

**Hearing Date and Time: September 20, 2021 at 1:00 p.m. (EDT)**  
**Objection Deadline: September 13, 2021 at 4:00 p.m. (EDT)**

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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.<sup>1</sup>**

**Chapter 11**

**Case No. 20-11563 (SCC)**

**(Jointly Administered)**

**DEBTORS' APPLICATION FOR AN ORDER AUTHORIZING THE RETENTION AND  
EMPLOYMENT OF KPMG CARDENAS DOSAL, S.C. AS INDEPENDENT AUDITOR  
TO THE DEBTORS NUNC PRO TUNC TO THE PETITION DATE**

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) file this application (the “**Application**”) for entry of an order substantially in the form of **Exhibit A** hereto (the “**Proposed Order**”), pursuant to sections 327(a) and 328(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2014(a) and 2016 of the Federal Rules of

<sup>1</sup> 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 Procedure (the “**Bankruptcy Rules**”), and Rules 2014-1 and 2016-1 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”), (i) authorizing the employment and retention of KPMG Cardenas Dosal, S.C. (“**KPMG**”) as their independent auditor in accordance with the terms and conditions set forth in the two engagement letters dated August 12, 2020 (the “**Engagement Letters**”),<sup>2</sup> attached hereto as **Exhibit B**, *nunc pro tunc* to the Petition Date (as defined below); (ii) approving the terms of KPMG’s employment and retention, including the fee and expense structure set forth in the Engagement Letters; and (iii) granting such other and further relief as is just and proper. In support of this Application, the Debtors submit the *Declaration of Mario Fernández Dávalos in Support of the Debtors’ Application for an Order Authorizing the Retention and Employment of KPMG Cardenas Dosal, S.C. as Independent Auditor to the Debtors Nunc Pro Tunc to the Petition Date* (the “**Fernández Declaration**”), attached hereto as **Exhibit C**, the *Declaration of Ricardo Javier Sánchez Baker in Support of the Debtors’ Application for an Order Authorizing the Retention and Employment of KPMG Cardenas Dosal, S.C. as Independent Auditor to the Debtors Nunc Pro Tunc to the Petition Date* (the “**Sánchez Declaration**”), attached hereto as **Exhibit D**, the *Declaration of Alejandro Sainz in Support of the Debtors’ Application for an Order Authorizing the Retention and Employment of KPMG Cardenas Dosal, S.C. as Independent Auditor to the Debtors Nunc Pro Tunc to the Petition Date* (the “**Sainz Declaration**”), attached hereto as **Exhibit E**, and respectfully represent as follows:

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<sup>2</sup> Any reference to, or summary of, the Engagement Letters in this Application is qualified by the express terms of the Engagement Letters, which shall govern if there is any conflict between the Engagement Letters and such reference or summary. Any capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Engagement Letters. As required under applicable Mexican law, the executed Engagement Letters are in Spanish. English translations of the Engagement Letters, translated by Sainz Abogados, S.C., the Debtors’ special Mexican counsel, immediately follow the executed versions.

### **Jurisdiction and Venue**

1. The Court has jurisdiction over this matter under 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 under 28 U.S.C. § 157(b). The Debtors consent, pursuant to Bankruptcy Rule 7008, to the entry of a final order by the Court in connection with this Application to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 327(a) and 328(a) of the Bankruptcy Code, as supplemented by Bankruptcy Rules 2014(a) and 2016, and Local Rules 2014-1 and 2016-1.

### **Background**

3. On June 30, 2020 (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case under chapter 11 of 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 (the “**U.S. Trustee**”) appointed the official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code [ECF No. 92]. No request has been made for the appointment of a trustee or examiner in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”). The 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.

4. 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].

#### **Relief Requested**

5. The Debtors respectfully request that the Court enter the Proposed Order: (i) authorizing the employment and retention of KPMG as their independent auditor *nunc pro tunc* to the Petition Date; (ii) approving the terms of KPMG's employment and retention, including the fee and expense structure set forth in the Engagement Letters; and (iii) granting such other and further relief as is just and proper.

#### **KPMG's Qualifications**

6. KPMG is a highly respected and experienced professional services firm which is well recognized for providing audit services in Mexico. KPMG is the Mexican member firm of the KPMG global network of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee.

7. Further, by virtue of the firm's prepetition engagements as independent auditor to the Debtors, KPMG is familiar with the books, records, financial information, and other data the Debtors maintain and is qualified to provide such services during the Chapter 11 Cases.

8. As such, KPMG is well qualified to serve as the Debtors' independent auditor in connection with these Chapter 11 Cases with respect to the matters identified in the Engagement Letters and summarized herein.

#### **Services to be Provided**

9. The terms and conditions of the Engagement Letters were negotiated between the Debtors and KPMG and reflect the parties' mutual agreement as to the services KPMG may provide and the other terms of KPMG's engagement. As set forth in further detail in the

Engagement Letters, KPMG has agreed to provide the audit services (collectively, the “**Services**”) detailed therein, as KPMG and the Debtors shall deem appropriate and feasible, which may include, among other things:

- (a) Auditing of the financial statements in accordance with International Standards on Auditing (ISA) issued by the International Federation of Accountants (IFAC);
- (b) Auditing of the specific-purpose financial statements to express an opinion on whether the specific-purpose financial statements and the aforementioned exhibits have been prepared by the Management of Grupo Aeroméxico, S.A.B. de C.V. and its subsidiaries pursuant to Articles 32-A and 52 of the Mexican Federal Tax Code (Código Fiscal Federal) and 57 and 58 of the of the Mexican Federal Tax Code Regulations (Reglamento del Código Fiscal de la Federación) and to the guidelines and instructions for the integration and characteristics for the presentation of the financial statements for tax purposes set forth in Exhibit 16 of the Miscellaneous Tax Resolution (*Resolución Miscelánea Fiscal*) (RMF);
- (c) In connection with planning and performing KPMG’s audit of the consolidated financial statements, conducting an examination and evaluation of the Company’s internal control, as necessary, to determine the nature, extent, and timing of KPMG’s audit procedures for the purpose of expressing an opinion on the consolidated financial statements but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control;
- (d) In connection with the planning and performance of KPMG’s audit of the specific-purpose financial statements, considering and evaluating the Company’s internal control over financial reporting to the extent necessary to determine the nature, scope, and timing of KPMG’s audit procedures for the purpose of expressing an opinion on the specific-purpose financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control;
- (e) In the event that, at some future date, the Company intends to publish, or reproduce the consolidated financial statements and KPMG’s opinion, including incorporation by reference in an application for registration with any regulatory agency (or otherwise refer to KPMG), in a document containing other information, at such date evaluating the advisability of giving KPMG’s consent for the required effects, for which Grupo Aeroméxico, S.A.B. de C.V. and its subsidiaries agree to: a) provide KPMG with a draft of the document for KPMG’s perusal and b) obtain KPMG’s written consent prior to printing and distributing it;

- (f) Issuing as a result of KPMG's audit of the consolidated financial statements of Grupo Aeroméxico, S.A.B. de C.V. and its subsidiaries as of December 31, 2020, and 2019, the following reports:
  - i. an opinion on the financial statements, in Spanish and English, prepared in accordance with IFRS, and
  - ii. if applicable, letter of recommendations to management (in Spanish);
- (g) As a result of KPMG's examination of the specific-purpose financial statements of Grupo Aeroméxico, S.A.B. de C.V., and its subsidiaries (companies mentioned in Exhibit I) as of December 31, 2020, delivering to the Company, in SIPRED's electronic files, for its submission to the General Administration of Federal Tax Auditing (*Administración General de Auditoría Fiscal Federal*) (AGAFF), the following information:
  - i. Independent auditors' report, which shall include KPMG's opinion on the specific-purpose financial statements as of and for the year ended on December 31, 2020. KPMG's report will describe the purpose for which the specific-purpose financial statements have been prepared and indicate that they may not therefore be useful for other purposes.
  - ii. Report on the Review of the Tax Situation of the Taxpayer (*Informe sobre la Revisión de la Situación Fiscal del Contribuyente*) (the Tax Report), in which KPMG must include, under oath, the information required by the Federal Tax Code Regulations (*Reglamento del Código Fiscal de la Federación*).
  - iii. Records prepared by the Company, which include the specific-purpose financial statements, the notes thereto and the schedules established by the tax authorities, reviewed by KPMG.

10. In addition to the foregoing, KPMG may provide such other consulting, advice, research, planning, and analysis regarding the Services as may be necessary, desirable, or requested from time to time.<sup>3</sup>

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<sup>3</sup> Internal KPMG procedures require that KPMG enter into additional engagement letters for additional work under certain circumstances. To the extent that the Debtors request additional services not covered by the Engagement Letters, on application to and subject to approval by the Court, KPMG and the Debtors may enter into additional engagement letters, as is necessary.

11. The Services that KPMG will provide to the Debtors are necessary to enable the Debtors to administer their estates and comply with Mexican laws. The Debtors believe that the Services will not duplicate the services that other professionals will be providing to the Debtors. KPMG will carry out unique functions and use reasonable efforts to coordinate with the Debtors' other retained professionals to avoid the unnecessary duplication of services.

### **Professional Compensation**

12. In consideration of the Services to be provided by KPMG, and as more fully described in the Engagement Letters, subject to the Court's approval, the Debtors have agreed to pay KPMG the proposed compensation and reimbursement of expenses (the "**Fee and Expense Structure**").

13. KPMG and the Debtors agreed that compensation for audit services rendered to the Debtors will be based upon the actual time incurred to complete the work at a discount of KPMG's hourly rates for the individuals involved in providing the services as agreed upon with the Audit Committee of Grupo Aeroméxico, S.A.B. de C.V.

14. KPMG also will seek reimbursement for reasonable necessary expenses incurred, which may include meals, lodging, travel, photocopying, delivery services, postage, vendor charges, and other out-of-pocket expenses incurred in providing professional services.

15. In the event that the Debtors request or authorize KPMG, or KPMG is compelled by law, rule, regulation or other legal process in a proceeding or investigation to which KPMG is not a named party or a defendant, to produce documents or provide KPMG personnel as witnesses or for interviews, or otherwise to produce information relating to service under the Engagement Letters available to a third party, or the Debtors, then KPMG also will seek reimbursement for its professional time, at its then current standard hourly rates, and expenses, including reasonable

attorneys' fees and expenses incurred in producing documents or engaging its personnel or providing information pursuant to such requests, authorizations or requirements.

16. KPMG intends to apply to the Court for allowance of compensation for professional services rendered and reimbursement of expenses incurred in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable procedures and orders of the Court. KPMG has agreed to accept as compensation such sums as may be allowed by the Court and understands that fee awards are subject to approval by the Court.

17. The discounted hourly rates for audit services to be rendered by KPMG are as follows:

<b>KPMG Professionals</b>	<b>Discounted Billing Rate<sup>4</sup></b>
Partners/Managing Directors	\$ 212.00
Senior Managers/Directors	\$ 104.80 / 78.20
Managers	\$ 48.20
Senior Associates	\$ 42.00 / 30.40
Associates	\$ 24.20 / 15.40
Para-Professionals	N/A

18. During the ninety days before the Petition Date, the Debtors paid approximately \$208,348.73<sup>5</sup> to KPMG.

19. As of the Petition Date, KPMG was owed \$468,863 by the Debtors in respect of services provided by KPMG prior to the Petition Date and waived its right to receive any unpaid fees incurred on Debtors' behalf prior to the Petition Date. Thus, as of the Petition Date, KPMG

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<sup>4</sup> These rates are converted from Mexican pesos to U.S. dollars at an exchange rate of 20 MXN to 1 USD.

<sup>5</sup> This amount is converted from Mexican pesos to U.S. dollars at an exchange rate of 20 MXN to 1 USD.

does not hold any claim for fees and expenses against the Debtors. Further, for the avoidance of doubt, KPMG hereby waives any potential claim for fees and expenses that KPMG later determines remain due and owing by the Debtors as of the Petition Date.

### **Post-Petition Payments**

20. As stated in the Sánchez Declaration, the Debtors are a publicly listed company on the Mexican Stock Exchange, also known as the Bolsa Mexicana de Valores (the “**BMV**”). Mexican law requires that the Debtors retain an independent auditor at all times in order to remain listed on the BMV. All Mexican public companies must engage external auditors to timely prepare audited annual financial statements that must be filed before the *Comisión Nacional Bancaria y de Valores* (“**CNBV**”) and disclosed to the market; in the absence of the foregoing, the trading of the stock would be suspended and potentially cancelled. Under Mexican law, an auditor is “independent” if, among others, it is owed no debts by the company it is auditing. KPMG has held this role for the Debtors since approximately 2007.

21. Due to a material misunderstanding, the Debtors were not aware that their independent auditor, an entity that must keep strict independence from them under Mexican law, would need to be formally retained in these Chapter 11 Cases. As a result, up until only recently, the Debtors continued to make timely payments to KPMG, post-petition, so as to comply with Mexican law and avoid being suspended and potentially delisted from the BMV, and without knowledge that such payments should not have been made until KPMG was formally retained in these Chapter 11 Cases.

22. Soon after it was discovered that the Debtors had made numerous post-petition payments to KPMG, the Debtors’ professionals began working quickly to assess the situation and, after confirming the nature of KPMG’s engagement, formally retain KPMG by this Application. The Debtors and their professionals believe that not making such payments, and therefore

compelling the suspension and even the delisting of the Debtors from the BMV, would be disastrous and harmful to the Debtors, their estates and all stakeholders. A delisting sanction, and a suspension of trading, would affect existing and future shareholders, as well as trigger certain obligations to the Debtors under securities laws with respect to buy-out of existing shareholders.

23. A schedule of all post-petition payments made to KPMG by each Debtor is listed below:

<b>Date of Payment</b>	<b>Debtor</b>	<b>Payment Amount (USD, at exchange rate of 20 MXN to 1 USD)</b>
10/16/2020	Aerovías de México, S.A. de C.V.	\$243,113.80 <sup>6</sup>
11/18/2020	Grupo Aeroméxico, S.A.B. de C.V.	\$29,499.21
11/18/2020	Aerovías de México, S.A. de C.V.	\$16,240.00
12/02/2020	Grupo Aeroméxico, S.A.B. de C.V.	\$26,957.53
12/22/2020	Aerovías de México, S.A. de C.V.	\$38,920.09
12/22/2020	Aerolitoral, S.A. de C.V.	\$28,619.64
12/22/2020	Aerovías Empresa de Cargo, S.A. de C.V.	\$22,405.98
12/23/2020	Aerovías de México, S.A. de C.V.	\$159,500.00
01/06/2021	Aerovías de México, S.A. de C.V.	\$25,520.00
02/19/2021	Aerolitoral, S.A. de C.V.	\$13,665.61
02/19/2021	Aerovías Empresa de Cargo, S.A. de C.V.	\$10,698.68
02/25/2021	Grupo Aeroméxico, S.A.B. de C.V.	\$26,957.53
04/07/2021	Grupo Aeroméxico, S.A.B. de C.V.	\$26,957.53

<sup>6</sup> This amount was paid with MCO – payment referred to air tickets equivalent.

04/07/2021	Aerovías de México, S.A. de C.V.	\$18,583.90
04/07/2021	Aerovías Empresa de Cargo, S.A. de C.V.	\$10,698.68
05/20/2021	Aerovías de México, S.A. de C.V.	\$87,721.52
05/21/2021	Grupo Aeroméxico, S.A.B. de C.V.	\$10,315.36
05/21/2021	Aerolitoral, S.A. de C.V.	\$3,884.14
05/21/2021	Aerovías Empresa de Cargo, S.A. de C.V.	\$13,837.47
06/04/2021	Aerolitoral, S.A. de C.V.	\$37,005.97
06/04/2021	Aerovías Empresa de Cargo, S.A. de C.V.	\$7,476.37
06/07/2021	Grupo Aeroméxico, S.A.B. de C.V.	\$6,484.75
06/07/2021	Aerovías de México, S.A. de C.V.	\$10,846.00
<b>Total</b>		<b>\$875,909.75</b>

### **Indemnification**

24. In the Engagement Letters, the Debtors have agreed to certain indemnification obligation as described therein, which are subject to the modifications set forth in the Proposed Order. The indemnification provisions provide that the Debtors shall hold KPMG and its employees harmless from any claims, liabilities, costs and expenses related to the services provided under the Engagement Letters attributable to any misrepresentation in the financial statements and specific-purpose financial statements. The indemnification provisions shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss asserted, whether in contract, statute (including but not limited to negligence) or otherwise.

25. The terms of the indemnification provisions in the Engagement Letters were fully negotiated at arm's length. The Debtors respectfully submit that the indemnification provisions, as modified by the Proposed Order, are reasonable and in the best interests of the Debtors, their

estates and creditors. Accordingly, as part of this Application, the Debtors request that this Court approve the indemnification provisions as modified by the Proposed Order.

**Disinterestedness**

26. To the best of the Debtors' knowledge and except to the extent disclosed herein and in the Fernández Declaration: (i) KPMG is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code, and does not hold or represent an interest adverse to the Debtors' estates, and (ii) KPMG has no connection to the Debtors, their creditors, or other parties in interest in these Chapter 11 Cases.

27. As of the Petition Date, KPMG does not hold any claim for fees and expenses against the Debtors and, for the avoidance of doubt, has agreed to waive any potential claim for fees and expenses that it later determines remained due and owing by the Debtors as of the Petition Date. Accordingly, KPMG is not a "creditor" with respect to the Debtors within the meaning of section 101(10) of the Bankruptcy Code.

28. As set forth in further detail in the Fernández Declaration, KPMG has certain connections with creditors and other parties in interest in these Chapter 11 Cases. All of these matters, however, are unrelated to these Chapter 11 Cases. KPMG does not believe that any of these matters represent an interest adverse to the Debtors' estates or otherwise create a conflict of interest regarding the Debtors or these Chapter 11 Cases.

29. To the extent that any new relevant facts or relationships bearing on the matters described herein during the period of KPMG's retention are discovered or arise, KPMG will use reasonable efforts to promptly file a supplemental declaration, as required by Bankruptcy Rule 2014(a).

**Basis for Relief**

30. Section 327(a) of the Bankruptcy Code provides that a debtor, subject to Court approval:

may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor] in carrying out the [debtor]'s duties under this title.

11 U.S.C. § 327(a).

31. Section 328(a) of the Bankruptcy Code provides that a debtor in possession may, with the Court's approval, "employ or authorize the employment of a professional person under section 327 [of the Bankruptcy Code] . . . on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." 11 U.S.C. § 328(a).

32. Bankruptcy Rule 2014(a) requires that an application for retention include:

specific facts showing the necessity for the employment, the name of the [firm] to be employed, the reasons for the selection, the professional services to be rendered, and proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the [firm's] connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the U.S. Trustee, or any person employed in the office of the U.S. Trustee.

Fed. R. Bankr. P. 2014.

33. Section 327(a) of the Bankruptcy Code permits the Debtors to hire a professional firm, like KPMG, to provide audit services to the Debtors in connection with these Chapter 11 Cases. Additionally, section 328 permits approval of KPMG's Fee and Expense Structure as set forth in the Engagement Letters, which the Debtors believes is fair, reasonable, and market-based in light of KPMG's experience and the issues that it may be required to address in performance of audit services for the Debtors. Furthermore, the requirements of Bankruptcy Rule 2014 are

satisfied by this Application. Thus, the Debtors respectfully submit that the retention of KPMG as their independent auditor pursuant to the terms of the Engagement Letters is in the best interests of the Debtors' estates, creditors and other parties in interest.

34. The Debtors and KPMG understand and have agreed that KPMG will apply to the Court for interim and final allowances of compensation and reimbursement of expenses in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any further orders of the Court for all professional services performed and expenses incurred after the Petition Date.

35. Finally, KPMG's retention *nunc pro tunc* to the Petition Date is warranted. *Nunc pro tunc* approval "requires that (i) if the application had been timely, the court would have authorized the appointment, and (ii) the delay in seeking court approval resulted from extraordinary circumstances." *Cushman & Wakefield of Conn., Inc. v. Keren Ltd. P'ship (In re Keren Ltd. P'ship)*, 189 F.3d 86, 87 (2d Cir. 1999). Factors that would justify *nunc pro tunc* relief in cases with a period of delay include "[1] whether the applicant or some other person bore responsibility for applying for approval; [2] whether the applicant was under time pressure to begin service without approval; [3] the amount of delay after the applicant learned that initial approval had not been granted; [4] the extent to which compensation to the applicant will prejudice innocent third parties; and [5] other relevant factors." *In re Keren Ltd. P'ship*, 225 B.R. 303, 306-07 (S.D.N.Y. 1998), *aff'd*, 189 F.3d 86 (2d Cir. 1999).

36. *Nunc pro tunc* may also be granted when the delay in seeking court approval results from excusable neglect, which includes "inadvertence, mistake, or carelessness." *In re Stylianou*, 2010 WL 3719303, at \*3-5 (Bankr. S.D.N.Y. Sept. 15, 2010) (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assocs.*, 507 U.S. 380, 388 (1993)); *In re 245 Assocs., LLC*, 188 B.R. 743, 750-51

(Bankr. S.D.N.Y. 1995). “The determination as to whether *nunc pro tunc* appointment is appropriate is in essence an equitable one, taking into account all relevant circumstances surrounding the party’s omission,” including factors such as “[1] the danger of prejudice to the debtor, [2] the length of the delay, including whether it was within the reasonable control of the movant, and [3] whether the movant acted in good faith.” *Stylianou*, 2010 WL 3719303, at \*5 (quoting *In re Hutter*, 215 B.R. 308, 315 (Bankr. D. Conn. 1997)).

37. Here, the delay in seeking court approval of KPMG’s retention resulted from excusable neglect. The delay was due to a material misunderstanding leading the Debtors to be unaware that an independent auditor, an entity that must keep strict independence from the Debtors under Mexican law, would need to be formally retained in these Chapter 11 Cases. The Debtors were informed that professionals conducting the case needed to be retained, but did not realize that auditors (who are subject to strict independence requirements and, as non-lawyers, not captured by a list of potential ordinary course professionals) would be considered professionals for this purpose. The Debtors’ professionals did not realize the issue until an issue was raised to AlixPartners in connection with a significant payment to KPMG. After it was discovered in late April 2021 that the Debtors had made numerous post-petition payments to KPMG, the Debtors’ professionals began working quickly to analyze the situation and, immediately thereafter, working to formally retain KPMG by this Application. The Debtors also proactively reached out to the U.S. Trustee’s office to inform them of the proposed retention in advance of them filing this Application, and also assisted KPMG in preparing this application and the requisite conflicts process (the KPMG conflicts process, given the size and complexity of the enterprise, was only completed shortly before filing this Application). The Debtors also believe that no party in interest will be prejudiced if the Court grants KPMG’s retention *nunc pro tunc* to the Petition Date because

KPMG provided and will continue to provide valuable services to the Debtors' estates in the interim period.

38. Furthermore, extraordinary circumstances exist. There was a legal requirement for KPMG to begin providing independent audit services on or after the Petition Date to comply with Mexican law and ensure the Debtors remained listed on the BMV. Without KPMG's services, the Debtors would have been suspended and potentially delisted from the BMV as of the Petition Date. As Mexican law requires the Debtors to retain an independent auditor at all times to remain listed on the BMV, the failure to retain KPMG *nunc pro tunc* to the Petition Date might impact the Debtors' listing on the BMV as of the Petition Date. In the instance that KPMG is not retained *nunc pro tunc* to the Petition Date and accordingly forced to reimburse fees paid during these Chapter 11 Cases, KPMG would lose the independence required for any external auditing firm in Mexico. The corresponding ripple effects (such as a necessary change in the Debtors tax auditing firm, as well as impacts on existing auditing activities in progress) would cause significant disruption, delay and expenditures for the Debtors. The Local Rules empower courts in this district to approve employment as of a prior effective date, and the Debtors submit that such approval is justified here.

**Notice and No Prior Request**

39. Notice of this Application will be provided to: (a) the entities on the Master Service List (as defined in the Case Management Order and available at the Debtors' case website at <https://dm.epiq11.com/aeromexico>) and (b) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "**Notice Parties**").

40. A copy of this Application and any order approving it will also be made available on the Debtors' Case Information Website located at <https://dm.epiq11.com/aeromexico>. Based

on the circumstances surrounding this Application and the nature of the relief requested herein, the Debtors respectfully submit that no further notice is required.

41. The Debtors have not previously sought the relief requested herein from the Court of any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: August 12, 2021  
New York, New York

GRUPO AEROMÉXICO, S.A.B. de C.V.  
(for itself and on behalf of its affiliates that are  
debtors and debtors in possession)

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