12) days of salary (exclusive of benefits, capped at up to two times the applicable legal minimum wage of Mexico City) per year the employee has worked for the Company (the "**Non-Unionized Severance Scheme**" and together with the Unionized Severance Scheme, the "**Severance Scheme**").[5] Allard Decl. ¶ 9; Sainz Decl. ¶¶ 5-6.

Relief Requested

17. 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 the Severance Cost of approximately $9.4 million to non-insider Employees, which is owed and payable under Mexican law and is consistent with the authority already granted by this Court in the CBA Order. Moreover, the Severance Scheme is anticipated to save the Debtors approximately $9.26 million in reduced labor costs and to provide certain operational and strategic benefits; therefore, such relief is compelled by the benefits and considerations related to maintaining a workforce that is appropriate in size and cost for the Debtors' current and near-term business needs.

18. By this Motion, and pursuant to Bankruptcy Code sections 105(a) and 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**.

[5] The general rule that provides that the seniority premium is payable only if such employee has worked for the company for at least 15 years only applies in the case of a "voluntary resignation" of the employee. With respect to the Severance Scheme described in this Motion (i.e., terminations mutually agreed upon by the employer and employee pursuant to a larger reduction in force), the seniority premium is payable regardless of the number of years worked by the employee. Sainz Decl. ¶ 5.

Basis for Relief

A. The Payment of the Severance Cost Is in the Ordinary Course of Business and Is Consistent with the Authority Provided in the CBA Order

19. The Debtors respectfully submit that paying the Severance Cost falls within the ordinary course of the Debtors' business. First, the Debtors' business necessarily includes periodically rationalizing its workforce and paying severance to such laid-off employees pursuant to their collective bargaining agreement and/or applicable labor law. Moreover, the Debtors have requested relief to pay severance on six separate occasions during these Chapter 11 Cases. For example, the Debtors have previously requested, and such relief has been granted, to lay off and pay severance to employees in the following motions: (a) the Flight Attendant Severance Motion, (b) the First Unionized Employee Motion, (c) the First Non-Unionized Severance Motion, (d) Second Non-Unionized Employee Motion, (e) the Pilot Severance Motion and (f) the Pilot Early Retirement Motion. The Severance Scheme is the same as the severance scheme used in whole or in part in each of the aforementioned motions. Notwithstanding, even though the Debtors believe the severance payable in the above motions were in the ordinary course of business, the Debtors filed motions seeking approval of such payments on each of the above six occasions out of an abundance of caution and to provide notice to parties-in-interest. Consequently, the Debtors respectfully submit that paying the Severance Cost is similarly within the ordinary course of the Debtors' business and permitted under section 363(c) of the Bankruptcy Code.

20. Additionally, the Debtors believe that paying the Severance Cost is consistent with the authority provided in the CBA Order. Among other things, the CBA Order provides that "[t]he Debtors are authorized to enter into the New CBAs and . . . perform all their obligations thereunder (including, without limitation, payment of the Deferred ASPA Compensation) and to take such actions as may be necessary in connection with or in furtherance thereof." CBA Order, ¶ 2. As

noted above, part of the Debtors' obligations under the New CBAs (as defined in the CBA Order) is to enter into agreements with independent specialized contractors so as to be able to migrate certain jobs currently held by the Employees. Therefore, the Debtors respectfully submit that paying the Severance Cost is consistent with the CBA Order because the Debtors have the authority to perform their obligations under the New CBAs, and these obligations include the payment of the Severance Cost needed to implement the migration of the jobs held by the Employees to independent specialized contractors.

B. The Payment of the Severance Cost Is a Reasonable Exercise of the Debtors' Business Judgment

21. The Debtors submit that paying the Severance Cost falls within the ordinary course of the Debtors' business and is consistent with the CBA Order. However, out of an abundance of caution, the Debtors are seeking the Court's approval before paying the Severance Cost and implementing the Severance Scheme. The Debtors respectfully submit that even if paying the Severance Cost is not in the ordinary course of their business, approval is still warranted under sections 105(a) and 363(b) of the Bankruptcy Code. Moreover, allowing the Debtors to pay the Severance Cost is consistent with previous relief this Court has approved.

22. Courts routinely hold that transactions should be approved under section 363(b) when they are supported by the reasonable judgment of the debtor's 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.2d 1063, 1069 (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's standard is well established 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 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… the business judgment of the debtor"); *In re MF Glob. Inc.*, 535 B.R. 596, 605 (Bankr. S.D.N.Y. 2015); *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").

23. 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 (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").

24. The Debtors respectfully submit that paying the Severance Cost is warranted under sections 363(b) and 105(a) of the Bankruptcy Code. In particular, achieving meaningful labor savings is critical for the Debtors to effectively and responsibly reorganize. Allard Decl. ¶ 10. Without the savings resulting from the Independent Specialized Contractor Migration, the Debtors

would be forced to continue to pay unsustainable and fixed labor costs. *Id.* Moreover, by migrating such roles to independent specialized contractors, the Company will benefit from having a variable cost structure where the Company only pays for aircraft support services to the extent the Company is operating its aircraft. *Id.* Subsequently, the Company will have flexibility depending on seasonality and demand changes—something it could not do when the COVID-19 pandemic struck leaving the Company with an overly burdensome cost structure. *Id.* Additionally, the airline will benefit from the aircraft-support service synergies that the independent specialized contractors can provide. *Id.* Finally, the Severance Scheme is estimated to save the Debtors approximately $9.26 million on a recurring annual basis, while only costing a one-time payment of approximately $9.4 million, and is understandably an important element of the Debtors' business plan. Accordingly, the Court should allow the Debtors to pay the Severance Costs.

C. The Payment of the Severance Cost Is an Allowed Administrative Expense

25. The Severance Cost is also likely an administrative expense that can 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, Inc. v. Local Union No. 3, Int'l Brotherhood of Electrical Workers, A F of L, CIO*, 386 F.2d 649, 650–651 (2d Cir. 1967); *see also Amalgamated Insurance Fund v. William B. Kessler, Inc.*, 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"); *Metro. Distrib. Serv., Inc. v. Local 1532 OPEIU (In re Golden Distributors Distrib. Servs., Inc.)*, 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 the 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, postpetition severance pay that is earned at termination and is meant to compensate for the hardship of an employee's termination receives administrative priority.

26. The severance plan at issue in *Straus-Duparquet* provided "employees who have been in the employ of the company one (1) year but under three (3) years, one (1) week's severance pay. To those over three (3) years, two (2) 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 follows a similar payment structure and rationale. The Employees' severance is similarly based off of each 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 might endure due to their termination—it is not a benefit that is earned or accrues; rather, it is exclusively a right embodied in the New Independencia CBA, and thereby is protected by Mexican labor law, or in the Mexican Federal Labor Law. Therefore, given the similarity between the Severance Scheme and the debtors' severance plan in *Straus-Duparquet*, the Severance Cost is also likely severance that must be paid during the pendency of these Chapter 11 Cases as an allowed administrative expense.

D. The Payment of the Severance Cost Complies with Section 503(c) of the Bankruptcy Code

27. 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 (a) the severance payable to the Employees does not include any retention payments and (b) the Employees are not insiders of the Debtors. First, the Employees 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 Employee serves as an officer or director of the Debtors. Allard Decl. ¶ 6. No Employee is in control of the Debtors (as more clearly outlined below) and no Employee is a relative of a director or Corporate-Level Executive (as defined herein).[6] *Id.* Further, no Employee has a title that would suggest they are an insider of the Debtors. Instead, the Employees' specific titles are Passenger Service Agent, Passenger Service Representative and Operations Coordinator. *Id.*

28. Second, the Employees are not insiders as the term is used under applicable case law. The Employees do not exercise control or authority over the Debtors' affairs or business operations as a whole, do not dictate the Debtors' corporate policies or sit on the Debtors' board

[6] The corporate-level executives (the "**Corporate-Level Executives**") include the Company's senior executive team, comprising the Chief Executive Officer, Chief Financial Officer, Chief Commercial Officer, Chief Digital and Customer Experience Officer, Chief Legal and Institutional Affairs Officer, Chief Human Resources Officer and Chief Operations Officer.

of directors or a committee thereto, were not appointed by one of the foregoing, do not report to the board of directors or a committee thereto, or attend meetings of the same, and similarly do not report to the Corporate-Level Executives. Allard Decl. ¶ 6. *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). Rather, the Employees are front-line workers that provide ancillary operational services to the Debtors' aircraft and passengers. As noted above, the Employees provide check-in and departure gate services to passengers and distribute the workload and allocate tasks to ground workers that operate aircraft ramps. None of the Employees are junior or senior managers, directors or officers of the Company and none of the Employees maintain any oversight or discretion over any of the Company's finances. *Id*.

29. Notwithstanding the foregoing, 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) (section 503(c)(3) of the Bankruptcy Code is nothing more than a reiteration of the standard under section 363 of the Bankruptcy Code (citing *In re Nobex Corp.*, 2006 WL 4063024, 2006 Bankr. LEXIS 417 (Bankr.

D. Del. Jan. 19, 2006)). Moreover, even if a higher standard than the business judgment rule were to apply, and this Court had to make its own determination that payment of the Severance Cost will serve the interests of creditors and the Debtors' estates, it is clear that such payment will do just that.

30. As set forth herein, laying off and paying the Severance Cost has a sound business purpose. It will right-size the Debtors' workforce for the post-COVID market, which will save the Debtors approximately $9.26 million on a recurring annual basis while only costing a one-time payment of approximately $9.4 million. Moreover, by migrating such roles, the Company will benefit from a variable cost structure and the aircraft-support service synergies that the independent specialized contractors can provide. Given the foregoing, the Debtors respectfully submit that to the extent 503(c)(3) applies, paying the Severance Cost 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

31. 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 Independencia, (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

32. 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
June 24, 2021

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