

**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>

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)

**ORDER PURSUANT TO 11 U.S.C. §§ 105 AND 363(B) AND FED. R. BANKR. P. 9019  
APPROVING THE SETTLEMENT BETWEEN DEBTORS AND NEWREST**

Upon the motion (the “Motion”) (Adv. Pro. ECF No. 42) of Aerovías de México, S.A. de C.V. (“Aerovías”) and its affiliates that are debtors and debtors in possession (each, a “Debtor” or “Aeroméxico Entity” and, collectively, the “Debtors” or “Aeroméxico”) in the above-captioned cases (the “Chapter 11 Cases”) for entry of an order, pursuant to sections 105, 363, 364, and 365 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001, 6004, 6006, and 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”), (i) approving and authorizing the Debtors to enter into and perform under the Settlement

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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.

Agreement<sup>2</sup> as amended, restated, supplemented, or otherwise modified from time to time consistent with the terms hereof and thereof (collectively, the “Settlement”) and (ii) granting related relief; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b); and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and after due deliberation the Court having determined that the legal and factual bases set forth in the Motion establish good and sufficient cause for the relief granted herein and that such relief is in the best interests of the Debtors, their estates, creditors and all parties in interest; now, therefore,

**IT IS HEREBY FOUND AND CONCLUDED THAT:<sup>3</sup>**

A. *Final Order.* This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Federal Rule of Civil Procedure 54(b), as made applicable by Bankruptcy Rule 7054, there is no just reason for delay in the implementation of this Order or entry of judgment is directed as set forth herein.

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<sup>2</sup> The Settlement Agreement is docketed at Adv. Pro. ECF 42-1. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion or the Settlement Agreement, as applicable. To the extent a conflict exists between the definitions in the Motion and the Settlement Agreement, the Settlement Agreement shall control.

<sup>3</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

*B. Findings Regarding the Settlement.*

(i) Each Debtor's board of directors, managing members, or other governing body, as applicable, has authorized the execution and delivery of the Settlement. The Debtors and their affiliates (a) have full corporate power and authority to execute and deliver the Settlement, (b) have all of the power and authority necessary to consummate the Settlement, and (c) have taken all action necessary to authorize and approve the Settlement and to consummate the Settlement, and no further consents or approvals are required for the Debtors to consummate the Settlement except as otherwise set forth in the Settlement.

(ii) The Settlement were negotiated, proposed, and entered into by the Debtors, Newrest, and each of their respective boards of directors, members, officers, directors, employees, agents, attorneys, advisors, and representatives at arm's length, in good faith, and without collusion or fraud. The terms and conditions set forth in the Settlement are fair and reasonable under the circumstances and are not being entered into for the purpose of, nor do they have the effect of, hindering, delaying, or defrauding any of the Debtors or any of their creditors under any applicable laws.

(iii) The Cash Consideration to be paid by Newrest under the Settlement was negotiated at arm's length, in good faith, and without collusion or fraud and constitutes (a) fair and reasonable consideration and (b) reasonably equivalent value and fair and adequate consideration under the Bankruptcy Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act, the Uniform Voidable Transactions Act, and under the laws of the United States and each state, territory, and, possession, and the District of Columbia.

(iv) The Settlement, including the Releases (as defined below), the Bar Order (as defined below), and the other injunctive provisions contained herein barring certain

claims by Newrest and the Debtors, (a) meet the standards applied by bankruptcy courts for the approval of a compromise and settlement pursuant to Rule 9019, (b) are reasonable, fair and equitable and supported by adequate consideration, and (c) are in the best interests of the Debtors, their estates, their creditors, and all other parties in interest. Entry into the Settlement and consummation of the Settlement represents the reasonable exercise of sound and prudent business judgment by the Debtors.

(v) The Settlement and the rights, interests, and obligations of each party to the Settlement are mutually dependent and are all part of a single, integrated transaction which is not severable in any respect or circumstance.

(vi) The Settlement is integral to the compromise and settlement of the Released Claims and the Newrest Released Claims (collectively, the “Released Claims”). The entry of this Order, including the Releases, the Bar Order, and the other injunctive provisions contained herein barring certain claims against Newrest and certain related persons, is a condition precedent to the effectiveness of the Settlement and the receipt by the Debtors of the benefits conferred in the Settlement.

C. *Relief Is Warranted.* The legal and factual bases set forth in the Motion establish just and sufficient cause to grant the relief requested therein.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The relief requested in the Motion is hereby granted as set forth herein. Any and all objections to the Motion not previously withdrawn, waived or settled, and all reservation of rights included therein, are hereby overruled.

2. The Debtors are authorized and directed to enter into the Settlement pursuant to sections 105(a) and 363(b) of the Bankruptcy Code.

3. The Debtors are authorized and directed to fully perform their obligations under the Settlement and to execute and deliver any and all such other instruments, documents, and agreements, and take any and all actions, necessary or appropriate to perform their obligations under the Settlement.

### **Settlement Agreement**

4. The settlements and compromises contained within the Settlement Agreement, including, without limitation, the releases set forth therein (the “Releases”), are approved in their entirety pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019. All of the terms of the Settlement Agreement, including, without limitation, the Releases, are incorporated herein by reference as if fully set forth herein (and the failure to specifically describe or include herein any particular term or provision of the Settlement Agreement shall not diminish or impair the effectiveness of any such term or provision).

5. The Debtors are authorized to seek dismissal with prejudice of the Adversary Proceeding, with the applicable Parties being responsible for their own fees and costs.

6. The Debtors are authorized to enter into the 2021 Inflight Catering Services Agreement for the provision of services by Newrest to Aeroméxico in SLC and Costa Rica.

7. The Court’s Preliminary Injunction (ECF No. 20), Order Holding Defendants in Civil Contempt (ECF No. 35) and Order Imposing Per Diem Monetary Sanctions (ECF No. 40), as well as any and all other findings, rulings or orders holding any and all of the Newrest Entities and/or Newrest Released Parties in contempt or subjecting any and all the Newrest Entities and/or Newrest Released Parties to sanctions are hereby VACATED.

8. Newrest shall pay to Aerovías \$50,000 as consideration for the Settlement.

9. The Proofs of Claim filed in these chapter 11 proceedings by Newrest España, S.L., Newrest Toronto Corporation, and Casa Provedora Phillips, S.A. (Claims No. 38, 39, 40) are

hereby reinstated in the same order of priority, amounts, and with the same validity, force, and effect that each had prior to the entry of the Contempt Order, and said Proofs of Claim are hereby ordered allowed.

10. The Debtors are authorized to take all actions necessary to dismiss with prejudice any counterclaims which they have filed in the Spanish Proceedings, with the applicable Parties being responsible for their own fees and costs, and take any and all other actions necessary to assist Newrest to dismiss the Spanish Proceedings.

### **Bar Order**

11. Any party who is not a signatory to the Settlement Agreement, and each of these parties' direct and indirect parent companies, subsidiaries, affiliates, members, partners and joint ventures, each of their respective predecessors, successors, and assigns, and all of each of their respective past and present employees, general partners, officers, directors and managers, in each case to the extent not released under the Settlement Agreement (each, a "Non-Settling Party" and, collectively, the "Non-Settling Parties") is hereby permanently barred, enjoined and restrained from commencing, prosecuting, or asserting in this Court, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere any claim for non-contractual indemnity or contribution against any Released Party arising out of or reasonably flowing from any of the Released Claims (including any non-contractual claim against such Released Party, whether or not brought for contribution or indemnity, where the injury to the Non-Settling Party is the liability of the Non-Settling Party to a Plaintiff (as defined below) on account of any Released Claims), whether arising under state, federal or foreign law as claims, cross-claims, counterclaims, or third-party claims (collectively, the "Barred Claims"). If a court or tribunal determines that Barred Claims exist that would have

given rise to liability of any such Released Party to a Non-Settling Party but for this Order, the Non-Settling Party will also be entitled to the Judgment Reduction (as defined below) provisions set forth herein. This Order (the “Bar Order”) is without prejudice to the position of any Party as to the existence, in the absence of this Bar Order, of any Barred Claim

12. In the event any person acting on behalf of the Debtors’ estates, including any successor to the Debtors (including any chapter 7 trustee or litigation trustee), any committee appointed in the bankruptcy cases or any estate representative appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code (any of the above, a “Plaintiff”) asserts a claim against any Non-Settling Party with respect to one or more causes of action based upon, arising from, or related to the facts, allegations, or transactions underlying any of the Released Claims (the “Action”), then, as soon as practicable but in any event prior to entry of any judgment or arbitration award (“Judgment”) in the Action, the Plaintiff shall provide notice of this Bar Order to the court or tribunal hearing the Action if the Action is reasonably related to the Barred Claims. Such court or tribunal shall determine whether the Action gives rise to Barred Claims on which any Released Party would have been liable to the Non-Settling Party in the absence of this Bar Order. If the court or tribunal so determines, it shall reduce any Judgment against such Non-Settling Party in an amount equal to (a) the amount of the Judgment against any such Non-Settling Party times (b) the aggregate proportionate share of fault (expressed as a percentage) of the Released Party that would have been liable on a Barred Claim in the absence of this Bar Order expressed as a percentage of the aggregate fault of (i) the Non-Settling Party, (ii) such Released Party or Parties, and (iii) all other Persons determined by such court or tribunal to be liable to the Plaintiff in connection with the Action, whether or not such Persons are sued in such Action (“Judgment Reduction”). Nothing herein shall prejudice or operate to preclude the right of any defendant in such Action to

(x) provide notice of this Bar Order to the court or tribunal hearing the Action at any point, or  
(y) raise any issues, claims or defenses regarding judgment reduction or proportionate share of fault in the court or tribunal hearing the Action at any point in accordance with this Bar Order.

13. Nothing in this Bar Order shall prejudice or operate to preclude the rights of any Non-Settling Party to assert any claims or causes of action (including, without limitation, any direct or personal claims or causes of action), other than Barred Claims against any of the Parties as set forth above.

14. If any Plaintiff enters into a settlement with any Person with respect to one or more causes of action based upon, arising from, or related to the Released Claims or any transaction underlying any of the Released Claims, then such Plaintiff shall use reasonable efforts to cause to be included, and, in all events, the settlement shall be deemed to include, a dismissal, release and waiver of any Barred Claims with respect to such settlement.

15. Each Plaintiff is hereby enjoined and restrained from seeking relief or collecting judgments against any Non-Settling Party in any manner that fails to conform to the terms of this Bar Order, including, without limitation, the proportionate judgment reduction provision set forth herein.

#### **Settlement Binding**

16. Effective as of the Settlement Effective Date, the Debtors' stipulations, admissions, agreements, and releases contained in this Order and in the Settlement, shall be binding upon the Debtors and any and all other parties in interest, including, without limitation, any party or entity which has intervened in the Adversary Proceeding, any statutory or non-statutory committees appointed or formed in these Chapter 11 Cases (including the official committee of unsecured creditors) and any other person or entity acting or seeking to act on behalf of the Debtors' estates,



including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors, in all circumstances and for all purposes.

17. The terms and provisions of the Settlement and this Order shall be binding in all respects upon the Debtors, their affiliates, their estates, all creditors of (whether known or unknown) and holders of equity interests in any Debtor and any other stakeholder of any Debtor, Newrest, and all of their respective successors and assigns including, but not limited to, any subsequent trustee(s), examiner(s), or receiver(s) appointed in any of the Chapter 11 Cases or upon conversion to Chapter 7 under the Bankruptcy Code, as to which trustee(s), examiner(s), or receiver(s) such terms and provisions likewise shall be binding. The Settlement shall not be subject to rejection or avoidance by the Debtors, their estates, their creditors, their shareholders, or any trustee(s), examiner(s), or receiver(s). For the avoidance of doubt, the provisions and effect of this Order, and any actions taken pursuant to this Order or the Settlement and the Parties' respective rights, obligations, remedies and protections provided for herein and in the Settlement Agreement shall survive the conversion, dismissal or closing of the Chapter 11 Cases, appointment of a trustee therein, confirmation of a plan or plans of reorganization or liquidation, or the substantive consolidation of these Chapter 11 Cases with any other case or cases, and the terms and provision of this Order and the Settlement shall continue in full force and effect notwithstanding the entry of any such order.

18. The Settlement may be modified, amended, or supplemented by the parties thereto in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment, or supplement does not, based on the Debtors' business judgment, have a material or an adverse effect on the Debtors' estates or their creditors. The Debtors shall provide

counsel to the Consenting Creditors (as defined in the PSA) with prior notice of any such modification, amendment, or supplement of the Settlement.

19. Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Order.

20. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

21. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, and 9014 or any other Bankruptcy Rule, the terms and conditions of this Order shall be effective immediately upon entry and the Debtors and Newrest are authorized to consummate the transactions contemplated in the Settlement immediately upon entry of this Order.

22. To the extent there is any conflict between the terms of this Order and the Settlement, the terms of this Order shall control. Nothing contained in any plan of reorganization or liquidation hereinafter confirmed in these Chapter 11 Cases or any order confirming such plan, or any other order of the Court, shall conflict with or derogate from the terms of the Settlement or this Order.

23. The requirements set forth in Local Bankruptcy Rule 9013-1 are satisfied by the contents of the Motion.

24. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

25. This Court shall retain jurisdiction with respect to all matters arising from or related

to the implementation or interpretation of this Order.

Dated: New York, New York  
August 30, 2021

/S/ Shelley C. Chapman  
THE HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE