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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

Aerovías de México, S.A. de C.V.,

Plaintiff,

v.

Newrest Group Holding S.A., Newrest España,
S.L., Newrest Toronto Corporation, and Casa
Provedora Phillips, S.A.,

Defendants.

Chapter 11

Case No. 20-11563 (SCC)

(Jointly Administered)

Adv. Pro. No. 20-1346 (SCC)

**DEBTORS' MOTION FOR AN ORDER PURSUANT TO 11 U.S.C. §§ 105 AND 363(b),
AND FED. R. BANKR. P. 9019, APPROVING THE SETTLEMENT
BETWEEN DEBTORS AND NEWREST**

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") hereby move (this

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.

“Motion”) the United States Bankruptcy Court for the Southern District of New York (the “Court”) for entry of an order, substantially in the form attached hereto as Exhibit A (the “Order”), granting the relief described below. In support thereof, the Debtors respectfully state as follows:

Procedural Background

1. On June 30, 2020, (the “Petition Date”), the Debtors each commenced in this Court a voluntary case (these “Chapter 11 Cases”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (as amended or modified, the “Bankruptcy Code”). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

2. The Debtors’ Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

3. On July 13, 2020, the United States Trustee formed an Official Committee of Unsecured Creditors in the Chapter 11 Cases. No trustee or examiner has been appointed in the Chapter 11 Cases.

4. Detailed information regarding the Debtors’ business, capital structure, and the circumstances leading to the commencement of these Chapter 11 Cases is set forth in the *Declaration of Ricardo Javier Sánchez Baker in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* [ECF No. 20], filed with the Court on the Petition Date.

Jurisdiction and Venue

5. 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)(2) and, pursuant to Bankruptcy Rule 7008, 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.

6. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

7. By this Motion, the Debtors request entry of an order substantially in the form annexed hereto as Exhibit A, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, and Bankruptcy Rule 9019, authorizing the Debtors to be bound to, and abide by, the terms and conditions of that Settlement Agreement, dated July 27, 2021 (the “Settlement Agreement,” annexed hereto as Attachment 1 to the Order), by and among Aerovías, and Newrest España, S.L., Newrest Toronto Corporation, and Casa Proveedora Phillips, S.A.,² which Settlement Agreement embodies the comprehensive settlement (the “Settlement”) of various disputes between Debtors on the one hand, and Newrest and a related entity, on the other.

Background

8. On January 20, 2019, Aerovías and Newrest Group Holding S.A. entered into an International In-Flight Caterin[g] Services Agreement (as amended pursuant to that certain Addendum dated June 15, 2019) (collectively, the “2019 Inflight Catering Services Agreement”), which was later terminated by Newrest Group Holding S.A. prior to the filing of the Debtors’ Chapter 11 Cases (as hereinafter defined).

9. On August 4, 2020, Newrest España, S.L., Newrest Toronto Corporation, and Casa Proveedora Phillips, S.A. filed respectively, as intended third party beneficiaries under the

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Settlement Agreement, as applicable.

2019 Inflight Catering Services Agreement, proofs of claim against Aerovías in the chapter 11 cases pending in the Bankruptcy Court, totaling in the aggregate approximately €609,000 for allegedly unpaid prepetition invoices services under the 2019 Inflight Catering Services Agreement, namely Proof of Claim No. 38 filed by Casa Proveedora Philipps S.A. in the amount of \$32,602.24, Proof of Claim No. 39 filed by Newrest Toronto Corporation in the amount of \$170,761 CAD, and Proof of Claim No. 40 filed by Newrest Espana S.L. in the amount of 463,547.83 Euros (collectively, the “Proofs of Claim”).

10. On July 9, 2020 certain Newrest entities commenced a lawsuit against Aerovías in the Civil Court No. 74 of Madrid (Juzgado Primera Instancia nº 74 de Madrid) (the “Madrid Court”), Procedimiento Ordinario 432/2020 seeking to recover the alleged unpaid prepetition invoices totaling approximately €609,000 (the “Spanish Proceedings”). On July 24, 2020, the Madrid Court granted Newrest’s request for a precautionary measure to seize the funds in Aerovías’ Spanish bank account to ensure that Aerovías would be able to pay a potential adverse ruling and finding at that time that the parties had submitted to the jurisdiction of the Madrid Court for disputes arising under the Agreement and that the Bankruptcy Court’s Automatic Stay has no legal effect in Spain or on the Spanish Proceedings (the “Seizure Order”).

11. On December 14, 2020, Aerovías initiated the instant adversary proceeding, *Aerovías de México, S.A. de C.V. vs. Newrest Group Holding S.A., et al.*, Case No. 20-1346 (SCC) (the “Adversary Proceeding”) by filing a complaint (ECF No. 1) (the “Complaint”) against Newrest Group Holding S.A. and the Newrest Entities named therein, and a motion seeking a temporary restraining order and preliminary injunction (ECF No. 3).

12. On December 30, 2020, the Bankruptcy Court granted the motion in part for a preliminary injunction against the Newrest Entities, held that it did not have jurisdiction over

Newrest Group Holding S.A., and entered an order enjoining the Newrest Entities from taking any action to further prosecute the action in Spain; ordering that the Newrest Entities voluntarily withdraw or stay their claims; and ordered that the Newrest Entities make an application to the Madrid Court to reverse the seizure of Aerovías' bank accounts (ECF No. 20) (the "Preliminary Injunction").

13. On February 4, 2021, Aerovías filed a Motion to Enforce the Automatic Stay and the Preliminary Injunction and for an Order to Show Cause Regarding Defendants' Contempt of the Preliminary Injunction and the Automatic Stay (ECF No. 28) (the "Contempt Motion").

14. On February 10, 2021, the Bankruptcy Court issued an order granting the Contempt Motion against the Newrest Entities (ECF No. 35)), which, among other things, awarded Aerovías \$165,000 in attorney's fees and costs against the Newrest Entities (the "Contempt Order").

15. On February 22, 2021, the Bankruptcy Court issued an order Imposing Per Diem Monetary Sanctions against the Newrest Entities (ECF No. 40) (the "Per Diem Sanctions Order").

16. On March 19, 2021, in an effort to collect on its judgment, Aerovías served on several Newrest entities requests for documents regarding the Newrest Entities' U.S.-based assets pursuant to Rule 7034 of the Federal Rules of Bankruptcy Procedure and Rule 34 of the Federal Rules of Civil Procedure. (Aranalde Decl. ¶ 6.) Thereafter, Aerovías and Newrest agreed to several extensions of the time for Newrest to respond to the subpoenas while the parties' U.S.-based counsel engaged in settlement discussions. (*Id.*)

17. On June 23, 2021, the Madrid Court-appointed administrator in Spain sent letters to branches of Bank of America and Banco Santander in Spain, and Bank of America branch in

France, inquiring about Aerovías' bank accounts and activity therein. (Aranalde Decl. ¶ 5.) In an apparent misunderstanding by the banks, each bank appears to have frozen Aerovías' accounts, rendering Aerovías unable to withdraw or transfer any funds from the accounts without the authorization of the administrator. (*Id.*) The Newrest Entities, through its Spanish counsel, contacted the administrator and asked the administrator to correct the banks' misunderstandings and unfreeze the account. Nonetheless, as a result, the account freezes have prevented and continue to prevent Aeroméxico from making critical payments in the ordinary course of business operations in Spain, including for vendors and payroll that are needed to operate its flights. (*Id.* ¶ 6.) To date, as a result of the account holds, Aeroméxico has \$1.2 million in unpaid vendor invoices in connection with its flights in and out of Madrid. (*Id.*) Should any of those vendors stop their services because of nonpayment, Aeroméxico would be unable to continue its operations in Spain and would lose approximately USD \$73,000 per day of operating income. (*Id.*)

18. After months of engaging in arm's-length, good faith discussions with the objective of settling any and all claims and causes of action between Aerovías and Newrest except those related to the Proofs of Claim, and on July 27, 2021, Newrest and Aerovías executed the Settlement Agreement. (Aranalde Decl. ¶ 7.)

19. Among other things, the Settlement Agreement provides that the Parties will seek entry of a 9019 Order that reinstates and grants allowance to Newrests' Proofs of Claim, and authorizes the Debtors to enter into catering services agreement(s) for the provision of in-flight catering services and related supplies and services by Newrest to Aeroméxico for flights serving airports in Salt Lake City, Utah ("SLC") and Costa Rica (the "2021 Inflight Catering Services

Agreement”). As discussed below, the 2021 Inflight Catering Services Agreement will allow Aeroméxico to resume operating flights in SLC.

20. Furthermore, among other things, pursuant to the Settlement Agreement, within five days of the entry of such 9019 Order, (i) Newrest will pay to Aerovías \$50,000; (ii) Aeroméxico will cause the Adversary Proceeding to be dismissed with prejudice and without fees or costs to any Party with the exception of the \$50,000 to be paid by Newrest to Aerovías pursuant to item (i); (iii) Newrest and the applicable Debtors will cause the Spanish Proceeding to be dismissed with prejudice and without fees or costs to any Party, (iv) Newrest’s affiliate, Newrest Group Holding S.A. (“Newrest Group Holding”), will comply with the terms of that separate settlement agreement (the “Newest Group Holding/Debtors Settlement Agreement”) executed in and enforceable exclusively in Spain between Newrest Group Holding and Aerovías (the “Spanish Settlement”) which provides that Newrest Group Holding and Aerovías shall cause the Spanish Proceeding to be dismissed with prejudice and without fees or costs to any Party. The Parties have agreed that Newrest Group Holding has not and is not subjecting itself to the jurisdiction of the Bankruptcy Court or any other court in the United States, and the Debtors have agreed that they will not raise the Spanish Settlement as a basis for any United States court to have jurisdiction over Newrest Group Holding.

21. Newrest cooperated with the Debtors in Spain to stay the Spanish Proceedings and to reverse the freezes imposed by the banks. On July 27, 2021, the parties to the Spanish Proceedings filed with the Madrid Court a joint request to stay the proceedings and the actions of the administrator for 60 days, to allow time for the Bankruptcy Court to hear the 9019 Motion.

(Aranalde Decl. ¶ 8.) On July 28, 2021, the Madrid Court granted the request. (*Id.*)³ To date, only the French bank has released its hold on Aerovías’ French bank account in response to the Madrid Court’s order, though the Debtors expect that the Spanish banks will also lift their holds in due course. (Aranalde Decl. ¶ 8.)

Basis for Relief

A. The Settlement Is Fair and Equitable, Reasonable, and In the Best Interests of the Estates, As It Ensures the Protections of the Automatic Stay and Avoids Unnecessary Litigation

22. This Court should exercise its discretion to approve the settlement “in light of the general public policy favoring settlements.” *In re Hibbard Brown & Co.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998). Indeed, courts in this district have made clear that “[a]s a general matter, ‘settlements and compromises are favored in bankruptcy as they minimize costly litigation and further parties’ interests in expediting the administration of the bankruptcy estate.” *In re Republic Airways Holdings, Inc.*, 2016 WL 2616717, No. 16-10429 (SHL) at *3 (Bankr. S.D.N.Y. May 4, 2016) (citing *In re Dewey & LeBouef LLP*, 478 B.R. 626, 640 (Bankr. S.D.N.Y. 2012); *Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 455 (2d Cir. 2007); 10 Collier on Bankruptcy ¶ 9019.01 (16th ed. rev. 2013).

23. Under Rule 9019 and governing case law, the Court should approve a compromise or settlement where it makes an independent determination that the compromise or settlement is fair and equitable, reasonable, and in the best interests of the debtor’s estate. *See, e.g., In re Republic Airways*, 2016 WL 2166717 at *3; *see also In re Ionosphere Clubs, Inc.*, 156

³ A true and correct copy of the Madrid Court’s order is attached to the Declaration of Alfonso Aranalde in Support of the Motion, filed herewith.

B.R. 414, 426 (S.D.N.Y. 1993), *aff'd*, 17 F.3d 600 (2d Cir. 1994); *Nellis v. Shugrue*, 165 B.R. 115, 122-23 (S.D.N.Y. 1994). In so doing, the Court may consider the opinions of the trustee or debtor in possession that the settlement is fair and reasonable. *Id.*; *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993).

24. The Court, in assessing whether to approve a settlement, need not decide the issues of law and fact raised by the settlement, but rather should “canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness.” *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983). Put differently, “the court need not conduct a ‘mini-trial’ to determine the merits of the underlying litigation.” *In re Purofied Down Prods.*, 150 B.R. at 522.

25. “The ‘reasonableness’ of [a] settlement depends upon all factors, including probability of success, the length and cost of the litigation, and the extent to which the settlement is truly the product of ‘arms-length’ bargaining, and not fraud or collusion.” *In re Ionosphere Clubs, Inc.*, 156 B.R. at 428.

26. Further, to the extent that the Settlement uses estate property such use is a justified exercise of the Debtors’ business judgment, pursuant to section 363 of the Bankruptcy Code. Section 363 provides that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). Although section 363 does not specify a standard, the Second Circuit has required that such use, sale, or lease be based upon the sound business judgment of the debtor. *See Official Comm. of Unsecured Creditors of LTV Aerospace & Def. Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983) (requiring “some articulated business justification” to

approve the use, sale or lease of property outside the ordinary course of business). In that regard, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986); *see also id.* (“[A] presumption of reasonableness attaches to a debtor’s management decisions.”).

27. Once a debtor articulates a valid business justification, “[t]he business judgment rule ‘is a 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 was in the best interests of the company.’” *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). Thus, if a debtor’s actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1).

28. The Debtors, in consultation with their professionals, believe, in their reasonable business judgment, that the proposed Settlement is in the best interests of their estates and creditors, and constitutes an efficient and cost-effective method to ensure that the Debtors are able to continue to focus on developing their business plan and restructuring their balance sheet, instead of having to entertain unnecessary and expensive litigation to defend against the Spanish Proceedings. (Aranalde Decl. ¶ 9.) This Settlement is beneficial because there is real risk to estates that the continued prosecution of the Spanish Proceedings will continue to prevent Aeroméxico from being able to pay its critical vendor contractual obligations and make payroll payments. (*Id.* ¶ 10.) This could result in Aeroméxico being unable to continue its business operations in Spain, which would be detrimental to the value of the enterprise. (*Id.*) In addition, the Debtors risk the Spanish Court-appointed administrator collecting on the judgment in full

satisfaction of Newrest's claims. (*Id.*) The Settlement preserves the equitable treatment of creditors, as Newrest's Proofs of Claim will be allowed in uncontested amounts and receive the same distribution as other unsecured creditors. (Aranalde Decl. ¶ 11.) As a result, the Debtors have determined that it is in their best interests to agree to a reduction of the \$165,000 in attorney's fees awarded to Debtors by the Court to \$50,000, and to seek waiver of the \$5,000 per diem sanction. (*Id.*)

29. Additionally, the Settlement includes the 2021 Inflight Catering Services Agreement, which will allow Debtors to resume its operations in Salt Lake City, Utah and to obtain catering services in Costa Rica. At the beginning of the COVID-19 pandemic, only two third-party vendors, LSG Sky Chefs ("LSG") and Newrest USA, provided trash disposal services to flights operating in and out of SLC. (*Id.* ¶ 12.) Those trash disposal services are required for Aeroméxico to operate flights in and out of SLC. (*Id.*) Aeroméxico had a contract with LSG to provide trash disposal services for flights that landed in SLC, but in March 2020, LSG stopped operations at SLC, leaving Newrest USA as the only vendor providing trash disposal services at SLC. (*Id.*) Due to the Parties' dispute, they had been unable to reach an agreement for the provision of services by Newrest to Aeroméxico in SLC. (*Id.*) As a result, Aeroméxico has been unable to fly critical routes into and out of SLC since April 23, 2020, costing Aeroméxico hundreds of thousands of dollars in lost revenue. (*Id.*) The 2021 Inflight Catering Services Agreement provides for, among other things, trash removal services by Newrest to Aeroméxico in SLC, allowing Aeroméxico to resume operating the route. (*Id.*)

30. Taken together, the Settlement unquestionably benefits the Debtors' estates and all of their creditors, is an essential step towards successfully reorganizing, and is well within the range of reasonableness, and thus should be approved. (*Id.* ¶ 13.)

Notice

31. Notice of this Motion is being provided on all parties to the Settlement Agreement, or that may be directly affected by the Settlement (the “Notice Parties”), in accordance with paragraph 22(d) of the Court’s Case Management Order, dated July 8, 2020 [ECF No. 79], and upon filing with the Court, the motion will be available for inspection on the Debtors’ Case Website (located at <https://dm.epiq11.com/case/Aerom xico>).

WHEREFORE, the Debtors respectfully request that the Court enter the proposed form of order, substantially in the form attached hereto, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: August 17, 2021
New York, New York

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