

Hearing Date: September 20, 2021 at 1:00 p.m. (ET)
Objection Deadline: September 17, 2021 at 4:00 p.m. (ET)

Teresa Mkhitarian
6100 Matilija Avenue,
Valley Glen, CA 91401
Tel: 818.209.0426

In Pro Per

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

GRUPO AEROMEXICO, S.A.B. de C.V., et al.,

Debtors.¹

Chapter 11

Case No. 20-11563 (SCC)

(Jointly Administered)

**OPPOSITION TO DEBTORS' EIGHTEENTH OMNIBUS CLAIMS OBJECTION TO
PROOFS OF CLAIM (WRONG DEBTOR, INCORRECTLY CLASSIFIED, FOREIGN
CURRENCY, AMENDED AND DUPLICATE, AND/OR REDUCED CLAIMS)**

TO THE HONORABLE SHELLEY C. CHAPMAN,
UNITED STATES BANKRUPTCY JUDGE:

The undersigned claimant, Teresa Mkhitarian ("Claimant"), in support of this opposition to the *Debtors' Eighteenth Omnibus Claims Objection to Proofs of Claim (Wrong Debtor, Incorrectly Classified, Foreign Currency, Amended and Duplicative, and/or Reduced Claims)* (the "Omnibus Objection") [doc. 1594], respectfully states as follows:

¹ The debtors in these cases, along with each debtor's registration number in the applicable jurisdiction, are as follows: Grupo Aeromexico, S.A.B. de C.V. 286676; Aerovias de Mexico, S.A. de C.V. 108984; Aerolitoral, S.A. de C.V. 217315; and Aerovias Empresa de Cargo, S.A. de C.V. 437094-1 (collectively, "Debtors").

PRELIMINARY STATEMENT

Claimant timely filed a proof of claim asserting a priority claim in the amount of \$828.49 (the “Claim”). Through the Omnibus Objection, Debtors request: (A) reclassification of the Claim as an unsecured claim; and (B) reassignment of the Claim from Grupo Aeromexico, S.A.B. de C.V. (“Grupo”) to Aerovias de Mexico, S.A. de C.V. (“Aerovias”). At this time, based on Debtors’ representation that the debt owed to Claimant is owed by Aerovias, Claimant does not oppose reassignment of her claim to Aerovias.² However, for the reasons set forth below, Claimant opposes reclassification of her claim as an unsecured claim.³

BACKGROUND

1. On or about March 10, 2020, Claimant paid \$828.49 to Debtors for the purchase of a roundtrip airline ticket from Los Angeles, California to Lima, Peru and, subsequently, from Lima, Peru back to Los Angeles, California (the “Ticket”).⁴ Claimant purchased the Ticket to secure transportation for a personal vacation. Declaration of Teresa Mkhitarian (“Mkhitarian Declaration”), ¶ 2.

2. On or about March 17, 2020, Claimant received notice from Debtors, via email, that Debtors canceled and rebooked the flights to and from Peru. Mkhitarian Declaration, ¶ 3. From

² Pursuant to 11 U.S.C. § 502(j) and pending discovery, Claimant reserves the right to seek reconsideration of the reassignment of her claim to the appropriate debtor.

³ Prior to filing this Opposition, Claimant contacted Debtors’ counsel to meet and confer. Claimant was informed that Debtors would be withdrawing their incorrect classification objection via a proposed order submitted *after* the opposition deadline. Claimant attempted to contact counsel to execute a stipulation prior to the deadline; Claimant did not receive a response. To preserve her rights and out of an abundance of caution, Claimant decided to file this Opposition.

⁴ Proof of purchase of the airline ticket, which reflects the date and method of purchase, is attached to the timely-filed Claim, designated Claim No. 11623.

April 4, 2020 through April 20, 2020, Claimant received additional emails modifying the rebooked flights. Mkhitarian Declaration, ¶ 3.

3. On or about April 27, 2020, Claimant received notice that Debtors again canceled the flights to and from Peru. Mkhitarian Declaration, ¶ 4. This time, Debtors did not rebook the flights. Mkhitarian Declaration, ¶ 4. Notwithstanding Debtors' failure to provide the services for which the parties contracted (i.e., flights to and from Lima, Peru on the dates specified in the Claim), to date, Debtors have not refunded Claimant's deposit of \$828.49. Mkhitarian Declaration, ¶ 5.

4. On June 30, 2020, Debtors filed voluntary chapter 11 petitions.

5. Pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 1015(b), Debtors' bankruptcy cases are being jointly administered.

6. On July 2, 2020, the Court entered the *Order Authorizing Debtors to Retain and Employ Epiq Corporate Restructuring, LLC as Claims and Noticing Agent Nunc Pro Tunc to the Petition Date* (the "Claims Agent Order") [doc. 47]. Through the Claims Agent Order, the Court appointed Epiq Restructuring, LLC as Debtors' claims and noticing agent.

7. On November 18, 2020, the Court entered the *Order (I) Establishing Deadline for Filing Proofs of Claim and Procedures Relating Thereto and (II) Approving the Form and Manner of Notice Thereof* (the "Bar Date Order") [doc. 648]. Through the Bar Date Order, the Court set January 15, 2021 as the bar date.

8. On January 4, 2021, Claimant timely filed the Claim, asserting a priority claim in the amount of \$828.49 in accordance with 11 U.S.C. § 507(a)(7). *See* Claim No. 11623. As noted

above, Claimant attached proof of purchase of the Ticket, which reflected the date of purchase, amount of purchase and method of payment.

9. On August 18, 2021, Debtors filed the Omnibus Objection. The Omnibus Objection provided that a response must be received on or before September 17, 2021.

ARGUMENT

10. A properly-filed proof of claim comprises “prima facie evidence of the validity and amount of the claim,” Fed. R. Bankr. P. 3001(f), and is “deemed allowed, unless a party in interest ... objects.” 11 U.S.C. § 502(a). An objecting party “bears the initial burden of production and must provide evidence showing the claim is legally insufficient” under 11 U.S.C. § 502. *In re Arcapita Bank B.S.C.(c)*, 508 B.R. 814, 817 (S.D.N.Y. 2014) (citation omitted). Once the objecting party has met its initial burden, it is up to the claimant to “prove by a preponderance of the evidence that under applicable law the claim should be allowed.” *Id.* (citation omitted).

11. Section 507(a)(7) of the Bankruptcy Code provides that the following claims are entitled to priority treatment—

Seventh, allowed unsecured claims of individuals, to the extent of \$3,025... for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided.

11 U.S.C. § 507(a)(7).

12. Through § 507(a)(7), “Congress intended to modernize the bankruptcy priority statute to protect the priority of consumer creditors of a bankrupt business at a time when the amount

and kinds of credit transactions were increasing.” *In re Superior Air Charter, LLC*, 627 B.R. 241, 250 (Bankr. D. Del. 2021) (citing H.R. REP. 95-595, at p. 3-4, 188 (1978)).

13. In *Superior Air*, consumers prepaid the debtor, an air services provider, for future flight services pursuant to a service contract. *Id.*, at 245-46. Prior to providing such services, the debtor filed a chapter 11 petition. *Id.*, at 246. After consumers filed claims designated as priority claims under 11 U.S.C. § 507(a)(7), the debtor objected to classification of the claims as priority. *Id.*, at 246-47. The bankruptcy court disagreed. *Id.*, at 254. In considering the plain language of the statute and the legislative intent to protect consumers, and after aggregating several decisions on the issue, the court held that the deposits came within the purview of § 507(a)(7) because: “(i) the consumer claimants gave money to [the debtor] for [the debtor’s] promise to return the money in the form of flight services and (ii) [the debtor] failed to fulfill its obligation to provide services to the consumer claimants.” *Id.*

14. Here, similar to *Superior Air*, Claimant gave money to Debtors in return for Debtor’s promise to provide flight services from Los Angeles to Lima and back. Debtors failed to fulfill their obligation to provide these services to Claimant. As such, the Claim qualifies as a “deposit... of money in connection with the... purchase of services[] for the personal, family, or household use” of Claimant. 11 U.S.C. § 507(a)(7).

15. As demonstrated by the proof of purchase attached to the Claim, Claimant made the deposit “before commencement of the case,” on March 10, 2020. As further shown by the proof of purchase, the deposit of \$828.49 is below the \$3,025 cap set forth in 11 U.S.C. § 507(a)(7).

16. In light of the above, Debtors’ boilerplate Omnibus Objection did not include “evidence showing the [Claim] is legally insufficient” under 11 U.S.C. § 502 and, as a result,

Debtors did not meet their “initial burden of production.” *Arcapita Bank*, 508 B.R. at 817.

Debtors failed to provide any legal or evidentiary basis to reclassify the Claim as a general unsecured claim.

17. Claimant believes the attachments to the Claim, combined with Claimant’s declaration attached to this Opposition, prove Claimant’s entitlement to a priority claim under the authorities above. However, if the Court requests additional documentary evidence in support of the Claim, Claimant will supplement this Opposition with any requested documents.

18. Pursuant to the plain language of 11 U.S.C. § 507(a)(7), Congress’s intent to protect consumers, such as Claimant, and the highlighted authorities above, Claimant is entitled to a priority claim in the amount of \$828.49.

CONCLUSION

WHEREFORE, for the foregoing reasons, Claimant respectfully requests that the Court overrule Debtors’ objection to the Claim.

Dated: September 10, 2021

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Teresa Mkhitarian', written over a horizontal line.

Teresa Mkhitarian
In Pro Per

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

GRUPO AEROMEXICO, S.A.B. de C.V., et al.,

Debtors.⁵

Chapter 11

Case No. 20-11563 (SCC)

(Jointly Administered)

**DECLARATION OF TERESA MKHITARIAN IN SUPPORT OF OPPOSITION TO
DEBTORS' EIGHTEENTH OMNIBUS CLAIMS OBJECTION TO PROOFS OF CLAIM
(WRONG DEBTOR, INCORRECTLY CLASSIFIED, FOREIGN CURRENCY,
AMENDED AND DUPLICATE, AND/OR REDUCED CLAIMS)**

I, TERESA MKHITARIAN, of full age, hereby declare as follows:

1. I am the Claimant and have personal knowledge of the facts supporting the Claim contained in this Declaration.
2. On or about March 10, 2020, I paid \$828.49 to Debtors for the purchase of a roundtrip airline ticket from Los Angeles, California to Lima, Peru and, subsequently, from Lima, Peru

⁵ The debtors in these cases, along with each debtor's registration number in the applicable jurisdiction, are as follows: Grupo Aeromexico, S.A.B. de C.V. 286676; Aerovias de Mexico, S.A. de C.V. 108984; Aerolitoral, S.A. de C.V. 217315; and Aerovias Empresa de Cargo, S.A. de C.V. 437094-1 (collectively, "Debtors").

back to Los Angeles, California (the "Ticket"). I purchased the Ticket to secure transportation for a personal vacation.

3. On or about March 17, 2020, I received notice from Debtors, via email, that Debtors canceled and rebooked the flights to and from Peru. From April 4, 2020 through April 20, 2020, I received additional emails modifying the rebooked flights.

4. On or about April 27, 2020, I received notice that Debtors again canceled the flights to and from Peru. This time, Debtors did not rebook the flights.

5. Notwithstanding Debtors' failure to provide the services for which the parties contracted (i.e., flights to and from Lima, Peru on the dates specified in the Claim), to date, Debtors have not refunded my deposit of \$828.49.

6. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Executed: September 10, 2021

By: 

Teresa Mkhitarian
In Pro Per

CERTIFICATE OF SERVICE

Pursuant to Local Bankruptcy Rule 9078-1, I certify that, on September 10, 2021, I caused a copy of the foregoing document to be served by: (A) the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of New York; (B) electronic mail to all addresses listed in the *Notice of Hearing on Debtors' Eighteenth Omnibus Claims Objection to Proofs of Claim (Wrong Debtor, Incorrectly Classified, Foreign Currency, Amended and Duplicate, and/or Reduced Claims)*; and (C) pursuant to the instructions on the Court's website, via electronic mail to the chambers of the Honorable Judge Shelley C. Chapman.

By: 

Teresa Mkhitarian
In Pro Per