

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

In re:

PINNACLE AIRLINES CORP., *et al.*,

Debtors.

Chapter 11

Case No. 12-11343 (REG)

(Jointly Administered)

**CLAIMS SETTLEMENT STIPULATION AND ORDER AMONG THE
DEBTORS, BANK OF NEW YORK MELLON TRUST COMPANY AND
MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY**

This claims settlement stipulation and order (the “**Stipulation**”) is entered into by and among Pinnacle Airlines Corp. and its subsidiaries that are debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), The Bank of New York Mellon Trust Company, N.A. (the “**Trustee**”) and Memphis-Shelby County Airport Authority (“**MSCAA**” and, together with the Debtors and the Trustee, the “**Parties**”).

Recitals

WHEREAS, on April 1, 2012 (the “**Petition Date**”), each of the Debtors commenced with the United States Bankruptcy Court for the Southern District of New York (the “**Court**”) a voluntary case (each, a “**Case**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), and the Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS Pinnacle Airlines, Inc., as successor to Express Airlines I, Inc. (“**Pinnacle**”) and MSCAA are party to a Special Facilities Lease Agreement dated

December 1, 1986 (as supplemented by the First Special Facility Supplemental Lease Agreement dated as of November 1, 1997, as amended, supplemented and modified, the “**SFLA**”) and (ii) that certain Landing Fee Agreement dated July 1, 1996 (as amended, supplemented and modified, the “**Landing Fee Agreement**”);

WHEREAS Pinnacle and the Trustee, as successor trustee to Union Planters National Bank under that certain Indenture dated as of December 1, 1986 between MSCAA and Union Planters National Bank (as amended, supplemented and modified, including by that certain First Supplemental Indenture dated November 1, 1997, the “**Indenture**”), are party to that certain Guaranty dated as of December 1, 1987 (as amended, supplemented and modified, including by that certain Reaffirmation of Guaranty dated November 1, 1997, the “**Guaranty**” and, together with the Indenture and the SFLA, the “**Rejected Agreements**”), whereby Pinnacle guaranteed payment obligations to note holders under the Indenture (the “**Noteholders**”);

WHEREAS, on January 25, 2013, the Debtors filed the *Debtors’ Motion for an Order Approving the (i) Rejection of Certain Airport Use and Lease Agreements and (ii) Abandonment of Certain Property of the Estate* [ECF No. 952] (the “**Rejection Motion**”), which requested approval to reject the Rejected Agreements;

WHEREAS, on February 13, 2013, MSCAA filed a limited objection to the Rejection Motion [ECF No. 991] (the “**MSCAA Limited Objection**”);

WHEREAS, on February 13, 2013, MSCAA filed the *Motion of Memphis-Shelby County Airport Authority to Compel Payment of Administrative Expenses* [ECF No. 992] (the “**Motion to Compel**”), which requested payment of \$173,136.70 on account of

payments owed under the Landing Fee Agreement and \$24,292.25 on account of rent payments under the SFLA;

WHEREAS, on February 14, 2013, the Trustee filed a limited objection to the Rejection Motion [ECF No. 999] (the “**Trustee Limited Objection**” and, together with the MSCAA Limited Objection, the “**Limited Objections**”) objecting, *inter alia*, to the reservation of right by the Debtors to claim that the SFLA may be deemed to be a financing arrangement (the “**Recharacterization Argument**”);

WHEREAS, on February 14, 2013 the Trustee filed a joinder to the Motion to Compel [ECF No. 1001] (the “**Joinder**”), asserting claims under Sections 365(d)(3) and 503(b) of the Bankruptcy Code relating to the SFLA in the amount of \$345,123.18 (the “**Trustee’s Administrative Claim**”);

WHEREAS, for purposes of this Stipulation, the Trustee and the Debtors have engaged in good faith and arm’s length negotiations regarding the merits of Trustee’s Administrative Claim and the Debtors’ defense thereto, including the impact of the Recharacterization Argument upon such claim, and the Trustee and its counsel have used the same degree of care and skill in the exercise of the Trustee’s rights and power in this matter as a prudent person would exercise and use under the circumstances;

WHEREAS, the Trustee filed proof of claim number 1026 (the “**Trustee’s Proof of Claim**”) asserting unsecured non-priority claims in the amount of \$1,510,934.67 on account of obligations under the Rejected Agreements;

WHEREAS, MSCAA filed proof of claim numbers 1051 and 1052 on account of parking and other fees due under the Landing Fee Agreement in the amounts of \$6,115.60 and \$61,656.70, respectively (the “**MSCAA LFA Proofs of Claim**”), and

proof of claim number 1613, on account of rejection damages due under the Facilities Agreement, in the amount of \$227,128.72 (collectively, with the MSCAA LFA Proofs of Claim, the “**MSCAA Proofs of Claim**”);

WHEREAS, on March 7, 2013, the Debtors filed the Debtors’ Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code [Appendix A to ECF No. 1071] (as has been and may be amended, supplemented and modified, the “**Plan**”); and

WHEREAS, on April 23, 2012, the Court entered an *Order Authorizing and Approving Procedures for Compromise and Settlement of Certain Claims, Litigations and Causes of Action* [ECF No. 170] (the “**Claim Settlement Order**”) setting forth procedures for settling claims asserted against the Debtors in the Cases.

NOW, THEREFORE, in consideration of the foregoing and the covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Within ten (10) calendar days of the Court’s entry of an order approving this Stipulation, the Debtors shall pay to MSCAA the total amount of \$40,212.24, which amount shall be in satisfaction of MSCAA’s administrative priority claims for the following amounts: (i) \$16,139.00 on account of amounts asserted as owed under the SFLA in the Motion to Compel, and (ii) the following additional amounts incurred pursuant to the Landing Fee Agreement:

Basis for Amount Owed	New Amount
<i>Parking (February 2013)</i>	\$22,824.00
<i>ID Badges (October 2012)</i>	\$1,200.00
<i>Long Distance Charges (September, October and December 2012)</i>	\$49.24
TOTAL:	\$24,073.24

2. Pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006 and Local Rule 6006-1, the Debtors' rejection of each of the Rejected Agreements listed on Schedule 1 hereto is hereby approved and shall be effective as of the date specified therein (the "**Effective Date**").

3. Pursuant to section 554(a) of the Bankruptcy Code and Bankruptcy Rule 6007 and Local Rule 6007-1, the Debtors' abandonment of the Expendable Property (as defined in the Rejection Motion) to MSCAA is approved and shall be effective as of the Effective Date; *provided* that nothing herein shall limit or prejudice, and MSCAA expressly reserves, all of its rights to timely assert environmental or nuisance claims against the Debtors on account of the Leased Properties or the Expendable Property (each as defined in the Rejection Motion)(such claims, the "**Environmental Claims**"); *provided further* that, solely for purposes of any administrative claims bar date that may be set for these Cases, this Stipulation shall be deemed to be a timely filed contingent, unliquidated Environmental Claim to the extent any such Environmental Claim arose postpetition.

4. The Trustee's Proof of Claim shall be reduced and allowed as a general unsecured non-priority claim in the aggregate amount of \$348,193.75 (the "**Allowed Trustee Rejection Claim**"). The Trustee shall also be granted an allowed administrative priority claim of \$297,983.00 (the "**Allowed Administrative Expense**" and, together with the Allowed Trustee Rejection Claim, the "**Trustee Allowed Claims**").

5. Upon the Court's entry of an order approving this Stipulation, the Limited Objections, the Motion to Compel and the Joinder shall be deemed withdrawn with

prejudice with no further action required by MSCAA or the Trustee to effect such withdrawal.

6. In accordance with the Claim Settlement Order, the Debtors will provide notice of the terms of this Stipulation to the Office of the United States Trustee for the Southern District of New York and counsel to the official committee of unsecured creditors. In addition, the Debtors will file a notice of presentment of this Stipulation with the Court and serve such notice on the Noteholders. Any Noteholder who does not file a timely objection to the notice of presentment will be bound by the terms of the Stipulation and after the entry of the Order approving the Stipulation, Noteholders will be barred from asserting any and all claims relating to the Stipulation against the Trustee, the Debtors or MSCAA.

7. Upon or as soon as reasonably practicable following the approval of this Stipulation by the Court, Epiq Bankruptcy Solutions, LLC, as the Debtors' notice and claims agent, is authorized and directed to amend the Debtors' register of claims to reflect the effect of this Stipulation, including by reducing and liquidating the Allowed Trustee Rejection Claim, reflecting the Allowed Administrative Expense and expunging any other claim that has been filed or may be filed by the Trustee on account of the Rejected Agreements.

8. Each of MSCAA and the Trustee, on behalf of itself, its successors and assigns, and, in the case of the Trustee, on behalf of the Noteholders, does hereby fully, finally and forever waive, release and/or discharge the Debtors, their estates and their respective heirs, successors, assigns, affiliates, officers, directors, shareholders, associates, parents, subsidiaries, predecessors, employees, attorneys and agents from any

claim (whether prepetition unsecured, priority or administrative) and from all related actions, causes of action, suits, debts, obligations, liabilities, accounts, damages, defenses, or demands whatsoever, known or unknown, that arise from the Rejected Agreements, other than (a) the Trustee Allowed Claims, (b) the MSCAA Proofs of Claim, (c) timely asserted Environmental Claims that may be held by MSCAA against the Debtor on account of the Leased Properties or the Expendable Property, (d) any rejection claim filed by MSCAA in connection with rejection of the SFLA within 30 days of the date this Stipulation is effective or (e) any amounts payable by the Debtor to MSCAA or the Trustee pursuant to this Stipulation. For the avoidance of doubt, nothing in this release or this Stipulation shall release, limit, or compromise, any unpaid amounts due to MSCAA pursuant to the Landing Fee Agreement, (which shall remain in full force and effect and shall not be modified, altered, limited, ratified or assumed in any way by this Stipulation).

9. Other than the Trustee Allowed Claims, neither the Trustee, nor the Noteholders, shall be entitled to any claims, nor shall they file any claims against any of the Debtors or any Released Parties (as defined in the Plan), in each case arising out of, based on or related to any of the Rejected Agreements.

10. Nothing contained herein shall be deemed to constitute an assumption or postpetition reaffirmation of any prepetition agreement.

11. The effectiveness of this Stipulation is conditioned upon it being so ordered by the Court.

12. None of this Stipulation, the Rejection Motion or any statement made or action taken in connection with the negotiation of this Stipulation, shall be offered or

received in evidence or in any way referred to in any legal action or administrative proceeding among or between the parties hereto, other than as may be necessary (a) to obtain approval of and to enforce this Stipulation or (b) to seek damages or injunctive relief in connection therewith.

13. No provision of this Stipulation is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any person other than the parties hereto and their respective successors.

14. Notice of this Stipulation is good and sufficient notice and satisfies Bankruptcy Rules 2002(a), 6006, 6007, and 9014 and Local Bankruptcy Rules 6006-1 and 6007-1 by providing the counterparties with notice and an opportunity to object.

15. The Parties agree that the Court shall have and retain jurisdiction to hear any matters or disputes arising from or relating to this Stipulation.

16. This Stipulation may be signed in counterpart originals, which, when fully executed, shall constitute a single original, and facsimile and electronic signatures shall be deemed originals.

17. The signatories to this Stipulation represent that they have been duly authorized by their clients to execute this Stipulation.

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Dated: New York, New York
April 5, 2013

Dated: New York, New York
April 5, 2013

By: /s/ Darren S. Klein
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Dated: New York, New York
April 5, 2013

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*Counsel to the Bank of New York
Mellon Trust Company, N.A.*

SO ORDERED _____, 2013

THE HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE