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Counsel to FO Galaxy Leasing Ltd. and TLC Daffodil Ltd.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

)	
In re:)	Chapter 11
)	
GRUPO AEROMÉXICO, S.A.B. de C.V. <i>et al.</i> ,)	Case No. 20-11563 (SCC)
)	
)	Jointly Administered
)	
Debtors. ¹)	Re: Docket No. 1851
)	

**OBJECTION OF AIRCRAFT LESSORS TO DEBTORS' MOTION FOR
ENTRY OF AN ORDER AUTHORIZING DEBTORS TO
ASSUME THAT CERTAIN AIRCRAFT LEASE**

FO Galaxy Leasing Ltd. and TLC Daffodil Ltd. (collectively, the “Lessors”), joint lessors of aircraft MSN #44427, hereby file this objection to the Motion for Entry of an Order Authorizing Debtors to Assume that Certain Aircraft Lease (the “Assumption Motion”, ECF No. 1851), filed by the above-captioned debtors (collectively, the “Debtors”), through which the Debtors seek to assume the lease of aircraft MSN #44427 leased from the Lessors. In further support of their objection, the Lessors state as follows:

¹ The Debtors in these Chapter 11 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 Cuahetemoc, Mexico City, C.P. 06500.

Preliminary Statement

1. Through the Assumption Motion, the Debtors seek to assume an aircraft lease that was negotiated as part of a larger, complex financing transaction. In connection with that transaction, the Lessors borrowed substantial sums to finance the acquisition of the leased aircraft. Due to the commencement of the Debtors' bankruptcy proceedings, and the Debtors' inability to pay contractual lease rates during their proceedings, the Lessors' loan associated with the aircraft fell into default, and the underlying debt obligations associated with the leased aircraft were accelerated, causing the Lessors to incur significant costs payable by the Debtors under the aircraft lease. Furthermore, in connection with acceleration of the loan, the Lessors' lender (as authorized under the applicable documents) exercised a right to terminate a postpetition aircraft usage stipulation negotiated with the Debtors and demanded return of the leased aircraft.

2. The total amount payable by the Debtors under the aircraft lease that they seek to assume exceeds \$106 million. However, the cure payment proposed in the Assumption Motion by the Debtors is only \$12.8 million – approximately 12% of the amounts currently payable under the lease. It is well settled that any debtor that seeks to assume an executory agreement must, among other things, cure all defaults existing under the agreement at the time of assumption. Even if the lease were still assumable, it cannot be assumed with payment of only 12% of the more than \$106 million of outstanding monetary obligations under lease. Any assumption of the lease must be conditioned upon a cure payment of not less than \$106,109,978.²

² In addition to the \$106,109,978 cure amount, if the Debtors fail to timely pay such cure amount upon assumption, the Debtors also would be required to pay, upon demand under the assumed Aircraft Lease, a Termination Value B in the amount of \$36,202,011.

Background

3. The Lessors are joint lessors of a Boeing 787-9 aircraft (MSN #44427) (such aircraft, the “Aircraft”) that is leased to debtor Aerovias de Mexico, S.A. de C.V. (the “Debtor Lessee”) The Aircraft is leased to the Debtor Lessee pursuant to that certain Aircraft Lease Agreement, dated December 15, 2017, by and among the Lessors and Debtor Lessee (such agreement, as amended, modified, supplemented, assigned, and in effect, the “Aircraft Lease”). The Debtor Lessee’s obligations under the Aircraft Lease are also guaranteed by debtor Grupo Aeroméxico S.A.B. de C.V. (the “Debtor Parent”).

4. The Lessors obtained a loan to finance the acquisition of the Aircraft (such loan, the “Aircraft Loan”). The terms of the Aircraft Loan are heavily intertwined with the terms of the Aircraft Lease. Among other things, the Aircraft Lease requires the Debtors to indemnify the Lessors for any losses or costs incurred by the Lessors in connection with the leasing and/or financing of the Aircraft.

5. The Lessors, Debtor Lessee, and Crédit Agricole Corporate and Investment Bank (in its capacity as Facility Agent and Security Trustee under the Aircraft Loan) are also parties to that certain Stipulation and Order Between Certain Debtors and Counterparties Concerning Certain Equipment (the “Aircraft Stipulation”, ECF No. 414) entered by the Court on or about September 21, 2020. The Aircraft Stipulation sets forth certain parameters regarding the Debtors’ use of the Aircraft during their bankruptcy proceedings, including procedures by which any of the parties to the Aircraft Stipulation may seek to terminate the stipulation and mandate return of the Aircraft. The Aircraft Stipulation provides that upon request of either the Lessors, or Crédit Agricole Corporate and Investment Bank (in its capacity as Facility Agent or Security Trustee), the Debtors shall, within 60 days after that request, return the Aircraft to the Lessors.

6. On October 14, 2021, Crédit Agricole Corporate and Investment Bank (in its capacity as Security Trustee) issued a notice to the Debtors indicating that the Security Trustee (on behalf of itself and all other counterparties to the Aircraft Stipulation) was electing its option to terminate the Aircraft Stipulation. The Security Trustee also requested that the Debtors make arrangements to return the Aircraft to the Lessors and Security Trustee in accordance with the Aircraft Stipulation.

7. Similarly, on October 14, 2021, Crédit Agricole Corporate and Investment Bank, Tokyo Branch (in its capacity as Facility Agent under the Aircraft Loan) issued a notice to the Lessors indicating that as a result of ongoing events of default under the Aircraft Loan (including the Lessors' failure to make certain payments that were due under the Aircraft Loan), the Facility Agent had elected to accelerate the Aircraft Loan, causing the full amount of such loan obligations to be matured and immediately due and payable.

8. The Aircraft Lease requires the Debtors to indemnify the Lessors for all obligations, costs, and expenses incurred by the Lessors in connection with the leasing and financing of the Aircraft. Specifically, Section 23.1 of the Aircraft Lease provides, in relevant part:

“... Lessee hereby agrees at all times to indemnify and hold the Lessor ... harmless from and against all and any Losses of whatsoever kind and nature and regardless of when the same shall arise ... which may from time to time or at any time be imposed on, suffered or incurred by or asserted against any Indemnatee ... relating to, arising out of, or resulting from (*whether directly or indirectly*):

(a) the purchase, ownership ... *financing* ... use, *operation* ... of the Aircraft ...”

(emphasis added)

Similarly, Section 23.7 of the Aircraft Lease provides:

“The Lessee shall indemnify the Lessor upon demand against any and all Losses of whatsoever kind and nature which may from time

to time or at any time be imposed on, suffered, or incurred by or asserted against the Lessor relating to, arising out of or resulting from (whether directly or indirectly) any breach by the Lessee of any of its obligations under this Agreement or any other Operative Document [which includes the Loan Agreement] ... any Potential Event or any Event of Default.”

9. The Lessors and the Finance Parties have accrued fees, costs, and expenses incurred by legal and other professionals in connection with the Aircraft Lease. The total amount of such costs has not yet been determined, but the Lessors presently estimate that such costs will be no less than \$712,000. The Debtors are required to indemnify and reimburse the Lessors for all such costs incurred by the Lessors in connection with the Aircraft and Aircraft Lease.

10. Through the Assumption Motion, the Debtors seek to assume the Aircraft Lease. Though the Assumption Motion acknowledges that the Debtors must cure all defaults associated with the Aircraft Lease before it can be assumed, the Assumption Motion alleges that the total cure payment needed to assume such lease is only \$12,882,616.

Argument and Objection

11. It is black letter bankruptcy law that before the Debtors may assume the Aircraft Lease, they must cure all defaults existing in connection with such lease at the time of assumption. 11 U.S.C. § 365(b), *Manhattan King David Restaurant Inv. v. Levine*, 154 B.R. 423, 429 (S.D.N.Y. 1993) (“If a debtor is in default of an unexpired lease, it may not assume the lease without promptly curing the default or providing adequate assurances). Indeed, the Debtors’ own assumption motion acknowledges that a cure of all Aircraft Lease defaults is a gating prerequisite to assumption.

12. However, the Assumption Motion woefully understates the total cure payment that will be needed in order to assume the Debtor Lease. As a result of the Debtors’ defaults under the Aircraft Lease, the Lessors have incurred substantial, indemnifiable losses under the Aircraft Lease and in connection with the financing of the Aircraft including as a result of the acceleration of the

Aircraft Loan. Such indemnifiable losses, totaling not less than \$105,397,977, must be fully satisfied in order to satisfactorily cure all existing defaults under the Aircraft Lease. Similarly, the Lessors have also incurred indemnifiable professional fees in connection with the Aircraft Lease that are presently estimated to be no less than \$712,000.

13. After accounting for losses associated with the Aircraft Loan, losses, indemnifiable professional fees, and other unpaid Aircraft Lease costs, the total cure amount that will need to be paid by the Debtors in order to assume the Aircraft Lease will be no less than \$106,109,978³.

14. The Lessors understand that the Security Trustee for the Aircraft Loan intends to submit an objection to the Assumption Motion on multiple grounds, including (i) that the Debtors no longer possess the ability to assume the Aircraft Lease, as they are obligated by the terms of the Aircraft Stipulation to reject the Aircraft Lease and return the Aircraft and (ii) that the proposed order granting the Assumption Motion seeks to impermissibly grant the Debtors injunctive and declaratory relief concerning the impact of the motion upon the Aircraft Stipulation (whose terms are to survive the termination of such agreement). The Lessors join in such objections raised by the Security Trustee and incorporate such objections as if fully set forth herein.

WHEREFORE, the Lessors respectfully request that the Court deny the Assumption Motion or alternatively, condition any approval of the Assumption Motion upon providing the cure payments set forth in this objection, and grant the Lessors such other relief as is just and proper.

³ In addition to the \$106,109,978 cure amount, if the Debtors fail to timely pay such cure amount upon assumption, the Debtors also would be required to pay, upon demand under the assumed Aircraft Lease, a Termination Value B in the amount of \$36,202,011.

Dated: October 20, 2021

Respectfully submitted,

/s/ Brian Smith

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-and-

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*Attorneys for FO Galaxy Leasing Ltd. and
TLC Daffodil Ltd.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, and served upon all parties receiving notice pursuant to the CM/ECF system on this the 20th of October, 2021.

/s/ *Brian Smith*

Brian Smith