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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 (A) DEBTORS' MOTION FOR APPROVAL OF
STIPULATIONS AND ORDERS BETWEEN DEBTORS AND COUNTERPARTIES
CONCERNING CERTAIN AIRCRAFT FINANCING AGREEMENTS AND (B)
DEBTORS' MOTION FOR AN ORDER (I) AUTHORIZING THE DEBTORS TO
PARTIALLY REDACT STIPULATIONS AND (II) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that on October 30, 2020, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the (A) *Debtors’ Motion for Approval of Stipulations and Orders Between Debtors and Counterparties Concerning Certain Aircraft Financing Agreements* and (B) *Debtors’ Motion for an Order (I) Authorizing the Debtors to Partially Redact Stipulations and (II) Granting Related Relief* (together, the “**Motions**”). A hearing on the Motions will be held on **November 16, 2020, at 10:00 a.m. (Prevailing Eastern Time)** (the “**Hearing**”) before

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; 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.

the Honorable Judge Shelley C. Chapman, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”), or at such other time as the Bankruptcy 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 Motions 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 Bankruptcy 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 thereafter from time to time without further notice other than an announcement of the adjourned date or dates at the Hearing or a later hearing. The Debtors will file an agenda before the Hearing, which may modify or supplement the motions to be heard at the Hearing.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motions 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 Bankruptcy Court (a) by attorneys practicing in the Bankruptcy Court, including attorneys admitted *pro hac vice*,

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>.

electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov), and (b) by all other parties in interest, in accordance with the customary practices of the Bankruptcy 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 **Friday, November 13, 2020 at 4:00 p.m. (Prevailing Eastern Time)** (the “**Objection Deadline**”).

PLEASE TAKE FURTHER NOTICE that any 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 Objections are timely filed and served with respect to the Motions, the Debtors may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motions, which order may be entered without further notice or opportunity to be heard.

Dated: October 30, 2020
New York, New York

DAVIS POLK & WARDWELL LLP

By: /s/ Timothy Graulich

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Objection Deadline: November 13 at 4:00 p.m. (prevailing Eastern Time)
Hearing Date and Time: November 16 at 10:00 a.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)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER
(I) AUTHORIZING THE DEBTORS TO PARTIALLY REDACT STIPULATIONS
CONCERNING AIRCRAFT FINANCING AGREEMENTS
AND (II) GRANTING RELATED RELIEF**

¹ The Debtors in these cases, along with the 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.

Grupo Aeroméxico, S.A.B. de C.V. (“**Grupo Aeroméxico**”) and its affiliates that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”; the Debtors collectively with their direct and indirect non-Debtor subsidiaries, the “**Company**” or “**Aeroméxico**”), respectfully represent as follows in support of this motion (the “**Motion**”):

Relief Requested

1. By this Motion, the Debtors respectfully request entry of an order, substantially in the form attached as **Exhibit A** hereto (i) authorizing the Debtors to partially redact the filed versions of stipulations between the Debtors and aircraft financing agreement counterparties concerning certain equipment (the “**Equipment**”), whether filed contemporaneously herewith or in the future (the “**Stipulations**”), and submit the unredacted versions under seal and (ii) granting certain related relief. This Motion is supported by the *Declaration of Matthew Landess in Support of Stipulation Motion and Related Pleadings* (the “**Landess Declaration**”).

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of New York (the “**Court**”) has jurisdiction to consider this matter 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) and, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Debtors consent to 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 consistent with Article III of the United States Constitution. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

3. On the date of June 30, 2020 (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On July 13, 2020, the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) appointed the Official Committee of Unsecured Creditors (the “**Committee**”) pursuant to section 1102 of the Bankruptcy Code [ECF No. 92]. No request has been made for the appointment of a trustee or examiner in above-captioned chapter 11 cases.

4. These chapter 11 cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* [ECF No. 30] entered by the Court in each of the chapter 11 cases.

5. Additional information about the Debtors’ businesses and the events leading up to the Petition Date can be found in the *Declaration of Richard Javier Sánchez Baker in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* [ECF No. 20].

The Confidential Information

6. Each of the Stipulations sets forth agreements between the Debtors and various aircraft finance counterparties (the “**Counterparties**”) regarding payment terms and performance covenants during the relevant stipulation period in relation to certain financed aircraft. The Stipulations also contemplate a limitation on administrative claims of the Counterparties during the Stipulation period. While one of the Stipulations is annexed to the Stipulation Motion filed contemporaneously herewith (as defined in the Landess Declaration), the Debtors are currently negotiating two additional Stipulations addressing analogous aircraft financing agreements with two other aircraft finance counterparties.

7. While each of the Stipulations is being filed publicly on the Court's docket in its entirety, the Debtors seek to protect specific economic terms of the aforementioned portions of the schedules attached as exhibits to each of the Stipulations (together, the "**Confidential Information**"). Disclosure of the Confidential Information could reasonably be expected to cause harm to the Debtors and jeopardize their goals at a critical juncture in these chapter 11 cases by providing other aircraft finance counterparties insight into the Debtors' cost structure, negotiating positions, and fleet strategy. Finance counterparties that are currently negotiating with the Debtors over additional stipulations will insist on obtaining the most favorable economic terms provided to any other financing counterparty. Moreover, the Debtors anticipate further negotiations with aircraft finance counterparties regarding the terms of long-term aircraft financings and the Debtors' negotiating position will be harmed if financing counterparties know details of all terms agreed in the payment schedules. Further, if the Debtors are not successful in protecting sensitive information and commercial concessions made by the Counterparties, it will inhibit the Debtors' ability to enter into further agreements with, and obtain beneficial concessions from, counterparties necessary to the Debtors' ongoing business. Thus, because disclosing the Confidential Information could potentially harm the Debtors, the Debtors should be permitted to partially redact such information from the filed versions of the Stipulations and submit the unredacted versions under seal.

Basis for Relief

8. Section 105(a) of the Bankruptcy Code codifies the Court's inherent 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). Furthermore, pursuant to section 107(b)(1) of the Bankruptcy Code, the Court may authorize the Debtors to redact the Confidential Information

from the filed version of the Stipulations and file the unredacted Stipulations under seal. *See* 11 U.S.C. § 107(b). Specifically, section 107(b) provides, in relevant part, that:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information

11 U.S.C. § 107(b).

9. Bankruptcy Rule 9018 sets forth the procedures by which a party may obtain a protective order authorizing the filing of a document under seal. Bankruptcy Rule 9018 provides, in relevant part, that “[o]n motion, or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information” Fed. R. Bankr. P. 9018.

10. The Second Circuit has acknowledged that section 107(b) of the Bankruptcy Code creates an exception to the general rule that court records are open to examination by the public. *See Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994). However, the court has also acknowledged that, unlike its counterpart Rule 26(c) of the Federal Rules of Civil Procedure, section 107(b) of the Bankruptcy Code does not require the entity seeking protection to demonstrate “good cause.” *Id.* Rather, if the material sought to be protected satisfies one of the categories identified in section 107(b), the court is required to protect the requesting party and has no discretion to deny the request. *Id.* at 27 (holding that, once the court determines that a party is seeking protection of information that falls within the ambit of section 107(b), “the court is required to protect a requesting interested party and has no discretion to deny the application”).

11. Thus, under section 107(b) of the Bankruptcy Code, an interested party has to show only that the information it wishes to protect is “‘confidential’ and ‘commercial’ in nature.” *Id.* Such information, however, need not rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. *Id.* at 28.

12. Courts have also held that the sealing order under section 107(b) should be as broad as “justice requires.” *In re Glob. Crossing, Ltd.*, 295 B.R. 720, 724 (Bankr. S.D.N.Y. 2003). Indeed, the courts’ “authority goes not just to the protection of confidential documents, but to other confidentiality restrictions that are warranted in the interests of justice.” *Id.* “Courts have supervisory powers over their records and files and may deny access to those records and files to prevent them from being used for an improper purpose.” *In re Kaiser Aluminum Corp.*, 327 B.R. 554, 560 (D. Del. 2005).

13. The Confidential Information is both “commercial” and “confidential,” thus falling squarely within the scope of information that is protected by section 107(b)(1) of the Bankruptcy Code and Bankruptcy Rule 9018. In granting motions to seal “commercial information,” courts have defined this term as “information which would result in ‘an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.’” *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006). *See also Glob. Crossing, Ltd.*, 295 B.R. at 725 (finding that the purpose of Bankruptcy Rule 9018 is to “protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury”).

14. Disclosure of the Confidential Information could reasonably be expected to cause harm to the Debtors and jeopardize their goals in these chapter 11 cases by permitting the Debtors’ competitors to gain insight into the Debtors’ cost structure, thereby allowing them to

pressure the Debtors' aircraft lenders and lessors for matching concessions. For this reason, many of the Counterparties themselves have requested the filing under seal of the Confidential Information. If the Debtors are not successful in protecting sensitive information of the Counterparties, it will inhibit the Debtors' ability to enter into further agreements with the Counterparties and other counterparties, which thus far the Debtors have been able to do quickly and consensually (and to the substantial benefit of the Debtors' estates).

15. Importantly, the redactions are limited and tailored to protect only specific information whose publication could reasonably be expected to have adverse consequences to the Debtors in ongoing and future negotiations. This will serve to both minimize the quantity of redacted information while maximizing value for the Debtors' estates.

16. In a comparable context earlier in the Debtors' chapter 11 cases, this Court allowed the sealing of specific commercial information included in exhibits to stipulations between the Debtors and aircraft lease counterparties. *In re Grupo Aeroméxico, S.A.B. de C.V.*, Case No. 20-11563 (SCC) (Bankr. S.D.N.Y. Sept. 21, 2020) [ECF No. 397]

17. Courts in other cases also regularly allow the sealing of information which, if disclosed, could assist the Debtors' competitors or counterparties in negotiations against the Debtors. *See, e.g.*; *In re LATAM Airlines Group S.A.*, Case No. 20-11254 (JLG) (Bankr. S.D.N.Y. Jul. 10, 2020) [ECF No. 514]; *In re Avianca Holdings S.A.*, Case No. 20-11133 (MG) (Bankr. S.D.N.Y. Jul. 7, 2020) [ECF No. 390]; *In re Republic Airways Holdings Inc.*, Case No. 16-10429 (Bankr. S.D.N.Y. Dec. 8, 2016) (SHL) [ECF Nos. 1031, 1271] (granting sealing motions with respect to section 1110 aircraft stipulation and amendments to loan agreement on the basis that the information contained therein would be highly valuable to the debtors' aircraft lenders and lessors who may seek to use the information to gain a commercial advantage over

the debtors); *In re Northwest Airlines Corp.*, Case No. 05-17930 (Bankr. S.D.N.Y. Nov. 10, 2005) (ALG) [ECF No. 1003] (order establishing procedures for filing section 1110 stipulations with aircraft counterparties under seal); *In re Delta Air Lines, Inc.*, Case No. 05-17923 (Bankr. S.D.N.Y. Nov. 1, 2005) (PCB) [ECF No. 994] (same). Therefore, the Debtors submit that the Confidential Information should be filed under seal pursuant to section 107(b) of the Bankruptcy Code.

18. The Debtors further submit that the Confidential Information should be sealed pursuant to section 105(a). Section 105(a) authorized the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” The Bankruptcy Code recognized that “the public right to access is not absolute.” *In re Georgetown Steel Co.*, 306 B.R. at 546. The Debtors respectfully submit that a balance must be found between the need to protect this sensitive and confidential commercial information with the goal of transparency in the bankruptcy process. Accordingly, the Debtors propose to file unredacted copies of the Stipulations with the Court under seal and to share unredacted versions, on a strictly confidential basis, with (a) the Office of the U.S. Trustee and (b) the Committee’s advisors on the “Professionals Eyes Only” basis.

Motion Practice

19. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Rule 9013-1(a).

Waiver of Bankruptcy Rule 6004(h)

20. To implement the foregoing successfully, the Debtors respectfully request that the Court enter an order providing that the Debtors have established cause to exclude the relief requested herein from the fourteen (14) day stay period provided under Bankruptcy Rule 6004(h).

Notice

21. Notice of this Motion will be provided to (a) the U.S. Trustee, (b) each of the Debtors' 30 largest unsecured creditors on a consolidated basis, (c) counsel to the Committee; (d) each of the Debtors' five largest secured creditors on a consolidated basis, (e) the Internal Revenue Service, (f) the United States Attorney's Office for the Southern District of New York, (g) any party that has requested notice pursuant to Bankruptcy Rule 2002, (h) the Securities and Exchange Commission; (i) the Federal Aviation Administration; and (j) each Counterparty listed on the Stipulations. A copy of this Motion and any order approving it will also be made available on the Debtors' Case Information Website located at <https://dm.epiq11.com/aeromexico>. In light of the nature of the relief requested in this Motion, the Debtors respectfully submit that no further notice is necessary.

No Prior Request

22. No prior motion for the relief requested herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Stipulations, substantially in the form attached hereto, granting the relief requested herein and such other and further relief as the Court deems just and proper.

[Remainder of Page Intentionally Left Blank]

Dated: New York, New York
October 30, 2020

DAVIS POLK & WARDWELL LLP

By: /s/ Timothy Graulich

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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 THE DEBTORS TO PARTIALLY REDACT
STIPULATIONS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of Grupo Aeroméxico, S.A.B. de C.V. and its affiliates that are debtors and debtors in possession in these cases (collectively, the “**Debtors**”) for entry of an order (this “**Order**”), pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rules 9013-1(a) and 9018-1, authorizing the Debtors to file under seal various stipulations and orders between the Debtors and counterparties concerning certain Equipment (the “**Stipulations**”), as more fully set forth in the Motion; 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 being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, 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;

¹ The Debtors in these cases, along with the 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.

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

and upon the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and the Court having determined the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtors are authorized (a) to file the Stipulations on the public docket of this case in their redacted form and (b) to file the unredacted versions of the Stipulations by delivering to the Clerk of the Court a copy of this Order and either a hard or an electronic copy of the Stipulations, in each case clearly labeled “TO BE FILED UNDER SEAL.”
3. The unredacted Stipulations shall remain confidential and shall not be made available to anyone without the prior written consent of the Debtors other than (a) the Office of the United States Trustee for the Southern District of New York on a strictly confidential basis, (b) the Committee’s advisors on a “Professionals Eyes Only” basis, and (c) the Debtors’ post-petition lenders on a “Professionals Eyes Only” basis.
4. The Debtors and any party authorized to receive the Stipulations pursuant to this Order shall be authorized and directed, subject to Local Rule 9018-1(c), to redact specific reference to information included in the Stipulations from any pleadings filed on the public docket of these chapter 11 cases.
5. Entry of this Order is without prejudice to the rights of any party in interest in the chapter 11 cases or the U.S. Trustee to seek an order of this Court unsealing all or part of the Stipulations or Confidential Information.

6. The Clerk of the Court is authorized to destroy the Stipulations at the conclusion of these chapter 11 cases.

7. This Order is without prejudice to the rights of any party interest, including the U.S. Trustee, to seek to unseal the Stipulations, or any part thereof.

8. Notwithstanding Bankruptcy Rule 6004(h), this Order is immediately effective and enforceable upon its entry.

9. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order.

10. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Date: _____, 2020

THE HONORABLE SHELLEY C.
CHAPMAN
UNITED STATES BANKRUPTCY JUDGE