

Hearing Date and Time: November 16, 2021 at 11:00 a.m. (Prevailing Eastern Time)
Objection Date and Time: November 12, 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.¹**

Chapter 11

Case No. 20-11563 (SCC)

(Jointly Administered)

**NOTICE OF HEARING ON DEBTORS' MOTION FOR ENTRY OF AN ORDER
(I) AUTHORIZING DEBTOR AEROLITORAL, S.A. DE C.V. TO ASSUME THAT
CERTAIN POOL AGREEMENT AND (II) APPROVING THE CLAIMS
SETTLEMENT WITH EMBRAER AIRCRAFT CUSTOMER SERVICES, LLC**

PLEASE TAKE NOTICE that, on November 1, 2021, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Debtors’ Motion for Entry of an Order (I) Authorizing Debtor Aerolitoral, S.A. de C.V. To Assume that Certain Pool Agreement and (II) Approving the Claims Settlement with Embraer Aircraft Customer Services, LLC* (the

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.

“**Motion**”). A hearing on the Motion is scheduled to be held on **November 16, 2021 at 11:00 a.m. (prevailing Eastern Time)** (the “**Hearing**”) before the Honorable Judge Shelley C. Chapman, United States 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**”),² the Hearing will be conducted telephonically. Any parties wishing to participate must do so telephonically by making arrangements through CourtSolutions, LLC (www.court-solutions.com). Instructions to register for CourtSolutions, LLC are attached to General Order M-543.

PLEASE TAKE FURTHER NOTICE that copies of the Motion may be obtained free of charge by visiting the website of Epiq Corporate Restructuring, LLC at <https://dm.epiq11.com/aeromexico>. You may also obtain copies of any pleadings by visiting the 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.

² A copy of the General Order M-543 can be obtained by visiting <http://www.nysb.uscourts.gov/news/general-order-m-543-court-operations-under-exigent-circumstances-created-covid-19>.

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) and (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 **November 12, 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 annexed 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.

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Dated: November 1, 2021
New York, New York

DAVIS POLK & WARDWELL LLP

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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)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING
DEBTOR AEROLITORAL, S.A. DE C.V. TO ASSUME THAT CERTAIN
POOL AGREEMENT AND (II) APPROVING THE CLAIMS SETTLEMENT
WITH EMBRAER AIRCRAFT CUSTOMER SERVICES, LLC**

Grupo Aeroméxico, S.A.B. de C.V. (“**Grupo Aeroméxico**”) and certain of its affiliates (collectively, the “**Debtors**”), including Aerovías de México, S.A. de C.V. (“**Aerovías**”) and Aerolitoral, S.A. de C.V. (“**Aerolitoral**”), 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 (a) authorizing Debtor Aerolitoral to assume that certain

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.

Fleet Hour Program (POOL) Support Agreement No. DRN/GVD 007/07, dated November 5, 2007, by and between Aerolitoral and Embraer Aircraft Customer Services, LLC (“**Embraer**” and, together with Aerolitoral, the “**Parties**”) (as amended, amended and restated, supplemented, or otherwise modified from time to time, including, without limitation, the amendments memorialized in by Amendment Nos. 1–47, the “**Pool Agreement**”)² and (ii) approving the Claims Settlement (as defined herein). This Motion is supported by the *Declaration of Ricardo Javier Sánchez Baker in Support of Debtors’ Motion for Entry of an Order (I) Authorizing Debtor Aerolitoral, S.A. de C.V. To Assume that Certain Pool Agreement and (II) Approving the Claims Settlement with Embraer Aircraft Customer Services, LLC* (the “**Sánchez 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 Copies of the documents comprising the Pool Agreement are not included as part of this Motion due to their voluminous nature; however copies of such documents may be obtained from the Debtors upon reasonable request.

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 and 105(a) of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Bankruptcy Rules 6004, 6006, 9013, and 9019, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**” and, if entered, the “**Order**”), (a) authorizing Aerolitoral to assume the Pool Agreement and (b) approving the Claims Settlement, each as further detailed herein and in 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.³

³ 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.

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.

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 fleet-related 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, including fleet-related service agreements. Over the last several months, the Debtors have continued negotiating with existing aircraft counterparties to obtain the best terms available for aircraft, equipment, and fleet-related services 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 new 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, 1891, 1932, 1939, 1941, 2004, 2006], 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. The foregoing aircraft also provided the Debtors with attractive economics and ownership costs compared to the Debtors’ average prepetition lease costs for similar equipment and 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.

10. By this Motion, Aerolitoral seeks to assume the Pool Agreement, as it believes that the fleet-related services provided thereunder fit within the Debtors’ operating fleet plan.

C. The Pool Agreement and the Claims Settlement

11. Pursuant to the Pool Agreement, Embraer provides Aerolitoral with certain component exchange services, repair and overhaul services, and technical administration services in connection with approximately 47 aircraft (the “**Aircraft**”) in the Aerolitoral fleet.⁴ The Pool Agreement supports and is necessary to Aerolitoral’s continued operation of the Aircraft. Notably, in the event that Aircraft components or parts (collectively, “**Aircraft Parts**”) require repair or replacement, the component exchange services provided by Embraer under the Pool Agreement require Embraer to exchange any Aircraft Part that requires repair or replacement with a compatible Aircraft Part already in Embraer’s possession, thereby facilitating Aerolitoral’s

⁴ The Pool Agreement covers the Aircraft in Aerolitoral’s fleet bearing the following manufacturer’s serial numbers: 19000121, 19000129, 19000135, 19000145, 19000234, 19000238, 19000248, 19000408, 19000455, 19000466, 19000499, 19000518, 19000525, 19000531, 19000538, 19000546, , 19000552, 19000554, 19000557, 19000651, 19000664, 19000666, 19000188, 19000216, 19000672, 19000673, 19000679, 19000206, 19000122, 19000138, 19000043, 19000036, 19000041, 19000068, 19000146, 19000097, 19000110, 19000151, 19000251, 19000269, 19000287, 19000273, 19000200, 19000208, 19000024, 19000037, and 19000197.

operation of the Aircraft largely uninterrupted and without delay (as opposed to potentially waiting a significant amount of time to repair an Aircraft Part or locate a replacement).

12. In conjunction with the assumption of the Pool Agreement, the Debtors seek to resolve any and all claims belonging to Embraer (collectively, with its affiliates, the “**Claimants**”⁵) against their estates in the Chapter 11 Cases (the “**Claims Settlement**” and, together with the assumption of the Pool Agreement, the “**Embraer Transactions**”), including, among other things, curing monetary defaults under the Pool Agreement in accordance with section 365(b)(1)(A) of the Bankruptcy Code to pay minimal cure costs (the “**Cure Costs**”). To this end, the Parties have agreed (as a result of arm’s length and good faith negotiations) that (a) Aerolitoral shall pay Embraer \$1,000,000 in cash in full satisfaction of the Cure Costs in connection with the assumption of the Pool Agreement and (b) Claimants shall have the following allowed non-priority general unsecured claims (the “**Allowed Claims**”) on account of any and all claims against the Debtors in the Chapter 11 Cases belonging to the Claimants:

Claim / Schedule Number(s)	Claimant	Debtor	Treatment	Amount of Allowed Claim
Claim # 14073 / Schedule # 565013640	Embraer Aircraft Customer Services, LLC	Aerolitoral	Allowed in part	\$9,657,118.07
Claim # 14077	Embraer Aircraft Customer Services, LLC	Aerovías	Allowed	\$3,194.43
Claim # 14084 / Schedule # 565013730	Embraer Aircraft France – EAF SAS	Aerolitoral	Allowed	\$15,579.88
Claim # 14101 / Schedule # 565013630	Yaborã Indústria Aeronáutica S.A.	Aerolitoral	Allowed	\$649,386.58

⁵ For the avoidance of doubt, “Claimants” includes, without limitation, each claimant holding the filed claims numbered 14073, 14077, 14084, 14101, or 14102 or scheduled claims numbered 565013640, 565013730, or 565013630.

Claims # 14102	Yaborã Indústria Aeronáutica S.A.	Aerovías	Allowed	\$135,000.00
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Basis for Relief

A. The Court Should Authorize the Assumption of the Pool Agreement Under Section 365(a) of the Bankruptcy Code

13. 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 executory contracts and unexpired leases. 11 U.S.C. § 365(a); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 521 (1984); *In re Orion Pictures Corp.*, 4 F.3d 1095, 1098 (2d Cir. 1993). 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).

14. In determining whether to permit a debtor to assume or reject a contract or lease, “the debtor’s interests are paramount.” *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 “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.

15. 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 Klein Sleep Prods., Inc.*, 78 F.3d 18, 25 (2d Cir. 1996); *In re Gucci*, 193 B.R. 411, 415 (S.D.N.Y. 1996). A debtor's decision to assume 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).

16. Upon finding that the debtor has exercised its sound business judgment in determining that the assumption 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 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); *In re Gucci*, 193 B.R. at 417.

17. 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).

18. 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 Sánchez 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 agreements relating to their fleet and, in doing so, compared the Pool Agreement to available alternatives and ultimately determined in good faith that the terms of the Pool Agreement are worth retaining and meet the Debtors’ operating fleet plan.

19. In light of the foregoing, the Debtors respectfully submit that the assumption of the Pool Agreement (a) would be the result of the Debtors exercising their sound business judgement in accordance with their fiduciary duties, (b) would be in the best interests of their estates and economic stakeholders, and (c) would further serve to maximize value for the benefit of all creditors. Accordingly, the Debtors respectfully request that the Court authorize Aerolitoral to assume the Pool Agreement and to perform all of the obligations thereunder.

B. The Court Should Approve the Claims Settlement Under Bankruptcy Rule 9019

20. By this Motion, the Debtors also seek approval of the Claims Settlement with the Claimants for the allowance of the Allowed Claims in the Chapter 11 Cases, while expunging any and all other claims belonging to the Claimants against the Debtors in the Chapter 11 Cases.

21. A court should exercise its discretion to approve settlements “in light of the general public policy favoring settlements.” *In re Hibbard Brown & Co.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998). Indeed, courts in this district have made clear that “[a]s a general matter, ‘settlements and compromises are favored in bankruptcy as they minimize costly litigation and further parties’ interests in expediting the administration of the bankruptcy estate.’” *In re Republic Airways Holdings, Inc.*, 2016 WL 2616717, No. 16-10429 (SHL) at *3 (Bankr. S.D.N.Y. May 4, 2016) (citing *In re Dewey & LeBouef LLP*, 478 B.R. 626, 640 (Bankr. S.D.N.Y. 2012)); *see also Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 455 (2d Cir. 2007).

22. Under Bankruptcy Rule 9019 and governing case law, a court should approve a compromise or settlement where it makes an independent determination that the compromise or settlement is fair and equitable, reasonable, and in the best interests of the debtor’s estate. *See, e.g., In re Republic Airways*, 2016 WL 2616717 at *3; *see also Ionosphere Clubs, Inc. v. American National Bank and Trust Co. of Chicago*, 156 B.R. 414, 426 (S.D.N.Y. 1993); *Nellis v. Shugrue*, 165 B.R. 115, 122–23 (S.D.N.Y. 1994). In so doing, a court may consider the opinions of the trustee or debtor in possession that the settlement is fair and equitable. *See id.*; *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993).

23. Furthermore, when assessing whether or not to approve a settlement, “the court need not conduct a ‘mini-trial’ to determine the merits of the underlying litigation” nor decide the issues of law or fact raised by the settlement. *See In re Purofied Down Prods.*, 150 B.R. at 522. Instead, a court should “canvass the issues and see whether the settlement fall[s] below the lowest point in the range of reasonableness.” *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983) (alteration in original) (citations and quotations omitted). In this regard, courts have found that “[t]he ‘reasonableness’ of [a] settlement depends upon all factors, including probability of success, the length and cost of the litigation, and the extent to which the settlement is truly the product of ‘arms-length’ bargaining, and not fraud or collusion.” *In re Ionosphere Clubs, Inc.*, 156 B.R. at 428.

24. The Debtors respectfully submit that the Claims Settlement satisfies the range of reasonableness test described above. Rather than engage in costly and value-destructive litigation over the Debtors’ obligations to Claimants, the amounts of the Claimants’ claims, and any amounts mitigating the quantum of those claims, the Parties negotiated consensual resolutions settling on the Allowed Claims as the agreed aggregate amount for the Claims Settlement. Any efforts by the Debtors, through litigation or otherwise, to resolve such disputes would be time consuming and expensive, and would delay any distribution to the creditor beneficiaries of the Debtors’ estates. A failure to resolve the matters at issue at this time could negatively impact the Debtors and their estates. The Claims Settlement is the product of arm’s length and good faith bargaining among the Parties that will (a) eliminate the need for a costly claims dispute and (b) unlock distributable value for the Debtors’ unsecured creditors by liquidating the Claimants’ claims in the Chapter 11 Cases. Accordingly, the Debtors respectfully submit that the proposed Claims Settlement is fair

and equitable, would be in the best interests of the Debtors' estates, creditors, and other stakeholders, and should be approved.

Notice

25. 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; and (f) 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.

No Prior Request

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

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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: November 1, 2021
New York, New York

DAVIS POLK & WARDWELL LLP

By: /s/ Timothy Graulich

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and Debtors in Possession*

Exhibit A

Proposed Order

**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)

**ORDER (I) AUTHORIZING DEBTOR AEROLITORAL, S.A. DE C.V.
TO ASSUME THAT CERTAIN POOL AGREEMENT AND
(II) APPROVING THE CLAIMS SETTLEMENT
WITH EMBRAER AIRCRAFT CUSTOMER SERVICES, LLC**

Upon the motion (the “**Motion**”)² of the Debtors for entry of an order (this “**Order**”), (i) authorizing Debtor Aerolitoral, S.A. de C.V. (“**Aerolitoral**”) to assume the Pool Agreement and (ii) approving the Claims Settlement, each as set forth more fully in the Motion and the Sánchez Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein 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.); and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b); and venue of the Chapter 11 Cases and related proceedings being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the notice parties identified in the Motion; such notice having been adequate and appropriate under the

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

circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion [and held a hearing to consider the relief requested in the Motion on November 16, 2021 (the “**Hearing**”)]; and upon [the record of the Hearing, and upon] all of the proceedings had before the Court; and after due deliberation the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court having found that the relief granted herein is in the best interests of the Debtors, their creditors, and all other parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.
2. Aerolitoral is authorized, pursuant to and in accordance with section 365 of the Bankruptcy Code, to (a) assume the Pool Agreement and (b) pay all amounts and otherwise perform all obligations under the Pool Agreement in accordance with the terms thereof.
3. Aerolitoral is authorized to enter into ordinary course amendments to the Pool Agreement from time to time without further order of the Court, subject to the terms and conditions set forth in the Pool Agreement.
4. The Debtors are authorized (but not directed) to execute, deliver, provide, implement, and fully perform any and all obligations, instruments, and papers provided for or contemplated in the Pool Agreement.
5. Aerolitoral shall pay, as soon as reasonably practicable, to Embraer \$1,000,000 in cash, thereby satisfying its obligation to pay all Cure Costs under the Pool Agreement in accordance with section 365(b)(1)(A) of the Bankruptcy Code.

6. From and after entry of this Order, the obligations of Aerolitoral under the Pool Agreement shall constitute administrative expenses of Aerolitoral's estate pursuant to sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code.

7. The Claims Settlement is (a) integral and necessary to the Embraer Transactions, (b) supported by reasonable consideration, (c) fair and equitable and in the best interest of the Debtors' estates, and (d) permitted by the Bankruptcy Code, and thus, is hereby approved pursuant to Bankruptcy Rule 9019(a) and shall be binding on the Debtors and the Claimants.

8. In accordance with the Claims Settlement, Claimants shall have the following allowed non-priority general unsecured claims (the "**Allowed Claims**") in the aggregate amount of \$10,460,278.96 on account of any and all claims against the Debtors in the Chapter 11 Cases belonging to the Claimants:

Claim / Schedule Number(s)	Claimant	Debtor	Treatment	Amount of Allowed Claim
Claim # 14073 / Schedule # 565013640	Embraer Aircraft Customer Services, LLC	Aerolitoral	Allowed in part	\$9,657,118.07
Claim # 14077	Embraer Aircraft Customer Services, LLC	Aerovías	Allowed	\$3,194.43
Claim # 14084 / Schedule # 565013730	Embraer Aircraft France – EAF SAS	Aerolitoral	Allowed	\$15,579.88
Claim # 14101 / Schedule # 565013630	Yaborã Indústria Aeronáutica S.A.	Aerolitoral	Allowed	\$649,386.58
Claim # 14102	Yaborã Indústria Aeronáutica S.A.	Aerovías	Allowed	\$135,000.00

For the avoidance of doubt, the amount of the Claims Settlement shall constitute the only claims belonging to the Claimants allowed in the Chapter 11 Cases.

9. In accordance with the Claims Settlement, any and all other claims against the Debtors belonging to the Claimants in the Chapter 11 Cases are hereby deemed withdrawn (collectively, the “**Withdrawn Claims**”), including, without limitation, the following claims:

Claim / Schedule Number	Claimant	Debtor	Treatment	Amount of Withdrawn Claim
Claim # 14073 / Schedule # 565013640	Embraer Aircraft Customer Services, LLC	Aerolitoral	Withdrawn in part	\$1,000,000.00
Schedule # 565013730	Embraer International SAS	Aerolitoral	Withdrawn	\$3,301.52
Schedule # 565013630	Embraer	Aerolitoral	Withdrawn	\$483,435.79
Schedule # 565013540	EAMS	Aerolitoral	Withdrawn	\$8,472,014

10. The Allowed Claims shall be automatically allowed, and the Withdrawn Claims shall be automatically withdrawn upon entry of this Order, and no further notice or action shall be required of the Debtors or the Claimants to effectuate the allowance or withdrawal, as applicable, of such claims. Upon entry of this Order, Epiq Corporate Restructuring, LLC is authorized to update the claims register to reflect the terms of this Order, including, among other things, reflecting the allowance of the Allowed Claims and the withdrawal of the Withdrawn Claims as set forth in this Order.

11. Claimants holding Allowed Claims (or any portion thereof) shall support a Complying Plan³ proposed by the Debtors, including, without limitation, by voting in favor of a Complying Plan. The obligations under this Order, including, without limitation, the obligation to

³ A chapter 11 plan shall be deemed a “Complying Plan” if it treats the Allowed Claims (a) as allowed general unsecured non-priority claims not subject to reconsideration under section 502 of the Bankruptcy Code and (b) no worse than the non-priority unsecured claims of other contract counterparties whose claims run solely against the applicable Debtor (other than de minimis “convenience class” claims).

vote Allowed Claims in favor of a Complying Plan, shall be binding on the Debtors, the Claimants, any successor or assignee, or any transferee of the Allowed Claims (or any portion thereof).

12. Notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, and their creditors, their respective affiliates, successors, and assigns, and any affected third parties, including, but not limited to, the Claimants and all other persons asserting an interest in the Pool Agreement.

13. The Debtors are authorized to take, or refrain from taking, any action necessary or appropriate to implement and effectuate the terms of, and the relief granted in, this Order without seeking further order of the Court.

14. While the above referenced Chapter 11 Cases are pending, this Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2021
New York, New York

THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Sánchez Declaration

**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)

**DECLARATION OF RICARDO JAVIER SÁNCHEZ BAKER IN SUPPORT
OF DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING
DEBTOR AEROLITORAL, S.A. DE C.V. TO ASSUME THAT CERTAIN
POOL AGREEMENT AND (II) APPROVING THE CLAIMS SETTLEMENT
WITH EMBRAER AIRCRAFT CUSTOMER SERVICES, LLC**

I, Ricardo Javier Sánchez Baker, declare as follows:

1. I am the Chief Financial Officer of Grupo Aeroméxico, S.A.B. de C.V. (“**Grupo Aeroméxico**”) and certain of its affiliates (collectively, the “**Debtors**”), including Aerovías de México, S.A. de C.V. (“**Aerovías**”) and Aerolitoral, S.A. de C.V. (“**Aerolitoral**”), each of which is a debtor and debtor in possession in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”). I have held several other positions with the Debtors since 2006, including serving as advisor to the Chief Executive Officer and Director of Revenue Management. I have been the chairman of the board of directors of the SABRE Corporation, a member of the SEAT Technical Committee, and a member of the Aeromexpress, CECAM, and PLM boards of directors. I have held various positions within the Federal Public Administration (*Administración Pública Federal*), including deputy director general of public debt for the Ministry of Finance and Public Credit in

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.

2003 and 2005. I hold a bachelor's degree in economics from the Universidad Iberoamericana, a diploma in finance from Instituto Tecnológico Autónomo de México, and master's and doctorate degrees in economics from the University of California, Los Angeles. I am generally familiar with the Debtors' day-to-day operations, fleet planning, financing arrangements, business affairs, and books and records that reflect, among other things, the Debtors' liabilities, and the amount thereof owed to their creditors as of the commencement of the Chapter 11 Cases.

2. I submitted the *Declaration of Ricardo Javier Sánchez Baker in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [ECF No. 20]. I submit this declaration (this "**Declaration**") in support of the *Debtors' Motion for Entry of an Order (I) Authorizing Debtor Aerolitoral, S.A. de C.V. To Assume that Certain Pool Agreement and (II) Approving the Claims Settlement with Embraer Aircraft Customer Services, LLC* (the "**Motion**").²

3. The statements in this Declaration are, except where specifically noted, based upon my personal knowledge, my review of relevant documents, information provided to me by employees working under my supervision, or my opinion based upon experience, knowledge, and information concerning the operations of the Debtors and the aviation industry as a whole.

4. I am over the age of 18 years and authorized to submit this Declaration on behalf of the Debtors. If I were called upon to testify, I could and would competently testify to the facts set forth herein.

5. As the Court is aware, the Debtors have been engaged in a multi-step process to (a) analyze their anticipated, long-term fleet and fleet-related needs, (b) make corresponding

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

adjustments to the size and composition of their current operating fleet, and (c) obtain the most favorable terms for agreements relating to aircraft equipment, including fleet-related service agreements. Over the last several months, the Debtors have continued negotiating with existing aircraft counterparties to obtain the best terms available for aircraft, equipment, and fleet-related services 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.

6. 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 new 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, 1891, 1932, 1939, 1941, 2004, 2006], 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. The foregoing aircraft also provided the Debtors with attractive economics and ownership costs compared to the Debtors' average prepetition lease costs for similar equipment and 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. As part of these efforts, Aerolitoral has reached an agreement with Embraer to (a) assume the Pool Agreement and (b) resolve any and all claims of the Claimants in the Chapter 11 Cases.

7. Pursuant to the Pool Agreement, Embraer provides Aerolitoral with certain component exchange services, repair and overhaul services, and technical administration services

in connection with approximately 47 aircraft (the “**Aircraft**”) in the Aerolitoral fleet.³ The Pool Agreement supports and is necessary to Aerolitoral’s continued operation of the Aircraft. Notably, in the event that Aircraft components or parts (collectively, “**Aircraft Parts**”) require repair or replacement, the component exchange services provided by Embraer under the Pool Agreement require Embraer to exchange any Aircraft Part that requires repair or replacement with a compatible Aircraft Part already in Embraer’s possession, thereby facilitating Aerolitoral’s operation of the Aircraft largely uninterrupted and without delay (as opposed to potentially waiting a significant amount of time to repair an Aircraft Part or locate a replacement).

8. 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 agreements relating to their fleet and, in doing so, compared the Pool Agreement to available alternatives and ultimately determined in good faith that the terms of the Pool Agreement are worth retaining and meet the Debtors’ operating fleet plan. I believe that the assumption of the Pool Agreement (a) would be the result of the Debtors exercising their sound business judgment in accordance with their fiduciary duties, (b) would be in the best interests of their estates and economic stakeholders, and (c) would further serve to maximize value for the benefit of all creditors.

9. Finally, in conjunction with the assumption of the Pool Agreement, the Debtors seek to resolve any and all claims against their estates in the Chapter 11 Cases belonging to

³ The Pool Agreement covers the Aircraft in Aerolitoral’s fleet bearing the following manufacturer’s serial numbers: 19000121, 19000129, 19000135, 19000145, 19000234, 19000238, 19000248, 19000408, 19000455, 19000466, 19000499, 19000518, 19000525, 19000531, 19000538, 19000546, , 19000552, 1900554, 19000557, 19000651, 19000664, 19000666, 19000188, 19000216, 19000672, 19000673, 19000679, 19000206, 19000122, 19000138, 19000043, 19000036, 19000041, 19000068, 19000146, 19000097, 19000110, 19000151, 19000251, 19000269, 19000287, 19000273, 19000200, 19000208, 19000024, 19000037, and 19000197.

Embraer (collectively, with its affiliates, the “**Claimants**”⁴) including, among other things, curing monetary defaults under the Pool Agreement in accordance with section 365(b)(1)(A) of the Bankruptcy Code to pay minimal cure costs (the “**Cure Costs**”). To this end, the Parties have agreed (as a result of arm’s length and good faith negotiations) that (a) Aerolitoral shall pay Embraer \$1,000,000 in cash in full satisfaction of the Cure Costs in connection with the assumption of the Pool Agreement and (b) Claimants shall have the following allowed non-priority general unsecured claims (the “**Allowed Claims**”) on account of any and all claims against the Debtors in the Chapter 11 Cases belonging to the Claimants:

Claim / Schedule Number(s)	Claimant	Debtor	Treatment	Amount of Allowed Claim
Claim # 14073 / Schedule # 565013640	Embraer Aircraft Customer Services, LLC	Aerolitoral	Allowed in part	\$9,657,118.07
Claim # 14077	Embraer Aircraft Customer Services, LLC	Aerovías	Allowed	\$3,194.43
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Claim # 14101 / Schedule # 565013630	Yaborã Indústria Aeronáutica S.A.	Aerolitoral	Allowed	\$649,386.58
Claims # 14102	Yaborã Indústria Aeronáutica S.A.	Aerovías	Allowed	\$135,000.00

10. I believe that the Claims Settlement negotiated with the Claimants is reasonable. Rather than engage in costly and value-destructive litigation over the Debtors’ obligations to Claimants, the amounts of the Claimants’ claims, and any amounts mitigating the quantum of those

⁴ For the avoidance of doubt, “Claimants” includes, without limitation, each claimant holding the filed claims numbered 14073, 14077, 14084, 14101, or 14102 or scheduled claims numbered 565013640, 565013730, or 565013630.

claims, the Parties negotiated consensual resolutions settling on the Allowed Claims as the agreed aggregate amount for the Claims Settlement. Any efforts by the Debtors, through litigation or otherwise, to resolve such disputes would be time consuming and expensive, and would delay any distribution to the creditor beneficiaries of the Debtors' estates. A failure to resolve the matters at issue at this time could negatively impact the Debtors and their estates. The Claims Settlement is the product of arm's length and good faith bargaining among the Parties that will (a) eliminate the need for a costly claims dispute and (b) unlock distributable value for the Debtors' unsecured creditors by liquidating the Claimants' claims in the Chapter 11 Cases. Accordingly, I believe that the proposed Claims Settlement is fair and equitable, is in the best interests of the Debtors' estates, creditors, and other stakeholders, and should be approved.

11. For the reasons set forth above, I believe that (a) the relief requested in the Motion is fair, equitable, and reasonable and represents a sound exercise of the Debtors' business judgment and (b) the Court's authorization for the Debtors to assume the Pool Agreement, (i) is in the best interest of their estates and economic stakeholders and (ii) will further serve to maximize value for the benefit of all creditors.

12. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 1st day of November, 2021
in Mexico City, Mexico

/s/ Ricardo Javier Sánchez Baker
Ricardo Javier Sánchez Baker