

Hearing Date and Time: October 21, 2021, at 9:00 a.m. (prevailing Eastern Time)
Objection Date and Time: October 15, 2021, at 4:00 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 TO APPROVE THE
(I) SHORTENED NOTICE AND OBJECTION PERIODS FOR DEBTORS'
DISCLOSURE STATEMENT MOTION, (II) ADEQUACY OF INFORMATION
IN THE DISCLOSURE STATEMENT, (III) SOLICITATION AND VOTING
PROCEDURES, (IV) FORMS OF BALLOTS, NOTICES AND
NOTICE PROCEDURES IN CONNECTION THEREWITH,
AND (V) CERTAIN DATES WITH RESPECT THERETO**

PLEASE TAKE NOTICE that on October 1, 2021, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Debtors’ Motion to Approve the (I) the Shortened Notice and Objection Periods for Debtors’ Disclosure Statement Motion, (II)*

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.

Adequacy of Information in the Disclosure Statement, (III) Solicitation and Voting Procedures, (IV) Forms of Ballots, Notices and Notice Procedures in Connection Therewith, and (V) Certain Dates with Respect Thereto [Docket No. 1808] (the “**Motion**”).² A hearing on the Motion will be held on **October 21, 2021 at 9:00 a.m. (prevailing Eastern Time)** (the “**Hearing**”) before the Honorable Judge 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**”),³ 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 list of motion(s) to be heard at the Hearing.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

³ A copy of the General Order M-543 can be obtained by visiting <http://www.nysb.uscourts.gov/news/general-order-m-543-court-operations-under-exigent-circumstances-created-covid-19>.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion shall be in writing, shall comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, shall be filed with the 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 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 [Docket No. 79], so as to be filed and received no later than **October 15, 2021 at 4:00 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; *provided* that objecting parties shall attend the Hearing telephonically so long as General Order M-543 is in effect or unless otherwise ordered by the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that if no responses or objections are timely filed and served with respect to the Motion, the Debtors may, on or after the Objection Deadline, submit to the 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.

PLEASE TAKE FURTHER NOTICE that the Debtors have made extensive efforts to identify all parties with whom they may have recently conducted business to ensure that the Debtors provide proper notice of the Hearing to all interested parties. However, not all of those parties are creditors of the Debtors. Accordingly, the fact that you are receiving this notice does

not require further action if you do not have, or are not aware of, a claim (i.e., a right to receive payment) you may have against one or more Debtors.

Dated: October 1, 2021
New York, New York

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**UNITED STATES BANKRUPTCY COURT
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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 TO APPROVE THE (I) SHORTENED NOTICE AND OBJECTION PERIODS FOR DEBTORS' DISCLOSURE STATEMENT MOTION, (II) ADEQUACY OF INFORMATION IN THE DISCLOSURE STATEMENT, (III) SOLICITATION AND VOTING PROCEDURES, (IV) FORMS OF BALLOTS, NOTICES AND NOTICE PROCEDURES IN CONNECTION THEREWITH, AND
(V) CERTAIN DATES WITH RESPECT THERETO**

Grupo Aeroméxico S.A.B. de C.V. and its affiliated debtors in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), as debtors and debtors in possession (collectively, the “**Debtors**”), respectfully state the following in support of this motion (the “**Motion**”):

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. Contemporaneously herewith, the Debtors filed the *Joint Chapter 11 Plan of Reorganization of Grupo Aeroméxico S.A.B. de C.V. and Its Affiliated Debtors*, (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the “**Plan**”) and the proposed *Disclosure Statement for the Joint Chapter 11 Plan of Grupo Aeroméxico S.A.B. de C.V. and Its Affiliated Debtors* (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the “**Disclosure Statement**”).² The Disclosure Statement contains, among other things, detailed information describing the Debtors’ prepetition business and operations, the events leading up to the filing of these Chapter 11 Cases, the extensive exit financing process and other events leading up to the filing of the Plan, and the details of the Plan. This Motion seeks, *inter alia*, approval of the Disclosure Statement as containing adequate information pursuant to section 1125 of the Bankruptcy Code (as defined below) and approval of proposed solicitation and noticing procedures that are tailored to efficiently solicit votes from claimants spread around the United States, Mexico and the world. The Debtors’ respectfully submit that the Disclosure Statement contains adequate information and that the solicitation, voting and noticing procedures are fair and reasonable.

2. By this Motion, and pursuant to sections 105, 1125, 1126, and 1128 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 3016, 3017, 3018, and 3020 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 3017-1, 3018-1, and 3020-1 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local**

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Plan, a copy of which is attached as Appendix A to the Disclosure Statement.

Rules”), the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Order**” or “**Proposed Order**” as applicable), granting the following relief:

- a. ***Disclosure Statement.*** Approving the Disclosure Statement for the Plan as containing adequate information pursuant to section 1125 of the Bankruptcy Code;
- b. ***Disclosure Statement Hearing Notice.*** Approving the form and manner of notice filed contemporaneously herewith (the “**Disclosure Statement Hearing Notice**”), of the hearing to consider the Disclosure Statement (the “**Disclosure Statement Hearing**”);
- c. ***Solicitation and Voting Procedures.*** Approving the procedures substantially in the form attached to the Order as **Exhibit 1** for (i) soliciting, receiving and tabulating votes to accept or reject the Plan; (ii) voting to accept or reject the Plan; and (iii) filing objections to the Plan (the “**Solicitation and Voting Procedures**”);
- d. ***Ballots.*** Approving the forms of ballots (collectively, the “**Ballots**”), attached to the Order as **Exhibit 2A**, **Exhibit 2B**, and **Exhibit 2C**;
- e. ***Notices of Non-Voting Status.*** Approving the following notices (each, a “**Notice of Non-Voting Status**” and collectively, the “**Notices of Non-Voting Status**”): (i) the form of notice applicable to Holders of Claims that are Unimpaired³ under the Plan and that are, pursuant to section 1126(f) of the Bankruptcy Code, conclusively presumed to accept the Plan; (ii) the form of notice applicable to Holders of Claims that are Impaired⁴ under the Plan and who are, pursuant to section 1126(g) of the Bankruptcy Code, conclusively deemed to reject the Plan; (iii) the form of notice applicable to Holders of Claims that are subject to a pending objection by the Debtors and who are not entitled to vote the disputed portion of such Claim, substantially in the forms attached to the Order as **Exhibit 3**, **Exhibit 4**, and **Exhibit 5**, respectively;
- f. ***Solicitation Packages.*** Approving the forms of solicitation packages and finding that the solicitation materials and documents included in the solicitation packages (the “**Solicitation Packages**”) that will be sent to, among others, Holders of Claims entitled to vote to accept or reject the Plan, comply with Bankruptcy Rules 3017(d) and 2002(b);
- g. ***Non-Voting Status Notice Packages.*** Approving the forms of notice packages and finding that the materials and documents included in the

³ “**Unimpaired**” refers to any Claim or Interest that is not Impaired.

⁴ “**Impaired**” means any Claim or Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

non-voting status notice packages that will be sent to, among others, Holders of Claims not entitled to vote to accept or reject the Plan;

- h. ***Summary of the Plan.*** Approving the form of a summary of the Plan (the “**Plan Summary**”), substantially in the form attached to the Order as **Exhibit 6**;
- i. ***Notice of Mexican Brokerage Requirement.*** Approving the form of notice related to receiving the Distribution of New Stock pursuant to the Plan, substantially in the form attached to the Order as **Exhibit 7**;
- j. ***Confirmation Hearing Notice.*** Approving the form and manner of notice of the hearing to consider confirmation of the Plan (the “**Confirmation Hearing**” and, the notice thereof, the “**Confirmation Hearing Notice**”), substantially in the form attached to the Order as **Exhibit 8**;
- k. ***Plan Supplement Notice.*** Approving the form of notice related to the filing of the Plan Supplement, substantially in the form attached to the Order as **Exhibit 9** (the “**Plan Supplement Notice**”);
- l. ***Assumption and Assumption and Assignment and Rejection Notices.*** Approving the form of notices to be sent to counterparties to Executory Contracts and Unexpired Leases that will be assumed, and, if applicable assigned, or rejected pursuant to the Plan (the “**Assumption and Assumption and Assignment Notice**” and the “**Rejection Notice**,” respectively, and together, the “**Assumption and Rejection Notices**”) substantially in the forms attached to the Order as **Exhibit 10** and **Exhibit 11**, respectively; and
- m. ***Publication Notice.*** Approving the form and manner of notice of the Confirmation Hearing by publication (the “**Publication Notice**”), substantially in the form attached to the Order as **Exhibit 12**;
- n. ***Confirmation Timeline.*** Establishing the following dates and deadlines, subject to modification as necessary:

Event	Date ⁵
Voting Record Date	October 14, 2021
Disclosure Statement Objection Deadline	October 15, 2021, at 4:00 p.m., prevailing Eastern Time
Disclosure Statement Hearing	October 21 2021, at 9:00 a.m., prevailing Eastern Time
Commencement of Solicitation	One business day after entry of

⁵ Dates herein are subject to change.

	the Order ⁶
Plan Supplement Filing Deadline	November 16, 2021
Publication Deadline	November 16, 2021
Voting Deadline	November 19, 2021, at 4:00 p.m., prevailing Eastern Time
Plan Objection Deadline	November 19, 2021, at 4:00 p.m., prevailing Eastern Time
Contract Objection Deadline	November 19, 2021, at 4:00 p.m., prevailing Eastern Time
Deadline to File Voting Report	November 24, 2021
Deadline to File the Confirmation Brief and Omnibus Reply to Plan Objections	November 22, 2021, at 4:00 p.m., prevailing Eastern Time
Confirmation Hearing Date	November 29, 2021, at 11:00 a.m., prevailing Eastern Time

3. For the Court's reference, and as described in further detail herein, below is a list of the various exhibits cited throughout the Motion:

Relevant Document	Exhibit
Proposed Order	Exhibit A
Solicitation and Voting Procedures	Exhibit 1 to the Proposed Order
Form of Ballots	Exhibit 2A, 2B and 3C to the Proposed Order
Notice of Non-Voting Status to Holders of Unimpaired Claims	Exhibit 3 to the Proposed Order
Notice of Non-Voting Status to Holders of Impaired Claims	Exhibit 4 to the Proposed Order
Notice of Non-Voting Status to Holders of Disputed Claims	Exhibit 5 to the Proposed Order
Plan Summary	Exhibit 6 to the Proposed Order
Notice of Mexican Brokerage Requirement	Exhibit 7 to the Proposed Order
Confirmation Hearing Notice	Exhibit 8 to the Proposed Order

⁶ The Claims and Solicitation Agent (as defined below) will use all practicable means to complete the emailing and mailing, as applicable, of the Solicitation Packages as soon as possible.

Plan Supplement Notice	Exhibit 9 to the Proposed Order
Assumption and Assumption and Assignment Notice	Exhibit 10 to the Proposed Order
Rejection Notice	Exhibit 11 to the Proposed Order
Publication Notice	Exhibit 12 to the Proposed Order

Jurisdiction and Venue

4. The United States Bankruptcy Court for the Southern District of New York (the “**Court**”) has jurisdiction over 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)(2) and, pursuant to Bankruptcy Rule 7008, 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.

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

Background

6. On June 30, 2020, (the “**Petition Date**”), the Debtors each commenced in this Court a voluntary case 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 Bankruptcy Code sections 1107(a) and 1108.

7. These Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* [Docket No. 30] entered by the Court in each of the Cases.

8. On July 13, 2020, the United States Trustee for the Southern District of New York appointed the official committee of unsecured creditors (the “**Creditors’ Committee**”). No trustee or examiner has been appointed in these Chapter 11 Cases.

9. Additional information regarding the Debtors’ business, capital structure, and the circumstances leading to the commencement of these 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.

Plan Overview⁷

10. The Plan contemplates classifying Holders of Claims and Interests into the Classes of Claims and Interests as set forth therein for all purposes, including with respect to voting on, and distributions under, the Plan, pursuant to section 1126 of the Bankruptcy Code. The Debtors propose to solicit votes to accept or reject the Plan from Holders of Claims in the following classes (the “**Voting Classes**”):

Class	Claims or Interest	Status	Voting Rights
3(a)	Aerovías and Grupo Aeroméxico Recourse Claims against Grupo Aeroméxico and Aerovías	Impaired	Entitled to Vote
3(b)	General Unsecured Claims against Grupo Aeroméxico	Impaired	Entitled to Vote
3(c)	General Unsecured Claims against Aerovías	Impaired	Entitled to Vote
3(d)	General Unsecured Claims against Aeroméxico Connect	Impaired	Entitled to Vote

⁷ The Plan constitutes a separate chapter 11 plan of reorganization for each Debtor, and shall include the classifications set forth herein.

11. The Debtors will not solicit votes to accept or reject the Plan from Holders of Claims and Interests in the following Classes (the “**Non-Voting Classes**”):

Class	Claims or Interest	Status	Voting Rights
1	Secured Claims against the Debtors	Unimpaired	Presumed to Accept
2	Other Priority Claims against the Debtors	Unimpaired	Presumed to Accept
7	Interests in Grupo Aeroméxico	Impaired	Deemed to Reject

12. Pursuant to the terms of the Plan (as may be amended from time to time), to the extent additional Classes of Claims or Interests are (a) impaired but not deemed to reject, the Debtors propose to solicit votes from such Classes, and such Classes will constitute a Voting Class, as defined herein; and (b) impaired or unimpaired and presumed to accept or deemed to reject, respectively, then the Debtors will not solicit votes from such Classes and such Classes will constitute a Non-Voting Class, as defined herein.

Basis for Relief

II. The Court Should Approve the Disclosure Statement.

A. The Standard of Approval for a Disclosure Statement.

13. Pursuant to section 1125 of the Bankruptcy Code, the proponent of a proposed chapter 11 plan must provide “adequate information” regarding that plan to Holders of impaired Claims and Interests entitled to vote on the plan. 11 U.S.C. § 1125. Specifically, section 1125(a)(1) of the Bankruptcy Code states, in relevant part, as follows:

“[A]dequate information” means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a

hypothetical investor of the relevant class to make an informed judgment about the plan.

14. A disclosure statement must, as a whole, provide information that is “reasonably practicable” to permit an “informed judgment” by creditors and interest Holders, if applicable, to vote on a plan, and “adequate information” is a flexible standard, based on the facts and circumstances of each case. *See In re Momentum Mfg. Corp.*, 25 F.3d 1132, 1136 (2d Cir. 1994); *see also In re Ionosphere Clubs, Inc.*, 179 B.R. 24, 28 (S.D.N.Y. 1995) (adequacy of a disclosure statement “is to be determined on a case-specific basis under a flexible standard that can promote the policy of chapter 11 towards fair settlement through a negotiation process between informed interested parties” (internal citation omitted)); *see also In re Amfesco Indus., Inc.*, No. CV-88-2952 (JBW), 1988 WL 141524, at *5 (E.D.N.Y. Dec. 21, 1988) (stating that “[u]nder section 1125 of the Bankruptcy Code, a reasonable and typical creditor or equity security holder must be provided ‘adequate information’ to make an informed judgment regarding a proposed plan”); *BSL Operating Corp. v. 125 E Taverns, Inc. (In re BSL Operating Corp.)*, 57 B.R. 945, 950 (Bankr. S.D.N.Y. 1986) (stating that “[s]ection 1125 might be described as a non-rigid ‘how-to-inform’ section A disclosure statement . . . is evaluated only in terms of whether it provides sufficient information to permit enlightened voting by holders of claims or interests”); *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988) (“From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case.”); *In re PC Liquidation Corp.*, 383 B.R. 856, 865 (E.D.N.Y. 2008) (internal citations omitted) (“The standard for disclosure is, thus, flexible and what constitutes ‘adequate disclosure’ in any particular situation is determined on a case-by-case basis, with the determination being largely within the discretion of the bankruptcy court.”). Moreover, this Court and others acknowledge that determining what

constitutes “adequate information” for the purpose of satisfying section 1125 of the Bankruptcy Code resides within the broad discretion of the court. *See, e.g., Kirk v. Texaco, Inc.*, 82 B.R. 678, 682 (S.D.N.Y. 1988) (“The legislative history could hardly be more clear in granting broad discretion to bankruptcy judges under § 1125(a): ‘Precisely what constitutes adequate information in any particular instance will develop on a case-by-case basis. Courts will take a practical approach as to what is necessary under the circumstances of each case.’” (*quoting* H.R. Rep. No. 595, at 408–09 (1977))); *see also In re River Village Assoc.*, 181 B.R. 795, 804 (E.D. Pa. 1995) (“[T]he Bankruptcy Court is thus given substantial discretion in considering the adequacy of a disclosure statement.”); *In re Lisanti Foods, Inc.*, 329 B.R. 491, 507 (D. N.J. 2005) (“The information required will necessarily be governed by the circumstances of the case.”).

15. In making a determination as to whether a disclosure statement contains adequate information as required by section 1125 of the Bankruptcy Code, courts typically look for disclosures related to topics such as:

- a. the circumstances that gave rise to the filing of the bankruptcy petition;
- b. a description of the available assets and their value;
- c. the anticipated future of the debtor;
- d. the source of the information provided in the disclosure statement;
- e. the condition and performance of the debtor while in chapter 11;
- f. Claims against the debtor’s estate;
- g. a liquidation analysis setting forth the estimated return that creditors would receive if the debtor’s case was converted to a case under chapter 7 of the Bankruptcy Code;
- h. the accounting and valuation methods used to produce the financial information in the disclosure statement;
- i. the future management of the debtor;

- j. the chapter 11 plan or a summary thereof;
- k. any financial information, including financial valuations or pro forma projections that would be relevant to creditors' determinations of whether to accept or reject the plan;
- l. the risks to creditors and interest Holders under the plan;
- m. the tax consequences of the plan.

See In re Scioto Valley Mortg. Co., 88 B.R. 168, 170–71 (Bankr. S.D. Ohio 1988); *see also In re Source Enters.*, 2007 Bankr. LEXIS 4770, *7–8 (Bankr. S.D.N.Y. July 31, 2007) (using similar list); *Phoenix Petroleum*, 278 B.R. at 393 (citing similar factors that courts have used to determine the adequacy of information contained in disclosure statements, while cautioning that “no one list of categories will apply in every case”).

B. The Disclosure Statement Contains Adequate Information in Accordance with Section 1125 of the Bankruptcy Code.

16. The Disclosure Statement provides “adequate information” to allow Holders of Claims in the Voting Classes to make informed decisions about whether to vote to accept or reject the Plan. Specifically, the Disclosure Statement contains (a) a description of the Debtors’ business and assets; (b) a description of the circumstances that gave rise to the filing of the bankruptcy petition; (c) information about certain key events in the Chapter 11 Cases; (d) the terms of the Plan; (e) the classification and treatment of Holders of all Classes of Claims and Interests; (f) the effect of the Plan on Holders of Claims and Interests and other parties in interest thereunder; (g) certain risk factors to consider that may affect the Plan; (h) certain securities and tax issues related to the Plan and distributions to be made thereunder; and (i) the means for implementation of the Plan.

17. Based on the foregoing, the Debtors submit that the Disclosure Statement complies with all aspects of section 1125 of the Bankruptcy Code and addresses the information

set forth above in a manner that provides adequate information to Holders of Claims entitled to vote to accept or reject the Plan. Accordingly, the Debtors submit that the Disclosure Statement contains “adequate information” and therefore should be approved.

C. The Disclosure Statement Provides Sufficient Notice of Injunction, Exculpation, and Release Provisions in the Plan.

18. Bankruptcy Rule 3016(c) requires that, if a plan provides for an injunction against conduct not otherwise enjoined under the Bankruptcy Code, the plan and disclosure statement must describe, in specific and conspicuous language, the acts to be enjoined and the entities subject to the injunction. Fed. R. Bankr. P. 3016(c).

19. Article V of the Disclosure Statement describes in detail the entities subject to an injunction under the Plan and the acts that they are enjoined from pursuing. Further, the language in Article VIII of the Plan is in bold font, making it conspicuous to anyone who reads it. Further, each of the proposed forms of Ballots attached to the Order as **Exhibits 2A, 2B, and 2C** sets forth the releases, exculpatory provisions and injunctions in clear and conspicuous language. Accordingly, the Debtors respectfully submit that the Disclosure Statement complies with Bankruptcy Rule 3016(c) by conspicuously describing the conduct and parties enjoined by the Plan.

D. Shortened Notice and Expedited Hearing for the Motion and Related Objection Deadline and Approval of the Form and Manner of the Disclosure Statement Hearing Notice

20. Bankruptcy Rule 2002(b) requires at least twenty-eight (28) days’ notice to all creditors of the time fixed for filing objections and the hearing to consider approval of a disclosure statement. Bankruptcy Rule 3017(a) provides that, after the filing of a disclosure statement, the court shall hold a hearing on at least twenty-eight (28) days’ notice to all creditors, interest Holders and other parties in interest as provided in Bankruptcy Rule 2002 to consider the

disclosure statement, and objections thereto “shall be filed ... at any time before the disclosure statement is approved or by an earlier date as the court may fix.” Fed. R. Bankr. P. 3017(a).

21. However, Bankruptcy Rule 9006(c) and Local Rule 9006-1(b) provide that the Court, for cause shown, may in its discretion (with or without motion or notice) reduce any such notice period. Moreover, pursuant to the *Order Establishing Certain Notice, Case Management, and Administrative Procedures* entered on July 8, 2020 [ECF No. 79] (the “**Case Management Order**”), a party’s right “to seek an amendment or waiver of the provisions of the Case Management Order upon showing of good cause including, without limitation, the right to file a motion seeking . . . relief upon shortened notice” was expressly preserved. Case Mgmt. Order,

22. In accordance with the aforementioned procedures under the Bankruptcy Rules, courts in this district and elsewhere have, upon a showing of sufficient cause, exercised discretion under Bankruptcy Rule 9006(c) to shorten the twenty-eight (28) day notice period required under Bankruptcy Rule 2002(b) for disclosure statement hearings and confirmation hearings. *See, e.g., In re Stearns Holdings, LLC*, No. 19-12226 (SCC) (Bankr. S.D.N.Y. Aug. 12, 2019) [ECF No. 323] (shortening the notice period for a disclosure statement hearing); *In re 4Kids Entertainment, Inc.*, No. 11-11607 (SCC) (Bankr. S.D.N.Y. Oct. 5, 2012) (same); *In re Holland*, 85 B.R. 735, 737 (Bankr. W.D. Tex. 1988) (concluding that, under Bankruptcy Rule 9006(c)(1), “[t]he court therefore has the power to reduce the time periods set out in Bankruptcy Rule 2002(b) for giving notice of hearing on the approval of a disclosure statement”); *In re Landmark Park Plaza Ltd. P’Ship*, 167 B.R. 752, 757–58 (Bankr. D. Conn. 1994) (citing *In re Holland*, 85 B.R. at 737) (and shortening notice on disclosure statement hearing).

23. The Debtors respectfully submit that there is cause to shorten notice and the objection deadline for the Motion and schedule an expedited hearing date for the Disclosure Statement Hearing, including:

(i) *First*, the DIP Credit Agreement⁸ contains certain milestones related to plan confirmation, most notably a requirement that the Debtors confirm a plan of reorganization by November 30, 2021. *See* DIP Credit Agr., § 6.17(d). As set forth in 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* [ECF No. 1700], the Debtors voluntarily delayed the delivery of Final Valuation Materials for as long as possible, and beyond the parameters set forth in the DIP Credit Agreement, in an attempt to continue building consensus and structuring a confirmable chapter 11 plan and related transactions. The Debtors stand by that decision and believe the Plan filed contemporaneously herewith could not have been achieved without such additional time. However, the additional time here requires the Debtors to seek to shorten notice with respect to the Court's consideration of the Disclosure Statement or Plan in order to remain within the confirmation timing constraints under the DIP Credit Agreement. In choosing whether to shorten notice in connection with plan confirmation or disclosure statement approval, in consideration of all of the circumstances described herein, the Debtors submit that shortening the notice periods for the Disclosure Statement's approval is more appropriate.

(ii) *Second*, it is paramount that the Debtors emerge from bankruptcy this calendar year. The Scheduled Maturity Date of the DIP Credit Agreement is "eighteen (18) months after the Petition Date," *i.e.*, December 30, 2021. Operationally, the Debtors' financing, budget and go-forward financial projections are based-off an assumed emergence date in the

⁸ **"DIP Credit Agreement"** means that certain secured superpriority debtor-in-possession facility dated as of November 6, 2020, by and among the Debtors and the DIP Lenders, as approved by the Bankruptcy Court pursuant to the DIP Order, as the same may be further amended, restated, modified or extended.

fourth quarter of 2021, and the ongoing overhang of bankruptcy has already led to operational pressures that have tightened the Debtors' resources. These pressures will only intensify if the Debtors are not permitted to seek approval of the Disclosure Statement on an expedited basis on October 21, 2021.

(iii) *Third*, the Debtors submit that the Debtors' stakeholders will not be prejudiced by shortened notice for the Motion or related objection deadline. As part of the mediation, the Debtors originally shared a draft of the Disclosure Statement and the Plan on September 10, 2021 with, among others, the Creditors' Committee, the Ad Hoc Group of Senior Noteholders, the Ad Hoc Group of Unsecured Claimholders, the BSPO Investors and Apollo. Therefore, the Debtors' most significant stakeholders, which represent a broad swath of its creditors, will have had a draft of the Disclosure Statement for forty-one (41) days at the time of the Disclosure Statement Hearing—much longer than the twenty-eight (28) days ordinarily required pursuant to the Bankruptcy Rules. The revised versions of the Disclosure Statement and the Plan filed contemporaneously herewith are substantially similar in structure and historical disclosure to the Disclosure Statement and Plan that was shared with the Final Valuation Materials. The changes to the Plan and Disclosure Statement are based on continuing negotiations regarding the underlying restructuring, in which many key stakeholders have been closely involved. Moreover, the Debtors' have exhausted countless hours and efforts in working with its stakeholders to arrive at a Plan and the Debtors have been ever transparent throughout these Chapter 11 Cases regarding its ultimate Plan and Disclosure Statement.

24. For all of the aforementioned reasons, the Debtors respectfully believe that sufficient cause exists to shorten the notice and objection periods for the Disclosure Statement Hearing. Concurrently with the filing of this Motion, the Debtors plan to serve the Disclosure

Statement Hearing Notice in accordance with the Case Management Order upon all parties required to be noticed pursuant to Bankruptcy Rules 2002 and 3017 (the “**Notice Parties**”). The Disclosure Statement Hearing Notice identifies (a) the date, time, and place of the Disclosure Statement Hearing as October 21, 2021 at 9:00 a.m. (prevailing Eastern Time) and held telephonically, (b) the deadline for filing objections to approval of the Disclosure Statement as October 15, 2021 at 4:00 p.m. (prevailing Eastern Time), (c) the procedures for filing such objections and (d) the manner in which a copy of the Disclosure Statement and/or the exhibits thereto can be obtained. Copies of the Disclosure Statement and the Plan also are on file with the Clerk of the Court for review during normal business hours and are also available free of charge on the website maintained by the Claims and Solicitation Agent at <https://dm.epiq11.com/aeromexico> (the “**Case Website**”).

25. The Debtors respectfully submit that the foregoing procedures provide adequate notice of the Disclosure Statement Hearing for all purposes and, accordingly, request that the Court approve such procedures as adequate and find that such notice is due and proper and that no further notice is necessary.

III. The Court Should Approve the Solicitation Materials and Timeline for Soliciting Votes on the Plan.

A. The Court Should Approve the Voting Record Date, Solicitation Deadline, and Voting Deadline.

26. Bankruptcy Rule 3017(d) provides that, for the purposes of soliciting votes in connection with the confirmation of a plan, “creditors and equity security holders shall include holders of stocks, bonds, debentures, notes, and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.” Fed. R. Bankr. P. 3017(d). Bankruptcy Rule 3018(a) contains a similar provision regarding determination of the record date for voting purposes. Fed. R. Bankr. P.

3018(a). Additionally, Bankruptcy Rule 3017(c) provides that before approving the disclosure statement, the Court must fix a time within which the Holders of Claims and Interests may accept or reject a plan and may fix a date for the hearing on confirmation of a plan. *See* Fed. R. Bankr. P. 3017(c).

27. The Debtors request that the Court exercise its authority under Bankruptcy Rules 3017(d) and 3018(a) to establish **October 14, 2021** as the voting record date (the “**Voting Record Date**”), one business day after entry of the Order as the deadline to commence solicitation (the “**Solicitation Deadline**”) and **November 19, 2021, at 4:00 p.m., prevailing Eastern Time** as the voting deadline (the “**Voting Deadline**”).

28. The Debtors request that, after they distribute Solicitation Packages to Holders of Claims entitled to vote on the Plan, the Court require that all Holders of Claims entitled to vote on the Plan complete, execute, and return their Ballots so that they are **actually received** by Epiq Corporate Restructuring, LLC, in its capacity as solicitation agent for the Debtors (the “**Claims and Solicitation Agent**”), on or before the Voting Deadline.

29. The foregoing timing and materials will afford Holders of Claims entitled to vote on the Plan 28 days within which to review and analyze such materials and subsequently make an informed decision as to whether to vote to accept or reject the Plan before the Voting Deadline, consistent with the requirements of the applicable Bankruptcy Rules. *See* Fed. R. Bankr. P. 3017(d) (after approval of a disclosure statement, the debtor must transmit the plan, the approved disclosure statement, a notice of the time within which acceptances and rejections of such plan may be filed, and any other information that the court may direct to certain Holders of Claims). Accordingly, the Debtors request that the Court approve the form of, and the Debtors’

proposed procedures for distributing, the Solicitation Packages to the Holders of Claims in the Voting Classes.

B. The Court Should Approve the Procedures for Establishing Claim Amounts for Voting Purposes and Temporary Allowance and Disallowance of Claims for Tabulation Purposes.

30. Pursuant to section 1126(a) of the Bankruptcy Code, the holder of an “allowed” claim may accept or reject a chapter 11 plan. A class of Claims accepts a plan if such plan has been accepted by creditors that hold at least two-thirds in amount and more than one-half in number of the allowed Claims of such class held by creditors that voted. 11 U.S.C. § 1126(c). Bankruptcy Rule 3018(a) provides that the court may temporarily allow a claim in an amount that the bankruptcy court deems appropriate for the purpose of such claim holder accepting or rejecting a plan. The Debtors submit the following procedures provide for a fair and equitable voting process.

31. The Debtors propose that, solely for the purpose of voting, each Claim within the Voting Classes be temporarily allowed in an amount equal to the liquidated, noncontingent, and undisputed amount of such Claim set forth in the Schedules⁹ or Proof of Claim,¹⁰ as applicable, subject to the following exceptions:

- a) If a Claim is deemed Allowed¹¹ under the Plan, such Claim is allowed for voting purposes in the amount deemed Allowed under the Plan;

⁹ “**Schedules**” means the schedules of assets and liabilities, statements of financial affairs, lists of Holders of Claims and Interests and all amendments or supplements thereto filed by the Debtors with the Bankruptcy Court to the extent such filing is not waived pursuant to an order of the Bankruptcy Court.

¹⁰ “**Proof of Claim**” means a proof of claim filed by a Holder of a Claim in accordance with the Bar Date Order.

¹¹ “**Allowed**” means all or that portion, as applicable, of any Claim against any Debtor (a) that has been listed by the Debtors in the Schedules, as such Schedules may be amended by the Debtors from time to time, as liquidated in amount and not Disputed or contingent, and for which no contrary or superseding Proof of Claim has been filed, (b) that has been expressly allowed by Final Order or under the Plan, (c) that has been compromised, settled or otherwise resolved pursuant to the Claims Objection and Settlement Procedures Order, another Final Order of the Bankruptcy Court or Section 6.2 of the Plan, or (d) that the Debtors do not timely object to in accordance with Section 6.1 of the Plan; provided, however, that Claims allowed solely for the purpose of voting to accept or reject

- b) If a Proof of Claim was timely filed in an amount that is wholly liquidated, noncontingent and undisputed, such Claim is temporarily allowed for voting purposes only in the amount set forth on the Proof of Claim, unless such Claim is a Disputed Claim (as defined below)
- c) If a Claim for which a Proof of Claim has been timely filed is wholly contingent, unliquidated or disputed (based on the face of such Proof of Claim or as determined upon the review of the Debtors), such Claim is accorded one (1) vote and valued at One Dollar (\$1.00) for voting purposes only, and not for purposes of allowance or distribution, unless such Claim is a Disputed Claim;
- d) If a Claim is listed on a timely filed Proof of Claim as contingent, unliquidated or disputed in part, such Claim is temporarily allowed in the amount that is liquidated, noncontingent and undisputed, unless such Claim is a Disputed Claim;
- e) Subject to subparagraphs (i)-(j) below, if a Claim has been estimated or otherwise allowed for voting purposes by order of the Court on or before the Voting Deadline, such Claim is temporarily allowed in the amount so estimated or allowed by the Court for voting purposes only; *provided* that nothing in the Solicitation and Voting Procedures shall limit in any way the effect of any order allowing a Claim for purposes of distribution and allowance;
- f) Any claimant who has filed or purchased Claims within the same Class relating to the same purported liability (“**Duplicate Claims**”) (based on the reasonable determination of the Debtors) will be provided with only one (1) Solicitation Package and one (1) Ballot for voting a single Claim in such Class, regardless of whether the Debtors have objected to such Duplicate Claim;¹²
- g) Each claimant who holds or has filed more than one (1) non-Duplicate Claim within a particular Class shall be treated as if such claimant has only one (1) Claim in such Class in the aggregate dollar amount of such Claims;
- h) If a Proof of Claim (an “**Amended Claim**”) has been validly amended by a later Proof of Claim that is filed on or prior to the Voting Record Date,

the Plan shall not be considered “Allowed Claims” for any other purpose under the Plan or otherwise, except if and to the extent otherwise determined to be Allowed as provided herein.

¹² The Debtors reserve their right to object to Duplicate Claims on the basis that any such Claim is a Duplicate Claim or on any other grounds that the Debtors discover or elect to pursue at a later time.

the later filed amending Claim shall entitle the holder of such Claim to vote in a manner consistent with these tabulation rules, and the earlier filed claim shall be disallowed for voting purposes, regardless of whether the Debtors have objected to such earlier filed Claim. Except as otherwise ordered by the Court, any amendments to proofs of claim after the Voting Record Date shall not be considered for purposes of these tabulation rules;¹³

- i) If a Claim is subject to an objection that is filed with the Court on or prior to five (5) days prior to the Voting Deadline (such claim, a “**Disputed Claim**”), such Disputed Claim is temporarily disallowed for voting purposes, except as otherwise provided in a stipulation, settlement, or other agreement filed by the Debtors or as ordered by the Court at least two (2) days prior to the Voting Deadline, including pursuant to an order of any Rule 3018 motion filed regarding such Claim; *provided* that if the objection seeks to reclassify or reduce the allowed amount of such Claim, then such Claim is temporarily allowed for voting purposes in the reduced amount and/or as reclassified, except as otherwise provided in a stipulation, settlement, or other agreement filed by the Debtors or as may be otherwise ordered by the Court at least two (2) days prior to the Voting Deadline; and
- j) The Debtors shall not be required to send Solicitation Packages to creditors whose Claims (a) are based solely on amounts scheduled by the Debtors that have already been paid in the full scheduled amount or (b) have been scheduled in a wholly unliquidated, contingent, or disputed amount and with respect to which such creditor did not timely file a Proof of Claim.

32. Estimating Claims for which a Proof of Claim has been timely filed and is wholly contingent, unliquidated or disputed on a claim-by-claim basis would be an incredibly burdensome and expensive endeavor. Allowing each Claim at \$1.00 as set forth above is a reasonable proxy for voting purposes. Courts have allowed Claims temporarily for limited purposes, including allowing such Claims at \$1.00 for voting purposes, in order to facilitate voting on plans of reorganization. *See, e.g., In re A.H. Robins Co., Inc.*, 88 B.R. 742, 747 (E.D. Va. 1988), *aff’d*, 880 F.2d 694 (4th Cir. 1989) (the placement of a nominal value on each claim

¹³ The Debtors reserve their right to object to Amended Claims on the basis that any such Claim is an Amended Claim or on any other grounds that the Debtors discover or elect to pursue at a later time.

for voting purposes was appropriate as “[a]ny attempt to evaluate each individual claim for purposes of voting on the Debtor’s Plan of Reorganization would, as a practical matter, be an act of futility, and would be so time consuming as to impose on many, many deserving claimants further intolerable delay all not only to their detriment, but to the detriment of the financial well being of the estate as well”); *In re Johns-Manville Corp.*, 68 B.R. 618, 631 (Bankr. S.D.N.Y. 1986), *aff’d*, 78 B.R. 407 (S.D.N.Y. 1987) (approving procedures fixing certain Claims at \$1.00 for voting purposes and finding that “[t]he effect of the voting procedures adopted for AH claimants in this case has been to enfranchise the greatest possible number of asbestos health victims” and further holding that “[i]t has been the stated goal of this court and of the parties in interest throughout these proceedings to ensure the protection and participation of the interests of the asbestos health victims. The construct of the voting procedure is proper as it clearly meets the desideratum of expanded suffrage and participation in the reorganization by all parties in interest”), *aff’d*, 843 F.2d 636 (2d Cir. 1988); *Pension Ben. Guar. Corp. v. Enron Corp.*, No. 04 CIV. 5499 (HB), 2004 WL 2434928, at *5 (S.D.N.Y. Nov. 1, 2004) (citing *Johns-Manville*, 68 B.R. at 631); *In re Lloyd E. Mitchell, Inc.*, 373 B.R. 416, 428 (Bankr. D. Md. 2007) (approving procedures that valued personal injury Claims at \$1.00 temporarily for voting purposes); *In re TK Holdings, Inc.*, Case No. 17-11375 (BLS) (Bankr. D. Del. Jan. 5, 2018) [ECF No. 1639] (approving procedures temporarily allowing tort Claims relating to Debtors’ defective airbag inflators, whether based on personal injury, wrongful death, or economic loss, at \$1.00 for voting purposes).

C. The Court Should Approve the Forms of the Ballots.

33. In accordance with Bankruptcy Rule 3018(c), the Debtors have prepared and customized the Ballots. Although based on Official Form No. 314, the Ballots have been modified to address the particular circumstances of these Cases and include certain additional

information that is relevant and appropriate for Claims in certain of the Voting Classes. The proposed form Ballots for each Voting Class are annexed as **Exhibits 2A, 2B and 2C** to the Order, respectively. The Ballots will be provided in both English and Spanish to Holders of Claims in certain of the Voting Classes. Holders of the Senior Notes and the Unsecured CEBURES and their Nominees will receive the beneficial holder ballot (if used by such Nominee), as attached hereto as **Exhibit 2B** (the “**Beneficial Holder Ballot**”), and the master ballot, as attached hereto as **Exhibit 2C** (the “**Master Ballot**”), respectively. All other Holdings of Claims in the Voting Classes will receive the individual ballot attached hereto as **Exhibit 2A** (the “**Individual Ballots**”). The Individual Ballots provide for a voluntary, irrevocable election by the Cash Opt-In Eligible Claimholders to receive their Pro Rata share of the Aerovías/Grupo Claimholder Cash Pool. The Beneficial Holder Ballot and Master Ballot will include information about a cash opt-in election; however, the process through which the Beneficial Holders elect to make the cash opt-in election will occur after confirmation and will be separately communicated via separate notice to such Beneficial Holders and their Nominees, as applicable. If any case, if a Cash Opt-In Eligible Claimholder does not make an election when required, then such Holder will receive the New Stock. The Debtors respectfully submit that the forms of the Ballots comply with Bankruptcy Rule 3018(c) and, therefore, should be approved.

D. The Court Should Approve the Form and Distribution of Solicitation Packages.

34. **General Solicitation Procedures.** Upon approval of the Disclosure Statement, the Debtors propose to send a Solicitation Package that incorporates the following materials in connection with voting on the Plan and notice of the Confirmation Hearing; *provided, however*, that in lieu of printing and mailing or emailing copies of the Order, Disclosure Statement and the Plan to all Holders of Claims in the Voting Classes, the Debtors propose providing instructions as part of the

Ballots and the Confirmation Hearing Notice that discuss how to access these documents through the Case Website, and:

- a) With respect to Holders of Claims in the Voting Classes:
 - i. the Confirmation Hearing Notice;
 - ii. the applicable Ballot, including, if applicable, a prepaid, preaddressed return envelope;
 - iii. the Plan Summary
 - iv. the Disclosure Statement with all exhibits thereto; and
 - v. the Order (without exhibits other than the Solicitation and Voting Procedures), as entered by the Court;
- b) With respect to Holders of Claims in the Non-Voting Classes (or Claims in Voting Classes that, as of the deadline set forth in the Order, are subject to a pending objection or otherwise deemed not entitled to vote on the Plan) (the “**Non-Voting Status Notice Package**”):
 - i. the Confirmation Hearing Notice;
 - ii. the Plan Summary; and
 - iii. the applicable Notice of Non-Voting Status;
- c) With respect to the U.S. Trustee, a copy of each document contained in each version of the Solicitation Packages, which may include non-customized Ballots and a non-customized Notice of Non-Voting Status; and
- d) Any additional documents that the Court has ordered to be included in hard copy format.

The Debtors request authorization to distribute the Solicitation Packages to Holders of Claims entitled to vote on the Plan by either electronic mail or regular mail. In the event that a Holder of a Claim entitled to vote on the Plan has not provided an electronic mail address or it is not practicable to serve a Solicitation Package by electronic mail, the Debtors request authorization to distribute the Solicitation Package via or regular mail; *provided*, however, that any party may

request to receive paper copies of such materials from the Claims and Solicitation Agent at no cost to such party.

35. The Debtors believe that such instruction to Holders of Claims in Voting Classes on how to access the Disclosure Statement and Plan and any related documents through the Case Website will provide ready access to the most up-to-date versions of such documents, and will result in substantial savings to the Debtors' estates. Further, to the extent that the Debtors utilize electronic mail service, this will be consistent with the Debtors' ordinary course of business since the Debtors regularly use electronic mail to correspond with customers and vendors; and the Debtors have been using electronic mail to provide notice throughout these Chapter 11 Cases, which has not limited the Debtors' ability to provide robust notice to parties in interest during these Chapter 11 Cases. Moreover, electronic mail is often more conducive to providing notice to creditors and parties in interest in Mexico given it is often more reliable than the local postal service in the country. Lastly, courts in this and other districts have granted the same or similar relief to chapter 11 debtors with voluminous disclosure statements and plans of reorganization. *See, e.g., In re Noble Corporation PLC*, Case No. 20-33826 (DRJ) (Bankr. S.D.TX Oct. 9, 2020); *In re Cumulus Media Inc.*, Case No. 17-13381 (SCC) (Bankr. S.D.N.Y. Feb. 2, 2018); *In re CGG Holdings (U.S.) Inc.*, Case No. 17-11637 (MG) (Bankr. S.D.N.Y. Aug. 29, 2017); *In re BCBG Max Azria Global Holdings, LLC*, Case No. 17-10466 (SCC) (Bankr. S.D.N.Y. June 23, 2017); *In re Sun Edison, Inc.*, Case No. 16-10992 (SMB) (Bankr. S.D.N.Y. June 13, 2017); and *In re Answers Holdings, Inc.*, Case No. 17-10496 (Bankr. S.D.N.Y. Mar. 9, 2017).

36. In an effort to conserve the resources of the Debtors' estates, the Debtors also propose to distribute to Holders of such Claims the Non-Voting Status Notice Package by either

electronic mail or regular mail. In the event that a Holder of a Claim in a Non-Voting Class has not provided an electronic mail address or it is not practicable to serve a Non-Voting Status Notice Package by electronic mail, the Debtors request authorization to distribute the Non-Voting Status Notice Package via regular mail; *provided*, however, that any party may request to receive paper copies of such materials from the Claims and Solicitation Agent at no cost to such party.

37. Each of the Notices of Non-Voting Status will include, among other things, instructions as to how to view or obtain copies of the Disclosure Statement (including the Plan and the other exhibits thereto), the Order and all related materials (excluding Ballots) from the Claims and Solicitation Agent, and/or the Court's website via PACER and notice of the Plan Objection Deadline. These parties will also receive the Confirmation Hearing Notice, but since they will not vote on the Plan, the Non-Voting Classes will not receive a Ballot. The Debtors request that the Court determine that they are not required to distribute copies of the Plan or Disclosure Statement to any Holder of a non-voting Claim unless otherwise requested in writing on or before twenty (20) days prior to the Confirmation Hearing. The Debtors submit that such notice satisfies the requirements of Bankruptcy Rule 3017(d).

38. The Debtors also propose that notice need not be sent to creditors whose Claims have already been paid in full; *provided, however*, that if any such creditor would be entitled to receive notice for any reason other than by virtue of the fact that the Claim had been paid in full by the Debtors, such creditor will be sent notice in accordance with the procedures set forth above.

39. Additionally, each of the Confirmation Hearing Notice, Ballots, Plan Summary and Notices of Non-Voting Status will be provided to Holders of Claims in both English and

Spanish. The Debtors also propose to email, if an email is available, a copy of the Confirmation Hearing Notice (to the extent not already provided in the distributions set forth above) to all Notice Parties.

40. The Debtors anticipate that some notices may be returned by the United States Postal Service as undeliverable. The Debtors believe that it would be costly and wasteful to mail such notices to the same addresses to which previous notices have been returned as undeliverable. Therefore, the Debtors seek the Court's approval for a departure from the strict notice rule, excusing the Debtors from mailing such notices to those persons listed at such addresses following receipt of a notice returned as undeliverable unless the Debtors are subsequently provided with accurate addresses. For purposes of serving the Solicitation Packages, the Debtors seek authorization to rely on the address information for Holders in all classes of Claims and Interests as compiled, updated and maintained by the Claims and Solicitation Agent as of the Voting Record Date. Neither the Debtors nor the Claims and Solicitation Agent are required to conduct any additional research for updated addresses based on undeliverable Solicitation Packages (including Ballots).

41. The Debtors submit that they have shown good cause for implementing the proposed notice and service procedures, and request that the Court approve such notice and service as adequate under the circumstances.

42. **Return of Ballots.** The Debtors request that the Court approve the procedures set forth in the Ballots governing the submission of such Ballots. As part of those procedures, votes to accept or reject the Plan will be counted only if such votes are included on a valid Ballot (or Master Ballot) properly executed, completed and delivered to the Claims and Solicitation Agent so that such Ballot is **actually received** by the Claims and Solicitation Agent no later than the

Voting Deadline. Detailed instructions for online transmission of Ballots will be set forth on such Ballots.

43. In addition to accepting hard copy Ballots via first class mail, overnight courier, or hand delivery, the Debtors request authorization to accept the Individual Ballots submitted via an online balloting portal accessible at the Debtors' chapter 11 case website ("**E-Ballots**").¹⁴ The encrypted E-Ballot data and audit trail created by such online submission shall become part of the record of any Ballot submitted in this manner and the creditor's electronic signature will be deemed immediately legally valid and effective.

E. The Proposed Notice of Confirmation Hearing Is Reasonable and Appropriate.

44. The Debtors will commence solicitation by the Solicitation Deadline, at which time the Confirmation Hearing Notice will be served on all known Holders of Claims and the Notice Parties (regardless of whether such parties are entitled to vote on the Plan). The Confirmation Hearing Notice will include the following: (a) instructions as to how to view or obtain copies of the Disclosure Statement (including the Plan and the other exhibits thereto), the Order, and all other materials in the Solicitation Package (excluding Ballots) from the Claims and Solicitation Agent and/or the Court's website via PACER; (b) notice of the Voting Deadline; (c) notice of the date by which the Debtors will file the Plan Supplement; (d) notice of the Plan Objection Deadline; and (e) notice of the Confirmation Hearing Date and information related thereto.

45. Bankruptcy Rule 2002(l) permits the Court to "order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice." Fed. R. Bankr. P. 2002(l). Therefore, in addition to the foregoing distribution of the Confirmation

¹⁴ The Master Ballots and related Beneficial Holder Ballots shall not be submitted via the E-Ballot platform; however, the Master Ballot is permitted to be returned via electronic mail as specified in the Master Ballot.

Hearing Notice, the Debtors will publish the Confirmation Hearing Notice in a format modified for publication (the “**Publication Notice**”) one time on or before November 16, 2021, in each of *The Wall Street Journal*, *The New York Times* and the Mexican national edition of *El Economista* (collectively, the “**Publications**”). The Debtors believe that the Publication Notice will provide sufficient notice of, among other things, the entry of the Order, the Voting Deadline, the Plan Objection Deadline, and the Confirmation Hearing to parties who did not otherwise receive notice thereof by electronic mail. Additionally, service and publication of the Confirmation Hearing Notice comports with the requirements of Bankruptcy Rule 2002 and should be approved.

F. The Proposed Form of Plan Summary Is Reasonable and Appropriate.

46. The Debtors propose to serve the Plan Summary on all Holders of Claims. The Plan Summary describes the most salient features of the Plan will be distributed in both English and Spanish and will be filed with the Court shortly before the Disclosure Statement Hearing’s Objection Deadline. The Debtors view the distribution of the Plan Summary as the most effective means of disseminating material information about the Plan in Spanish. Given that many of the Holders of Claims are based in Mexico and are Spanish speakers, the Debtors propose to send the Plan Summary in Spanish instead of translating the Plan into Spanish, which could unintentionally introduce translation errors that create confusion among parties in interest. Therefore, in order to minimize cost and the risk of translation errors, the Debtors seek to provide a Plan Summary to Holders of Claims. The Plan Summary will not be provided in lieu of the English-language Plan or Disclosure Statement itself. Moreover, it is only out of an abundance of caution that the Debtors request that the Court approve dissemination of the Plan Summary and seek court approval of the form of the Plan Summary.

G. The Proposed Form of Notice of Mexican Brokerage Requirement Is Reasonable and Appropriate.

47. The Debtors propose to serve the Notice of Mexican Brokerage Requirement as part of the Solicitation Package. As further described in the Disclosure Statement and Plan, the New Stock will be a publicly-traded security listed on the *Bolsa Mexicana de Valores (BMV)* (the “**Mexican Stock Exchange**”). Therefore, as required of such securities, all New Stock must be held through a Mexican brokerage account. The Notice of Mexican Brokerage Requirement provides creditors with information regarding (a) the requirement to set up a Mexican brokerage account to be able to hold and trade the New Stock and (b) what is required to set up such an account. It is only out of an abundance of caution that the Debtors request that the Court approve dissemination of the Notice of Mexican Brokerage Requirement and seek court approval of the form thereof.

H. The Proposed Plan Supplement Notice Is Reasonable and Appropriate.

48. The Plan contemplates the Plan Supplement to be a supplemental appendix to the Plan, which shall be filed with the Bankruptcy Court prior to the Confirmation Hearing, and additional documents filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement. The Debtors shall have the right to amend the documents contained in, and exhibits to, the Plan Supplement through the Effective Date. *See* Article XI of the Plan.

49. To ensure that all Holders of Claims receive notice of the Debtors’ filing of the Plan Supplement, the Debtors propose to send the Plan Supplement Notice on the date the Debtors file the Plan Supplement, or as soon as practicable thereafter. Accordingly, the Plan Supplement Notice should be approved.

I. The Proposed Notices to Contract and Lease Counterparties Are Reasonable and Appropriate.

50. The Plan provides that, as of and subject to the occurrence of the Effective Date, all executory contracts and unexpired leases to which any Debtor is a party shall be deemed assumed by the applicable Debtors, except for any executory contract or unexpired lease that (a) has previously been assumed or rejected pursuant to an order of the Bankruptcy Court, (b) is specifically identified on the Schedule of Rejected Contracts, which shall be filed with the Plan Supplement, (c) is the subject of a separate assumption or rejection motion or notice filed by the Debtors under section 365 of the Bankruptcy Code pending on the Confirmation Date, (d) is the subject of a pending contract dispute, or (e) is being treated pursuant to the Plan. *See* Article VII of the Plan.

51. Accordingly, to ensure that counterparties to executory contracts and unexpired leases receive notice of rejection, assumption, or assumption and assignment (as applicable) of their contract or lease pursuant to the Plan, the Debtors will provide such counterparties with an Assumption Notice or Rejection Notice (as applicable), substantially in the form attached to the Order (together, the “**Contract Notices**”), at least twenty-one (21) days prior to the Confirmation Hearing; *provided, however*, the Debtors are permitted to also utilize any assumption or rejection procedures already approved by the Court to assume, assume and assign or reject (as applicable) any contract or lease up to and including the Effective Date.

52. The Contract Notices will inform such counterparties, among other things, of the following:

- (a) the proposed rejection, assumption, or assumption and assignment of executory contracts and unexpired leases of the Debtors (including the proposed Cure Amounts related thereto and the release and satisfaction of any Claims or defaults arising under any assumed executory contract or unexpired lease at any time before the effective date of assumption or assumption and assignment upon the satisfaction thereof);

- (b) the amendment of contracts in connection with assumption, or assumption and assignment pursuant to Article VII of the Plan;
- (c) the deadline to file a Proof of Claim for rejection damages;
- (d) the procedures and deadline for objecting to (a)-(c) or to any other matter pertaining to the treatment of any executory contract or unexpired lease as set forth in the Plan or in the Contract Notices (as applicable) (the “**Contract Objection Deadline**”); and
- (e) that the failure of any counterparty to any executory contract or unexpired lease to timely assert an objection by the Contract Objection Deadline pursuant to the procedures set forth in the Contract Notices (as applicable), shall be deemed to have assented to the treatment of such contract or lease on the terms set forth in the Plan and the Contract Notices (as applicable).

53. Any time prior to the closing of the Effective Date, the Debtors may alter, amend, modify or supplement the Schedule of Rejected Contracts to assume or assume and assign an Executory Contract or Unexpired Lease or reject additional Executory Contracts and Unexpired Leases or, with respect to any Executory Contract or Unexpired Lease subject to a Contract Dispute that is resolved after the Effective Date, within thirty (30) days following entry of an order of the Bankruptcy Court resolving such Contract Dispute.

54. The Debtors respectfully submit that these notices and procedures comply with the Bankruptcy Code and, therefore, should be approved.

IV. The Proposed Solicitation and Voting Procedures Are Reasonable and Appropriate

A. The Standard for Approval of Solicitation and Voting Procedures

55. Section 1126(c) of the Bankruptcy Code provides that:

A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under section (e) of this section that holds at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected the plan. 11 U.S.C. § 1126(c).

56. Additionally, Bankruptcy Rule 3018(c) provides, in part, that “[a]n acceptance or rejection [of a plan] shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent and conform to the appropriate Official Form.” Fed. R. Bankr. P. 3018(c). Consistent with these requirements, the Debtors propose to use the Solicitation and Voting Procedures. The Solicitation and Voting Procedures include specific voting and tabulation requirements and procedures, as described below.

B. Completion of Ballots

57. To ease and clarify the process of tabulating all votes received, the Debtors propose that a Ballot be counted in determining the acceptance or rejection of the Plan only if it satisfies certain criteria. Specifically, the Solicitation and Voting Procedures provide that the Debtors may not count a Ballot if it is, among other things, illegible, not in English or Spanish, unidentifiable, lacking signature or lacking necessary information, received via facsimile or via electronic mail (where submission by email is not permitted) or damaged. Further, the Debtors, subject to a contrary order of the Court, may (in consultation with the Creditors’ Committee) waive any defects or irregularities as to any particular Ballot at any time, either before or after the close of voting, and any such waivers shall be documented in the report tabulating the voting on the Plan (the “**Voting Report**”).

C. General Ballot Tabulation and Voting Procedures.

58. The proposed Solicitation and Voting Procedures set forth specific criteria with respect to the general tabulation of Ballots, voting procedures applicable to Holders of Claims and tabulation of such votes. The Debtors believe that the proposed Solicitation and Voting Procedures will facilitate the Plan confirmation process. Specifically, the procedures will clarify any obligations of Holders of Claims entitled to vote to accept or reject the Plan and will create a straightforward process by which the Debtors can determine whether they have satisfied the

numerosity requirements of section 1126(c) of the Bankruptcy Code. Accordingly, the Debtors submit that the Solicitation and Voting Procedures are in the best interests of their estates, Holders of Claims and Interests, and other parties in interest, and that good cause supports the relief requested herein.

V. The Proposed Confirmation Hearing Date Is Reasonable and Appropriate.

59. Section 1128 of the Bankruptcy Code provides that a court shall hold a hearing on confirmation of a plan and provides that parties in interest can object to confirmation. 11 U.S.C. § 1128. Additionally, Bankruptcy Rule 3017(c) provides that, on or before approval of a disclosure statement, a court shall fix a time for the hearing on confirmation of a plan. Fed. R. Bankr. P. 3017(c). In accordance with Bankruptcy Rule 3017(c) and section 1128 of the Bankruptcy Code, the Debtors request that the Court establish **November 29, 2021 at 11:00 a.m., prevailing Eastern Time**, as the Confirmation Hearing Date. The Debtors further request that the Confirmation Hearing may be continued from time to time by the Court or the Debtors without further notice to parties in interest other than such adjournment announced in open court and/or a notice of adjournment filed with the Court and served on the Notice Parties.

VI. Plan Objection Procedures

60. Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed and served “within a time fixed by the court.” Local Rule 3020-1 requires that objections to confirmation of a plan be filed no later than seven (7) days before the Confirmation Hearing. Bankruptcy Rule 2002(b) provides that parties must receive at least twenty-eight (28) days’ notice of the deadline for filing objections to confirmation. Accordingly, the Debtors propose **November 19, 2021** at 4:00 p.m. (prevailing Eastern Time) as the deadline to object or respond to confirmation of the Plan (the “**Plan Objection Deadline**”). The Debtors request that the Court direct that any objections to confirmation of the Plan comply with the procedures for

filing objections set forth in the Confirmation Hearing Notice. Pursuant to Bankruptcy Rule 3020(b), “[i]f no objection is timely filed, the [C]ourt may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.” Fed. R. Bankr. P. 3020(b)(2).

61. The Debtors request that objections and responses, if any, to confirmation of the Plan (a) be in writing, (b) in English, (c) conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, (d) be filed with the Court (i) 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 <http://www.nysb.uscourts.gov>), and (ii) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and (d) be served in accordance with the Case Management Order entered on July 8, 2020 [Docket No. 79]], on (i) counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attention: Timothy Graulich, Stephen D. Piraino and Erik Jerrard, Email: timothy.graulich@davispolk.com, stephen.piraino@davispolk.com, erik.jerrard@davispolk.com; (ii) counsel to the Creditors Committee, Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, Attention: Brett Miller, Todd Goren, Craig Damast and Debra Sinclair, Email: bmiller@willkie.com, tgoren@willkie.com, cdamast@willkie.com and dsinclair@willkie.com; (iii) counsel to Apollo Management Holdings, L.P., Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, New York 10006, Attention: Richard J. Cooper, Luke A. Barefoot and Thomas S. Kessler, Email: rcooper@cgsh.com, lbarefoot@cgsh.com and tkessler@cgsh.com;

(iv) counsel to that certain Ad Hoc Group of Senior Noteholder, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036, Attention: David H. Botter and Abid Qureshi, Email: dbotter@akingump.com and aqureshi@akingump.com; (v) counsel to that certain ad hoc group of unsecured claimholders, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166, Attention: Joshua Brody and Matthew J. Williams, Email: jbrody@gibsondunn.com and mjwilliams@gibsondunn.com; (vi) counsel to those certain entities for which any of the The Baupost Group, L.L.C., Silver Point Capital, L.P. and Oaktree Capital Management, L.P. serve as investment manager, advisor, subadvisor, or accounts or sub-accounts directly or indirectly under any of their management, Milbank LLP, 55 Hudson Yards, New York, New York 100001, Attention: Dennis F. Dunne, Esq. and Matt Brod, Email: ddunne@milbank.com and mbrod@milbank.com; and (vii) the Office of the U.S. Trustee for the Southern District of New York, 201 Varick Street, Suite 1006, New York, New York 10014, Attention: Andrea Beth Schwartz, Email: andrea.b.schwartz@usdoj.gov, so as to be actually received on or before the Plan Objection Deadline.

62. The Debtors submit that, if there are objections to confirmation, it will assist the Court and may streamline the Confirmation Hearing if the Debtors file a reply to any such objections. Accordingly, the Debtors request that they be authorized to file and serve a reply, replies or an omnibus reply (as applicable) to any such objection(s) and that the Court set **November 22, 2021 at 4:00 p.m. (prevailing Eastern Time)** (the “**Reply Deadline**”) as the deadline for filing and service of a reply, replies or an omnibus reply to any objection(s) to confirmation of the Plan.

63. The Debtors also request that the Court establish the Reply Deadline as the deadline for the Debtors to file their brief (the “**Confirmation Brief**”). In addition, the Debtors

request that any party in interest be permitted to file and serve a statement in support of confirmation of the Plan and/or reply to any objection to confirmation of the Plan by the Reply Deadline.

64. The Debtors respectfully request that the Court approve the procedures for filing objections to the Plan and replies thereto and find that such procedures comply with Bankruptcy Rules 2002, 3017, and 3020 and Local Rule 3020-1.

Non-Substantive Modifications

65. The Debtors request authorization to make non-substantive modifications to the Disclosure Statement, Plan, Confirmation Hearing Notice, Solicitation Packages, Notices of Non-Voting Status, Ballots, Publication Notice, Solicitation and Voting Procedures, Plan Supplement Notice, Notice of Mexican Brokerage Requirement, Assumption and Rejection Notices, and related documents without further orders of the Court, including changes to correct typographical and grammatical errors, if any, and to make conforming changes to the Disclosure Statement, the Plan and any other materials in the Solicitation Packages before distribution. Fed. R. Bankr. P. 3019.

Notice

66. The Debtors have provided notice of this Motion 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 Debtors respectfully submit that no other or further notice is necessary.

No Prior Request

67. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: October 1, 2021
New York, New York

DAVIS POLK & WARDWELL LLP

By: /s/ Timothy Graulich

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