

Hearing Date and Time: September 20, 2021, at 1:00 p.m. (prevailing Eastern Time)
Objection Date and Time: September 17, 2021, at 12:00 p.m. (prevailing Eastern Time)

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 701-5800
Marshall S. Huebner
Timothy Graulich
James I. McClammy
Stephen D. Piraino
Erik Jerrard (admitted *pro hac vice*)

*Counsel to the Debtors
and Debtors in Possession*

**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 DEBTOR'S FOURTH MOTION FOR ENTRY
OF AN ORDER EXTENDING THE EXCLUSIVE PERIODS WITHIN WHICH
TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF**

PLEASE TAKE NOTICE that on September 3, 2021, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Debtors’ Fourth Motion for Entry of an Order Extending the Exclusive Periods Within Which to File a Chapter 11 Plan and Solicit Acceptances Thereof* (this “**Motion**”). A hearing on the Motion will be held on **September 20, 2021, at 1:00 p.m. (prevailing Eastern Time)** (the “**Hearing**”) before the Honorable Judge

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.

Shelley C. Chapman, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”), or at such other time as the Bankruptcy 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 Bankruptcy 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 thereafter from time to time without further notice other than an announcement of the adjourned date or dates at the Hearing or a later hearing. The Debtors will file an agenda before the Hearing, which may modify or supplement the motions 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 Bankruptcy Court (a) by attorneys practicing in the Bankruptcy Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at

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>.

www.nysb.uscourts.gov), and (b) by all other parties in interest, in accordance with the customary practices of the Bankruptcy 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 **September 17, 2021 at 12:00 p.m. (prevailing Eastern Time)** (the “**Objection Deadline**”).

PLEASE TAKE FURTHER NOTICE that any 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 Objections are timely filed and served with respect to the Motion, the Debtors may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be entered without further notice or opportunity to be heard.

Dated: September 3, 2021
New York, New York

DAVIS POLK & WARDWELL LLP

By: /s/ Timothy Graulich

450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 701-5800
Marshall S. Huebner
Timothy Graulich
James I. McClammy
Stephen D. Piraino
Erik Jerrard (admitted *pro hac vice*)

*Counsel to the Debtors
and Debtors in Possession*

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 701-5800
Marshall S. Huebner
Timothy Graulich
James I. McClammy
Stephen D. Piraino
Erik Jerrard (admitted *pro hac vice*)

*Counsel to the Debtors
and Debtors in Possession*

**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' FOURTH MOTION FOR ENTRY OF AN ORDER
EXTENDING THE EXCLUSIVE PERIODS WITHIN WHICH TO FILE
A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF**

Grupo Aeroméxico S.A.B. de C.V. and its affiliates that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) hereby file this *Debtors’ Fourth Motion for Entry of an Order Extending the Exclusive Periods Within Which to File a Chapter 11 Plan and Solicit Acceptances Thereof* (this “**Motion**”). In support of this Motion, the Debtors respectfully state as follows:

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.

Relief Requested

1. By this Motion, and pursuant to section 1121(d) of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**” and, if entered, the “**Order**”), extending the Debtors’ exclusive periods to (a) file (the “**Exclusive Filing Period**”) a chapter 11 plan of reorganization (the “**Chapter 11 Plan**”) through and including October 8, 2021 and (b) solicit votes thereon (the “**Exclusive Solicitation Period**,” and together with the Exclusive Filing Period, the “**Exclusive Periods**”) through and including December 8, 2021. By order dated June 23, 2021, the current Exclusive Filing Period and Exclusive Solicitation Period were extended to Wednesday, September 8, 2021 and Monday, November 8, 2021, respectively [ECF No. 1338]. By operation of Local Rule 9006-2, and pursuant to the Case Management Order, exclusivity is automatically extended to the hearing date, currently scheduled for Monday, September 20, 2021. The requested extensions would be without prejudice to the rights of the Debtors to seek further extensions of the Exclusive Periods.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of New York (the “**Court**”) has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Debtors consent to entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter a final order or judgment consistent with Article III of the United States Constitution.

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

Background

4. On June 30, 2020 (the “**Petition Date**”), the Debtors each commenced in this Court a voluntary case (the “**Chapter 11 Cases**”) under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. The Debtors’ Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b).

6. On July 13, 2020, the United States Trustee formed an Official Committee of Unsecured Creditors (the “**Creditors’ Committee**”) in the Chapter 11 Cases. No trustee or examiner has been appointed in the Chapter 11 Cases.

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

8. On October 26, 2020, the Court entered the *Order Extending the Exclusive Periods Within Which to File a Chapter 11 Plan and Solicit Acceptances Thereof* [ECF No. 577] (the “**First Extension Order**”) extending the Exclusive Filing Period and the Exclusive Solicitation Period through and including Thursday, February 25, 2021 and Monday, April 26, 2021, respectively. On February 17, 2021, the Court entered the *Order Extending the Exclusive Periods Within Which to File a Chapter 11 Plan and Solicit Acceptances Thereof* [ECF No. 905] (the “**Second Extension Order**”) extending the Exclusive Filing Period and the Exclusive Solicitation Period through and including Friday, June 25, 2021 and Wednesday, August 24, 2021, respectively. On June 23, 2021, the Court entered the *Order Extending the Exclusive Periods Within Which to File a Chapter 11 Plan and Solicit Acceptances Thereof* [ECF No.

1338] (the “**Third Extension Order**”) extending the Exclusive Filing Period and Exclusive Solicitation Period through and including Wednesday, September 8, 2021 and Monday, November 8, 2021, respectively.

Preliminary Statement

9. These Chapter 11 Cases present a unique challenge. As the Court is well aware, the Chapter 11 Cases have produced remarkable consensus on many issues. Indeed, virtually every hearing in these cases have been fully consensual, or cancelled outright. This level of consensus has so far proven elusive on a critical gating issue for any chapter 11 plan to be filed in these cases – the conversion price to be offered to the Tranche 2 DIP Lenders pursuant to Schedule 2.12 of the Super-Priority Debtor-in-Possession Term Loan Agreement, dated as of November 6, 2020 (the “**DIP Credit Agreement**”).² Under Schedule 2.12 of the DIP Credit Agreement, delivery of the Final Valuation Materials is a necessary prerequisite to filing a plan of reorganization, and will determine key proposed chapter 11 plan terms (most notably, whether the Tranche 2 DIP Lenders will convert their loans into equity).

10. The Debtors have delayed sending Final Valuation Materials as long as possible to facilitate discussions and to afford parties as much time as possible to resolve any issues in their respective proposals. Indeed, the Debtors are currently in default under the DIP Credit Agreement because, pursuant to Schedule 2.12 of the DIP Credit Agreement, the Debtors were supposed to deliver the Final Valuation Materials by August 23, 2021. But it was more important to the Debtors that they get the valuation right than timely because they appreciate that sending the Final Valuation Materials, and subsequently filing the Chapter 11 Plan, is a critical

² Each capitalized term used herein but not otherwise defined herein shall have the meaning ascribed to it in the DIP Credit Agreement.

milestone for these Chapter 11 Cases and it is of paramount importance to make every effort to obtain stakeholder consensus before doing so. At this point, the Debtors cannot delay sending the Final Valuation Materials much longer, and have messaged the same to relevant parties. But while the appropriateness of exclusivity may soon become a contested issue in the Chapter 11 Cases, at the very least, the extension of the Exclusive Periods sought herein, which will enable a Chapter 11 Plan filing on the timeline previously messaged to key stakeholders and discussed in further detail below, is necessary and appropriate.

11. On August 6, 2021, the Court entered the *Order Appointing the Honorable Sean H. Lane as Mediator* [ECF No. 1527] appointing the Honorable Sean H. Lane to serve as mediator (the “**Mediator**”) in the Chapter 11 Cases to conduct a mediation (the “**Mediation**”) with respect to: (i) the Debtors’ obligations, and the lenders’ rights, under Schedule 2.12 of the DIP Credit Agreement, including, without limitation, with respect to the delivery and contents of the Final Valuation Materials; (ii) any exit financing proposals; and (iii) any and other related matters the Mediator deems necessary to resolve any of the foregoing. The goal of this Mediation from the Debtors’ perspective is to reach consensus among key constituencies in the Chapter 11 Cases, avoid unnecessary litigation, and provide the Debtors with a clear path to a viable Chapter 11 Plan, which would enable the Debtors to emerge from bankruptcy expeditiously and well positioned for success as a reorganized entity.

12. As contemplated by, and in accordance with, Schedule 2.12 to the DIP Credit Agreement, beginning in May 2021, the Debtors’ investment banker, Rothschild & Co US Inc. and Rothschild & Co Mexico S.A. de C.V., as financial advisor and investment banker to the Debtors, commenced a robust marketing and exit financing process. This process was initially scheduled to conclude in early July, but was twice extended, the last extension until July 26,

2021, so that the Debtors could evaluate and hopefully execute a binding commitment for exit financing within the time constraints of Schedule 2.12 of the DIP Credit Agreement. Discussions relating to the exit financing process have continued in Mediation. The process produced two exit financing proposals that later merged into a single combined proposal.

13. In accordance with the DIP Credit Agreement, the Debtors (a) delivered Initial Valuation Materials to Tranche 2 Lenders on June 29, 2021;³ (b) are required to file a Chapter 11 Plan no later than 75 days after the delivery of the Initial Valuation Materials (*i.e.*, September 12, 2021), *see* DIP Credit Agr., Sch. 2.12, § 7;⁴ and (c) are required to deliver Final Valuation Materials to the Tranche 2 Lenders 20 days prior to filing a Chapter 11 Plan. *See id.* at § 4(i).⁵ Taken together, delivery of Final Valuation Materials was required by August 23, 2021 in order to ensure the ability to comply with sub-clauses (b) and (c) of this paragraph 11. In light of the ongoing Mediation, including the Debtors' recent receipt of a new, joint exit financing proposal, the Debtors determined that delivery of the Final Valuation Materials on August 23, 2021 may upend the Mediation process and, ultimately, could be value-destructive to the Debtors' estates. As a result, the Debtors did not comply with the August 23, 2021 deadline to send Final Valuation Materials and, in accordance with the DIP Credit Agreement, notified the Administrative Agent of actual knowledge of such default by letter dated August 27, 2021 (such

³ "At least 50 days prior to the Plan Filing Date ... Aeroméxico will provide the Tranche 2 Lenders customary materials ... relating to an initial plan valuation ... (the 'Initial Valuation Materials'), and material exhibits to the Chapter 11 Plan and the Plan Term Sheet." DIP Credit Agr., Sch. 2.12, § (3)(i).

⁴ "[N]o more than 75 days after delivery of the Initial Valuation Materials, Aeroméxico will file a Chapter 11 Plan and Disclosure Statement with the Bankruptcy Court for approval (the date of such filing, the 'Plan Filing Date')." DIP Credit Agr., Sch. 2.12, § 7.

⁵ "No less than twenty (20) days prior to the Plan Filing Date, Aeroméxico will deliver or cause to be delivered to the Tranche 2 Lenders...updated valuation materials and additional Chapter 11 Plan materials, including the Disclosure Statement, and material exhibits to the Chapter 11 Plan, including precedent transactions, public equity multiples and discounted cash flows ('Final Valuation Materials')....." DIP Credit Agr., § (4)(i).

letter was also sent simultaneously by the Debtors to counsel to the DIP Lenders). *See* DIP Credit Agr. at § 6.01(d).

14. The Debtors intend to deliver Final Valuation Materials by September 10, 2021. The Debtors have clearly communicated this timing and corresponding next steps to the key parties in the Mediation. The Debtors believe that it would be premature to file a Chapter 11 Plan prior to delivery of the Final Valuation Materials and the delivery of the Tranche 2 Lenders of their Election Subscription Notice. Accordingly, the Debtors respectfully request that the Exclusive Periods be extended through and including October 8, 2021 and December 8, 2021. The Debtors seek this additional extension of the Exclusive Periods in order to deliver Final Valuation Materials, receive the Election Subscription Notice and file a Chapter 11 Plan. The proposed extension of the Exclusive Periods, while short, is sufficient to accomplish the foregoing within the timeline communicated to the Mediation parties. Simultaneously, the Debtors will continue to do everything in their power to advance the ongoing discussions among key constituencies with respect to matters central to the formulation of the Debtors' Chapter 11 Plan.

15. Conscious of the fact that the Mediation is ongoing and, absent the Mediation, several issues in the Chapter 11 Cases may have already been contested, the Debtors are requesting a shorter extension of the Exclusive Periods than the full statutory maximum, with all rights reserved to seek further extensions. The Debtors are requesting a shorter extension of the Exclusive Periods at this time in order to give the Debtors the exclusive opportunity to file a viable Chapter 11 Plan within the timeline proposed to the Mediation parties, and intend to file

the Chapter 11 Plan on or prior to October 1, 2021, which is the milestone for filing the Chapter 11 Plan in the DIP Credit Agreement (the “**Plan Filing Milestone**”).⁶

The Debtors Have Made Substantial Progress in the Chapter 11 Cases

16. Following the Court’s entry of the Third Extension Order, the Debtors have continued to make substantial progress towards a successful reorganization. The Debtors have worked diligently to preserve value, reduce costs, maintain customer loyalty and satisfaction, and rationalize their fleet and workforce, all while focusing on securing an expeditious exit from chapter 11 with the support of their creditors and economic stakeholders.

17. Since the Court’s entry of the Third Extension Order, the Debtors have accomplished a great deal to narrow remaining issues, advance the Chapter 11 Cases, and further the Chapter 11 Plan process, including:

- (a) participated in the Mediation and conducted a robust exit-financing marketing process as a prerequisite step to filing a Chapter 11 Plan, analyze and review resulting proposals for such exit financing and related terms, and prepare for, and conduct, extensive negotiations with numerous stakeholders and counterparties relating to same;
- (b) negotiated, and obtained approval for, numerous agreements with various aircraft counterparties, resulting in the significant upgrades to the Debtors’ fleet, including the addition of new aircraft and the assumption of amended leases related to equipment already in the Debtors’ possession;
- (c) continued the Debtors’ claims analysis, including expunging over 150 claims from the claims registers, reclassifying or otherwise modifying over 1,700 claims filed in the Chapter 11 Cases, and communications and extensive negotiations with stakeholders related thereto;
- (d) negotiated, and obtaining approval for, severance packages for terminated employees, as required by Mexican law;
- (e) analyzed issues related to the Debtors’ loyalty program, and extensive negotiations with various constituencies in connection therewith;

⁶ See section 6.17(b) of the DIP Credit Agreement.

- (f) prepared and obtained approval of numerous motions and applications; and
- (g) addressed, and continuing to address, extremely in-depth issues surrounding numerous diligence requests from various parties in interest while providing an ever-increasing volume of relevant information.

18. In addition, the Debtors and their advisors have been and are continuing to diligently prepare a Chapter 11 Plan that will maximize value for the Debtors, their estates, and economic stakeholders. As stated above, the Debtors anticipate delivering Final Valuation Materials on September 10, 2021 and intend to comply with the Plan Filing Milestone. Accordingly, the Debtors fully intend to deliver Final Valuation Materials and file a Plan in the very near future.

19. While the Debtors have made significant and meaningful progress in the Chapter 11 Cases, there remains more to accomplish to position the Debtors to finalize a Chapter 11 Plan that is viable and reach resolution with important stakeholders through the Mediation and related discussions. To this end, it is critical to the Debtors, their estates, and all economic stakeholders that the Debtors do not lose their exclusive ability to file a Chapter 11 Plan, and solicit votes thereon, at this juncture of the Chapter 11 Cases. The Debtors thus submit that an additional 30-day extension of the Exclusive Periods at this time, as proposed here, is necessary and in the best interests of the Debtors, their estates, creditors, and all parties in interest.

20. Through the Mediation and otherwise, the Debtors have discussed the Final Valuation Materials and the potential timing and substance of a Chapter 11 Plan with Apollo Management Holdings, L.P. (on behalf of one or more affiliates and/or funds or separate accounts managed by it and its affiliates (“**Apollo**”)), the Creditors’ Committee, the Ad Hoc

Group of Senior Noteholders,⁷ the Ad Hoc Group of Unsecured Claimholders,⁸ and the advisors to each of the foregoing. And while there is not consensus on these issues as of the date of this Motion, the Debtors will continue to encourage, facilitate and participate in these discussions.

Basis for Relief Requested

21. Section 1121(b) of the Bankruptcy Code provides debtors with the exclusive right to file a chapter 11 plan during the first 120 days after the commencement of a chapter 11 case. If a debtor files a plan during this period, section 1121(c)(3) of the Bankruptcy Code provides the debtor with an initial period of 180 days as of the commencement of the chapter 11 case to solicit acceptance of such plan. Section 1121(d) of the Bankruptcy Code permits a court to extend a debtor's exclusive period to file a plan and solicit acceptances thereof upon demonstration of "cause." *See* 11 U.S.C. § 1121(d) ("[O]n request of a party in interest and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section."). For the reasons described in this Motion, the Debtors respectfully submit that "cause" exists to extend the Exclusive Periods.

22. It is well established that the decision to extend such exclusive periods is left to the sound discretion of the bankruptcy court and should be based upon the facts and circumstances of the particular case. *See, e.g., In re Excel Mar. Carriers Ltd.*, No. 13-23060 (RDD), 2013 WL 5155040, at *2 (Bankr. S.D.N.Y. Sept. 13, 2013); *In re Dow Corning Corp.*, 208 B.R. 661, 664 (Bankr. E.D. Mich. 1997); *First Am. Bank of N.Y. v. Sw. Gloves & Safety Equip., Inc.*, 64 B.R. 963, 965 (D. Del. 1986). Although the Bankruptcy Code does not define

⁷ As used in this Motion, "Ad Hoc Group of Senior Noteholders" 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].

⁸ As used in this Motion, "Ad Hoc Group of Unsecured Claimholders" refers to those parties identified in the *Verified Statement of the Ad Hoc Group of Unsecured Claimholders Pursuant to Bankruptcy Rule 2019* [ECF No. 1530].

“cause,” courts have construed the term in consideration of the Bankruptcy Code’s underlying legislative history. *See, e.g., In re Burns & Roe Enters., Inc.*, No. 00-41610 RG, 2005 WL 6289213, at *4 (D. N.J. Nov. 2, 2005) (quoting H.R. Rep. No. 103-835, at 36 (1994), as reprinted in 1994 U.S.C.C.A.N. 3340, 3344) (noting that the exclusive periods under section 1121 of the Bankruptcy Code are intended “to promote an environment in which the debtor’s business may be rehabilitated and a consensual plan may be negotiated”); *In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 409 (E.D.N.Y. 1989) (examining the applicable legislative history and noting that “[t]he ‘cause’ standard referred to in section 1121 has been referred to as a general standard that allows the Bankruptcy Court ‘maximum flexibility to suit various types of reorganization proceedings.’” (citations omitted)). The opportunity for a debtor to negotiate a plan unimpaired by competition is intended to allow a debtor time to negotiate with its creditors, win support for its plan, and ultimately its survival as a business. H.R. Rep. No. 95-595 at 231–32 (1978), as reprinted in 1978 U.S.C.C.A.N. 5963, 6191 (indicating that “cause” should be interpreted in such a way “to allow the debtor to reach an agreement.”); *see also Geriatrics Nursing Home v. First Fidelity Bank, N.A. (In re Geriatrics Nursing Home)*, 187 B.R. 128, 131–32 (D. N.J. 1995) (“The exclusivity period affords the debtor the opportunity to negotiate the settlement of its debts ... by proposing and soliciting support for its plan of reorganization without interference—in the form of competing plans . . .”); *In re Glob. Crossing Ltd.*, 295 B.R. 726, 730 (Bankr. S.D.N.Y. 2003) (noting that so long as the debtors give the court “no reason to believe that they are abusing their exclusivity rights ... [a] requested extension of exclusivity ... should be granted”).

23. In determining whether to extend a debtor's exclusive periods, courts consider a variety of factors to assess the totality of circumstances affecting whether or not "cause" exists, including:

- (a) the size and complexity of the case;
- (b) the necessity for sufficient time to permit the debtor to negotiate a chapter 11 plan and prepare adequate information;
- (c) the existence of good faith progress toward reorganization;
- (d) the fact that the debtor is paying its bills as they come due;
- (e) whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- (f) whether the debtor has made progress in its negotiations with creditors;
- (g) the amount of time that has elapsed in the case;
- (h) whether creditors are prejudiced by the extension;
- (i) whether the debtor is not seeking to extend exclusivity to pressure creditors to accede to the debtor's reorganization demands; and
- (j) the existence of an unresolved contingency.

See In re Adelphia Communs. Corp., 336 B.R. 610, 674 (Bankr. S.D.N.Y. 2006); *In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987); *In re Cent. Jersey Airport Servs., LLC*, 282 B.R. 176, 183 (Bankr. D. N.J. 2002); *see also In re Dow Corning Corp.*, 208 B.R. 661, 664 (Bankr. E.D. Mich. 1997) (identifying the above factors and noting that courts generally rely on the same factors to determine whether exclusivity should be extended); *In re Friedman's Inc.*, 336 B.R. 884, 888 (Bankr. D. Ga. 2005) (same); *In re Borders Grp., Inc.*, 460 B.R. 818, 822 (Bankr. S.D.N.Y. 2011) (noting the debtors' "substantial efforts ... to stabilize their business and develop a viable exit strategy"). Any one of these factors may constitute sufficient grounds for

extending a debtor's exclusive periods. *See In re Express One Int'l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996).

24. Not all of the above factors are relevant to every case and the court considers only the relevant factors to determine whether cause exists to grant an exclusivity extension. *See In re Texaco, Inc.*, 76 B.R. 322, 327 (Bankr. S.D.N.Y. 1987) (holding that size and complexity of the chapter 11 case is sufficient cause to extend exclusivity); *In re Express One Int'l*, 194 B.R. at 100–01 (identifying four of the factors as relevant in determining whether “cause” exists to extend exclusivity); *In re United Press Int'l, Inc.*, 60 B.R. 265, 269 (Bankr. D.D.C. 1986) (finding that the debtor showed “cause” to extend exclusivity based upon three of the factors).

a. The Chapter 11 Cases Are Large and Complex, and the Debtors Require Sufficient Time to Negotiate a Chapter 11 Plan in Good Faith

25. Courts regularly consider the size and complexity of a chapter 11 case a determining factor of whether a court should grant an extension of the exclusive periods. *See, e.g., In re Crescent Mfg. Co.*, 122 B.R. 979, 982 (Bankr. N.D. Ohio 1990) (stating that “cause” can include an “unusually large case”) (citation omitted); *In re Texaco*, 76 B.R. at 326 (“The large size of the debtor and the consequent difficulty in formulating a plan of reorganization for a huge debtor with a complex financial structure are important factors which generally constitute cause for extending the exclusivity periods.”); *see also* H.R. Rep. No. 95-595, at 231–32 (1978), as reprinted in 1978 U.S.C.C.A.N. 5963, 6191 (“[I]f an unusually large company were to seek reorganization under Chapter 11, the Court would probably need to extend the time in order to allow the debtor to reach an agreement.”). Indeed, the size and complexity of the case, by itself, can support a determination that cause exists for multiple extensions of exclusivity. *See, e.g., In re Express One Int'l*, 194 B.R. at 100 (noting that two previous extensions of exclusivity had been granted based on the size and complexity of the case alone).

26. The Debtors are acutely aware of the costs and risks associated with operating in chapter 11, but given the complexity, including airline operations during an unprecedented worldwide pandemic, and the importance of the issues they face, additional time is needed to negotiate with key constituencies, conclude the Mediation and related discussions, finalize the Chapter 11 Plan and related disclosure statement, solicit approval thereof, and seek a confirmation order from the Court in connection therewith. Furthermore, the Debtors' conduct in the Chapter 11 Cases demonstrates their good-faith desire to successfully reorganize in chapter 11 and emerge as a strong, leading airline. The Debtors have been working diligently and in good faith with the Creditors' Committee, Apollo, the Ad Hoc Group of Senior Noteholders, the Ad Hoc Group of Unsecured Claimholders, other claimants, lessors, vendors, unions, employees, and a host of other stakeholders, both in the Mediation and otherwise, to reach a value-maximizing settlement for all. Accordingly, each of the first three factors listed above weighs in favor of the Court granting the relief sought herein.

b. The Debtors Pay Their Bills as They Come Due

27. The Debtors continue to make timely payments on account of their undisputed postpetition obligations and, as applicable, in accordance with the terms of the relevant settlements negotiated during the pendency of the Chapter 11 Cases. As such, this factor also weighs in favor of the Court extending the Exclusive Periods.

c. A Relatively Short Amount of Time Has Elapsed in the Chapter 11 Cases

28. Just over 14 months have elapsed in the Chapter 11 Cases, which is not long for cases of this size and complexity. *See, e.g., In re Purdue Pharma L.P.*, No. 19-23649 (RDD) (Bankr. S.D.N.Y. Mar. 1, 2021), ECF No. 2433 (extending exclusive periods a fourth time, to eighteen months after the petition date); *In re Windstream Holdings, Inc.*, No. 19-22312-RDD

(Bankr. S.D.N.Y. June 22, 2020), ECF No. 2186 (extending exclusive periods a fourth time more than 16 months after the petition date).

29. Furthermore, large airline bankruptcies, even in economically stable times, are extremely complex. Especially in that context, relatively little time has elapsed, and many airline cases have had exclusivity extended beyond the aggregate period proposed here. *See, e.g., In re Avianca Holdings S.A.*, No. 20-11133 (MG) (Bankr. S.D.N.Y. Aug. 16, 2021), ECF No. 2001 (granting the debtors' fourth extension of the exclusive periods, through statutory maximum 18 months from the petition date); *In re AMR Corp.*, No. 11-15463 (SHL) (Bankr. S.D.N.Y. Mar. 27, 2013), ECF No. 7284 (granting a sixth extension of the exclusive periods, to 18 months after the petition date); *In re Frontier Airlines Holdings, Inc.*, No. 08-11298 (RDD) (Bankr. S.D.N.Y. May 20, 2009), ECF No. 853 (granting a third extension of the exclusive periods, to 18 months after the petition date); *In re Delta Airlines, Inc.*, No. 05-17923 (ASH) (Bankr. S.D.N.Y. Mar. 15, 2007), ECF No. 5225 (granting a fourth extension of the exclusive periods, to 625 days after the petition date); *In re Northwest Airlines Corp.*, No. 05-17930 (ALG) (Bankr. S.D.N.Y. June 29, 2006), ECF No. 2959 (granting a third extension of the exclusive periods, to 488 days after the petition date); *In re UAL Corp.*, No. 02-48191 (ERW) (Bankr. N.D. Ill. Dec. 16, 2005), ECF No. 14136 (granting an eleventh extension of the exclusive periods, to almost thirty-nine months after the petition date). Specifically, as of the date of this Motion, the debtors in *In re LATAM Airlines Group S.A.*, No. 20-11254 (JLG) (Bankr. S.D.N.Y. May 26, 2020) have not yet filed a chapter 11 plan of reorganization despite filing for chapter 11 protection over a month before the Debtors, which reflects the inherent complexity of the issues needing to be resolved in large Latin American airline bankruptcies. Accordingly, a short extension of the Exclusive Periods is appropriate.

d. The Debtors Have Demonstrated Reasonable Prospects for Filing a Viable Chapter 11 Plan and Are Making Progress in Negotiations with Creditors

30. As set forth herein, the Debtors have made substantial progress and obtained significant benefits throughout the Chapter 11 Cases. The Court ordered Mediation for the parties to negotiate the remaining issues that are predicates to filing a Chapter 11 Plan. As discussed above, the Debtors intend to file a Chapter 11 Plan shortly, while simultaneously working to resolve as many issues around the filing of the Chapter 11 Plan as possible. Accordingly, this factor weighs in favor of allowing the Debtors to extend the Exclusive Periods.

e. The Debtors Are Not Seeking to Extend Exclusivity to Pressure Creditors to Accede to the Debtors' Demands and Creditors Are Not Prejudiced by the Extension

31. Continued exclusivity will permit the Debtors to bring to culmination the substantial progress that has been achieved to date, and to continue diligently working with many various creditor groups and other parties in interest. The Debtors are seeking an extension of the Exclusive Periods to secure adequate time to negotiate and finalize a Chapter 11 Plan. Finally, the Debtors are seeking a short extension of the Exclusive Periods at this point, rather than an extension to the statutory maximum, precisely to minimize any inadvertent prejudice to creditors. Accordingly, this factor also weighs in favor of granting the relief requested herein.

f. The Debtors Still Must Resolve Several Important Contingencies

32. As discussed above, the Debtors believe that an extension is warranted to permit the Mediation to conclude, and the Debtors to deliver Final Valuation Materials and file a Chapter 11 Plan, in each case hopefully with stakeholder support. Moreover, the Debtors still need to finalize the rationalization of their fleet (a complicated endeavor in good times, and even more so now when demand is difficult to project), and the claims reconciliation process is ongoing. These circumstances preclude the Debtors from filing a Chapter 11 Plan at this

juncture, but the Debtors are nearing the point where filing a Chapter 11 Plan will be both feasible and required. Accordingly, this factor also weighs in favor of the relief requested herein.

The Relief Requested Should Be Granted

33. The Debtors faced major tasks in the Chapter 11 Cases, including, without limitation: (i) obtaining DIP financing, (ii) rationalizing the Debtors' labor force, (iii) rationalizing the Debtors' fleet, (iv) reaching agreement with important contract counterparties; (v) resolving issues relating to the Debtors' loyalty program, and (vi) formulating, soliciting votes on, and ultimately seeking confirmation of a Chapter 11 Plan. Despite arriving at satisfactory resolutions of several of the foregoing issues and making significant headway on the remaining, and despite the Debtors' significant progress in a host of other areas, work remains, given the size and complexity of the Chapter 11 Cases, as well as the unique requirements of the Debtors' DIP Facility. The Debtors believe it is in the best interests of the Debtors' estates and all parties in interest to seek a 30-day extension of the Exclusive Periods as described herein to permit the Debtors to proceed toward the goal of a confirmable Chapter 11 Plan that maximizes the value of the Debtors' estates to the benefit of all parties in interest and the timeline previously provided to the Mediation parties. The Debtors' progress to date has been achieved in no small part due to the breathing room provided by chapter 11. The Debtors believe that maintaining their exclusive right to file and solicit votes on a plan is critical to their ability to complete a value-maximizing and fruitful process.

34. Furthermore, courts in this jurisdiction have granted relief similar to, and in fact more extensive than, the relief requested herein. *See, e.g., In re Avianca Holdings S.A.*, No. 20-11133 (MG) (Bankr. S.D.N.Y. Aug. 16, 2021), ECF No. 2001 (granting the debtors' fourth extension of the exclusive periods, through statutory maximum 18 months from the petition date); *In re Windstream Holdings, Inc.*, No. 19-22312 (RDD) (Bankr. S.D.N.Y. June 22, 2020),

ECF Nos. 699, 1329, 1706, 2186 (granting an initial extension of the exclusivity periods of 180 days, a second extension of 120 days, and two additional extensions of 60 days each); *In re The Great Atlantic & Pacific Tea Company, Inc.*, No. 15-23007 (RDD) (Bankr. S.D.N.Y. July 14, 2016), ECF Nos. 3015 (same); *In re Pacific Drilling S.A.*, Case No. 17-13193 (MEW) (Bankr. S.D.N.Y. Nov. 16, 2018) (granting the debtors' fourth extension of the exclusive periods, for a total extension of 341 days); *In re Residential Capital LLC*, Case No. 12-12020 (MG) (Bankr. S.D.N.Y. Sept. 11, 2012), ECF Nos. 1413, 2489, 3007, 3102, 3440, 3634, 3919 (granting four exclusivity extensions for a total of 464 days).

Automatic Extension

35. Pursuant to the *Order Establishing Certain Notice, Case Management, and Administrative Procedures*, entered on July 8, 2020 [ECF No. 79] (the “**Case Management Order**”):

Automatic Extension of Certain Time Periods. If a Request for Relief to extend the time to take any action is filed prior to the expiration of the time period provided by the Bankruptcy Code (**including any Request for Relief pursuant to section 1121 of the Bankruptcy Code**), the Bankruptcy Rules, the Local Rules, or any order of the Court, the time to so take action shall be automatically extended until the Court considers and rule upon the Request for Relief.

Case Management Order at ¶ 46 (emphasis added). In addition, pursuant to Local Rule 9006-2, the Exclusive Periods are automatically extended until the Court acts on this Motion, without the necessity for the entry of a bridge order.

Notice

36. Notice of this Motion will be provided to: (a) the entities on the Master Service List (as defined in the Case Management Order and available on the Debtors' case website at <https://dm.epiq11.com/aeromexico>) and (b) any person or entity with a particularized interest in

the subject matter of this motion (the “**Notice Parties**”). The Debtors respectfully submit that no further notice is required.

No Prior Request

37. The Debtors have not previously sought the relief requested herein from the Court or any other court.

[Remainder of Page Intentionally Left Blank]

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

Dated: September 3, 2021
New York, New York

DAVIS POLK & WARDWELL LLP

By: /s/ Timothy Graulich

450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 701-5800
Marshall S. Huebner
Timothy Graulich
James I. McClammy
Stephen D. Piraino
Erik Jerrard (admitted *pro hac vice*)

*Counsel to the Debtors
and Debtors in Possession*