

Hearing Date and Time: September 17, 2021 at 10:00 a.m. (Prevailing Eastern Time)
Objection Date and Time: September 14, 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 AUTHORIZING THE DEBTORS TO
PARTIALLY REDACT OMNIBUS AMENDMENT AGREEMENTS**

PLEASE TAKE NOTICE that, on September 3, 2021, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Debtors’ Motion for Entry of an Order Authorizing the Debtors To Partially Redact Omnibus Amendment Agreements* (the “**Sealing Motion**”). A hearing on the Sealing Motion is scheduled to be held on **September 17, 2021 at 10:00 a.m. (prevailing Eastern Time)** (the “**Hearing**”) before the Honorable Judge Shelley C.

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.

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 Sealing 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 Sealing 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

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>.

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 **September 14, 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 Sealing 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 Sealing 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.

Dated: September 3, 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 AUTHORIZING THE DEBTORS
TO PARTIALLY REDACT OMNIBUS AMENDMENT AGREEMENTS**

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 “**Sealing Motion**”) seeking the entry of an order (a) authorizing the Debtors to (i) partially redact the filed versions of the Omnibus Amendment Agreements² and (ii) submit unredacted versions of the

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.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Debtors’ Motion for Entry of an Order Authorizing Certain of the Debtors To Implement Certain Transactions with Ex-Im Bank, Including (I) Entry Into Omnibus Amendment Agreements, (II) Assumption (on an Amended Basis) of Certain Aircraft Leases, and (III) Claims Settlement* (the “**Ex-Im Motion**”) filed contemporaneously herewith.

Confidential Information (as defined herein) under seal and (b) granting certain related relief. This Sealing Motion is supported by the *Declaration of Jeffrey S. Craine in Support of (A) Debtors' Motion for Entry of an Order Authorizing Certain of the Debtors To Implement Certain Transactions with Ex-Im Bank, Including (I) Entry Into Omnibus Amendment Agreements, (II) Assumption (on an Amended Basis) of Certain Aircraft Leases, and (III) Claims Settlement and (B) Related Pleadings* (the “**Craine Declaration**”) filed contemporaneously herewith and incorporated herein by reference. In further support of this Sealing 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 Sealing 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 entry of a final order by the Court in connection with this Sealing 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 Sealing Motion, and pursuant to sections 105(a) and 107(b) of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Bankruptcy Rule 9018, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**” and, if entered, the “**Order**”), (a) authorizing the Debtors to (i) partially

redact the filed versions of the Omnibus Amendment Agreements and (ii) submit unredacted versions of the Confidential Information (as defined herein) under seal, and (b) granting certain related relief, as further detailed herein and in the Proposed Order.

Background

4. On June 30, 2020, 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.³

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.

³ On July 2, 2020, the Court entered similar orders for the other Debtors on their respective case dockets. *See In re Aerovías de México, S.A. de C.V.*, No. 20-11561 (SCC), ECF No. 4; *In re Aerolitoral, S.A. de C.V.*, No. 20-11565 (SCC), ECF No. 4; *In re Aerovías Empresa de Cargo, S.A. de C.V.*, No. 20-11566 (SCC), ECF No. 4.

The Confidential Information

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.

9. As part of these efforts, Aeroméxico has reached agreements with the MAF III Counterparties, the MAF IV Counterparties, the MAF V Counterparties, and the CGF Credit Counterparties (collectively, the “**Counterparties**”) to enter into the respective Omnibus Amendment Agreements. While the Debtors recognize the need to disclose sufficient information and details when seeking the relief requested in the Ex-Im Motion, the Debtors must ensure that they protect certain key economic and commercial terms of the Omnibus Amendment Agreements (the “**Confidential Information**”). As a result, by this Sealing Motion, the Debtors seek to partially redact the Omnibus Amendment Agreements.

10. Disclosure of the Confidential Information could reasonably be expected to cause harm to the Debtors and jeopardize their goals at a critical juncture in the Chapter 11 Cases in various ways.

11. First, disclosing the Confidential Information would provide other aircraft lessors and aircraft finance counterparties insight into the Debtors’ cost structure, negotiating positions, and fleet strategy. Counterparties that are currently negotiating with the Debtors over new long-term leases (some for aircraft similar to the Aircraft) or aircraft financing amendments will insist on obtaining the most favorable economic terms provided to any other lessor or aircraft finance counterparty. Moreover, the Debtors anticipate further negotiations with equipment, aircraft, or aircraft finance counterparties (and potential new counterparties) regarding the terms of new or amended aircraft leases or aircraft financing agreements, and the Debtors’ negotiating position

would be harmed if such counterparties know the details of all of the terms in the Omnibus Amendment Agreements. Further, if the Debtors are not successful in protecting sensitive information and commercial accommodations made by the Counterparties, it would hinder the Debtors' ability to enter into further agreements with, and obtain beneficial economic terms from, the Counterparties and other counterparties necessary to the Debtors' ongoing business.

8. Second, disclosure of the Confidential Information would provide rarely disclosed information to the Debtors' industry competitors. Given that fleet strategy and aircraft finance are core components of any commercial airline's business model, disclosure of this sensitive information would provide the Debtors' competitors with unique insight into the Debtors' business and financial strategy, which insight the Debtors themselves do not possess with respect to their competition. In an already challenging marketplace, this informational asymmetry would leave the Debtors at a competitive disadvantage relative to their peers.

9. Third, disclosure of the Confidential Information could negatively implicate the relief requested in the Ex-Im Motion because the Counterparties may be unwilling to proceed with the Omnibus Amendment Agreements on their current terms if they are required to publicly disclose certain highly confidential commercial terms in the context of the recent negotiations with the Debtors. The Counterparties seek to ensure that they are not disadvantaged by disclosure of commercial terms in this proceeding that could be used by other parties to disadvantage them in future business negotiations. For this reason, the Counterparties agree with filing the Confidential Information under seal.

12. Based on the foregoing, since disclosure of the Confidential Information would likely harm the Debtors and their estates, the Debtors should be permitted to partially redact such

information from the filed versions of the Omnibus Amendment Agreements and submit unredacted versions of the Confidential Information to the Court under seal.

Basis for Relief

13. Section 105(a) of the Bankruptcy Code codifies the Court's inherent 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). Furthermore, pursuant to section 107(b)(1) of the Bankruptcy Code, the Court may authorize the Debtors to redact the Confidential Information from the filed versions of the Omnibus Amendment Agreements and file unredacted versions thereof with the Court under seal. *See* 11 U.S.C. § 107(b). Specifically, section 107(b) of the Bankruptcy Code provides, in relevant part, that:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information

11 U.S.C. § 107(b).

14. Similarly, Bankruptcy Rule 9018 sets forth the procedures by which a party may obtain a protective order authorizing the filing of a document under seal. Bankruptcy Rule 9018 provides, in relevant part, that "[o]n motion, or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information...." Fed. R. Bankr. P. 9018.

15. The Debtors respectfully submit that a balance must be found between the need to protect sensitive and confidential commercial information with the goal of transparency in the bankruptcy process. Indeed, the Second Circuit has acknowledged that section 107(b) of the Bankruptcy Code creates an exception to the general rule that court records are open to

examination by the public. *See Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994); *In re Georgetown Steel Co., LLC*, 306 B.R. 542, 546 (Bankr. D.S.C. 2004) (recognizing that “the public right to access is not absolute”). However, the Second Circuit has also acknowledged that, unlike its counterpart Rule 26(c) of the Federal Rules of Civil Procedure, section 107(b) of the Bankruptcy Code does not require the entity seeking protection to demonstrate “good cause.” *In re Orion Pictures Corp.*, 21 F.3d at 28. Rather, if the material sought to be protected satisfies one of the categories identified in section 107(b) of the Bankruptcy Code, a court is required to protect the requesting party and has no discretion to deny the request. *See id.* at 27 (holding that, once the court determines that a party is seeking protection of information that falls within the ambit of section 107(b) of the Bankruptcy Code, “the court is *required* to protect a requesting interested party and has no discretion to deny the application”). Thus, under section 107(b) of the Bankruptcy Code, an interested party only has to show that the information it wishes to protect is “‘confidential’ and ‘commercial’ in nature.” *Id.* Such information, however, need not rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. *Id.* at 28.

16. Courts have also held that the sealing order under section 107(b) should be as broad as “justice requires.” *In re Glob. Crossing, Ltd.*, 295 B.R. 720, 724 (Bankr. S.D.N.Y. 2003). Indeed, a court’s “authority goes not just to the protection of confidential documents, but to other confidentiality restrictions that are warranted in the interests of justice.” *Id.*; *see also Kaiser Aluminum Corp. v. Future Asbestos Claim Representative (In re Kaiser Aluminum Corp.)*, 327 B.R. 554, 560 (D. Del. 2005) (“Courts have supervisory powers over their records and files and may deny access to those records and files to prevent them from being used for an improper purpose.”).

17. The Debtors respectfully submit that the Confidential Information is both “commercial” and “confidential;” thus, falling squarely within the scope of information that is protected by section 107(b)(1) of the Bankruptcy Code and Bankruptcy Rule 9018. In granting motions to seal “commercial information,” courts have defined this term as “information which would result in ‘an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.’” *In re Alterra Healthcare Corp.*, 353 B.R 66, 75 (Bankr. D. Del. 2006) (citation omitted); *see also In re Glob. Crossing, Ltd.*, 295 B.R. at 725 (finding that the purpose of Bankruptcy Rule 9018 is to “protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury”).

18. As detailed above, disclosure of the Confidential Information could reasonably be expected to cause harm to the Debtors and jeopardize their goals in the Chapter 11 Cases by permitting the Debtors’ aircraft and aircraft finance counterparties and competitors to gain insight into the Debtors’ cost structure, thereby allowing them to pressure the Debtors’ aircraft and aircraft finance counterparties for matching commercial terms with respect to similar agreements. For this reason, the Counterparties are in agreement with filing the Confidential Information under seal. If the Debtors are not successful in protecting the Confidential Information, it would severely impair the Debtors’ leverage when negotiating new and amended aircraft leases or aircraft financing agreements and would create a competitive disadvantage in relation to their industry competitors.

19. In fact, courts in similar situations to the instant matter regularly allow the sealing of information which, if disclosed, could assist the Debtors’ competitors or counterparties in negotiations against the Debtors. *See, e.g., In re Grupo Aeroméxico, S.A.B. de C.V.*, No. 20-11563 (SCC) (Bankr. S.D.N.Y.) [ECF Nos. 397, 649, 983, 1093, 1146, 1159, 1569, 1570, 1571, 1576] (granting sealing motions in connection with aircraft transaction documents and usage stipulations

for leased aircraft equipment); *In re LATAM Airlines Group S.A.*, No. 20-11254 (JLG) (Bankr. S.D.N.Y. June 30, 2021) [ECF No. 2648] (granting relief similar to that requested in the Ex-Im Motion and entering an order redacting confidential information contained in omnibus amendment agreements pursuant to a standing order regarding redactions); *In re Avianca Holdings S.A.*, No. 20-11133 (MG) (Bankr. S.D.N.Y. July 7, 2020) [ECF No. 390]; *In re Republic Airways Holdings Inc.*, No. 16-10429 (SHL) (Bankr. S.D.N.Y. Dec. 8, 2016) [ECF Nos. 1031, 1271] (granting sealing motions with respect to section 1110 aircraft stipulation and amendments to loan agreement on the basis that the information contained therein would be highly valuable to the debtors' aircraft lenders and lessors who may seek to use the information to gain a commercial advantage over the debtors); *In re Northwest Airlines Corp.*, No. 05-17930 (ALG) (Bankr. S.D.N.Y. Nov. 10, 2005) [ECF No. 1003] (order establishing procedures for filing section 1110 stipulations with aircraft counterparties under seal); *In re Delta Air Lines, Inc.*, No. 05-17923 (PCB) (Bankr. S.D.N.Y. Nov. 1, 2005) [ECF No. 994] (same). Therefore, the Debtors submit that the Confidential Information should be filed under seal pursuant to section 107(b) of the Bankruptcy Code.

20. Finally, and very importantly, the proposed redactions are limited and tailored to protect only specific information whose publication could reasonably be expected to adversely affect the Debtors' ongoing and future negotiations or competition with their peers. The narrowly-tailored nature of the redactions will serve to both minimize the quantity of redacted information while maximizing value for the Debtors' estates and economic stakeholders.

21. Accordingly, the Debtors propose to file with the Court unredacted copies of the Omnibus Amendment Agreements under seal and to share unredacted versions, on a strictly confidential basis, with the U.S. Trustee and the respective advisors to the Committee, the DIP Lenders, and the Ad Hoc Group on a "Professionals Eyes Only" basis.

Notice

22. Notice of this Sealing 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 Sealing Motion. The Debtors respectfully submit that no other or further notice is required.

No Prior Request

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

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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: September 3, 2021
New York, New York

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