

**Hearing Date and Time: October 21, 2021 at 9:00 a.m. (Prevailing Eastern Time)**  
**Objection Date and Time: October 18, 2021 at 12:00 p.m. (Prevailing Eastern Time)**

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

**In re:**

**GRUPO AEROMÉXICO, S.A.B. de C.V., et al.,  
Debtors.<sup>1</sup>**

**Chapter 11**

**Case No. 20-11563 (SCC)**

**(Jointly Administered)**

**NOTICE OF HEARING ON DEBTORS' MOTION FOR ENTRY OF AN ORDER  
AUTHORIZING DEBTORS TO REJECT THAT CERTAIN AIRCRAFT LEASE**

**PLEASE TAKE NOTICE** that, on October 7, 2021, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Debtors’ Motion for Entry of an Order Authorizing Debtors To Reject that Certain Aircraft Lease* (the “**Motion**”). A hearing on the Motion is scheduled to 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

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<sup>1</sup> The Debtors in these cases, along with each Debtor’s registration number in the applicable jurisdiction, are as follows: Grupo Aeroméxico, S.A.B. de C.V. 286676; Aerovías de México, S.A. de C.V. 108984; Aerolitoral, S.A. de C.V. 217315; and Aerovías Empresa de Cargo, S.A. de C.V. 437094-1. The Debtors’ corporate headquarters is located at Paseo de la Reforma No. 243, piso 25 Colonia Cuauhtémoc, Mexico City, C.P. 06500.

Bankruptcy Judge, in the United States Bankruptcy Court for the Southern District of New York (the “**Court**”), or at such other time as the Court may determine.

**PLEASE TAKE FURTHER NOTICE** that, in accordance with General Order M-543, dated March 20, 2020 (Morris, C.J.) (“**General Order M-543**”),<sup>2</sup> 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](http://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 Court’s website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

**PLEASE TAKE FURTHER NOTICE** that the Hearing may be continued or adjourned from time to time by an announcement of the adjourned date or dates at the Hearing or a later hearing or by filing a notice with the Court. The Debtors will file an agenda before the Hearing, which may modify or supplement the motion(s) to be heard at the Hearing.

**PLEASE TAKE FURTHER NOTICE** that any responses or objections to the Motion shall be in writing, shall comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, shall be filed with the Court by (a) attorneys practicing in the Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov)) and

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<sup>2</sup> 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>.

(b) all other parties in interest, in accordance with the customary practices of the 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 **October 18, 2021 at 12:00 p.m. (prevailing Eastern Time)** (the “**Objection Deadline**”).

**PLEASE TAKE FURTHER NOTICE** that all objecting parties are required to telephonically attend the Hearing, and failure to appear may result in relief being granted upon default.

**PLEASE TAKE FURTHER NOTICE** that, if no responses or objections are timely filed and served with respect to the Motion, the Debtors may, on or after the Objection Deadline, submit to the Court an order substantially in the form of the proposed order attached to the Motion, under certification of counsel or certification of no objection, which order may be entered by the Court without further notice or opportunity to be heard.

Dated: October 7, 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.<sup>1</sup>**

**Chapter 11**

**Case No. 20-11563 (SCC)**

**(Jointly Administered)**

**PARTIES RECEIVING THIS MOTION SHOULD LOCATE THEIR NAMES AND  
AIRCRAFT IN SCHEDULE 1 ATTACHED TO THE PROPOSED ORDER (AS DEFINED  
HEREIN)**

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING DEBTORS TO  
REJECT THAT CERTAIN AIRCRAFT LEASE**

Grupo Aeroméxico, S.A.B. de C.V. (“**Grupo Aeroméxico**”) and certain of its affiliates (collectively, the “**Debtors**”), each of which is a debtor and debtor in possession in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby file this motion (this “**Motion**”) seeking the entry of an order authorizing Debtor Aerovías de México, S.A. de C.V. (the “**Debtor Lessee**”) to reject the Rejected Lease (as defined herein). This Motion is supported by the

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<sup>1</sup> The Debtors in these cases, along with each Debtor’s registration number in the applicable jurisdiction, are as follows: Grupo Aeroméxico, S.A.B. de C.V. 286676; Aerovías de México, S.A. de C.V. 108984; Aerolitoral, S.A. de C.V. 217315; and Aerovías Empresa de Cargo, S.A. de C.V. 437094-1. The Debtors’ corporate headquarters is located at Paseo de la Reforma No. 243, piso 25 Colonia Cuauhtémoc, Mexico City, C.P. 06500.

*Declaration of Matthew Landess in Support of Debtors' Motion for Entry of an Order Authorizing Debtors To Reject that Certain Aircraft Lease* (the “**Landess Declaration**”) attached hereto as **Exhibit B** and incorporated herein by reference. In further support of this Motion, the Debtors respectfully state as follows:

**Jurisdiction and Venue**

1. The United States Bankruptcy Court for the Southern District of New York (the “**Court**”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b). In addition, the Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), to the 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 in connection herewith consistent with Article III of the United States Constitution.

2. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

**Relief Requested**

3. By this Motion, and pursuant to sections 365(a), 554(a), and 105(a) of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Bankruptcy Rule 6006, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**” and, if entered, the “**Order**”), authorizing the Debtor Lessee to reject that certain aircraft lease (the “**Rejected Lease**”) for the aircraft (the “**Rejected Aircraft**”) identified on Schedule 1 to the Proposed Order.

## **Background**

### **A. General Background**

4. On June 30, 2020 (the “**Petition Date**”), each of the Debtors filed in this Court voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors have continued to operate and manage their businesses and have continued to possess their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. The Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* [ECF No. 30] entered by the Court on July 1, 2020 in Grupo Aeroméxico’s Chapter 11 Case.<sup>2</sup>

6. On July 13, 2020, the Office of the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) appointed an Official Committee of Unsecured Creditors (the “**Committee**”) pursuant to section 1102 of the Bankruptcy Code. *See Notice of Appointment of Official Committee of Unsecured Creditors* [ECF No. 92]. No trustee or examiner has been appointed in the Chapter 11 Cases.

7. Detailed information regarding the Debtors’ businesses and affairs, capital structure, and the circumstances leading to the commencement of the Chapter 11 Cases can be found in the *Declaration of Ricardo Javier Sánchez Baker in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* [ECF No. 20], which is incorporated herein by reference.

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

**B. The Debtors' Fleet Optimization Process**

8. As the Court is aware, the Debtors have been engaged in a multi-step process to (a) analyze their anticipated, long-term fleet and equipment needs, (b) make corresponding adjustments to the size and composition of their current operating fleet, and (c) obtain the most favorable terms for agreements relating to aircraft equipment. Over the last several months, the Debtors have continued negotiating with existing lessors and potential lessors of additional aircraft equipment to obtain the best terms available for the aircraft and equipment that will be necessary for the Debtors to pursue their long-term business plan and to optimize their anticipated fleet upon emergence from the Chapter 11 Cases.

9. As a result of arm's length and good faith negotiations, the Debtors have reached agreements with lessors to either (a) enter into new aircraft leases for aircraft or (b) assume current aircraft leases on an amended basis. By agreeing to such transactions and receiving Court approvals [ECF Nos. 396, 399–429, 475, 491, 502, 984, 1100, 1141, 1154, 1156–57, 1161, 1544, 1572–73, 1659, 1693, 1759], the Debtors achieved certainty in maintaining and adding aircraft in and to their fleet on terms that fit the Debtors' short- and long-term needs and that the Debtors believe are advantageous. These aircraft provided the Debtors with attractive economics and ownership costs compared to the Debtors' average prepetition lease costs for similar equipment.

10. In addition to the improved costs and better terms and conditions, these transactions also created operational flexibility for the Debtors, as they allowed the Debtors to potentially reject other costly aircraft or equipment that are not as attractive for the long term fleet. After discussing with the lessor of the Rejected Aircraft (the "**Rejected Lessor**") the possibility of assuming the Rejected Lease on an amended basis, the Debtor Lessee and the

Rejected Lessor were unable to reach an agreement on economic terms that would fit within, or otherwise create value for, the Debtors' short- and long-term plans.

### **Basis for Relief**

11. Section 365 of the Bankruptcy Code allows a debtor in possession (with bankruptcy court approval) to maximize the value of its estates by, among other things, assuming or rejecting executory contracts and unexpired leases. 11 U.S.C. § 365(a); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 521 (1984). An executory contract is a “contract under which the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other.” *Sharon Steel Corp. v. Nat’l Fuel Gas Distribution Corp.*, 872 F.2d 36, 39 (3d Cir. 1989) (internal citations omitted); *see also In re Keren Ltd. P’ship*, 225 B.R. 303, 307 (S.D.N.Y. 1997), *aff’d*, 189 F.3d 86 (2d Cir. 1999) (same). “[T]he purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to ‘renounce title to and abandon burdensome property.’” *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993).

12. In determining whether to permit a debtor to assume or reject a contract or lease, “the debtor’s interests are paramount.” *COR Route 5 Co. v. Penn Traffic Co. (In re Penn Traffic Co.)*, 524 F.3d 373, 383 (2d Cir. 2008). Accordingly, the decision to assume or reject an executory contract or unexpired lease is governed by the business judgment rule, which requires that a debtor determine that the requested assumption would be beneficial to its estates. *See Grp. of Institutional Invs. v. Chicago, M., St. P. & P. R. Co.*, 318 U.S. 523, 550 (1943) (finding that the question of assumption or rejection “is one of business judgment”); *In re Penn Traffic*, 524 F.3d at 383; *In re Old Carco LLC*, 406 B.R. 180, 188 (Bankr. S.D.N.Y. 2009); *In re Helm*, 335



B.R. 528, 538 (Bankr. S.D.N.Y. 2006); *In re MF Global Inc.*, No. 11-2790, 2011 WL 6792758, at \*2 (Bankr. S.D.N.Y. Dec. 20, 2011) (“The assumption or rejection of an executory contract may be approved if such action would benefit the debtor’s estate and is an exercise of sound business judgment.”); *Sharon Steel*, 872 F.2d at 40.

13. In considering a motion to assume or reject an executory contract or unexpired lease, a debtor “should examine a contract and the surrounding circumstances and apply its best ‘business judgment’ to determine if [assumption] would be beneficial or burdensome to the estate.” *In re Orion Pictures Corp.*, 4 F.3d at 1099; *see also In re Gucci*, 193 B.R. 411, 414–15 (S.D.N.Y. 1996). A debtor’s decision to assume or reject an executory contract or unexpired lease based on its business judgment will generally not be disturbed absent a showing of “bad faith or abuse of business discretion.” *In re Old Carco*, 406 B.R. at 188 (quoting *In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994), *aff’d sub nom. John Forsyth Co., Inc. v. G Licensing, Ltd.*, 187 B.R. 111 (S.D.N.Y. 1995)); *see also In re MF Global Inc.*, No. 11-2790, 2011 WL 6792758, at \*2 (Bankr. S.D.N.Y. Dec. 20, 2011) (“The assumption or rejection of an executory contract may be approved if such action would benefit the debtor’s estate and is an exercise of sound business judgment.”); *In re Chipwich, Inc.*, 54 B.R. 427, 430–31 (Bankr. S.D.N.Y. 1985). The party opposing a debtor’s exercise of its business judgment has the burden of rebutting the presumption of validity. *See Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993).

14. Upon finding that the debtor has exercised its sound business judgment in determining that the assumption or rejection of a contract or lease is in the best interests of the debtor, its creditors, and all parties in interest, the court should approve the assumption or

rejection under section 365(a) of the Bankruptcy Code. *See, e.g., In re Child World, Inc.*, 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992).

15. Moreover, section 105(a) of the Bankruptcy Code confers the Court with broad equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

16. The Debtors respectfully submit that the relief requested herein is fair, equitable, reasonable, and in the best interests of the Debtors’ estates and is, thus, justified under sections 365(a) and 105(a) of the Bankruptcy Code. As described above and in the Landess Declaration, the Debtors are seeking to reset their fleet and attendant costs to a market level. As part of this process, the Debtors are evaluating their fleet of aircraft and equipment, reviewing the relevant underlying leases and agreements, and, to the extent prudent, negotiating amendments to such leases and agreements for aircraft and equipment that the Debtors desire to maintain. In doing so, the Debtors compared the Rejected Lease and the Rejected Aircraft to available alternatives and determined (in good faith and after consultation with their key stakeholders) that they needed to negotiate new economically favorable terms for the Rejected Lease that are in line with the Debtors’ business plans. Accordingly, the Debtor Lessee approached the Rejected Lessor to negotiate new terms and conditions for the Rejected Lease; however, such negotiations did not result in an agreement on amended terms that would fit within, or otherwise create value for, the Debtors’ short- and long-term plans.

17. Finally, the relief sought herein is similar to the relief granted by this Court in connection with the rejection of aircraft, engines, and related equipment leases in the Chapter 11 Cases and under similar circumstances. *See, e.g., In re Grupo Aeroméxico, S.A.B. de C.V.*, Case No. 20-11563 (SCC) (Bankr. S.D.N.Y.) [ECF Nos. 177, 210, 1751]; *In re LATAM Airlines*

*Group S.A.*, Case No. 20-11254 (JLG) [ECF No. 391] (Bankr. S.D.N.Y. Jun. 28, 2020); *In re Avianca Holdings S.A.*, Case No. 20-11133 (MG) [ECF No. 277] (Bankr. S.D.N.Y. Jun. 11, 2020); *In re AMR Corporation*, Case No. 11-15463 (SHL) [ECF No. 454] (Bankr. S.D.N.Y. Dec. 23, 2011); *In re Northwest Airlines Corp.*, Case No. 05-17930 (ALG) [ECF No. 672] (Bankr. S.D.N.Y. Oct. 20, 2005); *In re Delta Air Lines, Inc.*, Case No. 05-17923 (PCB) [ECF No. 164] (Bankr. S.D.N.Y. Sept. 16, 2005).

18. In light of the foregoing, the Debtors respectfully request that the Court approve the rejection of the Rejected Lease pursuant to section 365(a) of the Bankruptcy Code.<sup>3</sup>

### **Notice**

19. Notice of this Motion will be provided to the following parties: (a) the entities on the Master Service List (as defined in the *Order Establishing Certain Notice, Case Management, and Administrative Procedures* [ECF No. 79], which is available on the Debtors' case website at <https://dm.epiq11.com/case/aeromexico/info>); (b) the U.S. Trustee; (c) counsel to the Committee; (d) counsel to Apollo Management Holdings, L.P.; (e) counsel to the Ad Hoc Group of Senior Noteholders<sup>4</sup>; (f) each party listed on Schedule 1 to the Proposed Order; and (g) 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 required.<sup>5</sup>

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<sup>3</sup> In the alternative, although the Debtors believe that the Rejected Lease is a true lease, in the event that the Rejected Aircraft is considered collateral for secured obligations, the Debtors respectfully request authority to abandon the Rejected Aircraft pursuant to section 554(a) of the Bankruptcy Code.

<sup>4</sup> As used in this Motion, "Ad Hoc Group of Senior Noteholders" refers to the group identified in the *Third Amended Verified Statement of the Ad Hoc Group of Senior Noteholders Pursuant to Bankruptcy Rule 2019* [ECF No. 1731].

<sup>5</sup> The filing and service of this Motion shall also be deemed to constitute the notice required under ¶ 3(d) of the *Stipulation and Order Between Certain Debtors and Counterparties Concerning Certain Equipment* [ECF No. 401] (the "**Stipulation**").

**Reservation of Rights**

20. Nothing contained herein or any action taken pursuant to such relief is intended or shall be construed as (a) an admission as to the validity or priority of any claim against the Debtors, (b) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of, any claim against the Debtors, or (c) a waiver of any claims or causes of action which may exist against any creditor or interest holders. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Order is not intended to be, and should not be construed as, an admission as to the validity or priority of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

**No Prior Request**

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

*[Remainder of page intentionally left blank]*

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: October 7, 2021  
New York, New York

DAVIS POLK & WARDWELL LLP

By: /s/ Timothy Graulich

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