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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re: :
EOS AIRLINES, INC. : **CHAPTER 11**
Debtor : **CASE NO. 08-22581 (ASH)**
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**MOTION FOR ENTRY OF AN ORDER (A) APPROVING ADEQUACY
OF DISCLOSURE STATEMENT; (B) FIXING A VOTING RECORD
DATE; (C) ESTABLISHING PROCEDURES FOR SOLICITATION AND
TABULATION OF VOTES TO ACCEPT OR REJECT THE PLAN;
(D) APPROVING FORM OF SOLICITATION PACKAGE AND NOTICES;
AND (E) SCHEDULING CERTAIN DATES IN CONNECTION THEREWITH**

Eos Airlines, Inc., the above-captioned debtor and debtor-in-possession (the “Debtor”), hereby submits this motion (the “Motion”) for entry of an order pursuant to sections 105(a), 502, 1123(a), 1124, 1125, 1126, and 1128 of title 11 of the United States Code, 11 U.S.C. §§ 101-1130 (the “Bankruptcy Code”) and Rules 2002, 3001, 3016, 3017, 3018 and 3020 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (a) approving the adequacy of the *Debtor’s Disclosure Statement Regarding Plan of Liquidation* (as may be amended or supplemented and including all exhibits and supplements thereto, the “Disclosure Statement”) for the *Debtor’s Plan of Liquidation* (as may be amended or supplemented and including all



exhibits and supplements thereto, the “Plan”)¹, pursuant to section 1125 of the Bankruptcy Code, (b) fixing a voting record date pursuant to Bankruptcy Rule 3017 and 3018, (c) establishing procedures for solicitation and tabulation of votes (the “Solicitation Procedures”) to accept or reject the Plan, (d) approving the form of the Solicitation Package (as defined below) and the notices to be distributed with respect thereto, and (e) scheduling certain dates, including the following: (i) scheduling a hearing to confirm the Plan (the “Confirmation Hearing”); (ii) establishing deadlines for filing objections, if any, to the Plan (the “Plan Objection Deadline”); and (iii) establishing the deadline for receipt of Ballots to accept or reject the Plan (the “Voting Deadline”).

Specifically, the Debtor proposes the following schedule:

| | |
|-------------------|---|
| November 25, 2008 | Voting Record Date |
| December 8, 2008 | Target Deadline for Distribution of Solicitation Packages |
| January 5, 2009 | Plan Objection Deadline |
| January 6, 2009 | Voting Deadline |
| January 15, 2009 | Confirmation Hearing |

In further support of the Motion, the Debtor respectfully represents as follows:

Jurisdiction

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief sought herein are sections 105(a), 502, 1123(a), 1124, 1125, 1126 and 1128 of the Bankruptcy Code, Rules 2002, 3001, 3016, 3017,

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the Plan, filed before this Court on October 24, 2008 [Doc. 338].

3018 and 3020 of the Bankruptcy Rules, and Rules 3017-1, 3018-1 and 3020-1 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”).

Background

3. On April 26, 2008 (the “Petition Date”), the Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code. On May 8, 2008 the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors (the “Committee”). The Debtor continues to operate and manage its business, as debtor-in-possession, pursuant to 11 U.S.C. §§ 1107 and 1108.

4. On October 24, 2008, the Debtor filed the Plan and the Disclosure Statement. The Plan is a liquidating plan providing generally for the transfer of all property of the Debtor’s estate to a trust (the “Trust”) for ultimate distribution to holders of Allowed Claims in accordance with the absolute priority rule.

Relief Requested

5. By this Motion, the Debtor respectfully requests, among other things, that this Court enter an order (the “Disclosure Statement Order”), in substantially the same form attached hereto as Exhibit A, (a) approving the adequacy of the Disclosure Statement, (b) fixing a Voting Record Date, (c) establishing Solicitation Procedures to accept or reject the Plan, (d) approving the form of the Solicitation Package and the notices to be distributed with respect thereto, (e) scheduling certain dates, including the following: (i) the Confirmation Hearing; (ii) the Plan Objection Deadline; and (iii) the Voting Deadline.

Basis for the Relief Requested

I. *Approval of Adequacy of Disclosure Statement*

6. Section 1125(b) of the Bankruptcy Code requires that a plan proponent provide “adequate information” regarding a debtor’s proposed plan of reorganization. In particular, section 1125(a)(1) of the Bankruptcy Code states:

‘[A]dequate information’ means information of a kind, and in sufficient detail, as far as is reasonably practicable in light on the nature and history of the debtor and the condition of the debtor’s books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan.

11 U.S.C. § 1125(a)(1). The primary purpose of a disclosure statement is to provide information that is “reasonably practicable” to permit an “informed judgment” by creditors and interest holders concerning the debtor’s plan. *In re Momentum Mfg. Corp.*, 25 F.3d 1132, 1136 (2d Cir. 1994); *see also Century Glove, Inc. v. First Am. Bank of New York*, 860 F.2d 94, 100 (3d Cir. 1988) (“... § 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote.”); *In re Phoenix Petroleum, Co.*, 278 B.R. 385, 392 (Bankr. E.D. Pa. 2001). Congress anticipated that such informed judgments would be needed to both negotiate over and vote on a plan of reorganization. *Century Glove*, 860 F.2d at 100.

7. In examining the adequacy of the information contained in a disclosure statement, the Court has broad discretion. *See Kirk v. Texaco, Inc.*, 82 B.R. 678, 682 (S.D.N.Y. 1988) (“The legislative history could hardly be more clear in granting broad discretion to bankruptcy judges under § 1125(a) . . .”); *see also In re Texas Extrusion Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988) (“The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court.”). This discretion provides flexibility and facilitates the effective exit strategies of the different types of chapter 11 debtors by accommodating the varying circumstances accompanying chapter 11 cases.

See H.R. REP. NO. 595, 95TH CONG., 1ST SESS. 408-09 (1977) (“Precisely what constitutes adequate information in any particular instance will develop on a case-by-case basis. *Courts will take a practical approach as to what is necessary under the circumstances of each case, such as the cost of preparation of the statements, the need for relative speed in solicitation and confirmation . . .*”) (emphasis added).

8. Courts evaluate whether a disclosure statement contains adequate information on a case by case basis, based on the facts and circumstances of each case. *See Talarico v. Thomas Crimmins Contracting Co., Inc.*, No. 94-CIV-0420, 1995 U.S. Dist. LEXIS 10053, at *15 (S.D.N.Y. July 14, 1995); *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 979 (Bankr. N.D.N.Y. 1998) (adequacy of a disclosure statement “is to be determined on a case-specific basis under a flexible standard”); *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3rd Cir. 1988).

9. The determination should take account of expertise and resources, including outside advisors and relevant information already possessed or publicly available, of the hypothetical investor of each class of claims or interests in the case from which classes the acceptance or rejection of the Plan is solicited after the commencement of the case. *See In re Zenith Elecs. Corp.*, 241 B.R. 92, 99-100 (Bankr. D. Del. 1999).

10. The Disclosure Statement is the product of the Debtor’s extensive review and analysis of the circumstances leading to the commencement of the Chapter 11 Case, the Chapter 11 Case itself, and a thorough analysis of the Plan. In drafting the Disclosure Statement, the Debtor sought the assistance and input of its financial and legal advisors. The Debtor also sought comments on the Plan and Disclosure Statement from the retained professionals for the Committee. Moreover, throughout the course of the Chapter 11 Case, the Debtor has provided

substantial information to various parties and their retained professionals, including, but not limited to, the Committee, and other constituents that have requested information.

11. The Disclosure Statement contains the pertinent information necessary for holders of Claims and Equity Interests to make an informed decision about whether to vote to accept or reject the Plan, including, among other things, information regarding: (a) the Plan; (b) the history of the Debtor, including certain events leading to the commencement of the Chapter 11 Case; (c) the operation of the Debtor's business, the liquidation of the Debtor's assets and significant events during the Chapter 11 Case; (d) the Debtor's pre-petition capital structure; (e) certain risk factors to consider that may affect the Plan; (f) the contemplated administration of the Trust; (g) certain federal income tax law consequences of the Plan; (h) the classification and treatment of Claims and Equity Interests; (i) the provisions governing Distributions under the Plan; (j) the means for implementation of the Plan; (k) the treatment of litigation; and (l) a disclaimer indicating that no statements or information concerning the Debtor and its assets are authorized other than those set forth in the Disclosure Statement.

12. The Debtor respectfully submits that the Disclosure Statement complies with all aspects of section 1125 of the Bankruptcy Code. The Debtor will demonstrate at the Disclosure Statement Hearing that the Disclosure Statement addresses the information set forth above in a manner that provides holders of Claims and Equity Interests that are entitled to vote to accept or reject the Plan with adequate information within the meaning of section 1125 of the Bankruptcy Code and should therefore be approved. Further, the Disclosure Statement provides Creditors and parties in interest with sufficient notice regarding the discharge injunction, exculpation and third-party release provisions contained in the Plan, as required by Bankruptcy Rule 3016(c).

13. Local Rule 3017-1(a) provides that in all large chapter 11 cases, the disclosure statement must contain the following statement until it has been approved by the court: THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE COURT. The Disclosure Statement prominently contains the requisite language.

14. Moreover, the Debtor will serve copies of this Motion and the related notice of filing on all parties required to receive notice by Bankruptcy Rules 2002 and 3017. The Court has already set November 25, 2008 at 11:30 a.m. prevailing Eastern Time as the hearing date for approval of the Disclosure Statement. The objection deadline and hearing date with respect to the Disclosure Statement comply with the notice requirements of Bankruptcy Rule 2002(b).

II. *Establishment of a Voting Record Date*

15. Bankruptcy Rule 3017(c) provides, in relevant part, that “on or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation.” Bankruptcy Rule 3017(d) provides that, for purposes of voting on a plan of reorganization under chapter 11 of the Bankruptcy Code, “creditors and equity security holders shall include holders of stocks, bonds, debentures, notes and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.” Bankruptcy Rule 3018(a) provides that “an equity security holder or creditor whose claim is based on a security of record [must be] the holder of record of the security on the date

the order approving the disclosure statement is entered or on another date fixed by the court.” Accordingly, the Debtor requests that the Court set November 25, 2008 as the Voting Record Date for purposes of Bankruptcy Rules 3017 and 3018.

III. *Solicitation Procedures and Forms of Solicitation Documents and Notices*

16. To conduct an effective solicitation of acceptances or rejections of the Plan, consistent with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and due process, the Debtor seeks approval of the Solicitation Procedures set forth in Exhibit 1 to the proposed Disclosure Statement Order and which are incorporated by reference as though fully set forth herein. The Debtor believes that the Solicitation Procedures are well-designed and specifically tailored to effectively solicit acceptances or rejections of the Plan. To the extent that circumstances require a further modification or amendment of the Solicitation Procedures, the Debtor reserves the right to supplement or amend the Solicitation Procedures to better facilitate the solicitation process.

A. *Duties of Voting Agent*

17. In connection with the solicitation of votes with respect to the Plan, the Debtor intends that Kurtzman Carson Consultants LLC (“KCC”) act as the Debtor’s voting agent (the “Voting Agent”).² The Debtor expects that the Voting Agent will be authorized and directed, in conjunction with the Debtor, to assist the Debtor in (i) distributing the Solicitation Packages, (ii) receiving, tabulating and reporting on Ballots cast for or against the Plan by holders of Claims and Equity Interests against the Debtor, (iii) responding to inquiries from Creditors, holders of Equity Interests and other parties in interest relating to the Plan, the Disclosure Statement, the Ballots, the Solicitation Procedures, and all other Solicitation Package materials and matters

² At the time of the filing of this Motion, the Debtor has not yet obtained authority to retain KCC as the Voting Agent, but is filing a motion substantially contemporaneously herewith seeking such authority.

related thereto, including, without limitation, the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan, (iv) soliciting votes on the Plan, and (v) if necessary, contacting Creditors and holders of Equity Interests regarding the Plan.

B. *Establishing the Voting Deadline*

18. The Debtor requests that the Court establish 5:00 p.m. (Pacific Time) on January 6, 2009 as the Voting Deadline. In order for votes to be counted, all Ballots must be properly executed, completed and delivered as specified in Section B of the Solicitation Procedures by the Voting Deadline. The Confirmation Hearing Notice (defined below) prominently states the Voting Deadline date and time.

C. *Approval of Solicitation Packages and Procedures for Distribution Thereof*

19. Bankruptcy Rule 3017(d) sets forth the materials that must be provided to holders of claims and equity interests entitled to vote for purpose of soliciting their votes and providing adequate notice of a plan confirmation hearing. Specifically, Bankruptcy Rule 3017(d) provides, in relevant part, that:

Upon approval of a disclosure statement, - except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders – the debtor in possession ...shall mail to all creditors and equity security holders, and in a chapter 11 reorganization case shall transmit to the United States trustee,

- a) the plan or a court-approved summary of the plan;
- b) the disclosure statement approved by the court;
- c) notice of the time within which acceptances and rejections of such plan may be filed; and
- d) any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion.

In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders

in accordance with Rule 2002(b), and a form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan.

Fed. R. Bankr. P. 3017(d).

20. The Debtor proposes that by December 8, 2008, the materials required by Bankruptcy Rule 3017(d) and specified in Section C.1 of the Solicitation Procedures (collectively, the “Solicitation Package”) will be distributed to those parties entitled to vote on the Plan in the form and manner set forth in Section C.2 of the Solicitation Procedures.

21. All parties in interest on the 2002 List (as defined below) as of the Voting Record Date and all parties entitled to vote to accept or reject the Plan shall be served with the Disclosure Statement Order, the Disclosure Statement and all exhibits to the Disclosure Statement, including the Plan. The Solicitation Package can also be obtained by any party by accessing the Voting Agent’s website at www.kccllc.net/eosairlines.

22. Moreover, all parties entitled to vote to accept or reject the Plan shall receive a package containing the Solicitation Notice, a personalized Ballot and the Solicitation Procedures. The Debtor’s proposed form of letter to the holders of Claims in Class 4, the only Class entitled to vote under the Plan, is attached as Exhibit 2 to the proposed Disclosure Statement Order.

23. The Debtor submits that the distribution procedures described above and set forth in the Solicitation Procedures satisfy the requirements of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

D. *Approval of Form of Ballot*

24. Bankruptcy Rule 3018(c) provides, in relevant part, as follows:

An acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent, and conform to the appropriate Official Form.

Fed. R. Bankr. P. 3018(c).

25. The Debtor, in accordance with Bankruptcy Rule 3018(c), will prepare and customize a Ballot (in substantially the form of the Ballot attached as Exhibit 3 to the proposed Disclosure Statement Order) for Class 4, the only Class that entitled to vote to accept or reject the Plan. The Debtor submits that the form of the Ballot complies with Bankruptcy Rule 3018(c) and is based substantially on Official Form No. 14. However, the form of Ballot has been modified to address the particular needs of this Chapter 11 Case.

26. By this Motion, the Debtor seeks approval of the Ballot, and requests authority to distribute the Ballot to the voting Creditors in the Impaired Class.

E. *Approval of Form of Non-Voting Status Notices*

27. As reflected in Section 4 of the Plan, certain Classes of Claims and Equity Interests under the Plan are not entitled to vote to accept or reject the Plan because such Classes (a) are Unimpaired within the meaning of section 1124 of the Bankruptcy Code and therefore are deemed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code,³ (b) are Impaired pursuant to section 1124 of the Bankruptcy Code but, by agreement, are deemed to accept the Plan, or (c) are receiving no distribution under the Plan and therefore are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code.⁴ Instead, these Creditors and holders of Equity Interests, along with holders of Claims that are unclassified pursuant to section 1123(a)(1) of the Bankruptcy Code, will receive the Non-Voting Status Notices (as defined below), together with the Confirmation Hearing Notice.

³ Section 1126(f) of the Bankruptcy Code provides: “Notwithstanding any other provision of this section, a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.” 11 U.S.C. § 1126(f).

⁴ Section 1126(g) of the Bankruptcy Code provides: “Notwithstanding any other provisions of this section, a class is deemed to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests.” 11 U.S.C. § 1126(g).

28. Consistent with section 1126 of the Bankruptcy Code and Bankruptcy Rule 3017(d) and in an effort to conserve the resources of the Debtor's Estate, unless specifically requested, the Debtor proposes that it not be required to send Solicitation Packages to those Creditors and holders of Equity Interests who are not entitled to vote on the Plan. These Creditors and holders of Equity Interests have been placed in Classes under the Plan that are deemed to either accept or reject the Plan under section 1126 of the Bankruptcy Code. The Debtor will send these Creditors and holders of Equity Interests, and Creditors with Unclassified Claims in accordance with section 1123(a)(1) of the Bankruptcy Code, both a Confirmation Hearing Notice and one of the following additional notices: (i) *Notice of Non-Voting Status with Respect to Unimpaired Classes Deemed to Accept the Plan, Impaired Classes Deemed to Accept the Plan, and Unclassified Classes*, or (ii) *Notice of Non-Voting Status with Respect to Impaired Classes Deemed to Reject the Plan*, as applicable, each substantially in the form attached to the proposed Disclosure Statement Order as Exhibits 4 and 5, respectively (collectively, the "Non-Voting Status Notices"). The Non-Voting Status Notices set forth the manner in which a copy of the Plan and Disclosure Statement may be obtained by the recipients. The Debtor submits that such notice satisfies the requirements of the Bankruptcy Code and the Bankruptcy Rules.

F. *Approval of Disputed Claims Notice and Procedures for Temporary Allowance of Claims*

29. Bankruptcy Rule 3018(a) provides that "the court after notice and hearing may temporarily allow [an objected to] claim or interest in an amount which the court deems proper for the purposes of accepting or rejecting a plan." Fed. R. Bankr. P. 3018(a).

30. The Debtor proposes that the Court approve the procedures set forth in Section D.4 of the Solicitation Procedures regarding temporary allowance of Claims for voting purposes only. Specifically, if an objection to a Claim or Equity Interest is pending on the Voting Record

Date, such Claim or Equity Interest holder shall receive a copy of the Confirmation Hearing Notice and a *Notice of Non-Voting Status with Respect to Disputed Claims* (the “Disputed Claim Notice”), substantially in the form attached as Exhibit 6 to the proposed Disclosure Statement Order, in lieu of a Solicitation Package. The Disputed Claim Notice shall inform such person or entity that its Claim has been objected to, and that the holder of such Claim cannot vote unless one or more of the following has taken place at least five (5) Business Days before the Voting Deadline: (i) an order is entered by the Bankruptcy Court allowing such Disputed Claim pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing; (ii) an order is entered by the Bankruptcy Court temporarily allowing such Disputed Claim for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing; (iii) a stipulation or other agreement is executed between the holder of the Disputed Claim and the Debtor resolving the objection and allowing the Disputed Claim in an agreed upon amount; (iv) a stipulation or other agreement is executed between the holder of the Disputed Claim and the Debtor temporarily allowing the holder of the Disputed Claim to vote its Claim in an agreed upon amount; or (v) the pending objection to the Disputed Claim is voluntarily withdrawn by the Debtor (each, a “Resolution Event”). No later than two (2) business days after a Resolution Event, the Voting Agent shall distribute a Solicitation Package and a pre-addressed, postage pre-paid envelope to the relevant holder of the Disputed Claim, which must be returned to the Voting Agent by no later than the Voting Deadline.

31. If an objection to a Claim is filed by the Debtor after the Voting Record Date but before fifteen (15) days prior to the Confirmation Hearing, the Ballot of such Claim will not be counted unless a Resolution Event takes place. Nothing in the Solicitation Procedures shall

affect the Debtor's right to object to any Proof of Claim on any other ground or for any other purpose.

32. The Debtor proposes that the Court approve the procedures described in Section D.4 of the Solicitation Procedures for handling the types of Claims described above.

G. *Voting and General Tabulation Procedures*

33. The Debtor respectfully requests that the Court approve the voting and tabulation procedures described in Section D of the Solicitation Procedures, in accordance with section 1126(c) of the Bankruptcy Code and Bankruptcy Rule 3018(a). Section 1126(c) of the Bankruptcy Code provides:

A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected the plan.

11 U.S.C. § 1126(c).

34. The Plan contemplates Impaired Classes that will be entitled to vote on the Plan.⁵ The Debtor respectfully requests that the Court order that only those holders of Claims specified in Section D.1 of the Solicitation Procedures are entitled to vote to accept or reject the Plan.

35. The Debtor further proposes, with respect to tabulating votes, that the Court approves the hierarchy described in Section D.2 of the Solicitation Procedures to be used to determine the Claim amount associated with each Creditor's vote. The Debtor requests that the Claim amount established pursuant to Section D.2 of the Solicitation Procedures control for voting purposes only and not constitute the Allowed amount of any Claim.

⁵ Any description herein of the terms of the Plan are subject to, and limited by, the further detail, disclosure and discussion in the Disclosure Statement. To the extent that there are any discrepancies between this Motion and the Disclosure Statement, the latter, as supplemented by the Plan, controls in all respects. In addition, Classes contained in the Plan are subject to revision and/or alteration, and the Debtor reserves the right to amend such Classes, consistent with the Bankruptcy Code and the Bankruptcy Rules.

36. Furthermore, the Debtor proposes that the voting procedures and standard assumptions listed in Section D of the Solicitation Procedures be used in tabulating ballots and requests Court approval of same.

H. *Returned Solicitation Packages or Notices*

37. The Debtor anticipates that some of the notices regarding the Disclosure Statement Hearing that are sent to Creditors and holders of Equity Interests of the Debtor may be returned by the United States Postal Service or other carrier as undeliverable. The Debtor believes that it would be costly and wasteful to mail Solicitation Packages to the same addresses to which undeliverable notices were mailed. Therefore, the Debtor seeks the Court's approval for a departure from the strict notice rule, excusing the Debtor from mailing Solicitation Packages to those entities for which notices of the Disclosure Statement Hearing were returned as undeliverable. If a Creditor has changed its mailing address after the date the Solicitation Packages are mailed out, the burden shall be on the Creditor or party in interest, not the Debtor, to advise the Voting Agent of the new address.⁶

38. The Debtor believes that the requested procedures and other relief requested herein are cost-effective, provide adequate notice and an opportunity to be heard, and are in the best interests of the Debtor's Estate, its Creditors, and other parties in interest. Accordingly, the Debtor submits that it has shown good cause for the relief requested herein.

⁶ The Debtor and its claims agent have diligently updated the Claims database as they have been informed of address corrections or changes by parties in interest.

IV. *Establishing Notice and Objection Procedures in Respect of Confirmation of the Plan*

A. *Setting the Confirmation Hearing*

39. Bankruptcy Rule 3017(c) provides: “On or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation.” Fed. R. Bankr. P. 3017(c).

40. In accordance with Bankruptcy Rule 3017(c) and section 1128 of the Bankruptcy Code (requiring a plan confirmation hearing), the Debtor requests that the Confirmation Hearing be scheduled at 10:15 a.m. (prevailing Eastern Time) on January 15, 2009, which is approximately 39 days after December 8, 2008, the date by which the Debtor proposes to complete distribution of the Solicitation Package to voting Creditors, which date may be continued from time to time by the Court or the Debtor without further notice other than adjournments announced in open court. The proposed timing for the Confirmation Hearing is in compliance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules and will enable the Debtor to pursue confirmation of the Plan in a timely fashion in order to ensure confirmation and consummation of the Plan within the timeframe contemplated by the Debtor and the Committee.

B. *Approval of the Form of Confirmation Hearing Notice*

41. Bankruptcy Rule 2002(b) and (d) requires not less than twenty-five (25) days’ notice to all Creditors and holders of Equity Interests of the time fixed for filing objections and the hearing to consider confirmation of a chapter 11 plan. The Solicitation Package includes the Confirmation Hearing Notice required by Bankruptcy Rules 2002 and 3017(d) setting forth the time set for filing objections to confirmation of the Plan and the date of the Confirmation Hearing. The Confirmation Hearing Notice contains, among other things: (a) the Confirmation

Hearing date and time; (b) the Voting Record Date; (c) the Voting Deadline; (d) the Plan Objection Deadline; (e) the temporary allowance of Claims procedures; and (f) a disclosure regarding the third-party release, injunction and exculpation provisions in the Plan. Additionally, the Confirmation Hearing Notice shall inform the parties that the Plan, the Disclosure Statement, the Disclosure Statement Order and all other Solicitation Package materials can be obtained by requesting a copy from the Debtor's Voting Agent.

42. The Debtor submits that the foregoing procedure will provide adequate notice of the Confirmation Hearing and accordingly, request that the Court approve the Confirmation Hearing Notice, substantially in the form attached to the proposed Disclosure Statement Order as Exhibit 7.

D. *Establishing Procedures for Filing Objections to Confirmation of the Plan*

43. Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed and served "within a time fixed by the court." Fed. R. Bankr. P. 3020(b)(1). Local Rule 3020-1 further provides that objections to confirmation of a plan must be submitted "no later than three days prior to the first date set for the hearing to consider confirmation of the plan."

44. The Confirmation Hearing Notice provides, and the Debtor requests that this Court direct that, objections to confirmation of the Plan or proposed modifications of the Plan, if any, must:

- a) be in writing;
- b) conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court;
- c) state the name and address of the objecting party and the amount and nature of the Claim or Equity Interest of such party;

- d) state with particularity the basis and nature of any objection to the Plan and, if practicable, proposed modification to the Plan that would resolve such objection; and
- e) be filed, together with proof of service, with the Court and served so that they are actually received by the Notice Parties identified in the Confirmation Hearing Notice, no later than 4:00 p.m. (prevailing Eastern Time) on January 5, 2009 (the “Plan Objection Deadline”).

45. The proposed timing for filing and service of objections and proposed modifications, if any, will afford the Court, the Debtor and other parties in interest sufficient time to consider the objections and proposed modifications prior to the Confirmation Hearing.

Memorandum of Law

46. This Motion includes citations to the applicable authorities and a discussion of their application to this Motion. Accordingly, the Debtor respectfully submits that such citations and discussion satisfy the requirements that the Debtor submits a separate memorandum of law in support of this Motion pursuant to Local Rule 9013-1.

Notice

47. Notice of this Motion has been given to (i) United States Bankruptcy Judge Adlai S. Hardin’s Chambers; (ii) Office of the United States Trustee for the Southern District of New York; (iii) counsel for the Committee; and (iv) those parties who have filed requests for notice under Bankruptcy Rule 2002 (the “2002 List”). In light of the nature of the relief requested, the Debtor submits that no further notice is required.

No Prior Request

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

CONCLUSION

WHEREFORE, the Debtor requests entry of the order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein, and such other and further relief as is just.

Dated: October 30, 2008

SQUIRE, SANDERS & DEMPSEY L.L.P.

/s/ Tim J. Robinson

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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| In re: | : |
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| EOS AIRLINES, INC. | : |
| | : |
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| Debtor | : |
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**ORDER (A) APPROVING ADEQUACY OF DISCLOSURE STATEMENT;
(B) FIXING A VOTING RECORD DATE; (C) ESTABLISHING PROCEDURES FOR
SOLICITATION AND TABULATION OF VOTES TO ACCEPT OR REJECT THE
PLAN; (D) APPROVING FORM OF SOLICITATION PACKAGE AND NOTICES;
AND (E) SCHEDULING CERTAIN DATES IN CONNECTION THEREWITH**

Upon the motion (the “Motion”),¹ dated October 30, 2008, of Eos Airlines, Inc., debtor and debtor-in-possession in the above-captioned proceeding (the “Debtor”), seeking entry of an order (a) approving the adequacy of the Disclosure Statement regarding the Debtor’s Plan, (b) fixing a Voting Record Date, (c) establishing procedures for solicitation and tabulation of votes to accept or reject the Plan, (d) approving the form of the Solicitation Package and the notices to be distributed with respect thereto, and (e) scheduling certain dates, including the following: (i) the Confirmation Hearing; (ii) establishing deadlines for filing objections, if any, to the Plan; and (iii) establishing the Voting Deadline for receipt of Ballots to accept or reject the Plan; and it

¹ Defined terms used herein but not defined herein have meanings ascribed to such terms in the Motion.

appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due, adequate and sufficient notice of the Motion having been given, and it appearing that no other notice need be given; and after due deliberation and sufficient cause appearing therefore, it is hereby:

ORDERED, that the Motion is GRANTED; and it is further

ORDERED, that the Disclosure Statement complies with all aspects of section 1125 of the Bankruptcy Code and Local Rule 3017-1(a) and it is hereby APPROVED as containing adequate information, as defined by section 1125(a) of the Bankruptcy Code; and it is further

ORDERED, that the Debtor has provided adequate notice of the time fixed for filing objections and the hearing to consider approval of the Disclosure Statement in accordance with Bankruptcy Rules 2002 and 3017 and Local Rule 3020-1; and it is further

ORDERED, that the Disclosure Statement provides Creditors, holders of Equity Interests and parties in interest with sufficient notice regarding the injunction, exculpation and third-party release provisions contained in the Plan in compliance with Bankruptcy Rule 3016(c); and it is further

ORDERED, that any objections to approval of the Disclosure Statement which were not withdrawn at or prior to the Disclosure Statement Hearing be, and hereby are, overruled; and it is further

ORDERED, that **November 25, 2008** shall be the Voting Record Date for determining: (a) the Creditors and holders of Equity Interests that are entitled to receive the Solicitation Package pursuant to the Solicitation Procedures; (b) the Creditors and holders of Equity Interests

entitled to vote to accept or reject the Plan; and (c) whether Claims or Equity Interests have been properly transferred to an assignee pursuant to Bankruptcy Rule 3001(e) such that the assignee can vote as the holder of the Claim or Equity Interest; and it is further

ORDERED, that the Voting Deadline shall be **January 6, 2009 at 5:00 p.m. (Pacific Time)**; and it is further

ORDERED, that the Solicitation Procedures attached hereto as Exhibit 1, and incorporated by reference herein, are hereby approved, provided, however, the Debtor reserves the right, subject to Court approval, to further amend or supplement the Solicitation Procedures to better facilitate the solicitation process; and it is further

ORDERED, that the procedures for distribution of the Solicitation Package set forth in the Solicitation Procedures satisfy the requirements of the Bankruptcy Code and the Bankruptcy Rules and the Debtor are directed to distribute or cause to be distributed Solicitation Packages to all parties in interest on the 2002 List as of the Voting Record Date and all parties entitled to vote to accept or reject the Plan; and it is further

ORDERED, that the form of the Debtor's customized letter to holders of Claims in Class 4, substantially in the form attached hereto as Exhibit 2, is hereby approved; and it is further

ORDERED, that the form of Ballot, substantially in the form attached hereto as Exhibit 3, is hereby approved; and it is further

ORDERED, that the form of the voting instructions, substantially in the form attached to the Ballot, is hereby approved; and it is further

ORDERED, that all votes to accept or reject the Plan must be cast by using the Ballot; and it is further

ORDERED, that all Ballots must be properly executed, completed and delivered by (a) first class mail, in the return envelope provided with each Ballot; (b) overnight courier; or (c) personal delivery, so that the Ballots are actually received, by the Voting Agent, no later than the Voting Deadline at the following address: Eos Airlines, Inc. Ballot Processing, c/o Kurtzman Carson Consultants LLC, 2335 Alaska Avenue, El Segundo, California 90245; and it is further

ORDERED, that the forms of the Non-Voting Status Notices, substantially in the forms attached hereto as Exhibits 4 and 5, respectively, are hereby approved; and it is further

ORDERED, that the form of the Disputed Claims Notice, substantially in the form attached hereto Exhibit 6, is hereby approved; and it is further

ORDERED, that the form of the Confirmation Hearing Notice, substantially in the form attached hereto as Exhibit 7, complies with the requirements of Bankruptcy Rules 2002(b), 2002(d) and 3017(d) and is hereby approved; and it is further

ORDERED, that the Debtor shall be excused from mailing Solicitation Packages to those entities to whom the Debtor mailed a notice regarding the Disclosure Statement Hearing and received a notice from the United States Postal Service or other carrier that it was undeliverable. If a Creditor has changed its mailing address after the date the Solicitation Packages are mailed, the burden shall be on the Creditor or party in interest, not the Debtor, to advise the Voting Agent of the new address; and it is further

ORDERED, that the Confirmation Hearing shall commence on **January 15, 2009 at 10:15 a.m. prevailing Eastern Time**, which date may be continued from time to time by the Court or the Debtor without further notice other than adjournments announced in open court; and it is further

ORDERED, that any objections to the Plan must be filed by the Plan Objection Deadline, **January 5, 2009 at 4:00 p.m. (prevailing Eastern Time)**, and must be: (a) in writing; (b) conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court; (c) state the name and address of the objecting party and the amount and nature of the Claim or Equity Interest of such party; (d) state with particularity the basis and nature for such objection to the Plan and, if practicable, proposed modification to the Plan that would resolve such objection; and (e) filed with the Court and served such that it is actually received by the following Notice Parties:

Debtor

Eos Airlines, Inc.
P.O. Box 598
Purchase, New York 10577

Office of the United States Trustee

Attention: Brian Masumoto
33 Whitehall Street, 21st Floor
New York, New York 10004

Voting Agent

Eos Airlines Processing
c/o Kurtzman Carson Consultants LLC
2335 Alaska Avenue
El Segundo, California 90245

Attorney for the Debtor and Debtor-in-Possession

Squire, Sanders and Dempsey L.L.P.
Attention: Tim J. Robinson
2000 Huntington Center
41 South High Street
Columbus, Ohio 43215
Email: tjrobinson@ssd.com
Telephone: 614.365.2700
Facsimile: 614.365.2499

Counsel for the Official Committee of Unsecured Creditors

Cohen Tauber Spievack & Wagner P.C.

Attention: Joseph M. Vann

420 Lexington Avenue, Suite 2400

New York, New York 10170

Email: jvann@ctswlaw.com

Telephone: 212.586.5800

Facsimile: 212.586.5095

Judge's Chambers

Judge Adlai S. Hardin's Chambers, Room 530

300 Quarropas Street

White Plains, NY 10601

no later than **4:00 p.m. (ET) on January 5, 2009**; and it is further

ORDERED, that the terms of this Order shall be binding upon the Debtor, all Creditors and holders of Equity Interests of the Debtor, and any trustee appointed in this proceeding or any trustee appointed in any subsequent proceeding under chapter 7 or chapter 11 of the Bankruptcy Code relating to the Debtor, and all other parties in interest; and it is further

ORDERED, that all time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a); and it is further

ORDERED, that the Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order; and it is further

ORDERED, that the requirement set forth in Local Rule 9013-1(b) that any motion or other request for relief be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived; and it is further

ORDERED, that notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, the terms and conditions of this order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED, that this Court shall retain jurisdiction, even after the closing of the Case,
with respect to all matters arising from or related to the implementation of this Order.

White Plains, New York
Dated: November __, 2008

United States Bankruptcy Judge

EXHIBIT 1

(Solicitation Procedures)

SOLICITATION PROCEDURES

A. The Voting Record Date

The Bankruptcy Court has approved **November 25, 2008 at 4:00 p.m. prevailing Eastern Time** as the record date for purposes of determining which Creditors and holders of Equity Interests are entitled to vote on the Plan (the “Voting Record Date”).¹

B. The Voting Deadline

The Bankruptcy Court has approved **January 6, 2009 at 5:00 p.m. Pacific Time** as the voting deadline (the “Voting Deadline”). To be counted as votes to accept or reject the Plan, all Ballots must be properly executed, completed and delivered by using the return envelope provided or by delivery by (a) first class mail, (b) overnight courier, or (c) personal delivery, so that they are actually received, by the Debtor’s voting agent, Kurtzman Carson Consultants LLC (the “Voting Agent”) at the following address, no later than the Voting Deadline:

| | |
|---|---|
| By first class mail, overnight courier or personal delivery | Eos Airlines, Inc. Ballot Processing c/o Kurtzman Carson Consultants LLC 2335 Alaska Ave. El Segundo, CA 90245 |
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C. Form, Content and Manner of Notices

1. The Solicitation Package: The following materials shall constitute the solicitation package (the “Solicitation Package”):

- a. the Confirmation Hearing Notice;
- b. the Ballot and Voting Instructions;
- c. a pre-addressed, postage pre-paid return envelope;
- d. the Disclosure Statement with all exhibits, including the Plan, and any other supplements or amendments to these documents which may be filed with the Bankruptcy Court;
- e. a letter from the Debtor to the holders of Claims in Class 4 requesting that they vote to accept the Plan; and
- f. the Disclosure Statement Order, which, among other things (a) approves the Disclosure Statement as containing “adequate information” in accordance with section 1125 of the Bankruptcy Code, (b) fixes a Voting Record Date, (c) approves solicitation and voting procedures with respect to the Plan, (d) approves the form of the Solicitation Package and the

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan, Disclosure Statement, or Disclosure Statement Order, as applicable.

notices to be distributed with respect thereto, and (e) schedules certain dates in connection therewith (without exhibits except for Exhibit 1 (Solicitation Procedures)).

2. Distribution of the Solicitation Package. All parties in interest on the 2002 List as of the Voting Record Date, United States Bankruptcy Judge Adlai S. Hardin's Chambers, the Office of the United States Trustee for the Southern District of New York, counsel to the Official Committee of Unsecured Creditors, and all parties entitled to vote to accept or reject the Plan shall be served with copies of the Disclosure Statement Order, the Disclosure Statement and all exhibits to the Disclosure Statement, including the Plan. The Solicitation Package (except the Ballots) can also be obtained by any party by accessing the Voting Agent's website at www.kccellc.net/eosairlines. Moreover, all parties entitled to vote to accept or reject the Plan shall receive a Solicitation Package containing copies of the Confirmation Hearing Notice, a Ballot and the Solicitation Procedures.

The Debtor shall serve the Solicitation Package in the manner described above on the 2002 List and the United States Bankruptcy Judge Adlai S. Hardin's Chambers, the Office of the United States Trustee for the Southern District of New York, and counsel to the Official Committee of Unsecured Creditors. Additionally, the Solicitation Package documents, including (i) the Confirmation Hearing Notice, (ii) Ballot and Voting Instructions, (iii) the Disclosure Statement (and all exhibits thereto, including the Plan), (iv) the Disclosure Statement Order (without exhibits except for Exhibit 1); (v) a customized letter from the Debtor to holders of Claim in Class 4, and (vi) a pre-addressed, postage pre-paid return envelope; shall be served, in the manner described above, on holders of Claims in Class 4 as follows:

a. the holders of Claims for which Proofs of Claim have been timely filed, as reflected on the official claims register, as of the close of business on the Voting Record Date, with the exception of those Claims subject to a pending objection filed before the Voting Deadline, unless such Claims are allowed for voting purposes pursuant to a Resolution Event as defined in Section D.4 hereof; provided, however, to the extent that the Debtor has reached a settlement on a Claim for which a Proof of Claim has been timely filed, the terms of such settlement shall govern for purposes of determining the holder of the Claim and the amount of the Claim;

b. the holders of scheduled Claims that are listed in the Debtor's Schedules of assets and liabilities filed with the Bankruptcy Court (as may have been amended, the "Schedules"), with the exception of those scheduled Claims that are listed as contingent, unliquidated or Disputed Claims (excluding such scheduled Claims that have been superseded by a timely-filed proof of claim);²

c. the holders of Claims arising pursuant to an agreement or settlement with the Debtor executed prior to the close of business on the Voting Record Date, as reflected in a court pleading, stipulation, term sheet, agreement or other document filed with the Bankruptcy

² Pursuant to Bankruptcy Rule 3003(c)(2), with respect to all persons or entities who are listed on the Debtor's Schedules as having a Claim or a portion of a Claim that is disputed, unliquidated or contingent which Person or entity did not timely file a proof of claim, the Debtor shall not distribute any documents or notices on behalf of such Claim.

Court, in an Order entered by the Bankruptcy Court, or in a document executed by the Debtor pursuant to authority granted by the Bankruptcy Court regardless of whether a proof of claim has been filed;

d. the holder of any Disputed Claim (as defined in Section D.4 herein) that has been allowed to vote pursuant to a Resolution Event (as defined below) pursuant to the procedures set forth in Section D.4 herein; and

e. the United States Trustee for the Southern District of New York.

The Debtor shall make every reasonable effort to ensure that Creditors who have more than one Claim in Class 4 (as defined in the Plan) receive no more than one set of the Solicitation Package materials.

3. Non-Voting Status Notices: Notwithstanding the above, certain Creditors whose Claims are not classified in accordance with 11 U.S.C. § 1123(a)(1) or who are not entitled to vote because they are deemed to accept or reject the Plan under 11 U.S.C. §§ 1126(f) or 1126(g) will receive only the Confirmation Hearing Notice and one of the following additional notices: (i) Notice of Non-Voting Status With Respect to Unimpaired Classes Deemed to Accept the Plan, Impaired Classes Deemed to Accept the Plan, and Unclassified Classes, or (iii) Notice of Non-Voting Status With Respect To Impaired Classes Deemed To Reject the Plan, as applicable, each substantially in the forms attached to the Disclosure Statement Order as Exhibits 4 and 5, respectively (collectively, the “Non-Voting Status Notices”). The Non-Voting Status Notices will instruct these Creditors that they may obtain copies of the Plan, the Disclosure Statement, the Disclosure Statement Order, and all other materials in the Solicitation Package (excluding a Ballot) by requesting a copy from the Debtor’s Voting Agent by writing to Eos Airlines Processing, c/o Kurtzman Carson Consultants LLC, 2335 Alaska Ave., El Segundo, CA 90245, by calling 1-866-381-9100, or by accessing the case website at www.kccllc.net/eosairlines.

D. Approval of Voting and Tabulation Procedures

1. Claim Holders Entitled to Vote: Only the following holders of Claims in Voting Classes shall be entitled to vote with regard to such Claims:

a. the holders of Claims for which proofs of claim have been timely filed, as reflected on the official claims register, as of the close of business on the Voting Record Date, with the exception of those Claims subject to a pending objection filed before the Voting Deadline, unless such Claims are allowed for voting purposes pursuant to a Resolution Event (as defined below) pursuant to the procedures in Section D.4 herein; provided, however, to the extent that the Debtor has reached a settlement on a Claim for which a proof of claim has been timely filed, the terms of such settlement shall govern for purposes of determining the holder of the Claim and the amount of the Claim;

b. the holders of scheduled Claims that are listed in the Debtor’s Schedules, with the exception of those scheduled Claims that are listed as contingent, unliquidated or

Disputed Claims (excluding such scheduled Claims that have been superseded by a timely-filed Proof of Claim); and

c. the holders of Claims arising pursuant to an agreement or settlement with the Debtor executed prior to the close of business on the Voting Record Date, as reflected in a court pleading, stipulation, term sheet, agreement or other document filed with the Bankruptcy Court, in an Order entered by the Bankruptcy Court, or in a document executed by the Debtor pursuant to authority granted by the Bankruptcy Court regardless of whether a proof of claim has been filed.

The assignee of a transferred and assigned Claim (whether a timely-filed or scheduled Claim) shall be permitted to vote such Claim only if appropriate transfer/assignment of claim documentation has been noted on the Bankruptcy Court's docket as 4:00 p.m. prevailing Eastern Time on the day following the Voting Record Date.

2. Establishing Claim Amount: In tabulating votes, the following hierarchy shall be used to determine the Claim amount associated with each Creditor's vote:

a. The Claim amount settled and/or agreed upon by the Debtor prior to the Voting Record Date, as reflected in a court pleading, stipulation, term sheet, agreement or other document filed with the Bankruptcy Court, in an Order entered by the Bankruptcy Court, or in a document executed by the Debtor pursuant to authority granted by the Bankruptcy Court;

b. The Claim amount allowed (temporarily or otherwise) pursuant to a Resolution Event under the procedures set forth in Section D.4 below;

c. The Claim amount contained on a proof of claim that has been timely filed by the applicable Bar Date (or deemed timely filed by the Bankruptcy Court under applicable law), provided, however, that Ballots cast by Creditors whose Claims are not listed on the Debtor's Schedules, but who timely file proofs of claim in unliquidated or unknown amounts that are not the subject of an objection filed before the Voting Deadline, will count for satisfying the numerosity requirement of section 1126(c) of the Bankruptcy Code, and will count as Ballots for Claims in the amount of \$1.00 solely for the purposes of satisfying the dollar amount provisions of Section 1126(c) of the Bankruptcy Code; provided, further, however, that to the extent the Claim amount contained in the proof of claim is different from the Claim amount set forth in a Court pleading, stipulation, term sheet, agreement, or other document filed with the Bankruptcy Court as referenced in D.1 above, the Claim amount in the court pleading, stipulation, term sheet, agreement, or other document filed with the Bankruptcy Court shall supercede the Claim amount set forth on the respective proof of claim;

d. The Claim amount listed in the Debtor's Schedules, provided that such Claim is not scheduled as contingent, disputed or unliquidated and has not been paid; and

e. In the absence of any of the foregoing, zero (\$0.00).

The Claim amount established pursuant to this Section D.2 shall control for voting purposes only, and shall not constitute the Allowed amount of any Claim.

3. Ballot Tabulation: The following voting procedures and standard assumptions shall be used in tabulating ballots:

a. Except as otherwise provided herein, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline, the Debtor shall reject such Ballot as invalid and, therefore, decline to count it in connection with confirmation of the Plan;

b. The Voting Agent will date and time-stamp all Ballots when received. The Voting Agent shall retain the original Ballots and an electronic copy of the same for a period of one (1) year after the Effective Date of the Plan, unless otherwise ordered by the Bankruptcy Court;

c. The Debtor will file the Voting Report with the Bankruptcy Court in accordance with the Local Rules. The Voting Report shall, among other things, enumerate every Ballot that does not conform to the Voting Instructions or that contains any form of irregularity (each an “Irregular Ballot”) including, but not limited to, those Ballots that are late or (in whole or in material part) illegible, unidentifiable, not denominated in U.S. dollars, lacking signatures or lacking necessary information, received via facsimile or electronic mail or damaged. The Voting Report shall indicate the Debtor’s intentions with regard to such Irregular Ballots;

d. The method of delivery of Ballots to be sent to the Voting Agent is at the election and risk of each Creditor, except as otherwise provided, a Ballot will be deemed delivered only when the Voting Agent actually receives the original executed Ballot;

e. An original executed Ballot is required. Delivery of a Ballot to the Voting Agent by facsimile, email or any other electronic means will not be accepted;

f. No Ballot should be sent to the Bankruptcy Court, the Clerk of the Bankruptcy Court, the Debtor, the Debtor’s agents (other than the Voting Agent), or the Debtor’s legal or financial advisors, and if so sent will not be counted;

g. The Debtor expressly reserves the right to amend from time to time the terms of the Plan (subject to compliance with the requirements of section 1127 of the Bankruptcy Code and the terms of the Plan regarding modification). If the Debtor makes material changes to the terms of the Plan or the Debtor waives a material condition to Plan confirmation, as determined by the Bankruptcy Court, the Debtor will disseminate additional solicitation materials and will extend the solicitation, in each case only to the extent directed by the Court;

h. If multiple Ballots are received from the same Creditor with respect to the same Claim or Equity Interest prior to the Voting Deadline, the last Ballot timely received will be deemed to reflect that voter’s intent and will supersede and revoke any prior Ballot;

i. Creditors must vote all of their Claims or Equity Interests within a particular Plan Class either to accept or reject the Plan and may not split their vote. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted. Further, to the extent there are multiple Claims within the same Class, the Debtor may, in its discretion, aggregate the Claims of any particular holder within a Class for the purpose of counting votes;

j. A Person signing a Ballot in its capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of corporations, or otherwise acting in a fiduciary or representative capacity should indicate such capacity when signing and, if required or requested by the Voting Agent, the Debtor or the Bankruptcy Court, must submit proper evidence to the requesting party to so act on behalf of such claimant;

k. The Debtor, subject to contrary order of the Bankruptcy Court, may waive any defects or irregularities as to any particular Ballot at any time, either before or after the close of voting provided however, that any such waivers will be documented in the Voting Report;

l. Neither the Debtor, nor any other person or entity, will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report, nor will any of them incur any liability for failure to provide such notification;

m. Unless waived or as ordered by the Bankruptcy Court, any defects or irregularities in connection with the return of Ballots must be cured prior to the Voting Deadline or such Ballots will not be counted;

n. In the event a designation of lack of good faith is requested by a party-in-interest under Section 1126(e) of the Bankruptcy Code, the Court will determine whether any vote to accept and/or reject the Plan cast with respect to that Claim will be counted for purposes of determining whether the Plan has been accepted and/or rejected;

o. Subject to any contrary order of the Bankruptcy Court, the Debtor reserves the right to reject any and all Ballots not in proper form, the acceptance of which, in the opinion of the Debtor, would not be in accordance with the provisions of the Bankruptcy Code or the Bankruptcy Rules, provided however, that any such rejections will be documented in the Voting Report;

p. If a Claim has been estimated or otherwise allowed for voting purposes only by final order of the Bankruptcy Court, such Claim shall be temporarily allowed in the amount so estimated or allowed by the Bankruptcy Court for voting purposes only, and not for purposes of Allowance or Distribution;

q. If an objection to a Claim or Equity Interest is filed prior to the Voting Record Date, such Claim or Equity Interest shall be treated in accordance with the procedures set forth in Section D.4 below. If an objection is filed after the Voting Record Date, the related Claim or Equity Interest shall be treated in accordance with the procedures set forth in Section D.5 below; and

r. The following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (i) any Ballot that is illegible or contains insufficient information to permit the identification of the Creditor; (ii) any Ballot cast by a person or entity that does not hold a Claim in a Class that is entitled to vote on the Plan; (iii) any Ballot cast for a Claim scheduled as unliquidated, contingent or disputed for which no Proof of Claim was timely filed; (iv) any unsigned Ballot; (v) any Ballot not marked to accept or reject the Plan, or marked both to accept and reject the Plan; and (vi) any Ballot submitted by any party not entitled to vote pursuant to the procedures described herein.

4. Temporary Allowance of Disputed Claims for Voting Purposes: If an objection to a Claim or Equity Interest is pending on the Voting Record Date, the holder of such Claim or Equity Interest shall receive a copy of the Confirmation Hearing Notice and a *Notice of Non-Voting Status with Respect to Disputed Claims* (“Disputed Claims Notice”), substantially in the form attached as Exhibit 6 to the Disclosure Statement Order, in lieu of a Solicitation Package. The Disputed Claim Notice shall inform such person or entity (i) that its Claim (“Disputed Claim”) or Equity Interest (“Disputed Equity Interest”) has been objected to; and (ii) that the holder of such Disputed Claim or Disputed Equity Interest cannot vote unless one or more of the following has taken place at least five (5) Business Days before the Voting Deadline: (a) an order is entered by the Bankruptcy Court allowing such Disputed Claim or Disputed Equity Interest pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing; (b) an order is entered by the Bankruptcy Court temporarily allowing such Disputed Claim or Disputed Equity Interest for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing; (c) a stipulation or other agreement is executed between the holder of the Disputed Claim or Disputed Equity Interest and the Debtor resolving the objection and allowing the Disputed Claim or Disputed Equity Interest in an agreed upon amount; (d) a stipulation or other agreement is executed between the holder of the Disputed Claim or Disputed Equity Interest and the Debtor temporarily allowing the holder of the Disputed Claim or Disputed Equity Interest to vote its Claim or Equity Interest in an agreed upon amount; or (e) the pending objection to the Disputed Claim or Disputed Equity Interest is voluntarily withdrawn by the Debtor (each, a “Resolution Event”). No later than two (2) Business Days after a Resolution Event, the Voting Agent shall distribute a Solicitation Package to the relevant holder of the Disputed Claim or Disputed Equity Interest, which must be returned to the Voting Agent by no later than the Voting Deadline.

5. If an objection to a Disputed Claim or Disputed Equity Interest is filed by the Debtor after the Voting Record Date, the Ballot of the holder of such Disputed Claim or Disputed Equity Interest will not be counted absent a Resolution Event occurring prior to the Voting Deadline.

E. Third Party Release, Exculpation, and Injunction Language in Plan

The third party release, exculpation, and injunction language in Section 10 of the Plan is included in Article 7 of the Disclosure Statement and further notice is provided in the Confirmation Hearing Notice.

EXHIBIT 2

(Form of Letter to Voting Class)

[EOS LETTERHEAD]

Dear Class 4 Claim Holder:

You have received this letter and the enclosed materials because, as the holder of a Class 4 General Unsecured Claim against Eos Airlines, Inc. (the “Debtor”), you are entitled to vote on the *Debtor’s Plan of Liquidation Under Chapter 11 of the United States Bankruptcy Code*, as it may be amended from time to time (the “Plan”).¹

The enclosed materials constitute the Debtor’s “Solicitation Package” and consist of:

- (a) the *Notice of (I) Confirmation Hearing and Objection Deadline with Respect to the Debtor’s Plan, and (II) Solicitation and Voting Procedures* (the “Confirmation Hearing Notice”);
- (b) the Ballot and Voting Instructions;
- (c) a pre-addressed, postage pre-paid return envelope;
- (d) the Disclosure Statement, as approved by the Bankruptcy Court (with all exhibits thereto, including the Plan) and any other supplements or amendments to these documents which may be filed with the Bankruptcy Court;
- (e) any supplemental solicitation materials the Debtor may file with the Bankruptcy Court or that the Bankruptcy Court orders to be made available;
- (f) the *Order (A) Approving Adequacy of Disclosure Statement; (B) Fixing a Voting Record Date; (C) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan; (D) Approving Form of Solicitation Package and Notices; and (E) Scheduling Certain Dates in Connection Therewith* (the “Disclosure Statement Order”) (without exhibits except for Exhibit 1 (Solicitation Procedures)); and
- (g) this letter.

The Debtor and the Official Committee of Unsecured Creditors (the “Committee”) believe that the Plan is in the best interests of all creditors. Accordingly, **THE DEBTOR AND THE COMMITTEE THEREFORE RECOMMEND THAT ALL CREDITORS ENTITLED TO VOTE TO SUBMIT A TIMELY BALLOT VOTE TO ACCEPT THE PLAN.**

The materials in the Solicitation Package are intended to be self-explanatory. If you should have any questions, however, please feel free to contact the Debtor’s Voting Agent by

¹ Capitalized terms not defined in this letter have the meaning given them in the Plan.

writing to Eos Airlines Processing, c/o Kurtzman Carson Consultants LLC, 2335 Alaska Ave., El Segundo, California 90245 or by calling 1-866-381-9100.

EXHIBIT 3

(Class 4 Ballot)

SQUIRE, SANDERS & DEMPSEY L.L.P.
1095 Avenue of the Americas, 31st Floor
New York, New York 10036
Phone: 614.365.2700
Fax: 614.365.2499
Stephen D. Lerner (NY 2067841)
Tim J. Robinson (OH 0046668)
Nicholas J. Brannick (OH 0079642)

Attorneys for Debtor and Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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:
In re: :
: **CHAPTER 11**
EOS AIRLINES, INC. :
: **CASE NO. 08-22581 (ASH)**
Debtor :
:
-----X

CLASS 4 BALLOT FOR ACCEPTING OR REJECTING PLAN

**PLEASE READ AND FOLLOW THE VOTING INSTRUCTIONS CAREFULLY BEFORE
COMPLETING THIS BALLOT**

1. Eos Airlines, Inc.(the “**Debtor**”) has filed a Liquidating Plan of Reorganization (the “**Plan**”) pursuant to Chapter 11 of the United States Bankruptcy Code in its Chapter 11 Case pending before the United States Bankruptcy Court for the Southern District of New York (the “**Court**”). By this Ballot you will vote to accept or reject the Plan.
2. The Court has approved a Disclosure Statement with respect to the Plan. The Disclosure Statement provides information to assist you in deciding how to cast your Ballot. If you do not have a Disclosure Statement, you may obtain a copy from the attorneys for the Debtor whose contact information is set forth below. Court approval of the Disclosure Statement does not indicate approval of the Plan by the Court.
3. You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and the classification and treatment of your Claim under the Plan.
4. If your Ballot is not received by the Debtor’s voting agent (the “**Voting Agent**”), whose name appears below, by **5:00 p.m., prevailing Pacific Time, on January 6, 2009**, and such deadline is not extended, your vote will not count as either an acceptance or rejection of the Plan.
5. If the Plan is confirmed by the Bankruptcy Court, it will be binding on you whether or not you vote.

6. The amount of your Class 4 General Unsecured Claim for purposes of voting on the Plan is set forth immediately below. If you disagree with this amount, you must file appropriate a timely and appropriate pleading before the Court to have your Claim estimated at a different amount for voting purposes.

AMOUNT OF CLASS 4 GENERAL UNSECURED CLAIM FOR VOTING PURPOSES: \$_____

7. The undersigned *[check one box only]*:

☐ **ACCEPTS THE PLAN**

☐ **REJECTS THE PLAN**

**THE DEBTOR RECOMMENDS THAT YOU ACCEPT THE PLAN
BY CHECKING THE “ACCEPT THE PLAN” BOX ABOVE**

Dated: _____

Name *[Print or type]*:

Signature:

Title *[if corporation or partnership]*:

Address:

Telephone/Facsimile Number:

RETURN THIS BALLOT TO THE DEBTOR’S VOTING AGENT AT:

EOS Airlines, Inc. Ballot Processing
c/o Kurtzman Carson Consults LLC
2335 Alaska Avenue
El Segundo, CA 90245

**THIS BALLOT DOES NOT CONSTITUTE A PROOF OF CLAIM AND WILL NOT BE
CONSIDERED A PROOF OF CLAIM**

Counsel to the Debtor: Squire, Sanders & Dempsey L.L.P., Attn: Nicholas Brannick, 2000 Huntington Center, 41 South High Street, Columbus, OH 43215, Phone: 614.365.2700

APPENDIX A
VOTING INSTRUCTIONS FOR COMPLETING THE CLASS 4 BALLOT

The Debtor is soliciting your vote with respect to the Debtor's Plan. Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan and the Disclosure Statement. Please review the Plan and the Disclosure Statement carefully and thoroughly before you vote.

To have your vote count, you must complete, sign and return the attached Ballot so that it is received by the Debtor's Voting Agent:

EOS Airlines, Inc. Ballot Processing
c/o Kurtzman Carson Consults LLC
2335 Alaska Avenue
El Segundo, CA 90245

in either case, no later than **5:00 p.m. prevailing Pacific Time, on January 6, 2009** (the "**Voting Deadline**"), unless the Debtor extends or waives such Voting Deadline, in which case the term "Voting Deadline" for such solicitation shall mean the last time and date to which such solicitation period is extended.

If a Ballot is received after the Voting Deadline, it may not be counted. Except as otherwise provided herein, delivery of Ballots will be deemed made only on the date the original executed Ballot is **actually received** by the Voting Agent. In all cases, sufficient time should be allowed to assure timely delivery. **Delivery of a Ballot to the Voting Agent by facsimile, e-mail or any other electronic means will not be accepted. No Ballot should be sent to the Debtor, counsel for the Debtor, counsel for the Official Committee of Unsecured Creditors, or the Bankruptcy Court.**

If a creditor casts simultaneous duplicative Ballots which are voted inconsistently, such Ballots shall count as one vote accepting the Plan.

The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan.

The Ballot does not constitute, and shall not be deemed to be, a Proof of Claim or Interest or an assertion or admission of a Claim or Equity Interest.

Please be sure to sign and date your Ballot. If you are completing the Ballot on behalf of an entity, indicate your relationship with such entity and the capacity in which you are signing. In addition, please provide your name and mailing address if different from that set forth on the attached mailing label or if no such mailing label is attached to the Ballot.

PLEASE COMPLETE, SIGN AND DATE THE BALLOT AND RETURN IT TO THE VOTING AGENT IN THE ENVELOPE PROVIDED. PLEASE RETURN YOUR BALLOT PROMPTLY!

If you would like to request a copy of the Disclosure Statement via email, please send your email to nbrannick@ssd.com.

IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, PLEASE CALL THE VOTING AGENT AT 1-866-381-9100

EXHIBIT 4

(Notice of Non-Voting Status Deemed to Accept)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
:
In re: :
: **CHAPTER 11**
: **EOS AIRLINES, INC.** :
: **CASE NO. 08-22581 (ASH)**
Debtor :
:
-----X

**NOTICE OF NON-VOTING STATUS WITH RESPECT TO UNIMPAIRED
CLASSES DEEMED TO ACCEPT THE PLAN, IMPAIRED CLASSES
DEEMED TO ACCEPT THE PLAN, AND UNCLASSIFIED CLASSES**

PLEASE TAKE NOTICE that on November 25, 2008, the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) approved the above-captioned Debtor’s Disclosure Statement (as amended from time to time and including all exhibits and supplements, the “Disclosure Statement”) for the Debtor’s Plan of Liquidation Under Chapter 11 of the United States Bankruptcy Code (as amended from time to time and including all exhibits and supplements, the “Plan”) for use by the Debtor in soliciting acceptances or rejections of the Plan from holders of Impaired Claims and Equity Interests who are (or may be) entitled to receive distributions under the Plan.¹

THE DEBTOR’S DISCLOSURE STATEMENT, PLAN, DISCLOSURE STATEMENT ORDER, AND OTHER SOLICITATION PACKAGE MATERIALS ARE AVAILABLE BY CONTACTING THE DEBTOR’S VOTING AGENT IN WRITING AT EOS AIRLINES PROCESSING, C/O KURTZMAN CARSON CONSULTANTS LLC, 2335 ALASKA AVE., EL SEGUNDO, CA 90245, BY CALLING 1-866-381-9100, OR BY ACCESSING THE CASE WEBSITE AT <http://www.kccllc.net/eosairlines>.

YOU ARE RECEIVING THIS NOTICE BECAUSE UNDER THE TERMS OF SECTIONS 2 AND 4 OF THE PLAN, EITHER: (A) YOUR CLAIM(S) IS/ARE UNCLASSIFIED PURSUANT TO SECTION 1123(a)(1) OF THE BANKRUPTCY CODE AND THEREFORE YOU ARE NOT ENTITLED TO VOTE ON THE PLAN; (B) YOUR CLAIM(S) AGAINST THE DEBTOR IS/ARE IMPAIRED BUT, PURSUANT TO THE WARN ACT SETTLEMENT AGREEMENT, YOU ARE (I) DEEMED TO HAVE ACCEPTED THE PLAN AND (II) NOT ENTITLED TO VOTE ON THE PLAN; OR (C) YOUR CLAIM(S) AGAINST, OR INTEREST(S) IN, THE DEBTOR IS/ARE UNIMPAIRED AND, THEREFORE, IN ACCORDANCE WITH SECTION 1126(f) OF THE UNITED STATES BANKRUPTCY CODE, YOU ARE (I) DEEMED TO HAVE ACCEPTED THE PLAN AND (II) NOT ENTITLED TO VOTE ON THE PLAN. ACCORDINGLY, THIS NOTICE AND THE “NOTICE OF (I) CONFIRMATION HEARING AND OBJECTION DEADLINE WITH

¹ Capitalized terms not defined in this letter have the meaning given them in the Plan, filed before the Bankruptcy Court on October 24, 2008 [Doc. 338].

RESPECT TO THE DEBTOR'S PLAN, AND (II) SOLICITATION AND VOTING PROCEDURES" ARE BEING SENT TO YOU FOR INFORMATIONAL PURPOSES ONLY.

IF YOU HAVE ANY QUESTIONS ABOUT THE STATUS OF YOUR CLAIM(S) OR EQUITY INTEREST(S), YOU SHOULD CONTACT THE DEBTOR'S VOTING AGENT AT THE ADDRESS OR TELEPHONE NUMBER SET FORTH ABOVE.

EXHIBIT 5

(Notice of Non-Voting Status Deemed to Reject)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
:
In re: :
:
EOS AIRLINES, INC. : CHAPTER 11
:
Debtor : CASE NO. 08-22581 (ASH)
:
:
-----X

**NOTICE OF NON-VOTING STATUS WITH RESPECT
TO IMPAIRED CLASSES DEEMED TO REJECTED THE PLAN**

PLEASE TAKE NOTICE that on November 25, 2008, the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) approved the above-captioned Debtor’s Disclosure Statement (as amended from time to time and including all exhibits and supplements (the “Disclosure Statement”) for the Debtor’s Plan of Liquidation Under Chapter 11 of the United States Bankruptcy Code (as amended from time to time and including all exhibits and supplements, the “Plan”) for use by the Debtor in soliciting acceptances or rejections of Plan from holders of Impaired Claims and Equity Interests who are (or may be) entitled to receive distributions under the Plan.¹

THE DEBTOR’S DISCLOSURE STATEMENT, PLAN, DISCLOSURE STATEMENT ORDER, AND OTHER SOLICITATION PACKAGE MATERIALS ARE AVAILABLE BY CONTACTING THE DEBTOR’S VOTING AGENT IN WRITING AT EOS AIRLINES PROCESSING, C/O KURTZMAN CARSON CONSULTANTS LLC, 2335 ALASKA AVE., EL SEGUNDO, CA 90245, BY CALLING 1-866-381-9100, OR BY ACCESSING THE CASE WEBSITE AT <http://www.kccllc.net/eosairlines>.

YOU ARE RECEIVING THIS NOTICE BECAUSE UNDER THE TERMS OF SECTION 4 OF THE PLAN, YOU ARE NOT ENTITLED TO RECEIVE OR RETAIN ANY PROPERTY ON ACCOUNT OF YOUR CLAIM(S) AGAINST, OR EQUITY INTEREST(S) IN, THE DEBTOR AND THEREFORE, IN ACCORDANCE WITH SECTION 1126(g) OF THE UNITED STATES BANKRUPTCY CODE, YOU ARE (I) PRESUMED TO HAVE REJECTED THE PLAN AND (II) NOT ENTITLED TO VOTE ON THE PLAN. ACCORDINGLY, THIS NOTICE AND THE “NOTICE OF (I) CONFIRMATION HEARING AND OBJECTION DEADLINE WITH RESPECT TO THE DEBTOR’S PLAN AND (II) SOLICITATION AND VOTING PROCEDURES” ARE BEING SENT TO YOU FOR INFORMATIONAL PURPOSES ONLY.

¹ Capitalized terms not defined in this letter have the meaning given them in the Plan, filed before the Bankruptcy Court on October 24, 2008 [Doc. 338].

IF YOU HAVE ANY QUESTIONS ABOUT THE STATUS OF YOUR CLAIM(S) OR EQUITY INTEREST(S), YOU SHOULD CONTACT THE DEBTOR'S VOTING AGENT AT THE ADDRESS OR TELEPHONE NUMBER ABOVE.

EXHIBIT 6

(Notice of Disputed Claims)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
:
In re: :
: **CHAPTER 11**
: **EOS AIRLINES, INC.** :
: **CASE NO. 08-22581 (ASH)**
Debtor :
:
-----X

NOTICE OF NON-VOTING STATUS WITH RESPECT TO DISPUTED CLAIMS

PLEASE TAKE NOTICE that on November 25, 2008, the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) approved the above-captioned Debtor’s Disclosure Statement (as amended from time to time and including all exhibits and supplements (the “Disclosure Statement”) for the Debtor’s Plan of Liquidation Under Chapter 11 of the United States Bankruptcy Code (as amended from time to time and including all exhibits and supplements, the “Plan”) for use by the Debtor in soliciting acceptances or rejections of Plan from holders of Impaired Claims and Equity Interests who are (or may be) entitled to receive distributions under the Plan.¹

THE DEBTOR’S DISCLOSURE STATEMENT, PLAN, DISCLOSURE STATEMENT ORDER, AND OTHER SOLICITATION PACKAGE MATERIALS ARE AVAILABLE BY CONTACTING THE DEBTOR’S VOTING AGENT IN WRITING AT EOS AIRLINES PROCESSING, C/O KURTZMAN CARSON CONSULTANTS LLC, 2335 ALASKA AVE., EL SEGUNDO, CA 90245, BY CALLING 1-866-381-9100, OR BY ACCESSING THE CASE WEBSITE AT <http://www.kccllc.net/eosairlines>.

YOU ARE RECEIVING THIS NOTICE BECAUSE AS OF THE VOTING RECORD DATE, NOVEMBER 25, 2008, YOU ARE THE HOLDER OF A CLAIM OR EQUITY INTEREST THAT IS SUBJECT TO A PENDING OBJECTION BY THE DEBTOR. YOU ARE NOT ENTITLED TO VOTE ON THE DEBTOR’S PLAN UNLESS AT LEAST FIVE (5) BUSINESS DAYS BEFORE THE JANUARY 6, 2009 VOTING DEADLINE: (A) YOUR CLAIM OR EQUITY INTEREST IS ALLOWED BY THE BANKRUPTCY COURT PURSUANT TO SECTION 502(b) OF THE BANKRUPTCY CODE, AFTER NOTICE AND A HEARING; (B) YOUR CLAIM OR EQUITY INTEREST IS TEMPORARILY ALLOWED FOR VOTING PURPOSES ONLY BY THE BANKRUPTCY COURT PURSUANT TO BANKRUPTCY RULE 3018(a), AFTER NOTICE AND A HEARING; (C) A STIPULATION OR OTHER AGREEMENT HAS BEEN EXECUTED BY YOU AND THE DEBTOR RESOLVING THE OBJECTION AND ALLOWING YOUR CLAIM OR EQUITY INTEREST IN AN AGREED UPON AMOUNT; (D) A STIPULATION OR OTHER AGREEMENT IS EXECUTED BY YOU AND THE DEBTOR TEMPORARILY ALLOWING YOU TO VOTE

¹ Capitalized terms not defined in this letter have the meaning given them in the Plan, filed before the Bankruptcy Court on October 24, 2008 [Doc. 338].

YOUR CLAIM OR EQUITY INTEREST IN AN AGREED UPON AMOUNT; OR (E) THE DEBTOR'S OBJECTION HAS BEEN VOLUNTARILY WITHDRAWN BY THE DEBTOR (EACH, A "RESOLUTION EVENT"). ACCORDINGLY, THIS NOTICE AND THE "NOTICE OF (I) CONFIRMATION HEARING AND OBJECTION DEADLINE WITH RESPECT TO THE DEBTOR'S PLAN, AND (II) SOLICITATION AND VOTING PROCEDURES" ARE BEING SENT TO YOU FOR INFORMATIONAL PURPOSES ONLY.

IF A RESOLUTION EVENT OCCURS, THEN, NO LATER THAN TWO (2) BUSINESS DAYS THEREAFTER, THE VOTING AGENT SHALL DISTRIBUTE A BALLOT AND A PRE-ADDRESSED, POSTAGE PRE-PAID ENVELOPE TO YOU, WHICH MUST BE RETURNED TO THE VOTING AGENT BY NO LATER THAN THE VOTING DEADLINE, JANUARY 6, 2009 AT 5:00 P.M. PACIFIC TIME.

IF YOU HAVE ANY QUESTIONS ABOUT THE STATUS OF YOUR CLAIM(S) OR EQUITY INTEREST(S), YOU SHOULD CONTACT THE DEBTOR'S VOTING AGENT AT THE ADDRESS OR TELEPHONE NUMBER ABOVE.

EXHIBIT 7

(Confirmation Hearing Notice)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

EOS AIRLINES, INC.

Debtor

-----X

:
:
: **CHAPTER 11**
:
: **CASE NO. 08-22581 (ASH)**
:
:

**NOTICE OF (I) CONFIRMATION HEARING AND OBJECTION
DEADLINE WITH RESPECT TO THE DEBTOR'S PLAN,
AND (II) SOLICITATION AND VOTING PROCEDURES**

TO ALL CREDITORS, EQUITY INTEREST HOLDERS AND PARTIES IN INTEREST:

1. Approval of Disclosure Statement and Solicitation Procedures. On November 25, 2008, the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") entered an order (the "Disclosure Statement Order") approving the Debtor's Disclosure Statement, dated October 24, 2008 (as amended from time to time and including all exhibits and supplements, the "Disclosure Statement") for the Debtor's Plan of Liquidation (as amended from time to time and including all exhibits and supplements, the "Plan"), as containing adequate information, as required under section 1125(a) of title 11 of the United States Code (the "Bankruptcy Code"), and authorized Eos Airlines, Inc., the debtor and debtor-in-possession (the "Debtor") to solicit votes with regard to the acceptance or rejection of the Plan.¹

2. Confirmation Hearing. A hearing to confirm the Plan (the "Confirmation Hearing") will commence at 10:15 a.m. prevailing Eastern Time on **January 15, 2009** before the Honorable Adlai S. Hardin, United States Bankruptcy Judge, located at 300 Quarropas Street, White Plains, New York 10601. The Confirmation Hearing may be continued from time to time by announcing such continuance in open court or otherwise, without further notice to parties in interest. The Bankruptcy Court, in its discretion and prior to the Confirmation Hearing, may put in place additional procedures governing the Confirmation Hearing. The Plan may be modified, if necessary, prior to, during, or as a result of the Confirmation Hearing, without further notice to interest parties.

3. Voting Deadline. If you hold a Claim against the Debtor as of November 25, 2008, the Voting Record Date, and are entitled to vote to accept or reject the Plan, you have received a Ballot and voting instructions for your Claim(s). For your vote to accept or reject the Plan to be counted, you must complete all required information on the Ballot, execute and return the completed Ballot to the address indicated on the Ballot by 5:00 p.m. Pacific Time on **January 6, 2009** (the "Voting Deadline"). Any failure to follow the voting instructions included with the Ballot may disqualify your Ballot and your vote.

4. Objection of the Plan. The Bankruptcy Court has established **January 5, 2009** at 4:00 p.m. prevailing Eastern Time, as the last date and time for filing and serving objections to the confirmation of the Plan (the "Plan Objection Deadline"). Any objections to the Plan must be in writing, and state the name and address of the objecting party and the amount and nature of the Claim or Equity Interest of such party, provide a concise statement of the basis for such objection or proposed modification, conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court and shall be served and filed, together with proof of service, with the Bankruptcy Court so that they are received no later than 4:00 p.m. prevailing Eastern Time, on **January 5, 2009** by (a) the Clerk of the Bankruptcy Court, Judge Adlai S. Hardin's Chambers, Room 530, 300 Quarropas Street,

¹ All capitalized terms used, but not defined herein, shall have the meanings ascribed to such terms in the Plan or the Disclosure Statement, as applicable.

White Plains, New York 10601; (b) Eos Airlines, Inc., P.O. Box 598, Purchase, New York 10577; (c) Squire, Sanders and Dempsey L.L.P., 2000 Huntington Center, 41 South High Street, Columbus, Ohio 43215, Attn: Tim J. Robinson, attorneys for the Debtor; (d) Cohen Tauber Spievack & Wagner P.C., 420 Lexington Avenue, Suite 240, New York, New York 10170, Attn: Joseph M. Vann, attorneys for the Official Committee of Unsecured Creditors; (e) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Brian Masumoto; and (f) Eos Airlines Processing, c/o Kurtzman Carson Consultants LLC, 2335 Alaska Ave., El Segundo, California 90245, the Voting Agent (collectively, the "Notice Parties").

5. Inquiries. The Plan, Disclosure Statement, Disclosure Statement Order, and all other materials in the Debtor's Solicitation Package may be obtained from the Voting Agent's website www.kccllc.net/eosairlines (except the Ballots) or by contacting the Debtor's Voting Agent in writing at Eos Airlines Processing, c/o Kurtzman Carson Consultants LLC, 2335 Alaska Avenue, El Segundo, California 90245 or calling 1-866-381-9100. The Debtor will serve copies of the Disclosure Statement Order, the Disclosure Statement, and all exhibits to the Disclosure Statement, including the Plan, on all parties on the 2002 List as of the Voting Record Date and all parties entitled to vote to accept or reject the Plan. Creditors who are entitled to vote to accept or reject the Plan shall receive a Solicitation Package containing copies of this Confirmation Hearing Notice, Ballot(s) and the Solicitation Procedures.

6. Temporary Allowance of Claims for Voting Purposes. Holders of Claims and Equity Interests that are subject to a pending objection by the Debtor as of the Voting Record Date cannot vote on the Plan unless one or more of the following has taken place at least five (5) Business Days before the Voting Deadline: (a) an order is entered by the Bankruptcy Court allowing such Disputed Claim or Disputed Equity Interest pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing; (b) an order is entered by the Bankruptcy Court temporarily allowing such Disputed Claim or Disputed Equity Interest for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing; (c) a stipulation or other agreement is executed between the holder of the Disputed Claim or Disputed Equity Interest and the Debtor resolving the objection and allowing the Disputed Claim or Disputed Equity Interest in an agreed upon amount; (d) a stipulation or other agreement is executed between the holder of the Disputed Claim or Disputed Equity Interest and the Debtor temporarily allowing the holder of the Disputed Claim or Disputed Equity Interest to vote its Claim or Equity Interest in an agreed upon amount; or (e) the pending objection to the Disputed Claim or Disputed Equity Interest is voluntarily withdrawn by the Debtor (each, a "Resolution Event"). If an objection to a Claim or Equity Interest is filed by the Debtor after the Voting Record Date but before 15 days prior to the Confirmation Hearing, any vote by the holder of such Disputed Claim or Disputed Equity Interest will not be counted unless there is a Resolution Event.

7. Release, Exculpation, and Injunction Language in the Plan. PLEASE BE ADVISED THAT THE PLAN CONTAINS CERTAIN RELEASE, EXCULPATION AND INJUNCTION PROVISIONS. YOU ARE ADVISED TO CAREFULLY REVIEW AND CONSIDER THE PLAN, INCLUDING THE RELEASE, EXCULPATION AND INJUNCTION PROVISIONS, AS YOUR RIGHTS MIGHT BE AFFECTED.

Dated: December __, 2008

SQUIRE, SANDERS & DEMPSEY L.L.P.

/s/ Tim J. Robinson

Stephen D. Lerner (NY 2067841)

Tim J. Robinson (OH 0046668)

Nicholas J. Brannick (OH 0079642)

350 Park Avenue

New York, New York 10022-6022

Phone: 614.365.2700

Fax: 614.365.2499

Counsel to the Debtor and Debtor-in-Possession