

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.¹**

Chapter 11

Case No. 20-11563 (SCC)

(Jointly Administered)

**NOTICE OF HEARING ON DEBTORS' MOTION FOR ENTRY OF AN ORDER
(I) AUTHORIZING DEBTOR AEROVÍAS DE MÉXICO, S.A. DE C.V. TO ASSUME
(ON AN AMENDED BASIS) THOSE CERTAIN AIRCRAFT LEASE AGREEMENTS
AND (II) APPROVING THE CLAIMS SETTLEMENT**

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 (I) Authorizing Debtor Aerovías de México, S.A. de C.V. To Assume (On an Amended Basis) those Certain Aircraft Lease Agreements and (II) Approving the Claims Settlement* (the “**Motion**”). A

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.

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 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**”),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 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.

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>.

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 (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) 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 annexed 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.

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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.¹

Chapter 11

Case No. 20-11563 (SCC)

(Jointly Administered)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING
DEBTOR AEROVÍAS DE MÉXICO, S.A. DE C.V. TO ASSUME (ON AN
AMENDED BASIS) THOSE CERTAIN AIRCRAFT LEASE AGREEMENTS
AND (II) APPROVING THE CLAIMS SETTLEMENT**

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 (i) authorizing, but not directing, Debtor Aerovías de México, S.A. de C.V. (the “**Debtor Lessee**”) to assume that certain (a) Aircraft Lease Agreement, dated as of

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.

November 8, 2013 (as assigned, assumed, amended, or otherwise modified from time to time, the “**39944 Aircraft Lease**”), on an amended basis in accordance with the terms and conditions set forth in that certain Second Amended and Restated Aircraft Lease Agreement (the “**Amended 39944 Aircraft Lease**”) between UMB Bank N.A. (as successor to Wells Fargo Trust Company, N.A. pursuant to an assignment and assumption agreement to be entered into simultaneously with the Amended 39944 Aircraft Lease), not in its individual capacity but solely as Owner Trustee (the “**39944 Lessor**”), and the Debtor Lessee, relating to that certain Boeing 737-800 aircraft bearing manufacturer’s serial number 39944 (together with the related engines, parts, equipment, and appurtenances, the “**39944 Aircraft**”), (b) Aircraft Lease Agreement, dated as of November 8, 2013 (as assigned, assumed, amended, or otherwise modified from time to time, the “**39945 Aircraft Lease**”), on an amended basis in accordance with the terms and conditions set forth in that certain Amended and Restated Aircraft Lease Agreement (the “**Amended 39945 Aircraft Lease**”) between UMB Bank N.A. (as successor to Wells Fargo Trust Company, N.A. pursuant to an assignment and assumption agreement to be entered into simultaneously with the Amended 39945 Aircraft Lease), not in its individual capacity but solely as Owner Trustee (the “**39945 Lessor**”), and the Debtor Lessee, relating to that certain Boeing 737-800 aircraft bearing manufacturer’s serial number 39945 (together with the related engines, parts, equipment, and appurtenances, the “**39945 Aircraft**”), (c) Aircraft Lease Agreement, dated as of June 24, 2014 (as assigned, assumed, amended, or otherwise modified from time to time, the “**39958 Aircraft Lease**”), on an amended basis in accordance with the terms and conditions set forth in that certain Amended and Restated Aircraft Lease Agreement (the “**Amended 39958 Aircraft Lease**”) between UMB Bank N.A. (as successor to Wells Fargo Trust Company, N.A. pursuant to an

assignment and assumption agreement to be entered into simultaneously with the Amended 39958 Aircraft Lease), not in its individual capacity but solely as Owner Trustee (the “**39958 Lessor**”), and the Debtor Lessee, relating to that certain Boeing 737-800 aircraft bearing manufacturer’s serial number 39958 (together with the related engines, parts, equipment, and appurtenances, the “**39958 Aircraft**”), (d) Aircraft Lease Agreement, dated as of June 24, 2014 (as assigned, assumed, amended, or otherwise modified from time to time, the “**39957 Aircraft Lease**”), on an amended basis in accordance with the terms and conditions set forth in that certain Amended and Restated Aircraft Lease Agreement (the “**Amended 39957 Aircraft Lease**”) between Global Aviation Equipment Leasing I Ireland Limited (the “**39957 Lessor**”) and the Debtor Lessee, relating to that certain Boeing 737-852 aircraft bearing manufacturer’s serial number 39957 (together with the related engines, parts, equipment, and appurtenances, the “**39957 Aircraft**”), (e) Aircraft Lease Agreement, dated as of October 27, 2017 (as assigned, assumed, amended, or otherwise modified from time to time, the “**43706 Aircraft Lease**”), on an amended basis in accordance with the terms and conditions set forth in that certain Amended and Restated Aircraft Lease Agreement (the “**Amended 43706 Aircraft Lease**”) between SMBC Aviation Capital Limited (the “**43706 Lessor**”) and the Debtor Lessee, relating to that certain Boeing 737MAX 8 aircraft bearing manufacturer’s serial number 43706 (together with the related engines, parts, equipment, and appurtenances, the “**43706 Aircraft**”), and (f) Aircraft Lease Agreement, dated as of October 27, 2017 (as assigned, assumed, amended, or otherwise modified from time to time, the “**43707 Aircraft Lease**” and, together with the 39944 Aircraft Lease, 39945 Aircraft Lease, 39958 Aircraft Lease, 39957 Aircraft Lease, and 43706 Aircraft Lease, the “**Aircraft Leases**”), on an amended basis in accordance with the terms and conditions set forth in that certain Amended and Restated

Aircraft Lease Agreement (the “**Amended 43707 Aircraft Lease**” and, together with the Amended 39944 Aircraft Lease, Amended 39945 Aircraft Lease, Amended 39958 Aircraft Lease, Amended 39957 Aircraft Lease, and Amended 43706 Aircraft Lease, the “**Amended Aircraft Leases**”) between SMBC Aviation Capital Limited (the “**43707 Lessor**” and, together with the 39944 Lessor, the 39945 Lessor, the 39958 Lessor, the 39957 Lessor, and the 43706 Lessor, the “**Lessors**”) and the Debtor Lessee, relating to that certain Boeing 737MAX 8 aircraft bearing manufacturer’s serial number 43707 (together with the related engines, parts, equipment, and appurtenances, the “**43707 Aircraft**” and, together with the 39944 Aircraft, the 39945 Aircraft, the 39958 Aircraft, the 39957 Aircraft, and the 43706 Aircraft, the “**Aircraft**”), and (ii) approving the Claims Settlement (as defined herein). The agreed form of the Amended 43706 Aircraft Lease is attached to the Proposed Order (as defined herein) as Exhibit A and summaries of the material terms of the Amended Aircraft Leases are attached to the Proposed Order as Exhibits B-G. This Motion is supported by the *Declaration of Matthew Landess in Support of (A) Debtors’ Motion for Entry of an Order (I) Authorizing Debtor Aerovías de México, S.A. de C.V. To Assume (On an Amended Basis) those Certain Aircraft Lease Agreements and (II) Approving the Claims Settlement 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 365 of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Bankruptcy Rules 6004, 6006, 9013, and 9019, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit 1** (the “**Proposed Order**” and, if entered, the “**Order**”), (a) authorizing (but not directing) the Debtor Lessee to assume the Aircraft Leases on an amended basis, substantially in accordance with (i) the terms and conditions set forth in the form of the Amended 43706 Aircraft Lease attached to the Proposed Order as Exhibit A and as otherwise set forth herein (ii) the summaries of material terms of the Amended Aircraft Leases attached to the Proposed Order as Exhibits B-G, and (b) approving the Claims Settlement, each 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.²

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.

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

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

² 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.

adjustments to the size and composition of their current operating fleet, and (c) obtain the most favorable terms for agreements relating to aircraft equipment.

9. On September 15, 2020, the Debtors filed their *Motion for Approval of Stipulations and Orders Between Debtors and Counterparties Concerning Certain Aircraft and Engines* [ECF No. 373] (the “**Equipment Stipulation Motion**”), pursuant to which the Debtors sought approval of certain stipulations (the “**Equipment Stipulations**”) between certain Debtors and certain counterparties concerning leases of Equipment (as defined in the Equipment Stipulation Motion). The Equipment Stipulations enabled the Debtors to continue to utilize the Equipment on their operating routes and to maintain the Equipment when not being operated. Broadly speaking, the Equipment Stipulations provide, with limited variation, for payment of rent calculated based on actual usage of the Equipment (called a “power by the hour” or “PBH” arrangement), rather than a fixed monthly amount. The Court entered an order approving the Equipment Stipulation Motion [ECF No. 396] and so ordered the underlying Equipment Stipulations. [ECF Nos. 399–429, 475, 491, 502].

10. 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, 2021,³ and subsequently entered each of the orders related thereto.⁴ Pursuant to such orders, the Debtors (a) added 28 new aircraft to their fleet, (b) assumed agreements relating to 18 existing aircraft, and (c) settled the allowed amounts of unsecured claims of certain counterparties with respect to such equipment.

11. The Court has entered additional orders authorizing the Debtors to either enter into new aircraft leases and/or assume existing aircraft leases on an amended basis. *See* [ECF Nos. 984, 1100, 1544, 1572–73].

C. The Amended Aircraft Leases and the Claims Settlement

12. Over the last several months, the Debtors have continued negotiating with existing lessors and potential lessors of additional aircraft and equipment to obtain the best terms available for the aircraft and equipment that will be necessary for the Debtors to pursue their long-term business plan and to optimize their anticipated fleet upon emergence from the Chapter 11 Cases.

13. As a result of arm’s length and good faith negotiations, the Debtors have reached an agreement with the Lessors to (a) assume the Aircraft Leases on an amended basis in accordance with the terms and conditions set forth in the Amended Aircraft Leases relating to the Aircraft and (b) allow certain claims against the Debtors in the Chapter 11 Cases in favor of the Lessors relating to the Aircraft and the Aircraft Leases, each as described herein, in the Amended Aircraft Leases, and in the Landess Declaration.

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

⁴ *See* ECF Nos. 1141–42, 1145, 1154, 1156–57, 1160–62.

14. The form of the Amended 43706 Aircraft Lease attached as Exhibit A to the Proposed Order sets forth the commercial terms agreed between the 43706 Lessor and the Debtor Lessee and, except with respect to certain terms specific to the leases for the 737-800 aircraft such as return conditions, serves as the form for the other Amended Aircraft Leases in accordance with the summaries of material terms attached as Exhibits B-G to the Proposed Order.⁵ By agreeing to such terms, the Debtors have achieved certainty in maintaining the Aircraft in their fleet on terms that fit the Debtors' short- and long-term needs and that the Debtors believe are advantageous. The Aircraft will come at attractive economics and ownership costs compared to the Debtors' average prepetition lease costs for similar equipment. Moreover, the Lessors and the Debtor Lessee have agreed that, subject to the Debtors' continued compliance with the terms of the Aircraft Leases and the applicable Equipment Stipulations, the assumption of the Aircraft Leases on an amended basis, in accordance with the terms and conditions set forth in the Amended Aircraft Leases, would not give rise to an obligation to cure any defaults under the Aircraft Leases under section 365(b)(1)(A) of the Bankruptcy Code.

15. In conjunction with these transactions, the Debtors seek to resolve certain prepetition claims of the Lessors against the Debtors in the Chapter 11 Cases relating to the Aircraft and the Aircraft Leases (collectively, the "**Claims Settlement**") and, together with the Amended

⁵ The return conditions included in the Amended 39944 Aircraft Lease, the Amended 39945 Aircraft Lease, the Amended 39958 Aircraft Lease, and the Amended 39957 Aircraft Lease (the "**Amended 737-800 Aircraft Leases**") will in substance remain unchanged from the original return conditions in the Aircraft Leases for the applicable Aircraft and therefore will differ from the return conditions in the Amended 43706 Aircraft Lease. The Amended 737-800 Aircraft Leases also will provide that maintenance reserves previously accumulated under those Aircraft Leases shall, subject to certain terms and conditions, be available to the Debtor Lessee for qualifying maintenance and for application towards payment of certain end of lease equivalency charges under the applicable Amended Aircraft Lease.

Aircraft Leases, the “**SMBC Transactions**”). To this end, the parties have agreed that (a) the 39944 Lessor shall have an allowed non-priority general unsecured claim against the Debtor Lessee in the aggregate amount of \$4,982,763.09 relating to the 39944 Aircraft and the 39944 Aircraft Lease (the “**39944 Allowed Claim**”), (b) the 39945 Lessor shall have an allowed non-priority general unsecured claim against the Debtor Lessee in the aggregate amount of \$4,802,438.93 relating to the 39945 Aircraft and the 39945 Aircraft Lease (the “**39945 Allowed Claim**”), (c) the 39958 Lessor shall have an allowed non-priority general unsecured claim against the Debtor Lessee in the aggregate amount of \$5,106,517.46 relating to the 39958 Aircraft and the 39958 Aircraft Lease (the “**39958 Allowed Claim**”), (d) the 39957 Lessor shall have an allowed non-priority general unsecured claim against the Debtor Lessee in the aggregate amount of \$6,402,189.58 relating to the 39957 Aircraft and the 39957 Aircraft Lease (the “**39957 Allowed Claim**”), (e) the 43706 Lessor shall have an allowed non-priority general unsecured claim against the Debtor Lessee in the aggregate amount of \$11,495,850.97 relating to the 43706 Aircraft and the 43706 Aircraft Lease (the “**43706 Allowed Claim**”), and (f) the 43707 Lessor shall have an allowed non-priority general unsecured claim against the Debtor Lessee in the aggregate amount of \$11,631,141.81 relating to the 43707 Aircraft and the 43707 Aircraft Lease (the “**43707 Allowed Claim**” and, together with the 39944 Allowed Claim, the 39945 Allowed Claim, the 39958 Allowed Claim, the 39957 Allowed Claim, and the 43706 Allowed Claim, the “**Allowed Claims**”). Without prejudice to any claims arising under the Amended Aircraft Leases, the Allowed Claims shall constitute the only general unsecured claims of the Lessors and their affiliates and SMBC Aviation Capital Limited (“**SMBC**”) allowed in the Chapter 11 Cases in respect of the Aircraft and the Aircraft Leases.

16. In determining to enter into the SMBC Transactions, the Debtors consulted with the respective advisors to the DIP Lenders,⁶ the Committee, and the Ad Hoc Group.⁷

Basis for Relief

A. The Court Should Authorize the Assumption of the Aircraft Leases (on an Amended Basis) Under Section 365(a) of the Bankruptcy Code

17. Section 365 of the Bankruptcy Code allows a debtor in possession (with bankruptcy court approval) to maximize the value of its estates by, among other things, assuming executory contracts and unexpired leases. 11 U.S.C. § 365(a); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 521 (1984); *In re Orion Pictures Corp.*, 4 F.3d 1095, 1098 (2d Cir. 1993). An executory contract is a “contract under which the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other.” *Sharon Steel Corp. v. Nat’l Fuel Gas Distribution Corp.*, 872 F.2d 36, 39 (3d Cir. 1989) (internal citations omitted); *see also In re Keren Ltd. P’ship*, 225 B.R. 303, 307 (S.D.N.Y. 1997), *aff’d*, 189 F.3d 86 (2d Cir. 1999) (same).

18. In determining whether to permit a debtor to assume or reject a contract or lease, “the debtor’s interests are paramount.” *In re Penn Traffic Co.*, 524 F.3d. 373, 383 (2d Cir. 2008). Accordingly, the decision to assume or reject an executory contract or unexpired lease is governed by the business judgment rule, which requires that a debtor determine that the requested

⁶ 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].

⁷ 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].

assumption would be beneficial to its estates. *See Grp. of Institutional Invs. v. Chicago, M., St. P. & P. R. Co.*, 318 U.S. 523, 550 (1943) (finding that the question of assumption “is one of business judgment”); *In re Penn Traffic*, 524 F.3d at 383; *In re Old Carco LLC*, 406 B.R. 180, 188 (Bankr. S.D.N.Y. 2009); *In re Helm*, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 2006); *In re MF Global Inc.*, No. 11-2790, 2011 WL 6792758, at *2 (Bankr. S.D.N.Y. Dec. 20, 2011) (“The assumption or rejection of an executory contract may be approved if such action would benefit the debtor’s estate and is an exercise of sound business judgment.”); *Sharon Steel*, 872 F.2d at 40.

19. In considering a motion to assume or reject an executory contract or unexpired lease, a debtor “should examine a contract and the surrounding circumstances and apply its best ‘business judgment’ to determine if [assumption] would be beneficial or burdensome to the estate.” *In re Orion Pictures Corp.*, 4 F.3d at 1099; *see also In re Klein Sleep Prods., Inc.*, 78 F.3d 18, 25 (2d Cir. 1996); *In re Gucci*, 193 B.R. 411, 415 (S.D.N.Y. 1996). A debtor’s decision to assume an executory contract or unexpired lease based on its business judgment will generally not be disturbed absent a showing of “bad faith or abuse of business discretion.” *In re Old Carco*, 406 B.R. at 188 (quoting *In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994), *aff’d sub nom. John Forsyth Co., Inc. v. G Licensing, Ltd.*, 187 B.R. 111 (S.D.N.Y. 1995)); *see also In re MF Global Inc.*, No. 11-2790, 2011 WL 6792758, at *2 (Bankr. S.D.N.Y. Dec. 20, 2011) (“The assumption or rejection of an executory contract may be approved if such action would benefit the debtor’s estate and is an exercise of sound business judgment.”); *In re Chipwich, Inc.*, 54 B.R. 427, 430–31 (Bankr. S.D.N.Y. 1985). The party opposing a debtor’s exercise of its business judgment has the burden of rebutting the presumption of validity. *See 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).

20. Upon finding that the debtor has exercised its sound business judgment in determining that the assumption of a contract or lease is in the best interests of the debtor, its creditors, and all parties in interest, the court should approve the assumption under section 365(a) of the Bankruptcy Code. *See, e.g., In re Child World, Inc.*, 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992); *In re Gucci*, 193 B.R. at 417.

21. 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).

22. The Debtors respectfully submit that the relief requested herein is fair, equitable, reasonable, and in the best interests of the Debtors’ estates and is, thus, justified under sections 365(a) and 105(a) of the Bankruptcy Code. As described above and in the Landess Declaration, the Debtors are seeking to reset their fleet and attendant costs to a market level. As part of this process, the Debtors are evaluating their fleet of aircraft and equipment, reviewing the relevant underlying leases and agreements, and, to the extent prudent, negotiating amendments to such leases and agreements for aircraft and equipment that the Debtors desire to maintain. In doing so, the Debtors compared the Aircraft Leases and the Aircraft to available alternatives and ultimately negotiated (at arm’s length, in good faith, and in consultation with their key stakeholders) new economically favorable terms, as set forth in the form of the Amended Aircraft Leases, that are in line with the Debtors’ long-term business plan. In addition to the improved costs and better terms and conditions as compared to the Aircraft Leases, the Amended Aircraft Leases also will create

operational flexibility for the Debtors, as they will allow the Debtors to retain and operate six existing aircraft in their fleet and position the Debtors to potentially reject other costly aircraft or equipment that are not as attractive for the long term fleet. Finally, the Debtors have determined (based on the exercise of their sound business judgement) that the terms set forth in the Amended Aircraft Leases represent the best available transactions under the circumstances of the Chapter 11 Cases (and are superior to at least some of their prepetition aircraft leases).

23. In light of the foregoing, the Debtors respectfully submit that the assumption of the Aircraft Leases on an amended basis, in accordance with the terms and conditions set forth in the Amended Aircraft Leases, (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 Lessee to assume the Aircraft Leases on an amended basis in accordance with the terms and conditions set forth in the Amended Aircraft Leases and to perform all of the obligations thereunder.

B. The Court Should Approve the Claims Settlement Under Bankruptcy Rule 9019

24. By this Motion, the Debtors also seek approval of the Claims Settlement between each Lessor (and its respective affiliates), SMBC, and the Debtors for the allowance of certain claims stemming from the amendment of the Aircraft Leases' terms, while expunging all other claims belonging to the Lessors (or their affiliates) or SMBC against the Debtors in the Chapter 11 Cases.

25. A court should exercise its discretion to approve settlements “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)); *see also Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 455 (2d Cir. 2007).

26. Under Bankruptcy Rule 9019 and governing case law, a 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 2616717 at *3; *see also Ionosphere Clubs, Inc. v. American National Bank and Trust Co. of Chicago*, 156 B.R. 414, 426 (S.D.N.Y. 1993); *Nellis v. Shugrue*, 165 B.R. 115, 122–23 (S.D.N.Y. 1994). In so doing, a court may consider the opinions of the trustee or debtor in possession that the settlement is fair and equitable. *See id.*; *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993).

27. Furthermore, when assessing whether or not to approve a settlement, “the court need not conduct a ‘mini-trial’ to determine the merits of the underlying litigation” nor decide the issues of law or fact raised by the settlement. *See In re Purofied Down Prods.*, 150 B.R. at 522. Instead, a court should “canvass the issues and see whether the settlement fall[s] below the lowest point in the range of reasonableness.” *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983)

(alteration in original) (citations and quotations omitted). In this regard, courts have found that “[t]he ‘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.

28. The Debtors respectfully submit that the Claims Settlement satisfies the range of reasonableness test described above. Rather than engage in costly and value-destructive litigation over the Debtor Lessee’s obligations to the Lessors (and their affiliates) and SMBC in respect of the Aircraft and the Aircraft Leases, the amounts of the Lessors’ (and their affiliates) and SMBC’s prepetition claims, and any amounts mitigating the quantum of those claims, the parties negotiated consensual resolutions settling on the Allowed Claims as the agreed aggregate amount for the Claims Settlement. Any efforts by the Debtors, through litigation or otherwise, to resolve such disputes would be time consuming and expensive, and would delay any distribution to the creditor beneficiaries of the Debtors’ estates. A failure to resolve the matters at issue at this time could negatively impact the Debtors and their estates. The Claims Settlement is the product of arm’s length and good faith bargaining among the separate and independent advisors of the Debtors, the Lessors, and SMBC that will (a) eliminate the need for a costly claims dispute and (b) unlock distributable value for the Debtors’ unsecured creditors by liquidating the Lessors’ (and their affiliates’) and SMBC’s claims against the Debtors. Lastly, a number of the Debtors’ key stakeholders, including the respective advisors to the Committee and the Ad Hoc Group, have no objection to the relief requested herein. Accordingly, the Debtors respectfully submit that the

proposed Claims Settlement is fair and equitable, would be in the best interests of the Debtors' estates, creditors, and other stakeholders, and should be approved.

Notice

29. 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

30. 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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