

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

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<b>In re</b>	:	<b>Chapter 11 Case No.</b>
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<b>AMERICAN EAGLE AIRLINES, INC.,</b>	:	<b>11-15469 (SHL)</b>
	:	
<b>Debtor.</b>	:	<b>Jointly Administered as</b>
	:	<b>Case No. 11-15463 (SHL)</b>
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<b>HTL OPERATING, LLC d/b/a MCM</b>	:	
<b>ELEGANTE HOTEL,</b>	:	
<b>Plaintiff,</b>	:	
<b>v.</b>	:	
	:	<b>Adv. Proc. No. 12-1799 (SHL)</b>
<b>AMERICAN EAGLE AIRLINES, INC.,</b>	:	
<b>Defendant.</b>	:	
	:	
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**STIPULATION AND AGREED ORDER BETWEEN THE DEBTORS AND MCM ELEGANTE**

This Stipulation and Agreed Order (the “**Stipulation**”) is entered into between American Eagle Airlines, Inc. (“**American Eagle**”) and its related debtors, as debtors and debtors-in-possession (collectively, the “**Debtors**”), HTL Operating, LLC d/b/a MCM Elegante Hotel (“**MCM Hotel**”), and its affiliate 1204 Hotel Operating, LLC d/b/a MCM Elegante Suites (“**MCM Suites**” and together with MCM Hotel “**MCM Elegante**”) (each a “**Party**” and together the “**Parties**”).

**RECITALS**

WHEREAS, on November 29, 2011 (the “**Commencement Date**”), each of the Debtors commenced a voluntary case under chapter 11 of title 11, United States Code (the “**Bankruptcy Code**”), and have continued to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, on October 21, 2013, the Court entered an order confirming the Debtors’ Fourth Amended Joint Chapter 11 Plan (as may be amended or modified, the “**Plan**”) (Main Case ECF No. 10361);

WHEREAS, MCM Hotel and American Eagle are parties to a certain Services Agreement, effective as of December 2, 2010, relating to the provision of hotel accommodations in Odessa, Texas (the “**Odessa Contract**”);

WHEREAS, MCM Suites and American Eagle are parties to a Services Agreement, effective as of August 1, 2010, relating to the provision of hotel accommodations in Abilene, Texas (together with the Odessa Contract, the “**Executory Contracts**”);

WHEREAS, the Debtors intend to assume the Executory Contracts pursuant to section 365 of the Bankruptcy Code and Article 8 of the Plan, subject to their rights to amend or modify the same as provided in the Plan, and pay MCM Elegante an aggregate cure amount of \$72,317.97 (the “**Proposed Cure Amount**”);

WHEREAS, on August 14, 2012, MCM Hotel commenced an adversary proceeding against American Eagle (Adv. Proc. 12-01799-SHL) (the “**Adversary Proceeding**”) and filed the Complaint of HTL Operating LLC d/b/a MCM Elegante Hotel for Declaratory Relief (Adv. Proc. ECF No. 1);

WHEREAS, on August 15, 2012, MCM Hotel filed the Amended Complaint of HTL Operating LLC d/b/a MCM Elegante Hotel for Declaratory Relief (the “**Amended Complaint**”) (Adv. Proc. ECF No. 2);

WHEREAS, on September 13, 2012, American Eagle filed a motion to dismiss the Amended Complaint (the “**Motion to Dismiss**”) (Adv. Proc. ECF No. 4);

WHEREAS, on January 16, 2013, the Court entered an order granting the Motion to Dismiss, which, among other things, dismissed Counts I-IV of the Amended Complaint with prejudice and dismissed Count V of the Amended Complaint without prejudice (Adv. Proc. ECF No. 17);

WHEREAS, on May 16, 2013, American Eagle filed a motion pursuant to Fed. R. Bankr. P. 7008(b) and 7054(b) for attorneys’ fees and costs (the “**Fee Motion**”) (Adv. Proc. ECF No. 19);

WHEREAS, on October 17, 2013, the Court entered an order granting the Fee Motion (the “**Fee Order**”) (Adv. Proc. ECF No. 32), which ordered MCM Hotel to pay American Eagle \$185,849.30, consisting of (i) \$185,373.00 for attorneys’ fees and (ii) \$476.30 for expenses (together, the “**Fee Award**”);

WHEREAS, on October 30, 2013, MCM Hotel filed a notice of intent to appeal the Fee Order (the “**Notice of Appeal**”) (Adv. Proc. ECF No. 33); and

WHEREAS, the Parties entered into this Stipulation to consensually resolve all issues relating to the Adversary Proceeding, the Fee Award, the Fee Order, and the Notice of Appeal.

**AGREEMENT**

NOW, THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE AS FOLLOWS:

1. Incorporation of Background Facts and Recitals. The foregoing Recitals are incorporated herein as if set forth in full.
2. Effective Date. This Stipulation shall become effective on the date it is “So Ordered” by the Court (the “**Effective Date**”) and shall inure to the benefit of the Parties and their respective successors.
3. Settlement. In lieu of the Fee Award, MCM Hotel shall pay American Eagle total settlement consideration of \$160,000.00 (the “**Settlement Amount**”) in two (2) installments. For the first installment, MCM Hotel shall pay American Eagle \$87,682.03 in cash via wire transfer or check within five (5) days of the Effective Date. For the second installment, the remaining \$72,317.97, which equals the Proposed Cure Amount, shall be satisfied by MCM Hotel by no later than January 31, 2014 and based upon the agreement of the Parties, by either (i) a set-off against the Proposed Cure Amount (the “**Setoff**”), or (ii) a cash payment to American Eagle via wire transfer or check; *provided, however*, that MCM Hotel may only effect the Setoff, upon agreement of the Parties, if the “Effective Date” of the Plan (as defined in the Plan) has occurred on or before January 31, 2014. Upon full satisfaction of the Settlement Amount, American Eagle shall promptly file a document with the Court evidencing satisfaction of the Fee Award.
4. Reservation of Rights Related to Executory Contracts. This Stipulation shall not prejudice in any way (i) the status of the Executory Contracts, (ii) any postpetition amounts due and owing by American Eagle to MCM Elegante under the Executory Contracts, (iii) American

Eagle's right to assume the Executory Contracts pursuant to the Plan, or (iv) MCM Elegante's right to receive one or more cure payments upon assumption of the Executory Contracts.

5. The Fee Order Appeal. The Parties are authorized to take actions required to preserve their rights relating to any appeal of the Fee Order, *provided, however*, that, on the Effective Date, MCM Hotel shall promptly withdraw the Notice of Appeal and discontinue any efforts to appeal the Fee Order and, to the extent applicable, the Adversary Proceeding.

6. No Modification. This Stipulation may not be modified orally and may only be modified in a writing signed by all of the Parties hereto and approved by the Court.

7. Authority. Each Party represents that it has the requisite power, authority, and legal capacity to execute this Stipulation.

8. Counterpart Originals. This Stipulation may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Evidence of execution of this Stipulation may be exchanged by facsimile or by electronic transmission of a scanned copy of the signature pages or by exchange of an originally signed document, each of which shall be as fully binding on the Party as a signed original.

9. Jurisdiction. The Court shall retain exclusive jurisdiction over any and all disputes arising out of or otherwise relating to this Stipulation.

Dated: New York, New York  
November 5, 2013

Stipulated and Agreed

By: /s/ D. Brent Wells  
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*Attorneys for Debtors and  
Debtors in Possession*

**APPROVED AND SO ORDERED**

this 12<sup>th</sup> day of November, 2013

**BY THE BANKRUPTCY COURT:**

/s/ Sean H. Lane  
United States Bankruptcy Judge