

**Hearing Date and Time: September 3, 2021 at 10:00 a.m. (Prevailing Eastern Time)**  
**Objection Date and Time: August 31, 2021 at 12:00 p.m. (Prevailing Eastern Time)**

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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)**

**NOTICE OF HEARING ON DEBTORS' MOTION FOR ENTRY OF AN ORDER  
AUTHORIZING DEBTOR AEROVÍAS DE MÉXICO, S.A. DE C.V. TO ENTER INTO  
NEW SIMULATOR PURCHASE AGREEMENT WITH CAE INC.**

**PLEASE TAKE NOTICE** that, on August 20, 2021, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Debtors’ Motion for Entry of an Order Authorizing Debtor Aerovías de México, S.A. de C.V. To Enter into New Simulator Purchase Agreement with CAE Inc.* (the “**Motion**”). A hearing on the Motion is scheduled to be held on **September 3, 2021 at 10:00 a.m. (prevailing Eastern Time)** (the “**Hearing**”) before the

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<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; 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.

Honorable Judge Shelley C. Chapman, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Southern District of New York (the “**Court**”), or at such other time as the 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**”),<sup>2</sup> 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](http://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 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 from time to time by an announcement of the adjourned date or dates at the Hearing or a later hearing or by filing a notice with the Court. The Debtors will file an agenda before the Hearing, which may modify or supplement the motion(s) 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 Court by

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<sup>2</sup> 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>.

(a) attorneys practicing in the Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov)) and (b) all other parties in interest, in accordance with the customary practices of the 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 **August 31, 2021 at 12:00 p.m. (prevailing Eastern Time)** (the “**Objection Deadline**”).

**PLEASE TAKE FURTHER NOTICE** that all 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 responses or objections are timely filed and served with respect to the Motion, the Debtors may, on or after the Objection Deadline, submit to the Court an order substantially in the form of the proposed order attached to the Motion, under certification of counsel or certification of no objection, which order may be entered by the Court without further notice or opportunity to be heard.

*[Remainder of page intentionally left blank]*

Dated: August 20, 2021  
New York, New York

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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' MOTION FOR ENTRY OF AN ORDER AUTHORIZING DEBTOR  
AEROVÍAS DE MÉXICO, S.A. DE C.V. TO ENTER INTO NEW SIMULATOR  
PURCHASE AGREEMENT WITH CAE INC.**

Grupo Aeroméxico, S.A.B. de C.V. (“**Grupo Aeroméxico**”) and certain of its affiliates (collectively, the “**Debtors**”), each of which is a debtor and debtor in possession in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby file this motion (this “**Motion**”) seeking the entry of an order authorizing, but not directing, Debtor Aerovías de México, S.A. de C.V. (the “**Debtor Purchaser**”) to enter into a new purchase agreement and related transaction documents (collectively, the “**Simulator Purchase Documents**”) for a new B737MAX 8 Series

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<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; 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.

7000XR Full Flight Simulator (collectively, with the related equipment, parts, data, and hardware, the “**Simulator**”) containing terms substantially consistent with those set forth in the letter of intent attached to the Proposed Order as Exhibit 1 (the “**Letter of Intent**”). This Motion is supported by the *Declaration of Matthew Landess in Support of (A) Debtors’ Motion for Entry of an Order Authorizing Debtor Aerovías de México, S.A. de C.V. To Enter into New Simulator Purchase Agreement with CAE Inc. and (B) Related Pleadings* (the “**Landess Declaration**”) filed contemporaneously herewith and incorporated herein by reference. In further support of this Motion, the Debtors respectfully state as follows:

### **Jurisdiction and Venue**

1. The United States Bankruptcy Court for the Southern District of New York (the “**Court**”) has jurisdiction over this Motion 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). In addition, the Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), to the 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 in connection herewith consistent with Article III of the United States Constitution.

2. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Relief Requested**

3. By this Motion, and pursuant to sections 105(a) and 363(b) of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Bankruptcy Rules 6004 and 9013, the Debtors seek entry of an order, substantially in the form attached hereto as Exhibit A (the

“**Proposed Order**” and, if entered, the “**Order**”), authorizing (but not directing) the Debtor Purchaser to enter into the Simulator Purchase Documents, in accordance with the terms and conditions set forth in the Letter of Intent attached to the Proposed Order as Exhibit 1, as further detailed herein and in the Proposed Order.

### **Background**

#### **A. General Background**

4. On June 30, 2020 (the “**Petition Date**”), each of the Debtors filed in this Court voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors have continued to operate and manage their businesses and have continued to possess their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. The Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* [ECF No. 30] entered by the Court on July 1, 2020 in Grupo Aeroméxico’s Chapter 11 Case.<sup>2</sup>

6. On July 13, 2020, the Office of the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) appointed an Official Committee of Unsecured Creditors (the “**Committee**”) pursuant to section 1102 of the Bankruptcy Code. *See Notice of Appointment of Official Committee of Unsecured Creditors* [ECF No. 92]. No trustee or examiner has been appointed in the Chapter 11 Cases.

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<sup>2</sup> On July 2, 2020, the Court entered similar orders for the other Debtors on their respective Court dockets. *See In re Aerovías de México, S.A. de C.V.*, No. 20-11561, ECF No. 2; *In re Aerolitoral, S.A. de C.V.*, No. 20-11565, ECF No. 2; *In re Aerovías Empresa de Cargo, S.A. de C.V.*, No. 20-11566, ECF No. 2.

7. Detailed information regarding the Debtors' businesses and affairs, capital structure, and the circumstances leading to the commencement of the Chapter 11 Cases 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], which is incorporated herein by reference.

**B. The Debtors' Fleet Optimization Process and Training Needs**

8. As the Court is aware, the Debtors have been engaged in a multi-step process to (a) analyze their anticipated, long-term fleet and equipment needs, (b) make corresponding adjustments to the size and composition of their current operating fleet, and (c) obtain the most favorable terms for agreements relating to aircraft equipment. In that regard, the Debtors' current business plan is aimed at a greater proportion of Boeing 737NG and 737MAX aircraft flying. Over the past several months, the Debtors have made substantial progress towards this goal.

- On March 9, 2021, the Debtors filed their *Motion for Authorization to Enter Into Aircraft Lease Agreements with Certain Counterparties* [ECF No. 954] (the "**BBAM-Merx Motion**"). The Court subsequently entered an order approving the BBAM-Merx Motion [ECF No. 1100], pursuant to which the Debtors added six new Boeing 737-800 aircraft (the "**BBAM-Merx Aircraft**") to their fleet (the "**BBAM-Merx Transaction**").
- On April 22, 2021, the Debtors filed their *Motion for (I) Approval of Compromises with Boeing and Other Counterparties, (II) Authorization To (A) Enter Into Amended Aircraft Purchase Agreement with Boeing and (B) Enter into Agreements with Other Counterparties related to the Boeing Transaction, (III) Approval of the Assumption of Such Amended Agreements, as Applicable, and (IV) Approval To Settle Certain Prepetition Claims of Counterparties* [ECF No. 1108] (the "**Boeing**



**Motion**”) and their *Motion for (I) Authorization To (A) Enter Into New Aircraft Lease Agreements and (B) Amend and Assume Certain Existing Aircraft Lease Agreements, and (II) Approval of Compromise Regarding Prepetition Claims with Air Lease Corporation* [ECF No. 1113] (the “**Air Lease Motion**”). The Court approved both the Boeing Motion and the Air Lease Motion at a hearing on April 30, 2021,<sup>3</sup> and subsequently entered each of the orders related thereto.<sup>4</sup> Pursuant to such orders, the Debtors added, among other things, 24 new Boeing 737MAX aircraft (collectively, the “**Boeing and ALC Aircraft**” and, together with the BBAM-Merx Aircraft, the “**New Aircraft**”) to their fleet (collectively, the “**Boeing and ALC Transactions**” and, together with the BBAM-Merx Transaction, the “**Aircraft Acquisitions**”).

- On July 19, 2021, the Debtors filed their *Motion for (I) Authorization to (A) Enter Into New Aircraft Lease Agreements and (B) Amend and Assume a Certain Existing Aircraft Lease Agreement, and (II) Approval of Compromise Regarding Prepetition Claims with Affiliates of Dubai Aerospace Enterprise (DAE) Ltd.* [ECF No. 1452] seeking to acquire up to 12 Boeing 737MAX aircraft in accordance with their long-term fleet plan (the “**DAE Transaction**”). On August 11, 2021, the Court entered an order [ECF No. 1544] approving the DAE Transaction on an interim basis.

9. The induction of the new Boeing MAX aircraft from the DAE Transaction, along with those being added pursuant to the Aircraft Acquisitions, has necessitated a reevaluation of

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<sup>3</sup> See Hr’g Tr. (April 30, 2021), 29:17–23 and 37:13–16.

<sup>4</sup> See ECF Nos. 1141–42, 1145, 1154, 1156–57, 1160–62.

the Debtors' pilot training needs as more pilots will transition to flying the Boeing 737NG and 737MAX aircraft. After careful consideration, the Debtors determined that they currently require an estimated 12 trained two-pilot crews (which could vary depending upon the training needs and the airline's schedule) for each additional Boeing 737NG and 737MAX aircraft that the Debtors will operate as part of its long-term fleet. Given that the Debtors are currently unable to meet the projected need for increased Boeing 737 pilot training, the Debtors, in consultation with their advisors, weighed their options to increase simulator capacity to meet the greater demand for training – whether it be purchasing or leasing a simulator or outsourcing the training.

10. Given market conditions, the current lead time to secure a simulator is between 14 and 18 months. The Debtors were alerted to the fact that CAE Inc. (the “**Seller**”) had a new Simulator available for purchase and deployment potentially as early as February 2022. Moreover, the Simulator has the capability to train pilots on the Boeing 737NG and 737MAX aircraft models. Accordingly, in light of the Aircraft Acquisitions and the DAE Transaction, the Debtors believe that acquiring the Simulator at this time would be in the best interests of the estates, as it would allow the Debtors to fully maximize the value and benefits attributed to the inclusion of these additional aircraft in accordance with their fleet optimization and business plans.

11. As a result of arm's length and good faith negotiations, the Debtors have reached an agreement with the Seller to enter into the Simulator Purchase Documents and take delivery of the Simulator (as described herein, in the Letter of Intent, and in the Landess Declaration). The Letter of Intent sets forth the commercial terms between the Seller and the Debtor Purchaser relating to the Simulator Purchase Documents. As described above, the purchase of this Simulator will enable the Debtors' pilots to continue most of their required training in-house using state-of-the-art equipment to assure an efficient transition towards the airline's new fleet structure.

12. In determining to enter into the Letter of Intent, the Debtors consulted with the relevant advisors to the Committee, the DIP Lenders,<sup>5</sup> and the Ad Hoc Group,<sup>6</sup> none of which expressed opposition to the relief requested herein.

**Basis for Relief**

13. The Debtors believe that the purchase of a flight simulator, as contemplated by the Letter of Intent, constitutes an ordinary course transaction because (a) it is commonplace in the airline industry and (b) the Debtors have purchased such equipment in the past. As a result, the Debtors believe that entry into the Simulator Purchase Documents, as contemplated by the Letter of Intent, would be permitted under section 363(c) of that Bankruptcy Code, which authorizes a debtor to “enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing . . . .” 11 U.S.C. § 363(c)(1). Nevertheless, out of an abundance of caution (and to the extent that such authorization is required under section 363(b) of the Bankruptcy Code), the Debtors seek entry of an order authorizing the Debtor Purchaser to enter into the Simulator Purchase Documents.

14. Section 363(b)(1) of the Bankruptcy Code empowers a court to allow a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A debtor’s decision to use, sell, or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *See Official Comm. of Unsecured*

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<sup>5</sup> As used in this Motion, “DIP Lenders” refers to those parties identified in this Court’s *Final Order Granting Debtors’ Motion to (I) Authorize Certain Debtors in Possession to Obtain Post-Petition Financing; (II) Grant Liens and Superpriority Administrative Expense Claims to DIP Lenders; (III) Modify Automatic Stay; and (IV) Grant Related Relief* [ECF No. 527].

<sup>6</sup> As used in this Motion, “Ad Hoc Group” refers to those parties identified in the *Second Amended Verified Statement of the Ad Hoc Group of Senior Noteholders Pursuant to Bankruptcy Rule 2019* [ECF No. 1292].

*Creditors of LTV Aerospace and Defense Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that “a judge determining a § 363(b) application [must] expressly find from the evidence presented before him . . . a good business reason to grant such an application”); *see also Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (same); *In re Glob. Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 674 (Bankr. S.D.N.Y. 1989) (noting that the standard for determining a motion under section 363(b) of the Bankruptcy Code is “good business reason”).

15. The business judgment rule is satisfied “when the following elements are present: (1) a business decision, (2) disinterestedness, (3) due care, (4) good faith, and (5) according to some courts and commentators, no abuse of discretion or waste of corporate assets.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993) (internal quotations omitted). In fact, “[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 In re Integrated Res., Inc.*, 147 B.R. at 656 (holding that a party opposing a debtor’s exercise of its business judgment has the burden of rebutting the presumption of validity). Indeed, courts in this district have consistently and appropriately been loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence and will uphold a board’s decisions as long as they are attributable to any “rational business purpose.” *Id.*

16. Moreover, section 105(a) of the Bankruptcy Code confers the Court with broad 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).

17. The Debtors respectfully submit that the relief requested herein is fair, equitable, reasonable, the product of the Debtors exercising their sound business judgment, and in the best interests of the Debtors’ estates and is, thus, justified under sections 363(b) and 105(a) of the Bankruptcy Code. As described above and in the Landess Declaration, the Debtors have a critical need to acquire at least one simulator that is compatible with their expected fleet at emergence from the Chapter 11 Cases. Further, for the reasons set forth above, a time-sensitive need exists to acquire a simulator to provide their pilots with the training necessary to operate the New Aircraft and the aircraft that the Debtors intend to acquire in the DAE Transaction. In determining to enter into the transactions with the Seller, the Debtors compared the Letter of Intent and the Simulator to available alternatives (while taking into consideration the timing advantages of a transaction with the Seller, as detailed above) and ultimately negotiated (at arm’s length, in good faith, and in consultation with their key stakeholders) economically favorable terms for the Simulator Purchase Documents, as memorialized in the Letter of Intent, that are in line with the Debtors’ long-term business plan. Moreover, the Debtors have determined (based on the exercise of their sound business judgement) that the terms of the Simulator Purchase Documents, including the payment and delivery schedule thereunder, represent the best available transaction under the circumstances, particularly given, among other things, that the Debtors are unable to obtain any alternative

simulator in a timely manner and in accordance with the delivery schedule contemplated by the Aircraft Acquisitions and the DAE Transaction, described above.

18. In light of the foregoing, the Debtors respectfully submit that the entry into the Simulator Purchase Documents, in accordance with the terms and conditions set forth the in the Letter of Intent, (a) would be the result of the Debtors exercising their sound business judgement in accordance with their fiduciary duties, (b) would be in the best interests of their estates and economic stakeholders, and (c) would further serve to maximize value for the benefit of all creditors. Accordingly, the Debtors respectfully request that the Court authorize, but not direct, the Debtor Purchaser to enter into the Simulator Purchase Documents in accordance with the terms and conditions set forth in the Letter of Intent.

#### **Notice**

19. Notice of this Motion will be provided to the following parties: (a) the entities on the Master Service List (as defined in the *Order Establishing Certain Notice, Case Management, and Administrative Procedures* [ECF No. 79], which is available on the Debtors' case website at <https://dm.epiq11.com/case/aeromexico/info>); (b) the U.S. Trustee; (c) counsel to the Committee; (d) counsel to Apollo Management Holdings, L.P.; (e) counsel to the Ad Hoc Group; and (f) any person or entity with a particularized interest in the subject matter of this Motion. The Debtors respectfully submit that no other or further notice is required.

#### **No Prior Request**

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

*[Remainder of page intentionally left blank]*

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: August 20, 2021  
New York, New York

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