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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)
	)	Ref: Docket No. 2293

OBJECTION OF PLM TO THE DEBTORS' PLAN AND RESERVATION OF RIGHTS

PLM Premier, S.A.P.I. de C.V. ("***PLM***"), by and through its undersigned counsel, hereby submits this objection and reservation of rights (this "***Objection***") regarding the *Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code* [Docket No. 2293] (the "***Plan***").

Detailed factual background about PLM and the Club Premier Agreements can be found in the *Motion of PLM for an Order Pursuant to Fed. R. Bankr. P. 9019 Approving the Stipulation Among the Debtors, PLM and Aimia* [Docket No. 1103] (the "***PLM Stipulation Motion***").[2]

[1] The debtors and debtors-in-possession (the "***Debtors***") in the above-captioned jointly-administered chapter 11 cases (the "***Bankruptcy Cases***"), along with each Debtor's registration number in the applicable jurisdiction, are as follows: Grupo Aeroméxico, S.A.B. de C.V. ("***Grupo Aeroméxico***") 286676; Aerovías de México, S.A. de C.V. ("***Aerovias***") 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.

[2] Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Plan or the PLM Stipulation Motion, as applicable.

BACKGROUND

1. PLM is a non-Debtor joint venture between Grupo Aeroméxico and Aimia, Inc. ("***Aimia***"). PLM owns and operates the Club Premier Loyalty Program, which serves as the Aeromexico frequent flyer program, and is one of the Debtors' most significant creditors. It is party to the Club Premier Agreements, a set of agreements between PLM, Aimia and the Debtors that govern the frequent flyer program and debt obligations between PLM and the Debtors. PLM currently holds approximately $65 million in liquidated prepetition claims against the Debtors (including both Grupo Aeroméxico and Aerovias), the majority of which arise out of the Debtors' improper procurement of approximately $100 million from PLM shortly before the Petition Date.[3] PLM's prepetition claims were the subject of duly filed proofs of claim (#733-#736), to which no objection has been filed. Importantly, the Debtors stipulated to the majority of PLM's prepetition claims on December 31, 2020. *See* PLM Stipulation Motion, Ex. 1 (the "***PLM Stipulation***") ¶¶ 5-6. While the Debtors have declined to seek approval of the PLM Stipulation, they have never contested the validity of the stipulations they made therein.

2. The Plan contemplates that the Debtors, Aimia and PLM may enter into a potential PLM Stock Participation Transaction pursuant to which Grupo Aeroméxico would buy out Aimia's interest in PLM. *See, e.g.*, Plan § 4.11. However, as disclosed by the Debtors in the Disclosure Statement (and other pleadings), the PLM Stock Participation Transaction has not yet been agreed, is not a condition to the Effective Date of the Plan, and indeed may never be

[3] Approximately $55 million of the PLM Prepetition Claims arise out of a $50 million intercompany loan from PLM to Aeromexico made on May 23, 2020. The remainder arises out of a $50 million prepurchase of award tickets consummated the day prior to the Petition Date pursuant to a Pre-Paid Seat Asset Purchase Agreement, or "***PPSA***". Over time, as PLM has used the award tickets it prepurchased, the Debtors' obligations under the PPSA have diminished. As of the date hereof, the Debtors owe approximately $10 million to PLM under the PPSA. PLM also holds approximately $23 million in administrative claims against the Debtors arising out of dividends paid to the Debtors under protest during their Bankruptcy Cases.

consummated. Yet the Plan completely ignores this scenario. PLM objects to the Debtors' Plan because of this fundamental oversight.

OBJECTION

3. Section 7.6 of the Plan provides that PLM will receive zero Cure Amount when its agreements with the Debtors are assumed, and zero recovery on account of its claims against the Debtors:

> Pursuant to and in accordance with section 365 of the Bankruptcy Code, on the Effective Date, and concurrent with the PLM Stock Participation Transaction, the Reorganized Debtors shall assume the Club Premier Agreements. Other than the Reorganized Debtors' assumption of the Club Premier Agreements, consummation of the PLM Stock Participation Transaction, and/or as provided in the PLM Stock Participation Transaction Agreement, the Club Premier Agreements shall otherwise remain unaffected by the Chapter 11 Cases. **Upon the Effective Date, the Debtors shall pay $0.00 to PLM in satisfaction of (i) the Debtors' obligation to cure any defaults under the Club Premier Agreements in accordance with section 365(b)(1)(A) of the Bankruptcy Code and (ii) subject to and upon consummation of the PLM Stock Participation Transaction, all PLM Prepetition Claims**.[4]

4. Incorrect Cure Amount. The Plan provides that the Debtors will assume the Club Premier Agreements on the Effective Date. However, the proposed Cure Amount for the Club Premier Agreements—$0.00—is flatly incorrect. The Debtors have stipulated that the net prepetition amount due and owing under the Club Premier Agreements is $7,383,000. *See* PLM Stipulation ¶ 5. PLM respectfully submits that the Debtors may not assume the Club Premier Agreements unless this stipulated amount is paid in cash to PLM on or prior to the Effective Date and the Debtors provide PLM with adequate assurance of future performance. *See* 11 U.S.C. § 365(b)(1). PLM objects to the proposed Plan insofar as it permits the Debtors to disregard the

[4] Plan § 7.6 (emphasis added).

requirements of section 365(b) of the Bankruptcy Code with respect to the assumption of the Club Premier Agreements.

5. Improper Classification and Treatment of Claims. The Debtors' Plan extinguishes the PLM Prepetition Claims on the Effective Date for $0.00, subject to the consummation of the PLM Stock Participation Transaction. However, the Plan is silent as to what happens if the PLM Stock Participation Transaction is not consummated on or prior to the Effective Date. (As discussed above, the PLM Stock Participation Transaction has not been agreed and may never be consummated.)

6. The Debtors previously stipulated to the validity of the PLM Prepetition Claims, and PLM duly filed proofs of claim against the applicable Debtors asserting such PLM Prepetition Claims, along with certain other liquidated and unliquidated claims. *See* PLM Stipulation ¶ 6. It is black-letter law that the Debtors have "the burden of putting forth evidence sufficient to negate the *prima facie* validity of [a duly-filed] claim by refuting one or more of the facts in the filed claim," whereupon the creditor must be provided an opportunity to reply. *In re St. Johnsbury Trucking Co., Inc.*, 206 B.R. 318, 323 (Bankr. S.D.N.Y. 1997), *aff'd*, 221 B.R. 692 (S.D.N.Y. 1998), *aff'd*, 173 F.3d 846 (2d Cir. 1999). Here, neither the Debtors nor any other party-in-interest have disputed the validity of the PLM Prepetition Claims, or provided any basis for the *de facto* discharge and expungement of the PLM Prepetition Claims without any payment or recovery.

7. Indeed, the Plan fails even to classify the PLM Prepetition Claims. PLM was not provided a ballot to vote its PLM Prepetition Claims, so the claims cannot be classified as Impaired Claims entitled to vote (*i.e.*, in any of classes 3 and 4 under the Plan). The Plan expressly excludes the PLM Prepetition Claims from its definition of Intercompany Claims, so the claims cannot be classified in class 6 under the Plan. Perhaps the PLM Prepetition Claims are intended to be

classified as Secured Claims in class 1—but in that case, the Debtors must unimpair the PLM Prepetition Claims and pay them in full or reinstate them on the Effective Date. It is incumbent upon the Debtors to be express about the allowance and treatment of the PLM Prepetition Claims. As it stands, the Plan simply ignores the $65 million elephant in the room.

8. PLM respectfully submits that these procedural deficiencies render the Plan unconfirmable unless the Plan is modified to expressly unimpair the PLM Prepetition Claims if the PLM Stock Participation Transaction is not consummated on or prior to the Effective Date. As it stands, PLM objects to the proposed Plan because of its improper allowance, classification and treatment of the PLM Prepetition Claims.

9. Releases and Exculpations. Because PLM's claims are not classified under the Plan and the Debtors failed to provide PLM a Ballot or a Non-Voting Opt In Form, the Plan is ambiguous as to whether PLM is a "Releasing Party" thereunder. If PLM is included as a Releasing Party under the Plan, PLM objects, opts out from and does not consent to the third-party release set forth in Section 8.7 of the Plan. Further, subject to the consummation of the PLM Stock Participation Transaction or the unimpairment of the PLM Prepetition Claims, PLM objects and does not consent to the exculpations set forth in Section 8.10 of the Plan to the extent they would release or exculpate any Exculpated Party on the Effective Date from liability arising from or relating to the Prepetition Transactions or the PLM Stipulation and the Debtors' breach thereof. PLM respectfully submits that there is no legal basis to compel PLM to provide releases and exculpations to the Debtors in exchange for zero recovery under the Plan.

RESERVATION OF RIGHTS

10. If Section 7.6 of the Plan were modified to reject the Club Premier Agreements, PLM would assert additional administrative and prepetition claims against each of the Debtors (in

multiples larger than its existing claims), and PLM reserves all rights with respect to such claims and to challenge any such modification of the Plan. PLM also reserves all rights with respect to the PLM Stipulation Motion, which has been adjourned (but not withdrawn) as of the date hereof. In addition, PLM does not consent to, and reserves its rights to object to, any attempt by the Debtors to retain any of the Club Premier Agreements following the Effective Date without assuming such contracts in strict compliance with section 365 of the Bankruptcy Code.

11. While PLM is compelled to file this Objection in order to protect its claims against the Debtors and their Related Parties in case the PLM Stock Participation Transaction does not occur, PLM expects to support the PLM Stock Participation Transaction, if agreed between the Debtors and Aimia. Finally, even if the PLM Stock Participation Transaction is not agreed prior to the Confirmation Hearing, PLM is prepared to support a Plan that has been amended to pay PLM its stipulated cure amount and to unimpair the PLM Prepetition Claims.

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Dated: January 10, 2022
New York, NY

/s/ Michael H. Torkin

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