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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	**Chapter 11**
GRUPO AEROMÉXICO, S.A.B. de C.V., *et al.*,	**Case No. 20-11563 (SCC)**
Debtors.[1]	**(Jointly Administered)**

DEBTORS' OMNIBUS REPLY IN FURTHER SUPPORT OF DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTORS' ENTRY INTO, AND PERFORMANCE UNDER, THE DEBT FINANCING COMMITMENT LETTER, (II) AUTHORIZING THE DEBTORS' ENTRY INTO, AND PERFORMANCE UNDER, THE EQUITY COMMITMENT LETTER, (III) AUTHORIZING THE DEBTORS' ENTRY INTO, AND PERFORMANCE UNDER, THE SUBSCRIPTION AGREEMENT AND (IV) AUTHORIZING INCURRENCE, PAYMENT, AND ALLOWANCE OF RELATED PREMIUMS, FEES, COSTS, AND EXPENSES AS SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS

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

[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 Mexico, 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.

in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**"), respectfully submit this omnibus reply (this "**Reply**") to (a) *The Ad Hoc Group of OpCo Creditors Limited Preliminary Objection to Debtors' Motion for Entry of an Order (I) Authorizing the Debtors' Entry into, and Performance Under, the Debt Financing Commitment Letter, (II) Authorizing the Debtors' Entry into, and Performance Under, the Equity Commitment Letter, (III) Authorizing the Debtors' Entry Into, and Performance Under, the Subscription Agreement and (IV) Authorizing Incurrence, Payment, and Allowance of Related Premiums, Fees, Costs, and Expenses as Superpriority Administrative Expense Claims* [ECF No. 2178] (the "**OpCo Creditor Preliminary Objection**"), the (b) *Objection of the Ad Hoc Group of OpCo Creditors to Debtors' Motion for Entry of an Order (I) Authorizing the Debtors' Entry into, and Performance Under, the Debt Financing Commitment Letter, (II) Authorizing the Debtors' Entry into, and Performance Under, the Equity Commitment Letter, (III) Authorizing the Debtors' Entry into, and Performance Under, the Subscription Agreement and (IV) Authorizing Incurrence, Payment, and Allowance of Related Premiums, Fees, Costs, and Expenses as Superpriority Administrative Expense Claims* [ECF No. 2228] (the "**OpCo Creditor Objection**"), and the (c) *Objection of the Official Committee of Unsecured Creditors to Debtors' Motion Seeking Approval of Commitment Premium* [ECF No. 2232] (the "**Committee Objection**" and, together with the OpCo Creditor Preliminary Objection and the OpCo Creditor Objection, the "**Objections**") to the *Debtors' Motion for Entry of an Order (I) Authorizing the Debtors' Entry into, and Performance Under, the Debt Financing Commitment Letter, (II) Authorizing the Debtors' Entry into, and Performance Under the Equity Commitment Letter, (III) Authorizing the Debtors' Entry into, and Performance Under, the Subscription Agreement and*

(IV) Authorizing Incurrence, Payment, and Allowance of Related Premiums, Fees, Costs, and Expenses as Superpriority Administrative Expense Claims [ECF No. 1860] (the "**Exit Financing Motion**") and the *Supplement to Debtors' Exit Financing Motion and Notice of Filing of Revised Equity and Debt Commitment Letters* [ECF No. 2168] (the "**Supplement**" and, together with the Exit Financing Motion, the "**Motion**").[2] This Reply is supported by the *Supplemental Declaration of Homer Parkhill in Support of Motion for Entry of an Order (I) Authorizing the Debtors' Entry into, and Performance Under, the Debt Financing Commitment Letter, (II) Authorizing the Debtors' Entry into, and Performance Under the Equity Commitment Letter, (III) Authorizing the Debtors' Entry into, and Performance Under, the Subscription Agreement and (IV) Authorizing Incurrence, Payment, and Allowance of Related Premiums, Fees, Costs, and Expenses as Superpriority Administrative Expense Claims* (the "**Second Supplemental Parkhill Declaration**") and by the *Declaration of Timothy Graulich in Support of Motion for Entry of an Order (I) Authorizing the Debtors' Entry Into, and Performance Under, the Debt Financing Commitment Letter, (II) Authorizing the Debtors' Entry into, and Performance Under, the Equity Commitment Letter, (III) Authorizing the Debtors' Entry Into, and Performance Under, the Subscription Agreement and (IV) Authorizing Incurrence, Payment, and Allowance of Related Premiums, Fees, Costs, and Expenses as Superpriority Administrative Expense Claims* (the "**Graulich Declaration**"), each as filed contemporaneously herewith and incorporated herein by reference. The Debtors hereby file this Reply in further support of the Motion and respectfully state as follows:

[2] Capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to such terms in the Exit Financing Motion and the Supplement, as applicable.

Preliminary Statement

1. The "Alliance Proposal" embodied in the revised Plan, filed on November 28, 2021 [ECF No. 2184], and also embodied in the term sheets attached to the Equity Commitment Letter and Third Amendment to the DIP Credit Agreement, is a remarkable achievement and the result of 18 months of negotiation, compromise by important stakeholders and consensus building by the company, its management and its professionals. The Alliance Proposal has a host of virtues: it, among other things, it (a) is supported by a broad array of constituents, (b) appropriately capitalizes and deleverages the Company, (c) broadens and deepens the Company's strategic and economic relationship with the gold-standard in airline operations, (d) ensures long-term Mexican ownership from a group of professional investors that satisfy both the legal and political requirements for operating Mexico's flagship carrier, (e) facilitates sound corporate governance and (f) allows the reorganized Company to benefit from the experience and leadership of some of the most preeminent private equity firms and investment funds in the marketplace, all while maximizing creditor recoveries and settling uncertain and potentially value destructive litigation. Value maximization for general unsecured creditors cannot be understated—value to general unsecured creditors has increased by a staggering $858 million since the transaction set forth in the Final Valuation Materials from July 29, 2021.

2. The Exit Financing, and approval of the Exit Financing Commitments, is an essential component of the Alliance Proposal. If such authorization is obtained, it will be a critical milestone in these Chapter 11 Cases and will substantially enhance the odds of a successful emergence from chapter 11 as a valuable reorganized Company. The Exit Financing Commitments secured thereunder provide $1,482,500,000 in debt and equity

financing that will serve as the backbone to the revised Plan that preserves and maximizes value, mitigates costly and distracting litigation, preserves jobs, provides robust recoveries for general unsecured creditors, and enjoys broad stakeholder, governmental and union support, including from key constituencies that are essential to maximizing the Company's go-forward operations and performance.[3]

3. This achievement is all the more remarkable when one considers the market environment at the commencement of these Chapter 11 Cases. The company was forced to file for chapter 11 protection amid the unprecedented disruption to commercial airline travel caused by the COVID-19 pandemic. As of May 30, 2020, the closure of borders, implementation of prevention measures and health practices, including social distancing and the corresponding decline in passenger demand, had resulted, inter alia, in a reduction in year over year in demand for the Company's services of a staggering of 94.4% (measured in Revenue Passenger Kilometers or RPKs).[4] As of the Petition Date, the Debtors had an overall cash position of $159.3 million, an amount that was deteriorating fast while owing, among other debts, over $100 million in fees to Mexican airports alone. In order to avoid liquidation, the Company needed an infusion of significant new capital quickly. After canvassing the market and speaking to over 100 institutions, the company obtained a single offer of fully committed financing in a quantum sufficient to fund the Debtors during these Chapter 11 Cases – from Apollo. Due to the risk of administrative insolvency and the possibility that the Debtors would have insufficient liquidity to repay or refinance the

[3] Furthermore, in connection with the proposed global settlement under the revised Plan, approximately $663 million of the Tranche 2 DIP Facility Claims will be equitized.

[4] *Declaration of Richard Javier Sanchez Baker in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [ECF No. 20], ¶ 25.

obligations, this court-approved financing provided the Tranche 2 DIP Lenders the ability to convert into the reorganized company's equity upon emergence, and related rights and conditions regarding such conversion option. From these very fragile beginnings, the Company right-sized its labor costs, upgraded its fleet, and materially transformed its business.[5] Despite the inevitable disruptions caused by the Chapter 11 Cases, Grupo Aeroméxico received the 2022 Five Star Global rating from APEX Official Airline Ratings for the third consecutive year. These extraordinary accomplishments were achieved without one peso of public money.

4. In order to secure the benefits of the Alliance Proposal for themselves and their estates, the Debtors seek authority, in their business judgment, for entry into the Revised Exit Financing Documents. The Revised Exit Financing Documents were negotiated at arms' length with sophisticated third parties, and yielded an outcome that was hundreds of millions of dollars better for general unsecured creditors than any other actionable proposal.

5. The Committee, seemingly dissatisfied with the tremendous progress in the case, seeks to risk that success in the hopes that there could be an even better result, no matter how small the incremental improvement and no matter how massive the risk of further delay and disruption. The Debtors' approximately 12,755 employees, their creditors (both senior and junior), the Mexican government (provider of material federal concessions critical to the Debtors' business, including the right to fly in Mexican airspace and regulatory and supervisor of the Debtors as a public company subject to foreign

[5] *See* MEXICONOW, *Aeromexico Receives 5 APEX Stars* (Dec. 2, 2021), https://mexico-now.com/aeromexico-receives-5-apex-stars/.

investment restrictions), the traveling public and the Debtors' fiduciary duties to its business simply do not afford the Debtors the option to accommodate further delay, especially in the absence of any credible restructuring alternative. Furthermore, while there is not at this time a *concurso mercantil* proceeding in Mexico (a development that would cause significant disruption, delay and downside to the Debtors and their stakeholders), there is no assurance that will be the case forever. Simply put, the Debtors must emerge from bankruptcy protection as soon as possible to preserve their going-concern activities and to service its customers in a challenging marketplace.

6. Setting aside spurious allegations and issues obviously more appropriate for consideration at confirmation, the Committee objections to the Exit Financing are threefold – none of which withstand scrutiny. First, the Committee claims that these transactions should be held to a higher standard of review because this process was run for the benefit of statutory insiders. But the Committee, as well as every other key stakeholder in these cases, knows that is not true. The Committee has been involved in these Chapter 11 Cases and the exit financing process every step of the way and know that Company determined the valuation in conjunction with the Mediation and independent of any insider. The Joint Bidders (as defined below) determined, in their own business judgment to include Delta and the Mexican Investors in their proposal.

7. [redacted]

[6] See Exhibit 3 to the Graulich Declaration.

[redacted] Furthermore, the alternative "proposal" provides for similar, if not identical, treatment for Delta and the Mexican Investors as the revised Plan.

8. Parties who have supported, or currently support, the same or higher treatment for statutory insiders, should not be heard to simultaneously complain about such treatment at this junction. To be sure, the existing revised Plan does provide for certain transactions with statutory insiders, and the Debtors are prepared to defend those transactions at the confirmation hearing. These transactions are described in detail in the Debtors' proposed Disclosure Statement. And while consideration of the Mexican Investors' and Delta's participation in the Exit Financing is undoubtedly appropriate at this stage, that participation is being done on the same terms negotiated by third parties to provide investment (and, for the reasons set forth below, must be evaluated on the business judgment standard).[8]

9. Second is the existence of a so-called "superior proposal". Such a proposal simply does not exist. What does exist is an embryonic moving target, which is conditioned on the consent of Apollo, who the proponents know does not consent, and has other substantial unresolved contingencies. Even the Committee's own description of the proposal in its Objection is aspirational about potential future revisions. There simply is no alternative proposal for the Debtors to consider at this point, and there is certainly no alternative proposal before the Court for approval.

[7] *See* Exhibit 2 to the Graulich Declaration.

[8] The Committee has indicated that it "does not oppose an investment by Delta or the Insider Mexican Shareholders at market value." *See* Footnote 11 of the *Objection of the Official Committee of Unsecured Creditors to Disclosure Statement for the Joint Chapter 11 Plan of Reorganization of Grupo Aeroméxico, S.A.B. DE C.V. and its Affiliated Debtors* [ECF No. 2233].

10. Third, the Committee voices concerns about certain commercial terms, specifically, when the Equity Commitment Premium is earned and the quantum thereof. The Joint Bidders have made a significant concession on the timing issue by agreeing to bifurcate the Equity Commitment Premium with 50% being earned now and 50% being earned upon the confirmation of the revised Plan.[9] As to quantum, the Debtors' submit that the Equity Commitment Premium is part of an integrated, highly-negotiated, transaction that delivers significant value and, accordingly is appropriate and should be approved.

Factual History

11. Given certain inaccuracies in the Objections and to hopefully avoid any confusion, it is important to set forth, on a very high level, the material changes and developments relating to the Debtors' exit financing process (in particular in connection with the quantum of the Equity Commitment Premium) and how these developments have informed the decision to go forward with the Exit Financing on the terms set forth in the Revised Exit Financing Documents.

12. Since early 2020, the global pandemic has dramatically affected the travel industry as a whole, and the global aviation industry specifically. In light of the impact that the COVID-19 pandemic had on Aeroméxico's business, on June 4, 2020, pursuant to the Grupo Aeroméxico's bylaws, the Board of Directors established a restructuring committee (the "**Restructuring Committee**"). The Restructuring Committee together with Aeroméxico's external restructuring advisors, oversaw an analysis of the company's

[9] *See The Commitment Parties' Statement in Support Of Debtors' Exit Financing and Disclosure Statement Motions* [ECF No. 2245], ¶ 7 ("[T]he Commitment Parties have agreed that if the Plan is not confirmed, the Commitment Premium would be reduced to 7.5%.").

financial condition and identified necessary measures to be taken, including a potential voluntary restructuring of the Company's liabilities. The Restructuring Committee meets separately from the Board of Directors. Presently, the Restructuring Committee is comprised of four members of the Board of Directors, none of whom is a Delta appointee or participant in the Exit Financing Proposal. The members of the Restructuring Committee are Javier de Arrigunaga Gómez del Campo (Chairman of the Restructuring Committee and of the Board of Directors), Andrés Conesa Labastida (Chief Executive Officer), Arturo Martínez del Campo Saucedo (independent Board member), and Luis de la Calle Pardo (independent Board member).

13. On June 30, 2020 (the "**Petition Date**"), the Debtors commenced these voluntary Chapter 11 Cases under the Bankruptcy Code. The Debtors filed for bankruptcy amid unprecedented macroeconomic uncertainty precipitated by the COVID-19 global pandemic. In these unprecedented times, the Debtors' operations and liquidity were strained to the point where they would be unable to generate sufficient levels of operating cash flow in the ordinary course of business to cover their operating and capital costs and the projected costs of these Chapter 11 Cases. Given their urgent needs, the Debtors filed for chapter 11 protection in order, in large part, to seek debtor-in-possession financing.

14. As set forth in further detail in the *Declaration of Homer Parkhill in Support of the Motion of Debtors for Entry of Interim and Final Orders, (I) Authorizing the Debtors to Obtain Secured Superpriority Postpetition Financing (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Scheduling a Final Hearing, and (V) Granting Related Relief* [ECF No. 273], beginning in June 2020, Rothschild & Co launched a formal marketing process on behalf of the Debtors designed to canvas the

market and identify the best possible solution to the Debtors' particular financing needs in connection with these Chapter 11 Cases. The marketing process, including the significant negotiations between the Debtors and the parties that submitted formal debtor-in-possession financing proposals, lasted nearly two months. Rothschild & Co began reaching out to approximately 100 institutions and investors to gauge interest in providing debtor-in-possession financing to the Debtors. As part of its outreach, Rothschild & Co also initiated dialogue with certain of the Debtors' creditors groups and shareholders to gauge their interest in providing debtor-in-possession financing. Following the initial outreach, Rothschild & Co engaged in a series of discussions and presentations with over 60 potential lenders that had executed confidentiality agreements, and provided those potential lenders with access to diligence materials—including a debtor-in- possession financing sizing analysis, information on the proposed collateral and weekly and monthly cash flow analyses. The Debtors, Rothschild & Co, and the Debtors' other advisors, subsequently provided those potential lenders with access to a virtual data room and responded to numerous follow-up diligence requests. During the arm's-length negotiations, the Committee and its advisors were kept apprised of negotiations, and their views were sought on substantially all iterations of the term sheet proposals.

15. The Bankruptcy Court granted the relief requested in the DIP Motion on an interim basis on August 21, 2020 [ECF No. 318] and on a final basis on October 13, 2020 [ECF No. 527] (the "**Final DIP Order**"). The DIP Facility approved by the Final DIP Order consists of (a) the Tranche 1 DIP Facility in an aggregate principal amount of $200 million (the "**Tranche 1 DIP Facility**"), and (b) the Tranche 2 DIP Facility in an aggregate principal amount of $800 million (the "Tranche 2 DIP Facility"). Pursuant to specific terms

and conditions set forth in the DIP Credit Agreement, the Tranche 2 DIP Facility lenders (the "**Tranche 2 Lenders**") may elect to convert their loans (the "**Tranche 2 DIP Loans**"), and receive, in full satisfaction for their Tranche 2 Obligations, shares in reorganized Grupo Aeroméxico on a dollar-for-dollar basis, based on the plan valuation of the Debtors, or any other lower valuation at which any party is permitted to subscribe for shares in reorganized Grupo Aeroméxico. Notably, this equity conversion feature was included in each DIP financing proposal in a sufficient amount to fund the Chapter 11 Cases that the Debtors received during the marketing period. Furthermore, the terms of the equity conversion were extensively negotiated to enable the participation of certain members of the Ad Hoc Group of Senior Noteholders and to obtain the support of the Committee.

16. Following substantial restructuring efforts, as described in further detail below, the Debtors launched their exit financing marketing process in May 2021. Through this process, negotiations were commenced in detail with the BSPO Investors and the Ad Hoc Group of Unsecured Claimholders. Additionally, deadlines were extended, both voluntarily by the Debtors and in connection with mediation. One thing the Debtors did not do, despite assertions in the Objections to the contrary, was condition bids on the involvement of Delta and the Mexican Investors. Potential exit financing parties did recognize the strategic value of Delta, and the statutory need to satisfy foreign ownership laws and authorizations granted by the foreign investment authority that require (i) that a majority of the common shares (full voting rights) will be controlled by Mexican investors (individuals or Mexican entities or vehicles controlled by Mexican investors); and (ii) that a minimum of 10% of the common shares are held by Mexican individuals or entities

owned and controlled by a majority of Mexican investors. *See Ley de Inversion Extranjera*, Articles 4, 7, 8 and Title Five.

17. The Committee is correct in their Objection in noting that in late July 2021, the Debtors contemplated sending Final Valuation Materials on the terms and timing requested by Apollo. The Debtors disagree with the Committee's assertion, however, that such a move would have "locked in Apollo's unfavorable valuation to the detriment of the Debtors' general unsecured creditors." Rather, as set forth in greater detail in the Motion, the Restructuring Committee determined that delivery of the Final Valuation Materials at that time would lock in a floor for the recovery to unsecured creditors, while providing an opportunity for future negotiations.[10] In the judgment of the Restructuring Committee, at that time the Debtors did not have an exit financing proposal from any party other than APollo with sufficient certainty of execution to justify the potential loss of a path out of chapter 11. Furthermore, absent setting a floor with the Apollo proposal unsecured creditor recoveries (which were approximately $207 million of the reorganized equity) could have been reduced or even eliminated in the case of a significant operational or macroeconomic downturn.

18. Given the threat of imminent filings and potential devolution of the Chapter 11 Cases into a morass of litigation, Debtors' counsel reached out to this Court's chambers to advise of developments and to request mediation. During a subsequent chambers conference, the Debtors and other stakeholders agreed to mediation. During the

[10] Notwithstanding the incorrect statements in the OpCo Creditor Objection, the meetings and key decisions in these Chapter 11 Cases relating to the Exit Financing process were made by independent directors who, together, constitute the Restructuring Committee. *See* OpCo Creditor Objection, paragraph 15 ("Upon information and belief, the Debtors made no meaningful governance changes in response to Delta's disclosure of this extraordinary conflict of interest."). This was also disclosed, in part, in the Motion.

six weeks of active mediation, the Ad Hoc Group of Senior Noteholders, the BSPO Investors and the Ad Hoc Group of Unsecured Claimholders combined to submit a single exit-financing proposal. With the assistance of Judge Lane, the Debtors requested final detail in support of the restructuring, and any updated terms, from the combined bidders (collectively, the "**Joint Bidders**") and Apollo by September 9, 2021.

19. On September 10, 2021, the independent board members (who are the same members constituting the Restructuring Committee) authorized the Debtors to submit Final Valuation Materials to Apollo consistent with the then-current iteration of the exit financing proposal from the Joint Bidders,[11] which at the time of the decision had no support or participation from any statutory insider. The Debtors' investment banker was unable to certify that the Refinancing Qualification under the DIP Facility had been met, given the non-customary conditions outstanding,[12] but given the potential for materially higher recoveries to unsecured creditors if consummated, as well as substantial progress on resolving outstanding contingencies, the Debtors determined that, consistent with their fiduciary duties, the Joint Bidders' Exit Financing Proposal was worth pursuing, even if some value that would otherwise flow to unsecured creditors would need to be used to finalize the Exit Financing and, potentially, a global settlement.

20. Following the delivery of the Final Valuation Materials, Apollo informed the Debtors of their position that Final Valuation Materials were not in fact delivered, largely because the Final Valuation Materials determined valuation by relying upon a deal

[11] The Equity Commitment Term Sheet that was sent with the Final Valuation Materials is attached as Exhibit 1 to the Graulich Declaration.

[12] The Refinancing Qualification Certificate is attached as Exhibit 5 to the Graulich Declaration.

where material outstanding contingencies remained.[13] The Debtors maintained their position that the Final Valuation Materials were delivered on September 10, 2021, and filed a plan on October 1, 2021, in compliance with the requirements under the DIP Facility to (a) file the Plan 20-25 days following the delivery of Final Valuation Materials[14] and (b) file a plan no later than October 1, 2021.[15]

21. Subsequent to the delivery of the Final Valuation Materials and the October 1, 2021 plan filing, the Joint Bidders reached a deal with the Mexican Investors and Delta, and the Committee commenced unilateral negotiations with Apollo. Following the filing of the October 1 Plan, Apollo was prepared to commence litigation with respect to its rights under the DIP, which, if successful, would have greatly diminish recoveries for unsecured creditors by materially lowering the price at which it could convert its Tranche 2 DIP Claims. This substantial litigation risk arises from an interpretation question under Schedule 2.12 of the DIP Credit Agreement.[16]

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[13] *See, e.g.*, *Reservation of Rights of Apollo With Respect to 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. 1743] ("Upon review, Apollo determined that the September 10 Materials were materially deficient, incomplete and were not reasonably acceptable. As a result, Apollo notified the Debtors by letter on September 12 that the September 10 Materials did not satisfy the Debtors' obligation to provide the Final Valuation Materials required by the DIP Credit Agreement.").

[14] In connection with the Mediation, the Debtors agreed to extend the time for the Tranche 2 Lenders to, send the Election Subscription Notice from five (5) days to ten (10) days following delivery of the Final Valuation Materials, which created a window to file the plan under Schedule 2.12 of 20-25 days following delivery of the Final Valuation Materials.

[15] *See* DIP Credit Agreement, section 6.17(b).

[16] Section 1(ii) of Schedule 2.12 of the DIP Credit Agreement provides that "based on the plan valuation of the Debtors, or, if less, any other valuation at which any party is permitted to subscribe for common stock of the Borrower." Stakeholders had different views as to whether a fee or premium (such as the Equity Commitment Premium) should be considered when calculating the "valuation at which any party is permitted to subscribe for common stock of the Borrower." [redacted]

22. [redacted].

23. The delays occasioned by the aforementioned developments assured that the Debtors would not be able to remain in compliance with the DIP Facility, which matures by the end of the year and requires confirmation 30 days before the Scheduled Maturity.[19] Accordingly, any restructuring proposal would need to address this fact,

[redacted]

[17] *See* Exhibit 2 to the Graulich Declaration.

[18] [redacted]

[19] *See* DIP Credit Agreement, Section 6.17(d).

whether it be through a DIP maturity extension, refinancing, or some other solution. On November 2, 2021, the Debtors requested by email to counsel best and final proposals from both the Joint Bidders and Apollo, including how the parties each intended to deal with the looming maturity. In an effort to facilitate the Debtors' successful emergence from chapter 11, and to resolve Apollo's litigation that could delay emergence and be extremely costly (and if successful, materially reduce recoveries), Apollo and the Joint Bidders (and Delta and the Mexican Investors) resolved their differences and presented the Debtors with the "Alliance Proposal". Such resolution was facilitated by, as has been the practice during these cases and during mediation, the exchange of restructuring proposals between the parties.

24. The Alliance Proposal requires a smaller new money component than the Plan filed on October 15, 2021 (and previous iterations of the proposed Exit Financing) because Apollo and other Tranche 2 DIP Lenders are now converting a portion of their Tranche 2 DIP Facility instead of being repaid in cash. The reduced need for cash also reduces the amount of new money allocations available to investors, which required those equity allocations to be recut (which was a process run by the exit financing providers and with no input from the Debtors). Following that reallocation process, two funds that were investors in the October 15 Plan formed a third ad hoc group (the Ad Hoc Group of OpCo Creditors) and submitted to the Debtors a conceptual proposal for alternative financing. As of today, this conceptual proposal (which is continually evolving through multiple iterations submitted to the Debtors and/or filed on the docket) has material outstanding contingencies and is not superior, or even viable, for reasons described in further detail below.

The Evolution of the 15% Equity Commitment Premium and Creditor Recoveries

25. On September 22, 2021, the Debtors received revised equity commitment documentation from the Joint Bidders reflecting an Equity Commitment Premium payable on 15% of the proposed commitments (increased from 12%). Notably, while the Equity Commitment Premium increased from 12% to 15%, the Joint Bidders also deleted the following provision that had been in its proposal:

> provided, however, that the Commitment Parties and the Debtors shall work together in good faith to provide for mutually acceptable additional economics to account for the fact that the Common Price Per Share will not be calculated at a discount to Plan Equity Value so long as such additional economics will not result in the Debtors applying a discount to Plan Equity Value for purposes of any conversion of the Tranche 2 DIP Loans.

The Debtors understood that the increase in the Equity Commitment Premium was in part responsive to the deletion of the above quoted language that contemplated additional economics for the Equity Commitment Parties in the 12% Equity Commitment Premium construct. The reason for this complication was tied directly to the DIP – any discount to plan value would likely have permitted Apollo to convert at the discounted price and thus limiting the benefit to the estate.

26. In early October, the Committee requested changes to the Exit Financing Proposal including, among other things, a reversion of the Equity Commitment Premium to 12%. The Debtors also made the request to reduce the Equity Commitment Premium to 12%. The Joint Bidders did not accept either request.

27. On October 8, 2021, the Debtors filed the Motion, which included sought authorization for, among other things, an Equity Commitment Premium of 15%. At the time, the Debtors needed sufficient funding to refinance the DIP Facility in full while allowing them to successfully reorganize. Notwithstanding the increased Equity

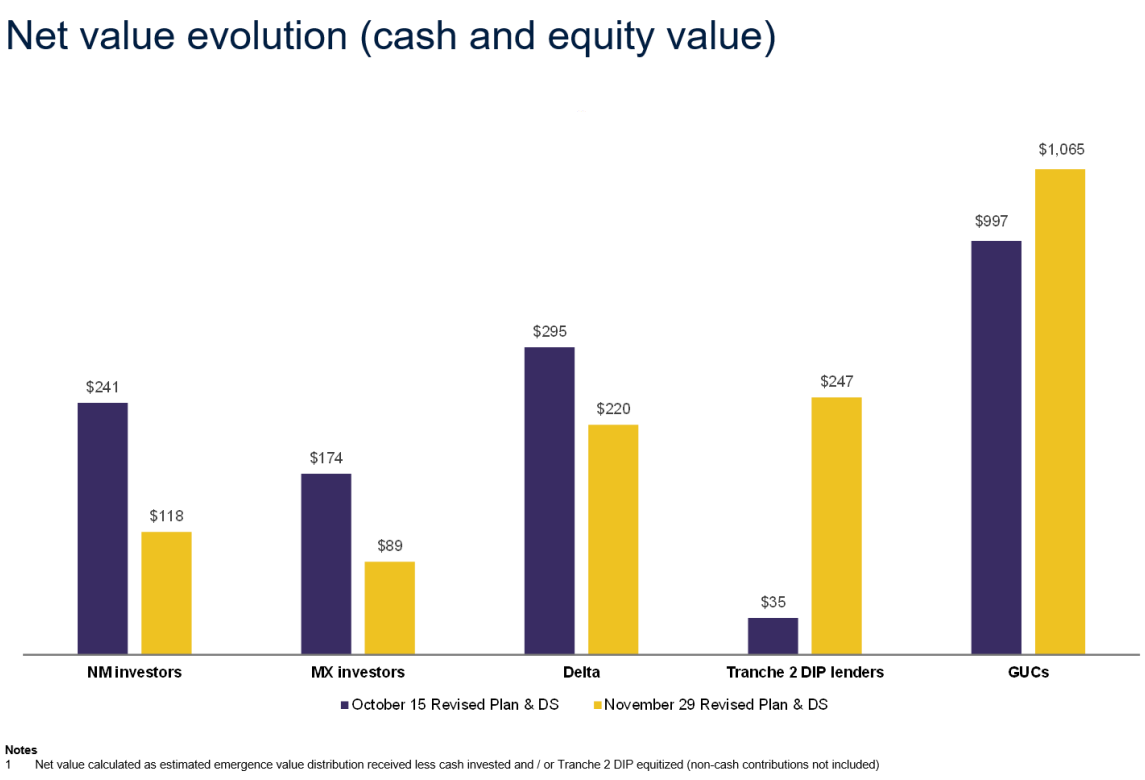
Commitment Premium, the Exit Financing still gave the Debtors the best chance to accomplish these goals. The Debtors subsequently filed a revised Plan and Disclosure Statement on October 15, 2021, with updated terms (including, without limitation, the updated terms of the Exit Financing).

28. In early November 2021, the Debtors received an updated exit financing proposal that had the support of Apollo, as well as the Exit Financing providers, Delta and the Mexican Investors.[20] Notably, the alliance arose from the Joint Bidders and Apollo exchanging their existing restructuring proposals, which was done with the full knowledge and consent of all organized stakeholders and the Court was aware of such exchange. In the revised proposal, while the Equity Commitment Premium percentage remained the same (15%), the Equity Commitment Premium was now payable on a significantly smaller total new money equity investment ($720 million, down from $1,187.5 million) and, accordingly, the Equity Commitment Premium would lead to significantly less dilution to unsecured creditors. Despite the material economic concession in the interest of global peace and the reduction in equity values throughout the industry,[21] the Joint Bidders did not ask for a corresponding increase in the fees or other material economics to account for such concession. The new proposal including Apollo not only led to a DIP maturity extension (which would have otherwise cost the estate substantial fees in connection with a stand-alone extension, DIP refinancing, etc.), but also eliminated substantial litigation risk arising from an interpretation question under Schedule 2.12 of the DIP Credit Agreement, which is moot for as long as the Debtors are pursuing the Alliance Proposal.

[20] *See* Exhibit 4 to the Graulich Declaration.

[21] *See* Second Supplemental Parkhill Declaration (filed contemporaneously herewith).

29. Accordingly, on November 19, 2021, the Debtors filed revised commitment papers reflecting the new Exit Financing proposal and global settlement reflected by the Alliance Proposal [ECF No. 2168]. Contrary to the various assertions in the Objections that the new Exit Financing was obtained by siphoning value from unsecured creditors, the updated Exit Financing Proposal provided more value for general unsecured creditors and eliminated litigation risk with Apollo, at the expense of the value to the new money investors, Mexican Investors, and Delta, as summarized in the below chart comparing value under the October 15, 2021 version of the Plan:



30. As briefly summarized above, and also disclosed in public filings and on the record before the Court, the Debtors have worked diligently for months with Delta, Apollo, the Ad Hoc Group of Senior Noteholders, the BSPO Investors, the Ad Hoc Group of Unsecured Claimholders and the Mexican Investors to obtain the necessary exit financing commitments to consummate a chapter 11 plan, fund the Debtors' capital needs post-emergence and secure key stakeholder support for a confirmable chapter 11 plan. Such Exit Financing Commitments were negotiated extensively (and at times painfully) in good faith and at arm's-length. Parties such as the Committee and the Ad Hoc Group of OpCo Creditors[22] (together, the "**Objectors**"), while perhaps not wholly satisfied with the outcome of the exit financing process, were continuously involved throughout, as is consistent with the Debtors' commitment to conduct these cases in an open and transparent matter.[23]

31. Accordingly, the Debtors respectfully request that the Court overrule the Objections, and grant the relief requested in the Motion.

[22] As used in this Reply, "Ad Hoc Group of OpCo Creditors" refers to the group identified in the *Verified Statement Pursuant to Bankruptcy Rule 2019* [ECF No. 2179].

[23] Invictus Global Management, LLC ("**Invictus**") was previously identified as a member of (a) the BSPO Investors as defined in the *Verified Statement Pursuant to Bankruptcy Rule 2019* [ECF No. 1995] and (b) the Ad Hoc Group of Unsecured Claimholders as defined in the *First Amended Verified Statement of the Ad Hoc Group of Unsecured Claimholders Pursuant to Bankruptcy Rule 2019* [ECF No. 1733]. Additionally, the Debtors understand that Corvid Peak Capital Management LLC was a member of the Ad Hoc Group of Unsecured Claimholders.

Reply

I. Entry into the Revised Exit Financing Documents Is in the Best Interests of the Estates

32. As more fully set forth in the Motion, the Exit Financing represents the successful culmination of months of negotiations with many stakeholders in these Chapter 11 Cases. The Exit Financing will help resolve numerous complex matters, including but not limited to regulatory requirements, all with material stakeholder support. Without the support of these key constituencies, any exit financing proposal faces protracted and costly litigation and execution risk, which would place undue burden on the estates and will further delay an already lengthy emergence timeline. Support from key constituents also ensures the ability of the Debtors to emerge as a strengthened airline with mainline carrier support, corporate governance to optimize performance while complying with Mexican law and governmental authorizations and concessions, appropriate voting creditor support, sufficient funding to close the revised Plan and related transactions (including the PLM Stock Participation Transaction and the refinancing of the Tranche 1 DIP Loan), and other benefits, as further detailed in the revised Plan and Disclosure Statement.

33. The exit financing proposal set forth in the OpCo Creditor Objection (the "**OpCo Exit Financing Proposal**") does not have this support and for that reason, together with the other material outstanding open terms, contingencies and documentation, does not at this time merit any additional consideration as an actionable proposal. The Ad Hoc Group of OpCo Creditors' suggestion that its proposal "could result in a substantially consensual confirmation hearing" is not supported by any evidence (other than perhaps its own willingness not to pursue frivolous litigation in that instance). Even if achieving

consensus around the OpCo Exit Financing Proposal is possible, the process of securing such consensus would cost months of time, and tens of millions of dollars in professional fees, therefore eliminating any purported benefit for unsecured creditors. The Debtors sincerely believe this because, among other reasons, they were just involved in extensive, protracted negotiations, and understand, unlike the Objectors, that the consensus around the Exit Financing was painstakingly built over months.

34. Delta and Apollo—both of whom are proposed participants in the OpCo Exit Financing Proposal without any indication they in fact would be willing to participate—are supporters of the Debtors' proposed Exit Financing. The OpCo Exit Financing Proposal also lacks the critical support of key creditor constituencies, including the Ad Hoc Group of Senior Noteholders and the Ad Hoc Group of Unsecured Claimholders.

II. The Debtors Conducted a Fair, Transparent, and Inclusive Marketing Process, on the Terms Mandated by the DIP Credit Agreement, in the Context of Unprecedented Macroeconomic Uncertainty

35. As is at this point well known and thoroughly disclosed, the approved DIP Facility contained a conversion option for the Tranche 2 Loans, on the terms and conditions set forth in Schedule 2.12 to the DIP Credit Agreement. Under the terms of the DIP Credit Agreement, the Debtors were obligated to deliver a Refinancing Qualification Certificate to Tranche 2 Lenders (each as defined in the DIP Credit Agreement) signed by Rothschild & Co, the Debtors' financial advisor and investment banker. Pursuant to the DIP Credit Agreement, Rothschild & Co was required to certify whether the Debtors were positioned to repay "all outstanding DIP Loans and all other DIP Obligations owing under the DIP Loan Documents through the effective date of the Plan . . . in full in cash . . . through the

issuance of debt or equity securities."[24] Given the unique convertible nature of the Tranche 2 Loans, the Debtors were also contractually required to determine plan equity valuation.

36. Consequently, beginning in May 2021, the Debtors conducted a fair, robust, and transparent exit financing process. An open, transparent process to assess the value of the Company and to ensure all stakeholders were treated as fairly as possible was the optimal approach for accurately assessing plan value and developing a confirmable chapter 11 plan, while complying with the contractual obligations under the DIP Facility. Rothschild & Co solicited over 125 institutions and investors (which included certain members of the Ad Hoc Group of OpCo Creditors) to gauge interest in providing an exit financing commitment to the Company to pay the Tranche 1 and Tranche 2 DIP loans in full, and to assess the most accurate valuation of the Company for purposes of delivering the Final Valuation Materials.

37. This exit financing process was subsequently enhanced by an extensive court-ordered mediation held at the request of the Company and agreed to by other parties in interest. During this time, competing financing proposals were exchanged with the consent and knowledge of the participating parties. This process was not run in secret as the Objections suggest and was open to any and all parties. In fact, while the marketing process was initially scheduled to conclude in early July, it was twice extended—the last extension until July 26, 2021, and de facto extended through the court-approved mediation process. As a result of this lengthy process, the Debtors' Exit Financing Proposal enjoys the support of a broad range of creditors and key stakeholders that include Delta, Apollo, the Ad Hoc Group of Senior Noteholders, the BSPO Investors, the Ad Hoc Group of

[24] Schedule 2.12 of the DIP Credit Agreement.

Unsecured Claimholders, and the Mexican Investors. None of these key constituents, to the Debtors' knowledge, support the OpCo Exit Financing Proposal.

38. The suggestion in the OpCo Creditor Objection that the exit financing process was "an exclusive club" that was not open to all stakeholders is, quite simply, false. The Exit Financing is a bid from a specific group of investors, who have no obligation to include anyone in their syndicate. However, as was necessary to comply with the DIP Facility's requirements, any party had the opportunity to propose exit financing in connection with the Debtors' marketing process. The Debtors conducted a thorough marketing process to satisfy requirements in a court-approved contract that had, as set forth in detail in the Motion, unique characteristics for a financing due to the extraordinary economic and financial exigencies of that time. If, as the Ad Hoc Group of OpCo Creditors asserts, the Debtors had run an exclusive process, such a process would have run contrary to the Debtors' business interests and would not have been sufficient to comply with the Debtors' contractual obligations under the DIP Credit Agreement. In fact, the Debtors encouraged broad participation in the exit financing process in order to assure plan value could be accurately ascertained. Indeed, each member of the Ad Hoc Group of OpCo Creditors had the opportunity to be a participant (and certain members were, at times, proposed commitment parties and members of different groups proposing debt and equity financings).[25]

39. Furthermore, the assertion in the OpCo Creditor Objection that the Debtors' exit financing process violated the equal treatment principle of section 1123(a)(4) is

[25] For this reason and others, the Ad Hoc Group of OpCo Creditors' assertion that the Debtors ran an exclusive exit financing process is misleading.

misplaced. The revised Plan provides equal value to all general unsecured creditors on account of their claims against the relevant Debtor(s), with the exception of a *de minimis* convenience class. The OpCo Creditor Objection conflates two separate concepts: the treatment creditors receive on account of their claims and the treatment creditors (and third parties) receive on account of capacities other than their capacity as creditors (i.e., new money commitments).

40. Additional consideration provided to those unsecured creditors on account of their new money commitments does not violate, and is consistent with, 1123(a)(4). It is manifestly unreasonable to assert, as the Ad Hoc Group of OpCo Creditors does in its objection, that, where all unsecured creditors, and indeed all parties, were afforded an equal opportunity to participate in the exit financing process, unsecured creditors who incurred additional risk through proposing new money contributions, and negotiating such commitments over months without compensation, should receive the same consideration in all respects as those who chose not to incur this risk. *See In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 249-250 (Bankr. S.D.N.Y. 2007) ("[T]he requirements of section 1123(a)(4) apply only to a plan's treatment on account of particular claims or interests in a specific class—not the treatment that members of the class may separately receive under a plan on account of the class members' other rights or contributions."); *In re Heron, Burchette, Ruckert & Rothwell*, 148 B.R. 660, 672 (Bankr. D.D.C. 1992) ("The objectors fail to distinguish between a partner's treatment under the plan on account of a claim or interest and treatment for other reasons. Only the former is governed by § 1123(a)(4).")

41. Restarting the marketing process at this time or reopening related discussions would incinerate extraordinary value from the Debtors' estates, at the expense

of general unsecured creditors and the Company itself. The Debtors have been in bankruptcy for nearly eighteen months, which is costly and burdensome for its operations, employees, and customers (not to mention approaching the original DIP maturity and expiration of the statutory exclusivity period). While the Debtors have taken advantage of the benefits of bankruptcy by optimizing their fleet, augmenting their liquidity, and entering into new labor agreements, that work is largely complete and extending the Company's stay in bankruptcy at this point will only lead to further costs. With the spread of new COVID variants, the Debtors cannot afford to delay its bankruptcy exit for any reason, let alone chase a proposal with countless unresolved contingencies and which contemplates a more levered and more illiquid reorganized company. In the wake of extraordinary macroeconomic uncertainty and a complex, heavily regulated business, it is imperative that the Debtors secure debt and equity financing that ensures sufficient operational support and compliance with Mexican law's ownership and governance requirements, regardless of future events in these Chapter 11 Cases.[26]

42. The Ad Hoc Group of OpCo Creditors asserts that pivoting towards its proposal "would not materially alter the emergence timeline established by this Court" (incredibly, while also suggesting "[t]he Debtors could implement formal procedures – with expedited deadlines").[27] This is a pipe dream and simply ignores the complexities of these Chapter 11 Cases, not to mention the requirements under the Debtors' DIP Facility driving the exit financing marketing process.

[26] It is for these reasons that the Ad Hoc Group of OpCo Creditors' assertion that the Debtors do not need to lock in the Exit Financing Motion now is patently incorrect. *See* OpCo Creditor Objection, ¶ 2.

[27] OpCo Creditor Objection, ¶ 12.

III. There Is No Evidence That the OpCo Exit Financing Proposal Is Superior

43. Despite the protestations to the contrary in the Objections, there is no evidence that the OpCo Exit Financing Proposal is superior or even actionable. The OpCo Exit Financing Proposal does not present a viable, alternative path to the Debtors' emergence. The Debtors became aware, through the submission of an alternate proposal, that Invictus had disassociated from the BSPO Investors on November 12, 2021,[28] and the Ad Hoc Group of OpCo Creditors filed their initial 2019 statement on November 26, 2021,[29] long after the Debtors' months-long exit financing marketing process had concluded, and subsequent to certain of the Ad Hoc Group of OpCo Creditors members' participation in such Debtors' marketing process. In the brief time since Invictus left the BSPO Investors, the Debtors have received eight iterations of proposals and scenarios from the Ad Hoc Group of OpCo Creditors or its members, which typically consist of a chart or slide, no detailed term sheet, and insufficient underlying calculations. The lone exception was the term sheet attached as Exhibit 2 to the OpCo Creditor Preliminary Objection (the "**OpCo Exit Financing Term Sheet**") where part of the Exit Financing documentation was largely copied and pasted, with no demonstration in that "documentation" of how the deal would need to change given differing levels of support from various stakeholders.[30]

[28] Prior to its association with the BSPO Investors (*see Verified Statement Pursuant to Bankruptcy Rule 2019* [ECF No. 1995]), Invictus was a member of the Ad Hoc Group of Unsecured Claimholders identified in the First Amended Verified Statement of the Ad Hoc Group of Unsecured Claimholders Pursuant to Bankruptcy Rule 2019 [ECF No. 1733].

[29] *See* Verified Statement Pursuant to Bankruptcy Rule 2019 [ECF No. 2179].

[30] The Committee expressly acknowledges this shortcoming, and notes that "[t]he Committee also understands that the Ad Hoc Group of OpCo Creditors is prepared to provide a toggle that would allow for substantially identical treatment for Apollo, Delta, and the Insider Mexican Shareholders or would take out such stakeholders and proceed without them." Committee Objection, ¶ 32. It is therefore astonishing for the Committee to argue that the Debtors should forego the negotiated and committed Exit Financing proposal and pursue a non-substantive OpCo Exit Financing Proposal when the Debtors have not yet received a

It is impossible for the Debtors to seriously consider proceeding with the Ad Hoc Group of OpCo Creditors' proposal when they have not received anything with the requisite substance or fully committed support, to allow, yet alone merit, serious consideration as a viable foundation to a confirmable alternative plan. This is not through a lack of effort, as the Debtors' advisors have had numerous communications with the Ad Hoc Group of OpCo Creditors and their members.[31]

44. Furthermore, the Ad Hoc Group of OpCo Creditors have in their proposals assumed away the lack of support of key stakeholders, ongoing operational support from a mainline carrier, Mexican ownership that complies with Mexican foreign ownership requirements,[32] and, most outrageously, any opposition to their proposed transaction.[33] These assumptions are fanciful. As one example of many as to why assuming away these problems is wholly disconnected from reality, the Debtors recently executed an amendment with Apollo to extend the maturity of the DIP Facility (and corresponding milestones tied

proposal with such a toggle, not to mention a coherent plan to address the contingencies associated with such a "toggle" approach.

[31] The Debtors received the initial proposal from certain of the OpCo Creditors on November 12, 2021 (at such time, the Debtors were unaware of the makeup of the Ad Hoc Group of OpCo Creditors, and the proposal submitted did not disclose same). On November 17, 2021, the Debtors' advisors attended a meeting in Austin, Texas with Invictus to discuss their proposal. On November 22, 2021, the Debtors' advisors engaged with Invictus to further discuss their proposal. On November 23, 2021, the Debtors' advisors had a formal discussion with Guggenheim Securities LLC regarding the OpCo Proposal. From November, 27, 2021 through December 3, 2021, the Debtors and members of the Ad Hoc Group of OpCo Creditors engaged on a daily basis (via telephone calls and email) reviewing multiple iterations of the OpCo Proposal.

[32] The Ad Hoc Group of OpCo Creditors have provided no concrete proposals or consideration to the Debtors on how they plan to satisfy Mexican foreign ownership law, which is an issue the Debtors and their stakeholders have been carefully considering for months.

[33] *See* OpCo Creditor Objection, ¶ 12. *See also* Committee Objection, ¶ 4 ("The Committee supports the efforts of the Ad Hoc Group of OpCo Creditors to construct an alternative plan that will increase distributions for unsecured creditors and create a consensual pathway to confirmation.").

to such maturity) by three months.[34] While there is no fee in connection with such amendment, in exchange for such necessary extension the Debtors are required to support and pursue the Exit Financing as part of a global settlement amongst the parties.[35] If the Debtors do not pursue the Exit Financing, the Debtors are required to provide revised Final Valuation Materials within 15 days of the Termination Event.[36] The last time the Debtors delivered Final Valuation Materials without committed, executable exit financing, unsecured creditor recoveries were much lower than what is provided for in the revised Plan supported by the Exit Financing. This is just one of numerous examples of why the OpCo Exit Financing Proposal is not, in the current landscape, practical and cannot lead to a confirmable chapter 11 plan.

45. Finally, the comparative advantage of higher general unsecured creditor recoveries suggested by the Ad Hoc Group of OpCo Creditors arises not from a fundamentally value-maximizing transaction, but from differing mathematical assumptions. For instance, the Ad Hoc Group of OpCo Creditors appears to consider the Equity Commitment Premium as a component of creditor recovery on account of general unsecured claims. The Ad Hoc Group of OpCo Creditors also estimates materially higher excess cash than the Debtors' current estimate and use of that excess cash to fund additional distributions to stakeholders. This estimate portrays a misleading differential in "recoveries" while also having higher net debt and lower liquidity—i.e., a worse airline—for the Reorganized Debtors.

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[34] *See* Notice of Presentment of Proposed Order Authorizing Debtors' Entry into the Third DIP Amendment [ECF No. 2177].

[35] Third Amendment to the Credit Agreement, Section 12.02(b).

[36] *Id*. Section 12.06.

IV. Delta and the Mexican Investors Participation

46. Both the Committee Objection and the OpCo Creditor Objection take issue with Delta's and the Mexican Investors' participation in the proposed Exit Financing. Their positions are particularly dumbfounding given that under the OpCo Exit Financing Term Sheet, Delta and the Mexican Investors purportedly receive identical treatment as provided under the Debtors' Exit Financing. Moreover, the Committee stated in its Objection that it "actually does not oppose an investment by Delta or the Insider Mexican Investors at market value,"[37] [redacted]. This aspect of the Exit Financing Proposal should not be subject to complaint by Objectors who propose to include that very same component in their own proposals.

47. To the extent that the Debtors are required to satisfy the entire fairness standard (which the Debtors do not, in any way, concede is the applicable standard) in connection with the proposed treatment of Delta and the Mexican Investors under the revised Plan, the Debtors will be prepared to do so at the confirmation hearing. While the Debtors vehemently disagree with the portrayal of the arrangements under the revised Plan with Delta and the Mexican Investors and related facts set forth in the Objections, those are plan confirmation issues.

48. Moreover, the necessary factors that trigger the entire fairness standard are not present with regard to the Exit Financing. The terms of the Exit Financing were

[37] Footnote 11 of the *Objection of the Official Committee of Unsecured Creditors to Disclosure Statement for the Joint Chapter 11 Plan of Reorganization of Grupo Aeroméxico, S.A.B. DE C.V. and Its Affiliated Debtors* [ECF No. 2233].

negotiated and proposed by certain creditor groups and third parties. The Ad Hoc Group of Senior Noteholders, the Ad Hoc Group of Unsecured Claimholders, and the BSPO Investors sought Delta's and the Mexican Investors' participation in the Exit Financing for their strategic go-forward value. When insiders are not involved in the negotiation and crafting of a transaction and merely join as a party to a largely negotiated construct, the heightened scrutiny standard of review is not warranted.[38] There are simply no concerns of "abuse" or "unfair advantage" when insiders are not intimately involved in the formulation of an exit financing proposal.

49. To the extent heightened scrutiny applies, it would apply solely to the components of a transaction that are intended to benefit insiders—it does not apply to every aspect of an exit financing proposal simply because an insider may be a party to the wider transaction.[39] Furthermore, the Equity Commitment Premiums to Delta and the Mexican Investors for the equity financing commitment are the same as what was separately negotiated with third parties—15% of the committed equity amounts.[40]

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[38] Hearing Transcript at ECF No. 615, 185:24-186:22, *Momentive Performance Materials, Inc. v. The Bank of New York Mellon Trust Co.* (*In re MRM Silicones, LLC*), Case No. 14-08227 (RDD) (Bankr. S.D.N.Y. July 7, 2014) (applying business judgment standard and declining to apply entire fairness standard to a transaction involving a party that was both a creditor and controlling shareholder of the Debtors but was one of many parties to the transaction); *In re Residential Capital, LLC*, Case No. 12-12020, 2013 Bankr. LEXIS 2601, 19 (Bankr. S.D.N.Y. June 27, 2013) (declining to apply entire fairness standard to plan support agreement because plan support agreement "resulted from a months-long, Court-supervised mediation involving numerous parties" and "numerous proposed compromises and settlements of billions of dollars of claims.").

[39] Hearing Transcript at ECF No. 652, 25:24-26:10, *In re LATAM Airlines Grp. S.A.*, Case No. 20-11254 (JLG) (Bankr. S.D.N.Y. July 23, 2020) (approving the commitment fees of the Tranche A DIP facility lenders and applying business judgment standard instead of entire fairness standard because the insiders participating in the Tranche C of the DIP Facility played no role in the negotiation of the Tranche A of the DIP facility).

[40] The Committee and members of the Ad Hoc Group of OpCo Creditors have historically supported and/or were proposed participants in restructuring and/or exit financing proposals that included the participation of Delta and the Mexican Investors. In fact, the current OpCo Exit Financing Proposal also permits (and in fact assumes) their participation. Clearly, every stakeholder in these Chapter 11 Cases seeks

V. Commitment Premium Quantum and Conditions

50. The Committee suggests in its objection various structural revisions to the Equity Commitment Premium, including (a) a lower quantum of the Equity Commitment Premium (suggesting 12% of the proposed commitments, rather than 15%, is the appropriate Equity Commitment Premium percentage) or (b) conditioning the Equity Commitment Premium on plan confirmation, with either nothing, or a smaller break-up fee, payable in case the revised Plan is not confirmed.[41] The Debtors are not in the business of paying unnecessary fees and would in a vacuum be happy to accept fully committed exit financing with lower Equity Commitment Premiums, or no Equity Commitment Premiums, that appropriately supported a confirmable chapter 11 plan. But that is not an option in front of the Debtors today, and, given the extraordinary efforts necessary to arrive at the current inflection point, it is not an option that the Debtors expect to materialize at any time in the future.

51. A break-up fee may be an appropriate form of consideration at the initial stages of an exit financing process, but it is less relevant when the Debtors are on the precipice of confirming a chapter 11 plan and finally emerging from chapter 11. As described in the Motion and above, the Debtors ran a comprehensive effort to explore exit financing opportunities and secure an exit financing agreement which would maximize value for all stakeholders. This process was officially run for months, and continued in

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the participation of these parties. However, at no time did the Debtors require the participation of Delta or the Mexican Investors. Any suggestion to the contrary simply ignores the record of these cases.

[41] Committee Objection, ¶¶ 49-52. It bears mention that the Committee and members of the Ad Hoc Group of OpCo Creditors supported a 15% commitment premium in previous proposals from which they thought they would benefit. The Objectors' current opposition to the Exit Financing Motion is simply a stall tactic to advance an aspirational settlement with the current revised Plan proponents.

other forms (e.g., mediation, continued discussions, etc.) for months further. But notably, this process was not run on an ad hoc basis; rather, this process was run specifically to comply with the requirements of Schedule 2.12 of the DIP Credit Agreement. These extensive efforts in accordance with the requirements of Schedule 2.12 of the DIP Credit Agreement culminated in the Exit Financing Commitments, a massive success for the Debtors and their stakeholders. But that process is now complete, and progressing towards confirmation of the revised Plan and emerging from chapter 11 is essential. The Debtors do not intend to continue exploring potential (and ephemeral) proposals and waste precious time and estate value in continuing to extend these Chapter 11 Cases. Accordingly, attempting to force a break-fee concept on the Exit Financing Parties while risking a transaction fundamental to the Debtors' chances to emerge is inappropriate.[42]

52. Conditioning the full Equity Commitment Premium upon plan confirmation is likewise untenable. The Debtors have determined in their business judgement that the Exit Financing is the only viable path forward for the Debtors to exit these cases positioned for success. The Debtors—mindful of the ongoing turmoil and unpredictability inherent to the travel industry during the pandemic—have determined that securing the Exit Financing Commitments, and incurring related fees and expenses, now to obtain those benefits is critical to ensure a successful emergence in the near term. Accordingly, the full Equity Commitment Premium being earned now (or at least a portion of it) is reasonable. Furthermore, the Debtors note the OpCo Exit Financing Proposal also contains a

[42] Footnote 30 of the Committee Objection claims "1-3% is the market range for break-up fees in chapter 11 asset sales in this District." This is not an asset sale or open auction; rather, it is a specific process arising from the bespoke requirements of a unique DIP Facility. The string cite in support of this proposition includes a list of 3% fees and a 2.4% fee. The Committee depiction of the "market" in this regard is, on its face, misleading and irrelevant.

commitment premium fully earned upon entry of an order approving their proposed financing.

53. Important, based on further discussions with the Debtors, the Joint Bidders have also made a significant concession on the timing of the Equity Commitment Premium by agreeing to bifurcate the Equity Commitment Premium with 50% being earned now and 50% being earned upon the confirmation of the revised Plan.[43]

54. As to fee quantum, the Debtors simply do not have a viable exit financing proposal with a commitment premium amount any lower than 15% of the committed equity amount and the Debtors have determined that, in this context, the 15% amount is reasonable. A 12% fee on a transaction that is not supported by full financing commitments[44] and assumes away every material contingency (material contingencies which the Debtors and other stakeholders have spent months negotiating in connection with the Exit Financing) is not in any way a "useful market check" as the Committee Objection asserts. To the contrary, it is wholly meaningless in assessing the appropriateness of the proposed Equity Commitment Premium.

[43] *See The Commitment Parties' Statement in Support Of Debtors' Exit Financing and Disclosure Statement Motions* [ECF No. 2245], ⁋ 7 ("[T]he Commitment Parties have agreed that if the Plan is not confirmed, the Commitment Premium would be reduced to 7.5%.").

[44] There is no evidence, in the Objections or otherwise, that there is sufficient capital committed to support the OpCo Exit Financing Proposal. The Committee's asserted expectation that such capital commitments may eventually come to fruition is hardly compelling justification. *See, e.g.*, Committee Objection, ¶ 33: "*The Committee expects* that the Alternative Proposal will have committed debt and equity financing in the immediate near term and could be consummated on the same timeline as the Combined Proposal." (emphasis added).

55. The Equity Commitment Premium is not a deal term that exists in a vacuum, but rather, part of a larger proposed Exit Financing that is of immense value to the Debtors and their stakeholders. The Exit Financing is also a key component of the Alliance Proposal that the Debtors believe will enable them to emerge from Chapter 11 successfully and expeditiously. It is in this context that the Debtors submit that the Equity Commitment Premium is reasonable, appropriate and should be approved.

Conclusion

56. Based on the foregoing, the Debtors request that the Court overrule the Objections and enter the Revised Proposed Order granting the relief requested in the Motion at, or as soon as practicable after, the hearing scheduled for December 6, 2021.

Dated: December 4, 2021
New York, New York

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