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**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW JERSEY**

| | |
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| Ad Hoc Group of Minority Secured Lenders,<br><br>Appellants,<br><br>v.<br><br>Del Monte Foods Corporation II Inc., et al.,<br><br>Appellees. | **APPELLANTS' REPLY IN SUPPORT OF APPELLANTS' EMERGENCY MOTION FOR A TEMPORARY ADMINISTRATIVE STAY AND TO STAY ORDER CONFIRMING DEBTORS' FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION PENDING APPEAL**<br><br>Civil Action No.: 26-06259 (RK) |

# REPLY IN SUPPORT OF APPELLANTS' EMERGENCY MOTION FOR A TEMPORARY ADMINISTRATIVE STAY AND TO STAY ORDER CONFIRMING DEBTORS' FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION PENDING APPEAL

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The Ad Hoc Group of Minority Secured Lenders, Appellants in the above-captioned bankruptcy appeal (collectively, the "Minority Ad Hoc Group," or "Appellants")[1] submit this reply in support of *Appellants' Emergency Motion for a Temporary Administrative Stay and to Stay Order Confirming Debtors' First Amended Joint Chapter 11 Plan of Reorganization Pending Appeal*, Dkt. 3 (the "Stay Motion") and in response to (1) the *Debtors' Opposition to Appellants' Emergency Motion for a Temporary Administrative Stay and to Stay Order Confirming Debtors' First Amended Joint Chapter 11 Plan of Reorganization Pending Appeal*, Dkt. 30 (the "Debtors' Response") and (2) the joinders to the Debtors' Response filed by the Ad Hoc Group of Majority Secured Lenders, Dkt. 31 (the "MAHG Joinder"), and the Committee of Unsecured Creditors, Dkt. 32 (the "Committee Joinder") (collectively, the "Responses").[2]

Far from refuting the ample grounds that exist for the grant of a temporary administrative stay and a stay pending appeal, the Responses amplify the merits of Appellants' request for relief. To begin with, Appellees[3] do not deny that Appellants have a *statutory right* to appellate review of the Settlement Order and the

[1] The members of the Minority Ad Hoc Group are listed in the disclosure statement in Appellants' merits brief filed with the Court, Case No. 26-02379, Dkt. 19.

[2] The Debtors' Response also references the *Declaration of Jonathan Goulding in Opposition to Stay Pending Appeal* [Bankr.Dkt. 1617-1] (the "Goulding Declaration").

[3] All capitalized terms not defined herein shall have the same meaning as in the Stay Motion.

Confirmation Order. *See* 28 U.S.C. § 158(a). Nor do Appellees deny that they are presently rushing to substantially consummate their Plan so that, once they do so by commencing distributions, they may move immediately to dismiss Appellants' appeals under the doctrine of equitable mootness.[4] They further do not contest that the Debtors' operating businesses have all been sold and what is left to be done is simply to liquidate miscellaneous assets (largely for the benefit of the Majority Ad Hoc Group) and distribute available proceeds to various claimants *other than* Appellants. Finally, they do not dispute that a stay pending appeal would not prevent them from continuing their liquidation activities, but would merely postpone distributions until it could be determined whether the Settlement and Plan properly zero out Appellants' recoveries—which is all that Appellants seek to maintain the status quo. What Appellees *do* contend is that, applying the *Nken* factors, it is equitable for them to be free to seek to override Appellants' legal appellate rights. Appellees are wrong.

Appellants are likely to succeed on the merits of their appeals of the Settlement Order and the Confirmation Order because these orders condone

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[4] *See In re Semcrude, L.P.*, 728 F.3d 314, 317 (3d Cir. 2013) (discussing equitable mootness doctrine). Upon other things, the doctrine is triggered upon "substantial consummation" of a debtor's Chapter 11 plan. "Substantial consummation" is defined in section 1101 of the Bankruptcy Code, and includes "commencement of distributions under the plan." 11 U.S.C. § 1101. Accordingly, if distributions under the plan are stayed, substantial consummation does not occur and the doctrine is not triggered.

impermissible arrangements that violate not only settled principles of bankruptcy law, but also the letter and spirit of the Bankruptcy Code. In addition, Appellants face a serious prospect of irreparable harm. Although Appellants do not concede that their appeals would be equitably moot if the Debtors are able to substantially consummate their Plan, there is a substantial risk that the appeals may be rendered moot, in which event Appellants would lose not merely their statutory right of appellate review, but also their ability to recover pecuniarily on their substantial claims and enjoy the benefit of the value of their lien rights, which are protected property interests.

Appellees contend that they will suffer harm if a stay is granted, but their contentions ring hollow. The Debtors claim that the Majority Ad Hoc Group may enforce a default if the Plan is not substantially consummated by the end of the month, Goulding Declaration ¶¶7-9, but the Majority Ad Hoc Group has not threatened to do so nor would doing so serve the group's interests, *see* 6/2/26 Hr'g Tr. [Wolpert Decl. Exhibit H] at 37:1-4. Again, the liquidation is currently being undertaken largely for their benefit. Enforcing a default would only undermine their interests. Further, the public interest lies in Appellants being able to vindicate their appellate rights, not with Appellees' efforts to insulate the erroneous Settlement Order and Confirmation Order from ongoing judicial review.

As a fallback, Appellees contend that, if a stay is granted, a bond is in order. But their allegations of potential loss are without merit. The expenses they claim they may incur as a result of a stay are in reality the expenses they must incur in any event in pursuing their liquidation activities. And given that the proceeds otherwise available for distribution may be placed in interest-bearing accounts, the delay in distributions that Appellants seek pending appeal is not a form of actual harm. Certainly Appellees have proffered *no evidence* that a delay in distributions would occasion anything other than that—mere delay. Thus, Appellees have failed to demonstrate any need for a bond. In contrast, it is evident that all of Appellees' current efforts in rushing to substantially consummate the Plan are geared intentionally toward inflicting irreparable harm on Appellants. The Court should grant the relief requested in the Stay Motion.

**I. The Court Should Grant a 21-Day Administrative Stay.**

1. The Responses misconstrue the point of a short administrative stay. An administrative stay is not for the benefit of the *parties*; it is for the benefit of the *Court*. As Justices Barrett and Kavanaugh have explained, "[t]he[] point [of an administrative stay] is to minimize harm while an appellate court deliberates" on the merits of a stay request—including the movants' likelihood of success—which is

"not always easy to evaluate in haste…." *United States v. Texas*, 144 S. Ct. 797, 798 (2024).[5]

2. Providing this Court with adequate time to independently consider the merits of the Stay Motion, while it is also considering the merits of the fully briefed Settlement Appeal, is both logical and fair—certainly none of the Appellees explain why that is not so. Because the Confirmation Order implements the unlawful Settlement Order, a decision reversing the Settlement Order would constitute independent grounds to stay the Confirmation Order. Indeed, the reversal of the Settlement Order would effectively moot the appeal of the Confirmation Order by mooting confirmation of the Debtors' Plan.

3. The Debtors argue—with no citation or support—that the grant of an administrative stay "would cause the exact same potential harm as a full-blown stay pending appeal" because it would stay the Confirmation Order past the June 30, 2026 maturity date of the Debtors' DIP Term Loan Facility. Debtors' Response at 23. As noted at the outset, however, that alleged harm is unfounded because the Majority

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[5] Administrative stays are widely used "to permit time for briefing and deliberation" when emergency relief is sought. *United States v. Texas*, 144 S. Ct. at 798; *see also Hope v. Warden York Cnty. Prison*, 956 F.3d 156, 159 (3d Cir. 2020) (noting grant of administrative stay); *Marine Polymer Techs., Inc. v. HemCon, Inc.*, 395 F. App'x 701 (Fed. Cir. 2010); *Bainbridge Fund Ltd. v. Republic of Argentina*, 2025 WL 1949907 (2d Cir. July 15, 2025); *Brady v. Nat'l Football League*, 638 F.3d 1004 (8th Cir. 2011); *Cobell v. Norton*, 2004 WL 603456 (D.C. Cir. Mar. 24, 2004); *Arnold v. Garlock, Inc.*, 278 F.3d 426, 433 (5th Cir. 2001).

Ad Hoc Group has not threatened to do so and doing so would be contrary to the group's self-interest.

4. The only party that attempts to engage meaningfully with Appellants' request for an administrative stay is the Majority Ad Hoc Group, but their counterarguments are beside the point. The Majority Ad Hoc Group first argues that "there is a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay." MAHG Joinder at 14 (quoting *Nelson v. Campbell*, 541 U.S. 637, 650, (2004)). But the group neglects that the "presumption" they cite is conditioned on "the State's significant interest in enforcing its *criminal judgments*" and only arises in the merits-based stay context. *Nelson*, 541 U.S. at 650 (emphasis added). Thus, it is inapplicable to Appellants' request for a non-merits 21-day administrative stay of a *civil* order. The Majority Ad Hoc Group's remaining argument—that Appellants were not diligent in seeking a stay pending appeal while the Rule 3020(e) stay was in effect—is inaccurate. As Appellants explained in their June 5, 2026 letter [Dkt. 5], they filed their request for a stay pending appeal in the bankruptcy court two business days after the bankruptcy court entered its written order confirming the Plan, and filed their motion for a stay pending appeal in this Court the day after the bankruptcy court entered its written order denying that relief. *Id.* at 2.

5. The fact that the bankruptcy court denied Appellants' request for a stay is also of no moment. Recognizing that a trial court is unlikely ever to agree that its judgment is substantially likely to be overturned on appeal (the first *Nken* factor), a motion for a stay pending appeal is considered *de novo* in the appellate courts. *See In re Genesis Health Ventures, Inc.*, 367 B.R. 516, 521 (Bankr. D. Del. 2007); *In re Revel AC, Inc.*, 802 F.3d 558, 567 (3d Cir. 2015).

**II. Appellants Satisfy the First *Nken* Factor.**

6. As an initial matter, the Debtors profess confusion that Appellants have secured, unsecured, and administrative claims. *See* Debtors' Response at 9. But as the Debtors are aware, such is common in bankruptcy, and readily explained.

7. Outside of bankruptcy, a secured creditor with lien rights in the debtor's property holds a secured claim—a claim secured by the relevant collateral. In bankruptcy, however, section 506(a) commonly divides a secured creditor's claim into two parts: (1) a secured claim to the extent of the value of its collateral and (2) an unsecured "deficiency" claim to the extent the value of the collateral is less than the full amount of the creditor's claim. 11 U.S.C. § 506(a); *see United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 239 (1989). Appellants hold unsecured deficiency claims because the value of the collateral securing their claims is less than the amount of the claims.

8. Secured creditors also commonly hold "administrative expense" claims to the extent that the debtor's use of their collateral during the bankruptcy causes them harm—*e.g.*, by destroying the value of their lien rights, thus impairing their right of recovery. *See, e.g., In re Carpet Ctr. Leasing Co.*, 991 F.2d 682, 685–87 (11th Cir. 1993). That is what happened here. Appellants have lien rights in various items of the Debtors' property, but the value of that property diminished as a result of the priming liens securing the DIP Loans and is otherwise being diverted to others—the proceeds are being used to pay other claims. Section 507(b) provides, and the bankruptcy court previously ordered, that if such occurs, Appellants have "administrative expense claims" to the extent of the loss of the value of their lien rights. *See* Bankr.Dkt. 359 (Final DIP Order) ¶8. The Debtors' professed confusion regarding this state of affairs is a deflection.

9. With respect to Appellants' substantial unsecured "deficiency claims," the Plan plainly violates the core bankruptcy principle of equality of distribution. In accordance with the Settlement, the Plan allocates $0 to Appellants' unsecured deficiency claims while distributing substantial value to other unsecured creditors. This is a clear form of unfair discrimination.

10. In an effort to get around this, the Debtors improperly gerrymandered the Plan, placing Appellants' unsecured deficiency claims in Class 3, and the preferred unsecured creditors in Class 4. But that is impermissible under binding

Circuit precedent. *See John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs*., 987 F.2d 154, 161 (3d Cir. 1993); Stay Motion at 12-13. The two groups should have been classified together and treated the same. *See, e.g.,* 11 U.S.C. § 1123(a)(4) (claims in the same class must be treated the same, unless the disfavored claimant agrees to being treated less favorably). The only reason why the Plan separately classifies the two groups is *to avoid* the requirement of equal treatment.

11. In an effort to silence Appellants, the Debtors included in Class 3 the deficiency claims of the members of the Majority Ad Hoc Group, which claims are sufficiently large and numerous to outnumber Appellants' claims. Then, in violation of section 1126(g), which directs that claimants in any class that are to receive nothing are deemed to vote "no," the Plan provides that claimants in Class 3 are entitled to vote. *See* 11 U.S.C. § 1126(g). Predictably, the Majority Ad Hoc Group outvoted Appellants in an effort to block Appellants from invoking section 1129(b), which expressly prohibits unfair discrimination if a class votes "no." *See* 11 U.S.C. §§ 1129(a)(8) (a plan cannot be confirmed if an impaired class votes "no"), 1129(b) (providing an exception—the "cram down" exception—if a class that votes "no" is being treated in a manner that is "fair and equitable" and does not "discriminate unfairly"). But this voting scheme violates not only the mandate of section 1126(g), but also the Supreme Court's direction that the votes of creditors like the Majority Ad Hoc Group cannot be counted because the members of the Majority Ad Hoc

Group are receiving inducements not provided to Appellants. *See Am. United Mut. Life Ins. Co. v. City of Avon Park,* 311 U.S. 138, 142–49 (1940); Stay Motion at 4-5.

12. The Plan's treatment of Appellants' administrative expense claim (*i.e.*, their claim for the loss of the value of their lien rights during the Debtors' bankruptcy case, which value is being diverted to others) is also defective. In order to prove that their Plan is feasible, the Debtors were required to show that all administrative expense claims would be paid in full. *See* 11 U.S.C. §§ 1129(a)(9), 1129(a)(11); Stay Motion at 17-18. Rather than do so, the bankruptcy court disregarded Appellants' administrative expense claim on the ground that Appellants had not fully proven it. In contrast, the Plan provides that other administrative expense claims that *also have yet to be finally resolved will be paid in full*. This discrepancy is inexplicable. Appellants are entitled to have their claim paid, and the Plan must provide the funding to do so.

13. Because the Plan plainly violates all of these principles and rules, it should not have been confirmed. Tellingly, *none* of the Responses cite a single case that has permitted anything like what the Plan attempts to engineer. Appellants are more than likely to succeed on the merits.

14. Opposing this, the Debtors rely heavily on the contention that the Appeal involves primarily factual issues, *see* Debtors' Response at 9, 11, 16, but that

is not so. As outlined above and explained in the Stay Motion, it involves dispositive principles of law subject to *de novo* review. Because Appellants are more than likely to prevail, the Stay Motion should be granted.

**III. Appellants Face a Serious Prospect of Irreparable Harm.**

15. Because Appellants have an exceptionally strong likelihood of success on the merits of their Appeal, they correspondingly have a reduced obligation to demonstrate irreparable harm under the "sliding scale" approach adopted in *Revel*. Courts have applied this "sliding scale" in many cases in which one or more of the *Nken* factors were not independently satisfied. *See Delaware ex rel. Jennings v. BP Am. Inc.*, 2022 WL 605822, at *2 (D. Del. Feb. 8, 2022) (applying the sliding scale approach and reducing the burden of showing the likelihood of success because "the other stay factors weigh in favor of granting [the stay]"); *Nissan Motor Acceptance Corp. v. Sports Car Leasing LLC*, 2021 WL 2555686, at *2 (E.D. Pa. 2021) (adopting the *Revel* sliding scale test and granting the request for a stay based on a strong showing of appellate harm even while holding it was more likely than not the lower court decision would be affirmed on appeal). In contending that Appellants have not shown a sufficient prospect of irreparable harm, the Responses simply ignore this standard.

16. Under the correct approach, Appellants have made more than a sufficient showing. To begin with, the Responses do not deny that the Debtors are

indeed rushing to substantially consummate their Plan so they may seek dismissal of Appellants' appeals on grounds of equitable mootness. Although the Responses contend that the "mere" loss of appellate rights is not irreparable harm, *see* Debtors' Response at 17-18, MAHG Joinder at 11-12, that contention is wide of the mark. Appellants *also* claim the irreparable loss of their ability to recover pecuniarily on their claims *and* the loss of the value of their lien rights.

17. A lienholder's right to its collateral is a property interest protected under the Fifth Amendment, including in bankruptcy cases. *See Armstrong v. United States*, 364 U.S. 40, 48 (1960) (destruction of lien rights violated the Takings Clause); *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 594–95, 602 (1935) (bankruptcy law that impaired lienholder's rights violated the Fifth Amendment). And the loss of the value of a protected property interest that will not be compensated is *quintessentially* irreparable harm—indeed, it is far more tangible than other forms of harm courts have recognized as irreparable. *See, e.g., Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1304 (2010) (Scalia, J., in chambers) ("If expenditures cannot be recouped, the resulting loss may be irreparable."); *Purdue Pharma L.P. v. Boehringer Ingelheim GmbH,* 237 F.3d 1359, 1368 (Fed. Cir. 2001) (likelihood of price erosion and loss of market position are evidence of irreparable harm); *Bio–Technology Gen. Corp. v. Genentech, Inc.,* 80 F.3d 1553, 1566 (Fed. Cir. 1996) (loss of revenue, goodwill, and research and development support

constitute irreparable harm); *Ross–Simons of Warwick, Inc. v. Baccarat, Inc.,* 102 F.3d 12, 19 (1st Cir.1996) ("[A]bsent a restraining order, [a party] would lose incalculable revenues and sustain harm to its goodwill.").

18. In any event, the threat of equitable mootness is a significant factor that courts *must* consider in evaluating irreparable harm. *See, e.g., In re Adelphia Commc'ns Corp.*, 361 B.R. 337, 347–49 (S.D.N.Y. 2007); *Rep. of Philippines v. Westinghouse Elec. Corp*., 949 F.2d 653, 658 (3d Cir. 1991); *In re Voluntary Purchasing Grps., Inc.,* 196 F.3d 1258 (5th Cir. 1999) (per curiam). Appellants have more than satisfied their burden.

## IV. Appellees Face No Prospect of Material Harm and the Public Interest Lies in the Correct Application of the Law.

19. In contrast, Appellees would not be harmed by a stay. They contend that, unless they are able to get away with their scheme, the Majority Ad Hoc Group may enforce a default and potentially take adverse action, including by preventing the Plan from going effective. *See* Debtors' Response at 19-20. But apart from the fact that this alleged "harm" is entirely engineered—Appellees themselves created it by agreement—there is no evidence that it is likely to materialize. The Debtors do not contend that the Majority Ad Hoc Group has threatened to enforce a default, and the Majority Ad Hoc Group has not asserted that it will.

20. There is good reason for this. The liquidation is being conducted largely for the benefit of the Majority Ad Hoc Group. The idea that the group would

pull the plug—and thus scuttle a process designed for its benefit—is simply implausible.

21. In addition, all that Appellants seek is a delay in commencing distributions under the Plan. A stay would not interfere with the liquidation process. And a delay in distributions will cause Appellees no material harm.

22. As for the final factor, the public interest favors the correct application of the law. Because the Plan violates so many important legal principles, a robust opportunity for appellate review should be preserved.

## V. A Bond Is Not Warranted.

23. Finally, Appellees cannot justify the imposition of a bond. Although the bankruptcy court stated in dicta that "whether a bond should be imposed" would have "required serious consideration" if the court had determined that a stay was warranted, the court did not, as the Responses imply, order that a bond would have been required. *See* Debtors' Response at 24-25.

24. In any event, requiring a bond is not the norm, particularly when, as here, the relevant property in dispute (*i.e.*, distributions from the liquidation of the Debtors' assets) will remain untouched while an appeal is pending. *See In re United Merchs. & Mfrs., Inc.*, 138 B.R. 426, 430 (D. Del. 1992) (holding that requiring a bond is unnecessary for stay of Chapter 11 plan distributions); *In re Yormak*, 2021 WL 5298533, at *5 (M.D. Fla. 2021) (because stay was temporary and estate funds

were in a trust account and not to be disturbed, appealing party did not need to post a bond for the stay of bankruptcy court order).

25. Further, the Debtors' request for a bond is premised on the Goulding Declaration, which is riddled with erroneous suppositions. Among other things, Mr. Goulding claimed as alleged "damages" expenses that the Debtors must incur in any event *or have already incurred*, which hardly qualify as expenses occasioned by a stay. Further, his calculations were greatly exaggerated. This was all brought out during his cross-examination in the bankruptcy court.[6] Tellingly, the bankruptcy court accepted none of his statements and made no finding regarding any potential damages.

26. The key point remains, however, that when, during an appeal, the requested relief remains simply a delay in distributions under a plan so that an appellant's interest in them may be adjudicated, a bond is not required because the

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[6] As for estimated damages, Mr. Goulding engaged in no mitigation analysis, and thus his declaration clearly overestimated potential losses. *See* 6/2/26 Hr'g Tr. at 47:16-22. Mr. Goulding also overstated the costs of professional fees and other costs during a stay by factoring in amounts that have already been incurred or would be incurred even in the absence of a stay. *See* Goulding Declaration ¶13 (describing professional fees as damages from a stay); 6/2/26 Hr'g Tr. at 51:10-52:16 (admitting on cross that these fees would be incurred regardless of a stay); *see also id.* at 52:13-24 (admitting that confirmation litigation professional fee burn rate may not be the burn rate of fees on appeal); 43:4-12 (admitting, with respect to the $19.265 million of accounts payable, "[t]hat's largely all incurred, or mostly incurred."). Other key expected costs and damages are uncertain or otherwise contradicted in the Goulding Declaration. *See* Goulding Declaration ¶¶10, 13.

relevant property simply is not going anywhere. Because this cannot cause Appellees any material harm, a bond would be inappropriate and the Debtors have failed to show that one is required.

## CONCLUSION

For the foregoing reasons, as well as those set forth in the Stay Motion, Appellants respectfully request that the Court enter an order staying substantial consummation of the Confirmation Order pending resolution of the Appeal.

Dated: June 10, 2026

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Fed. R. Bankr. P. 8013 and 8015(h), the undersigned hereby certifies that:

1. This reply complies with the type-volume limitations of Fed. R. Bankr. P. 8013(f)(3), as expanded by order of the Court, *see Letter Order* [Dkt. 45], because it contains 3,900 words or less, excluding the parts exempted by Fed. R. Bankr. P. 8015(g).

2. This reply complies with the typeface requirements of Fed. R. Bankr. P. 8013(f)(2) and type style requirements of Fed. R. Bankr. P. 8013(f)(2) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word, in 14-point Times New Roman.

Dated: June 10, 2026

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