

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

In re:

DEL MONTE FOODS CORPORATION II INC.,
et al.,

Debtors.

Chapter 11

Case No. 25-16984 (MBK)

(Jointly Administered)

AD HOC GROUP OF MINORITY SECURED
LENDERS,

Appellants,

v.

DEL MONTE FOODS CORPORATION II,
INC., *et al.*

Appellees.

Hon. Robert Kirsch

Civil Action No. 3:26-cv-06259 (RK)

**DEBTORS' OPPOSITION TO APPELLANTS' EMERGENCY MOTION FOR A
TEMPORARY ADMINISTRATIVE STAY AND TO STAY ORDER CONFIRMING
DEBTORS' FIRST AMENDED JOINT CHAPTER 11 PLAN PENDING APPEAL**

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PRELIMINARY STATEMENT

Appellants' Stay Motion [Dkt. No. 3] seeks an extraordinary remedy without good cause and should be denied. The Plan confirmed by the Bankruptcy Court has the approval of every major constituency in the case, including the Debtors, the Official Committee of Unsecured Creditors (the "**Committee**," a statutory fiduciary for unsecured creditors), and the debtor-in-possession ("**DIP**") lenders that financed the bankruptcy and who also hold a majority of the Debtors' prepetition loans (the "**Majority Group**"). The Bankruptcy Court's well-reasoned, post-trial Confirmation Order [Bankr. Dkt. No. 1592] approved the Plan based on detailed factual findings and careful application of settled law, neither of which are likely to be disturbed on appeal. Further, staying the Confirmation Order pending appeal would cause stakeholders serious harm, including by potentially triggering a default under the DIP financing if the Plan is not consummated by June 30, 2026. A default could allow the DIP lenders to seize the Debtors' collateral (including cash), potentially precluding any recoveries to other creditors, all so that one group of disgruntled lenders can mitigate the risk that their longshot appeal might be rendered moot. A stay is not justified.

The Appellants (the "**Minority Group**") are a minority group of prepetition lenders under the same loan agreement as the Majority Group. The Minority Group was offered the same opportunity as the Majority Group to help finance the bankruptcy by providing DIP loans. Had the Minority Group participated in the DIP, it would have enjoyed many of the same economic benefits as the Majority Group. Instead, it chose not to participate, and its claims (along with the claims of all other creditors) were subordinated to repayment of the DIP loans, as is standard in court-approved DIP financings. The Minority Group did not object to the Bankruptcy Court's final approval of this subordination. As a consequence, when the Debtors' assets were sold through a court-approved auction process, and that auction did not yield proceeds sufficient to pay

even the DIP lenders in full, other creditors—including the Minority Group and general unsecured creditors—were out of the money.

During the bankruptcy, the Committee threatened to assert claims against the Debtors' lenders, including the Majority Group that provided the DIP. To settle this dispute, the DIP lenders agreed to forego a modest portion (\$8 million) of their legal entitlements under the DIP to permit general unsecured creditors to receive a recovery. But that settlement did not contemplate any recovery to the unsecured deficiency claims of the Minority Group. After all, the Committee had threatened to bring claims against both the DIP lenders and the Minority Group as prepetition lenders. Thus, when the DIP lenders settled, it made no sense to direct the proceeds of that settlement to other potential *defendants* in the claims that were the subject of that settlement.

The Minority Group was not a party to the foregoing settlement, and has spent the ensuing several months opposing, under an evolving set of arguments, the Debtors' efforts to save their businesses and confirm a chapter 11 plan. Fortunately for the Debtors' creditors, the Minority Group's efforts have largely failed. Despite the Minority Group's indiscriminate and "kitchen-sink" objections, the Bankruptcy Court first approved the near-global settlement that set the stage for a chapter 11 plan, and then, following disclosure and solicitation of that plan, and a contested evidentiary hearing, confirmed the plan. The success of these efforts is undeniable: the Debtors' business lines were sold as going concerns; the historic Del Monte brand was preserved; employee jobs were saved; many vendors received payment in full; value-destructive litigation was avoided; and general unsecured creditors, who potentially stood to receive nothing on the Petition Date, instead will receive a modest distribution of \$8 million.

The Minority Group calls this outcome discriminatory. What they fail to grapple with is that the Bankruptcy Code by its terms *permits* discrimination. The Bankruptcy Code only prohibits

discrimination that is *unfair*. With that key distinction, the Minority Group's arguments fall apart. As the Bankruptcy Court explained, the distinction between the treatment afforded to general unsecured creditors, on the one hand, and the members of the Minority Group, on the other, was simply not material under controlling Third Circuit precedent. And even if it were material, it was amply justified—i.e., *not* unfair. The Minority Group is set to receive exactly what it would receive outside of bankruptcy (i.e., nothing), and it has offered no good reason why it should receive the proceeds of a settlement that is paid, in part, to resolve claims in which the Minority Group was a potential defendant.

The Bankruptcy Court's holding was undoubtedly correct—both on the key issue of unfair discrimination and the host of ancillary issues raised by the Minority Group. Thus, when the Bankruptcy Court was asked to stay its Confirmation Order pending appeal, it declined to do so. *See* Stay Decision [Bankr. Dkt. No. 1624] denying the stay motion below. [Bankr. Dkt. No. 1602]. It found little likelihood of success on appeal, coupled with inadequate showings on each of the remaining three prongs for a stay. The Bankruptcy Court also suggested, based on the evidentiary record before it, that even if it had issued a stay, it likely would have required a substantial bond, to protect against the evident harm that a stay will have on other parties.

The Minority Group's renewed Stay Motion to this Court should fare no better. The Stay Motion offers nothing new on the merits, and no reason to think that the Bankruptcy Court's confirmation decision and order were wrong. As for the remaining prongs of the test:

- The Minority Group has not shown it will suffer irreparable harm, because the only harm it identifies is the speculative possibility of equitable mootness, which courts in this Circuit have held is not sufficient.
- The Minority Group has not shown the absence of substantial harm to other parties, and, to the contrary, the evidence shows that a stay will cause such harm, both through delayed distributions under the Plan and through the possibility of a default under the

DIP loan that could lead to far more deleterious effects on the overall outcome of this case, including a value-destructive liquidation.

- The public interest favors the prompt consummation of a chapter 11 plan that enjoys near-universal support and approval of the Bankruptcy Court, not the encouragement of hold-out behavior by out-of-the-money creditors whose only leverage is obstruction and delay.

Should the Court decide a stay is warranted, it should impose a substantial bond. That is the “ordinary” requirement in this Circuit, and there is no reason to deviate here. As set forth in the Declaration of Jonathan Goulding, filed in opposition to the stay motion below [Bankruptcy Dkt. No. 1617-1] (the “**Goulding Declaration**”) (which was accepted into evidence by the Bankruptcy Court), a bond is necessary to guard against the substantial harm that will likely befall creditors and other stakeholders in the event of a stay.

Finally, the Minority Group’s request for a 21-day administrative stay should also be denied. The Court has set a schedule under which the Stay Motion will be fully briefed by June 10, permitting its resolution (subject to the Court’s schedule) before the June 12 date on which the Plan would go effective. And just as a stay pending appeal would cause substantial harm, an administrative stay (particularly one that extends into July) would pose the exact same harms.

For these and other reasons discussed below, the Stay Motion should be denied.

RELEVANT BACKGROUND

A. Chapter 11 Petition and Sale Process.

The Debtors commenced these Chapter 11 Cases in July 2025. At the time, the Debtors had prepetition secured debt with the Majority and Minority Groups under the same loan agreement. All lenders (including the Minority Group) were offered the opportunity to participate in DIP financing to fund the bankruptcy. The Majority Group agreed to provide DIP financing, while the Minority Group declined. *See generally* Goulding First Day Declaration [Bankr. Dkt. No. 19]. The Debtors then conducted a robust and competitive process to sell their assets.

B. The Court-Approved Settlement.

Concurrently with the sale process, the Debtors' Special Investigation Committee conducted a comprehensive investigation into potential claims that the Debtors' estates might hold against third parties. The Official Committee of Unsecured Creditors also undertook its own independent investigation, including drafting papers threatening to bring claims against the Debtors' prepetition lenders, including the Majority Group and the Minority Group.

In an attempt to resolve these disputes and avoid costly litigation, the Debtors asked the Bankruptcy Court to refer the parties to mediation, which the Bankruptcy Court did. [Bankr. Dkt. No. 900]. During that mediation, which was overseen by the Chief Bankruptcy Judge of the District, the Debtors, the Committee, the Majority Group, and the Debtors' non-debtor parent reached a global resolution of the disputes between them (the "Settlement").

Under the Settlement, among other things, the Majority Group (a) agreed to permit the Debtors to use a significant amount of cash that otherwise would have been required to be used to repay the DIP Term Loan to fund an orderly wind-down, (b) agreed to waive \$70,000,000 of its remaining DIP Term Loan Claims in exchange for receiving designation rights on certain real property, and (c) agreed to fund an \$8 million reserve for general unsecured creditors (the "GUC Recovery Reserve") from the proceeds of the DIP Term Loan Lenders' collateral.

C. Approval of the Settlement and Sales.

Following extensive briefing and a two-day evidentiary hearing on January 28-29, 2026, the Bankruptcy Court entered orders approving the Debtors' proposed asset sales [Bankr. Dkt. No. 1208, 1209, 1210], as well as the Settlement [Bankr. Dkt. No. 954]. The Minority Group appealed the Settlement to this Court, and that appeal is fully briefed. [Case No. 26-CV-2379].

D. The Debtors File a Plan Consistent with the Settlement.

The Debtors then proposed a Plan and Disclosure Statement consistent with the Settlement.

As relevant here, the Plan placed the claims of the Debtors' prepetition lenders (including both the Minority Group and the Majority Group) in Class 3, and the claims of the Debtors' general unsecured creditors in Class 4. Certain other general unsecured creditors who agreed to subordinate their claims were placed in Class 5. *See* Goulding Confirmation Declaration [Bankr. Dkt. No. 1477] ¶¶ 33, 34. The Plan called for the payment of the \$8 million GUC Recovery Reserve to be shared pro rata among the general unsecured creditors in Class 4, for an estimated recovery percentage to those creditors of 3-5%. *Id.* ¶ 74. The Plan contemplated the *possibility* of a recovery to creditors in Class 3 (i.e., the lenders), but in view of the unlikelihood of that result, the Disclosure Statement estimated the Class 3 recovery percentage at 0%. *Id.* ¶ 105. Classes 3, 4, and 5 all voted to approve the Plan. *See* Voting Declaration. [Bankr. Dkt. No. 1479].

E. The Minority Group's Objection to the Plan Is Overruled.

The Minority Group objected to the Debtors' Plan, asserting many of the same objections it had lodged against approval of the Settlement. [Bankr. Dkt. Nos. 1475, 1476].

The Bankruptcy Court held a hearing on confirmation of the Plan on May 12, 2026. The Debtors, the Committee, and the Majority Group supported the Plan, while the Minority Group opposed. No party pressed an objection to the Plan other than the Minority Group. The Debtors' witness, Mr. Goulding, submitted a declaration [Bankr. Dkt. No. 1477] and was cross-examined by the Minority Group. *See* May 12, 2026 Hearing Transcript [Bankr. Dkt. No. 1563] ("**Confirmation Hearing Tr.**") 19:12-113:9.

On May 18, the Bankruptcy Court issued its detailed oral opinion confirming the Plan. May 18, 2026 Hearing Transcript [Bankr. Dkt. No. 1597] ("**Confirmation Ruling Tr.**"). Relying on the testimony of the Debtors' witness, Mr. Goulding, and other evidence, and on the application of well-settled law, the Court rejected each of the Minority Group's objections to the Plan. *See, e.g.,* Confirmation Ruling Tr. 27:14-17.

F. The Minority Group’s Desultory Stay Efforts.

At the May 18, 2026 hearing, after the Court had read its opinion, the Minority Group stated it would likely be filing a motion for a stay pending appeal. Confirmation Ruling Tr. 29:13-30:3. On May 22, several days after the Court’s oral ruling, the Bankruptcy Court entered its formal Confirmation Order approving the Plan. [Bankr. Dkt. No. 1592]. But it was not until several days after that, on May 27 (*9 days* after the Minority Group first mentioned a stay), that the Minority Group finally filed its stay motion with the Bankruptcy Court. [Bankr. Dkt. No. 1602].

G. The Bankruptcy Court’s Denial of a Stay.

The Debtors opposed the stay motion [Bankr. Dkt. No. 1617]. At a June 2 hearing, the Bankruptcy Court admitted into evidence the Goulding Declaration, which, among other things, outlined the expected harms of a stay. Goulding Decl. ¶¶ 19-26; June 2, 2026 Hearing Transcript [Bankr. Dkt. No. 1625] (“Stay Tr.”) 30:22-25.

The Bankruptcy Court denied the stay motion. Among other things, the Bankruptcy Court held that the Minority Group was unlikely to succeed on appeal, observing:

The authorities govern[ing] classification, unfair discrimination, voting rights, feasibility and section 507(b) claims are well developed. [] The dispute is not over what the law is, it is over how the law applies to the facts of this case. The Minority Group’s disagreement with the Court’s application of settled law [does] not in and of itself establish a reasonable probability of success on appeal. Stay Tr. 59:18-25.

The Bankruptcy Court found that the other relevant factors weighed against a stay, as well. Stay Tr. 61:11-62:21. Since the Bankruptcy Court denied the stay, it did not set a bond. However, it acknowledged the likely need for a substantial bond should a stay issue, noting:

[T]he Court knows that the debtors have raised substantial concerns regarding the potential economic consequences of a stay including increased professional fees, administration expenses, delayed distributions and risks associated with the maturing DIP facility. [] Had a stay otherwise been warranted, those expressed

concerns would have required serious consideration in determining whether a substantial bond should be imposed as a condition of relief. Stay Tr. 62:24-63:6.

The Bankruptcy Court also entered an administrative stay through June 10. Stay Tr. 63:14-19; [Bankr. Dkt. No. 1624]. On June 4, the Minority Group filed the instant Stay Motion, requesting the same relief.

ARGUMENT

I. The Stay Motion Fails.

The Minority Group does not come close to satisfying the high standard for a stay pending appeal. “A motion for a stay of a Court’s decision is an ‘extraordinary remedy.’” *In re W.R. Grace & Co.*, 475 B.R. 34, 205 (D. Del. 2012). Whether to grant a stay depends on four factors: “(1) whether the appellant has made a strong showing of the likelihood of success on the merits; (2) will the appellant suffer irreparable injury absent a stay; (3) would a stay substantially harm other parties with an interest in the litigation; and (4) whether a stay is in the public interest.” *In re Revel AC, Inc.*, 802 F.3d 558, 565 (3d Cir. 2015). If the movant fails to make a sufficient showing that it can win on the merits and will suffer irreparable harm, the motion should be denied. *Id.* at 571. If, and only if, the movant satisfies those first two prongs, the court then balances the relative harms considering all four factors. *Id.* Even if a court orders a stay, it typically requires the appellant to post a bond. *W.R. Grace & Co.*, 475 B.R. at 209.

Here, the Bankruptcy Court found that the Minority Group “failed to satisfy either of the threshold requirements,” Stay Tr. 59:2-6, and that even if the first two factors had been satisfied, “the balance of harms would weigh against granting a stay” and “the public interest likewise favors denial of the motion.” Stay Tr. 61:11-13, 62:9-10. The Bankruptcy Court also found that if a stay had been warranted, the Debtors had “raised substantial concerns regarding the potential economic consequences of a stay,” and that those concerns “would have required serious consideration in

determining whether a substantial bond should be imposed as a condition of relief.” Stay Tr. 62:24-63:6. As set forth below, the Bankruptcy Court was right.

A. The Minority Group Cannot Show that It Is Likely to Prevail on Appeal.

To satisfy *Revel*'s first prong, the Minority Group must make a “strong showing” that it is likely to prevail on appeal, meaning that it has a “reasonable chance” of winning. *Revel*, 802 F.3d at 568-71. In making this determination, the Court should consider, among other things, the applicable standard of appellate review. *See, e.g., NLRB v. 710 Long Ridge Rd. Operating Co. II, LLC*, 2014 WL 1155539, at *4 (D.N.J. Mar. 21, 2014) (likelihood of success “necessarily tempered by the extensive factual findings of the Bankruptcy Court, which will be reviewed only for clear error on appeal.”). Evaluated under these standards, the Stay Motion fails to show a strong likelihood of success on appeal. As set forth below, the Bankruptcy Court's holdings were consistent with applicable law, and many of them were dependent upon factual findings that will be reviewed only for clear error. None is likely to be reversed.

To understand the uphill battle facing the Minority Group, it is necessary first to bring order to their convoluted arguments. The Minority Group has at various times taken the position that its members are unsecured creditors ([Bankr. Dkt. No. 1270] ¶¶ 5, 9, 49-57), that they are secured creditors ([Bankr. Dkt. No. 1476] ¶¶ 72-74), and/or (in an eve-of-confirmation development) that they hold superpriority claims ([Bankr. Dkt. No. 1538] ¶¶ 1-2, 21-22). It has also taken a kitchen-sink approach, including raising objections to standard plan constructs (like classifying all prepetition secured creditors under the same loan facility together in one class). As a result, it can be hard to parse its arguments and understand what really matters. At a high level, however, the Minority Group's Stay Motion now focuses on four main categories of objections:

First, it argues that the Minority Group's claims were improperly grouped with the Majority Group's claims in Class 3 for purposes of voting on the Plan rather than with the general

unsecured creditors in Class 4 (Stay Motion at 13-15), even though the Bankruptcy Court made factual findings that the Majority Group and Minority Group claims arise under the same loan documents that grant them different rights than a run-of-the-mill unsecured trade creditor. Confirmation Ruling Tr. 19:16-20.

Second, it argues that because Class 3 was projected to receive no recovery under the Plan, it should have been assumed to reject the Plan rather than vote (Stay Motion at 14-15), despite factual findings by the Bankruptcy Court that there was a possibility of a recovery, which was sufficient under the plain language of the statute and applicable case law to entitle Class 3 to vote. Confirmation Ruling Tr. 18:2-19:11.

Third, it claims that the Plan discriminates unfairly in violation of section 1129(b)(2) of the Bankruptcy Code. Stay Motion at 14-16. But unfair discrimination does not apply as a matter of law because the Minority Group was properly grouped in Class 3, which approved the Plan. And even if that classification and vote were improper, it does not matter, because the Bankruptcy Court made factual findings that treatment of the Minority Group was not unfair given the small disparity in the recovery between the Minority Group and the general unsecured creditors. Confirmation Ruling Tr. 22:15-24.

Fourth, it asserts that the Plan is infeasible in violation of section 1129(a)(11) of the Bankruptcy Code since the Plan does not reserve any funds to pay the Minority Group's entirely speculative (not to mention legally infirm) eleventh-hour assertion of a superpriority claim (Stay Motion at 17-18), which the Minority Group lacks standing to bring and for which it provided no evidentiary basis to ascertain a value and its potential impact on feasibility. Confirmation Ruling Tr. 12:19-14:25.

Each of these arguments was properly rejected on the merits principally based on factual findings of the Bankruptcy Court that are subject to review only for clear error.

i. The Minority Group's Claim Was Properly Classified in Class 3.

Bankruptcy plans generally group similarly situated creditors together for purposes of voting on whether to approve a plan. 11 U.S.C. § 1122(a). Thus, it is standard practice that financial lenders are grouped separately from trade creditors. *See, e.g., In re Coram Healthcare Corp.*, 315 B.R. 321, 350-51 (Bankr. D. Del. 2004), 315 B.R. at 350-51 (finding separate classification reasonable where noteholders represented a voting interest separately distinct from trade creditors); *Hargreaves v. Nuverra Env't Sols., Inc. (In re Nuverra Env't Sols., Inc.)*, 590 B.R. 75, 97 (D. Del. 2018) (“Numerous cases permit separate classification of trade claims from noteholder claims on the grounds that such claims have different legal attributes.”). And the caselaw makes clear that “[p]lan proponents and bankruptcy courts have considerably broad discretion in deciding how to classify claims.” *W.R. Grace & Co.*, 475 B.R. at 110 (citing *In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1061 (3d Cir. 1987)).

That's exactly what happened here. The Bankruptcy Court properly found that the Minority and Majority Group's claims were “substantially similar” and thus properly grouped together in Class 3, and the Minority Group's claims were *not* similar to those of the general unsecured creditors in Class 4, the class in which the Minority Group evidently wished it had been placed. Confirmation Ruling Tr. 19:12-22. The reasons for this were factually established at the Confirmation Hearing: all the claims in Class 3 arose under the exact same prepetition credit agreement, held the same rights against the Debtors, and would have been defendants in any litigation brought by the Committee; the claims in Class 4, by contrast, were general unsecured claims like various trade creditors, none of which arose under a credit agreement and all of which would have benefitted from claims that the Debtors' estates might have asserted *against* the

Majority and Minority Groups. See Goulding Confirmation Decl. ¶¶ 31, 33-35, 37, 109; see also Confirmation Ruling Tr. 19:12-20:8. The Minority Group identifies no contrary evidence to demonstrate clear error by the Bankruptcy Court.

The Minority Group cites *John Hancock Mutual Life Insurance Co. v. Route 37 Business Park Associates*, 987 F.2d 154 (3d Cir. 1993), in support of its assertion that its unsecured deficiency claims should have been classified with Class 4 General Unsecured Claims. Stay Motion at 13-14. However, *John Hancock* did not announce any categorical rule concerning the classification of deficiency claims. Compare, e.g., *In re Greate Bay Hotel & Casino, Inc.*, 251 B.R. 213, 223-26 (Bankr. D.N.J. 2000) (finding classification of secured and deficiency claims of noteholders in the same class to be permissible because the deficiency claims were not “substantially similar” to the general unsecured claims). In any event, the distinctions between the claims in Class 3 and Class 4 in this case are far more pronounced than the differences the court found insufficient in *John Hancock*. See *John Hancock*, 987 F.2d at 161 (separate classification not warranted where only difference between claims was that one had recourse to non-debtor partners). As the Bankruptcy Court found, there is “ample justification” for the Plan’s classification scheme, and “[t]he evidence further establishes that the classification scheme was not proposed for any improper purpose such as vote manipulation or artificial impairment.” Confirmation Ruling Tr. 20:1-4.¹

¹ The Minority Group also contends it could not be placed in the same class as the Majority Group since the latter alone is receiving a release, supposedly violating section 1123(a)(4)’s requirement that all claims in a class receive the same treatment. Stay Motion at 8, 14, 15. However, section 1123(a)(4) looks to equality of treatment between *claims*, not of claimants. See, e.g., *Ad Hoc Comm. of Non-Consenting Creditors v. Peabody Energy Corp. (In re Peabody Energy Corp.)*, 933 F.3d 918, 925 (8th Cir. 2019). Here, all members of Class 3 are receiving the same treatment on account of their Class 3 claims: their pro rata share of Distributable Proceeds in accordance with the Plan’s Waterfall Recovery.

ii. Class 3 Was Properly Allowed to Vote on the Plan.

The Bankruptcy Code provides detailed rules governing voting by the various classes of creditors for or against a plan. “[A] class is deemed not 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....” 11 U.S.C. § 1126(g) (emphasis added). The Bankruptcy Court properly determined that Class 3 was entitled to vote on (and accepted) the Plan, notwithstanding that claims in Class 3 were unlikely to receive a recovery, because the “plan provide[d]” they were still “entitled” to the *possibility* of a recovery. Confirmation Ruling Tr. 15:24-17:6, 18:7-10. The Plan also provides for the holders of claims in Class 3 to “retain” certain property, i.e., their rights of setoff or recoupment against the Debtors to the extent that claims were brought against the Minority Group. Plan, Art. III.B.3. The Minority Group cites no contrary evidence that it lacked the possibility of a recovery under the Plan. So long as the plan allows for the possibility of a recovery to a class, it is allowed to vote. *See, e.g., In re Pipeline Health Sys., LLC*, No. 22-90291 (MI), Dkt. No. 524, Nov. 16, 2022 Hr’g Tr. 64:4-18 (Bankr. S.D. Tex. Nov. 18, 2022) (finding claimants were entitled to vote on plan where they retained rights to distribution of proceeds through plan’s recovery waterfall).

iii. The Unfair Discrimination Test Does Not Apply and Was Not Violated.

The Bankruptcy Court did not even need to consider the issue of unfair discrimination, since section 1129(b) applies only to classes that reject a plan, and the Minority Group was properly placed in a class (Class 3) that *accepted* the Plan. But even if Class 3 had not accepted the Plan, the Plan did not violate section 1129(b)(1) because the supposed discrimination here was not unfair.

The Minority Group’s central argument, that the Plan purportedly discriminates unfairly, is inconsistent with controlling Third Circuit law, which the Bankruptcy Court faithfully applied.

As the Third Circuit explained in *In re Tribune Co.*, 972 F.3d 228 (3d Cir. 2020), the Bankruptcy Code does not prohibit discrimination, per se, but only discrimination that is *unfair*: “you can treat differently (discriminate) but not so much as to be unfair.” *Id.* at 242. Thus, in that case, applying the “rebuttable presumption” test for unfair discrimination, the court held that a “nine-tenths of a percentage point difference” in recovery between a creditor’s plan recovery and the recovery it would receive without the allegedly discriminatory mechanic, was “not material.” *Id.* at 244-45. The Third Circuit also noted that a presumption of unfair discrimination could be overcome if the “lower recovery for the dissenting class is consistent with the results that would obtain outside of bankruptcy.” *Id.* at 241 (quoting authority).

Applying *Tribune*, the Bankruptcy Court properly found that there was no unfair discrimination. As the evidence showed, *see* Goulding Confirmation Decl. ¶ 107, the “percentage point difference” between what the Minority Group is receiving under the Plan and what it would receive if shared pro rata in the \$8 million GUC Recovery Reserve is just 0.85%. *Tribune* holds that this is not material. *See Tribune*, 972 F.3d at 245. Second, even if the difference were material, the Bankruptcy Court concluded—again, consistent with *Tribune*—that “[t]he recovery for the Minority Lender Group under the plan is consistent with the results they would obtain outside of bankruptcy since the group is to receive nothing in liquidation.” Confirmation Ruling Tr. 22:18-21. This is a *factual finding* that can be reversed only if it was clearly erroneous. That is unlikely to occur.

Astonishingly, the Stay Motion does not even mention *Tribune*, the controlling Third Circuit authority on this point. Instead, the Stay Motion argues that the Plan effectuated an unauthorized “gift” of proceeds from the Majority Group to the general unsecured creditors. But while the Plan’s construct can also be justified on gifting grounds (as a permissible allocation by

the DIP lenders of the proceeds of their collateral),² the Court need not even reach that issue if it concludes, as the Bankruptcy Court did, that the Plan is consistent with *Tribune*.

iv. The Plan Is Feasible.

The Bankruptcy Court also properly rejected the Minority Group's eleventh-hour argument that the Plan was not feasible. Under section 1129(a)(11), a plan is feasible if it "is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor." 11 U.S.C. § 1129(a)(11). To meet this standard, a debtor merely must show by the preponderance of the evidence that there is a reasonable likelihood of the plan's success – but "not an absolute certainty" of such success. *In re W.R. Grace & Co.*, 729 F.3d 332, 349 (3d Cir. 2013).

Here, the Minority Group asserted the Plan was not feasible because it allegedly failed to account for their purported claim that their collateral had declined in value by some \$25 million during the case, entitling them to a superpriority claim under Bankruptcy Code section 507(b) that had to be paid under section 1129(a)(9). But that argument rests on the assumption that the Minority Group possesses such a claim—an issue yet to be adjudicated and vigorously disputed by the Appellees.³ In any event, while a decline in the value of a secured creditor's collateral

² Multiple cases in this Circuit have held that a so-called horizontal gift from one creditor group to another is permissible. *See, e.g., In re Nuverra*, 590 B.R. at 91-96 (unfair discrimination rebutted and horizontal gifting permissible where an increased distribution to trade and business unsecured creditors did not "diminish the distribution" to class of deficiency claims as "the surplus distribution would revert to secured creditors" not holders of deficiency claims); *In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 611-12 (Bankr. D. Del. 2001) (unfair discrimination rebutted and gift was "a permissible allocation by the secured creditors of a portion of the distribution to which they would otherwise be entitled" to unsecured creditors), *aff'd*, 280 B.R. 339, 346 (D. Del. 2002), *aff'd*, 119 F. App'x 427 (3d Cir. 2004); *see also In re Yellow Corp.*, 2026 WL 908516, at *27 (Bankr. D. Del. Apr. 2, 2026) (adopting the rationale of *Nuverra* and finding that settlement funded by settling pension plans to certain unsecured creditors and not others did not amount to unfair discrimination).

³ The allowance of the Minority Group's purported superpriority claim has not been adjudicated because the Minority Group waited until one business day before the Confirmation Hearing to assert its claim. However, in considering all of the evidence submitted to date, the Bankruptcy

might, in theory, give rise to such a claim, the Debtors showed at the Confirmation Hearing that the Minority Group's alleged claim was legally and factually deficient and highly unlikely to be allowed.

First, the purported claim was premised on the notion that the *members* of the Minority Group held liens. Instead, the Bankruptcy Court preliminarily held that it was the *collateral agent* under the credit agreement that held a security interest in the Debtors' assets. *See* Confirmation Ruling Tr. 13:10-12. Therefore, the members of the Minority Group had no standing to assert a claim premised on the alleged decline in the value of their (non-existent) collateral. *See* Confirmation Ruling Tr. 12:19-13:9; *see also, e.g., In re Enron Corp.*, 2005 WL 356985, at *7-8 (S.D.N.Y. Feb. 15, 2005) (where credit documents granted rights to the collateral agent, individual lender lacked standing to proceed against collateral).

Second, the Minority Group did not meet its burden of proving the existence and amount of any diminution in value of its collateral. *See, e.g., In re Residential Cap., LLC*, 501 B.R. 549, 591 (Bankr. S.D.N.Y. 2013) (the burden of proof under § 507(b) is on the claimant). Rather, as the Bankruptcy Court found in a ruling entitled to deference on appeal, “[t]he evidentiary record at the combined hearing does not establish any actionable diminution in the aggregate value of the group’s interest in the collateral between the petition date and confirmation.” Confirmation Ruling Tr. 14:1-4. The evidence was, in fact, the exact opposite: the value of the collateral had increased. *See* Confirmation Hearing Tr. 103:6-12 (Goulding testifying that “we built up the value of the business, there wasn’t a diminution in the value of those assets [the collateral]”); Goulding Supp.

Court correctly ruled that “the record made at the combined hearing is woefully insufficient for this Court to find that the potential 507(b) claims have sufficient legal or factual merit to require a finding that the plan is unfeasible.” Confirmation Ruling Tr. 12:10-13.

Sale & Settlement Decl. ¶ 17 [Bankr. Dkt. 1050] (explaining that the final sale price exceeded the initial stalking horse bid).

Because the Minority Group lacked standing to assert the rights of a secured creditor, and because in any event it failed to prove a decline in the value of its collateral, its purported claim was so speculative that it could not serve as an impediment to the Plan.

* * *

In sum, the Minority Group’s arguments are unlikely to succeed because they each depend on demonstrating clear error in the Bankruptcy Court’s fact finding and erroneous legal arguments disconnected from binding precedent.

B. The Minority Group Failed to Show It Would Be Irreparably Harmed.

The Minority Group “must ‘demonstrate that irreparable injury is *likely* [not merely possible] in the absence of [a] [stay].” *Revel*, 802 F.3d at 569 (alterations in original). “[L]ikely” injury “mean[s] more apt to occur than not.” *Id.* Here, the *only* harm the Minority Group alleges is that its appeal may become equitably moot (Stay Motion at 18-20), and that is insufficient.

“The Third Circuit and courts within its appellate jurisdiction have previously recognized . . . that the risk of equitable mootness by itself is insufficient to demonstrate irreparable injury for the purposes of a stay.” *W.R. Grace & Co.*, 475 B.R. at 206-07. “Indeed, if equitable mootness alone could serve as the basis of irreparable injury, a stay would be issued in every case of this nature pending appeal.” *Id.*; *see also, e.g., Rep. of Phil. v. Westinghouse Elec. Corp.*, 949 F.2d 653, 658 (3d Cir. 1991) (“Certainly the fact that the decision on the stay may be dispositive of the appeal in some cases is a factor that an appellate court must consider, but that alone does not justify premitting an examination of the nature of the irreparable injury alleged and the particular harm that will befall the appellant should the stay not be granted.”); *In re Diocese of Camden*, No. 24-cv-4279 (ESK), Dkt. No. 26 (D.N.J. May 8, 2024) (“equitable mootness, alone, is not sufficient

to establish an ‘irreparable injury’”); *In re THG Holdings LLC*, 2019 WL 6615341, at *6 (D. Del. Dec. 5, 2019) (same); *In re Nuverra Env’t Sols., Inc.*, 2017 WL 3326453, at *4 (D. Del. Aug. 3, 2017) (same); *In re Am. Tissue, Inc.*, 2015 WL 1516973, at *4 (D. Del., Mar. 31, 2015) (same).

The Minority Group’s Third Circuit cases are either inapposite or contradict their argument. Stay Motion at 18-20; see *In re Tribune Co.*, 477 B.R. 465, 476 (Bankr. D. Del. 2012) (“Courts have held that [equitable mootness], alone, is not sufficient to justify a stay pending appeal”); *Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharm. Co.*, 290 F.3d 578, 596 (3d Cir. 2002) (no analysis of equitable mootness); *Guardian Life Ins. Co. of Am. v. Estate of Cerniglia*, 446 F. App’x 453, 456-57 (3d Cir. 2011) (same).⁴

For this reason, the Bankruptcy Court correctly held that the Minority Group failed to establish irreparable harm. Stay Tr. 60:20-61:2. The Bankruptcy Court also noted that the dispute here is “fundamentally an economic one,” and that “[t]he Minority Group itself acknowledges that if it ultimately prevails distributions may be adjusted or recovered. Economic injuries capable of remediation through monetary relief ordinarily do not constitute irreparable harm.” Stay Tr. 61:3-8.

⁴ The Minority Group’s out-of-circuit authorities fare no better. Stay Motion at 18-20; see *In re Adelphia Commc’ns Corp.*, 361 B.R. 337, 347 (S.D.N.Y. 2007) (“[a] majority of courts have held that a risk of mootness, standing alone, does not constitute irreparable harm” outside the Second Circuit); *In re Country Squire Assocs. of Carle Place, L.P.*, 203 B.R. 182, 183 (B.A.P. 2d Cir. 1996) (finding mootness from imminent foreclosure sale constitutes the “quintessential form of prejudice,” but not addressing equitable mootness as applied to a plan); *In re Voluntary Purchasing Grps., Inc.*, 196 F.3d 1258, at *1 (5th Cir. 1999) (per curiam) (reversing denial of stay of confirmation plan when bankruptcy court *did not explain* how the plan complied with 11 U.S.C. §§ 1129(b)(2)(B)(ii) and 1129(a)(7)). It is also of no moment whether equitable mootness “is a factor that an appellate court must consider,” Stay Motion at 20 n.3, as the Minority Group does not allege any other irreparable harms, and as discussed *supra* at 17, Third Circuit caselaw is clear that equitable mootness alone is insufficient to demonstrate irreparable harm.

Because the Minority Group has not “ma[d]e the requisite showings on either of these first two factors, the inquiry into the balance of harms and the public interest is unnecessary, and the stay should be denied without further analysis.” *Revel*, 802 F.3d at 571 (citation omitted).

C. A Stay Will Substantially Harm the Interests of Other Parties.

As they did below, the Minority Group misstates the third *Revel* factor, which is “(3) would a stay *substantially harm other parties* with an interest in the litigation,” *see Revel*, 802 F.3d at 565 (emphasis added), not whether the other parties can show “irreparable harm.” Stay Motion at 20. The Minority Group utterly failed to meet that burden. *See W.R. Grace & Co.*, 475 B.R. at 208 (finding that “[t]he third factor requires [the movant] to present satisfactory evidence that imposition of the stay will not substantially injure other parties in the litigation”). The Minority Group’s two paragraph argument on this factor (Stay Motion at 20-21) is dismissive of the harms the Debtors and other interested parties would face. But the harm to the non-moving parties from a stay far outweighs the purported harm to the Minority Group.

A stay would significantly harm the parties in interest for a number of reasons. Delay in distributions is alone a form of harm, but the stakes are even higher here because of the consequences of a very near-term maturity and default of the DIP Term Loan Facility. *See* Goulding Decl. ¶¶ 7, 8; DIP Term Loan Credit Agreement [Bankr. Dkt. No. 50, Ex. B] §§ 1.1 (definition of “Maturity Date”), 10.5(b)(i), 8.1(a). The DIP Term Loan Facility matures no later than June 30, 2026 (or earlier, if the Plan is consummated). Goulding Decl. ¶ 8. Thus, if the Effective Date is stayed and the Plan is not consummated by June 30, 2026, the DIP Term Loan Facility will default by virtue of not being repaid at maturity, and the *entire* DIP Term Loan Facility will become immediately due and payable. *Id.*; DIP Term Loan Credit Agreement § 8.1. Because the Debtors do not have sufficient cash to repay the DIP Term Loan Facility, the DIP Term Loan Lenders may seek to foreclose on their collateral to satisfy the approximately \$170

million in outstanding DIP Term Loan Claims, including the DIP Term Loan Lenders' cash collateral that is being used to fund the Wind-Down Budget,⁵ Goulding Decl. ¶ 9, and may not agree to the use of their cash collateral to fund the Wind-Down Budget. *Id.* In contrast, if there is no stay and the Plan is consummated, the DIP Term Loan Facility will be resolved consensually, eliminating this risk.

A DIP default would harm virtually every stakeholder. *See In re Nine Point Energy Holdings, Inc.*, 2021 WL 3410242, at *6-7 (D. Del. Aug. 4, 2021) (recognizing that potential DIP default posed a risk of substantial harm to debtors and other parties-in-interest). The DIP Term Loan Lenders could argue that the GUC Recovery Reserve does not have to be distributed, and hundreds of general unsecured creditors would lose access to that funding under this Plan. Everyone who has been providing post-petition goods and services to the Debtors could find the payments they were promised and counting on (and which were approved by the Bankruptcy Court) gone.

Even if the Minority Group loses on appeal, the harm to the Debtors' estates will already have been done. Without access to the DIP Term Loan Lenders' collateral, (a) the Debtors would likely not be able to conduct an orderly Wind-Down or distribute the GUC Recovery Reserve, to the detriment of all other stakeholders; and (b) the current Court-approved Plan would then never be able to be consummated, as one of the conditions precedent to the Effective Date of the Plan is that DIP Term Loan Facility is not in default. Goulding Dec. ¶ 9; *see* Plan, Art. IX.B.4. The Debtors also would likely have nothing left with which to consummate any future plan.

⁵ The Debtors reserve all rights to contest any attempt by the DIP Term Loan Lenders to exercise remedies during or following an alleged event of default.

The Bankruptcy Court accepted these facts and found that “[a]ccording to the record presented, a stay could create the prospect of a default under the facility potentially affecting the [D]ebtors’ ability to access cash collateral and complete the orderly wind down contemplated by the confirmed plan.” Stay Tr. 61:16-21. It also noted “the possibility of disruption to the wind-down process increase[ing] administration expenses, delay of creditor distributions and further litigation [are] legitimate concerns that weigh against the issuance of a stay.” Stay Tr. 61:24-62:1.

Also, if a stay were granted, the Debtors would incur millions of dollars in professional fees and other costs during the pendency of a months- or years-long appeal that extends the wind-down of the Debtors. Long appeals are not unusual.⁶ The median length of time from filing in the lower court to the last opinion or final order in the appeals court was 27.8 months for bankruptcy appeals in the Third Circuit. See Administrative Office of the United States Courts, 2025 Judicial Business Analysis, Table B-4B, https://www.uscourts.gov/sites/default/files/document/jb_b4b_0930.2025.pdf.

The Debtors’ projected fees and other expenses weigh against a stay. See *In re Adelpia Commc’ns Corp.*, 361 B.R. 337, 353 (S.D.N.Y. 2007) (accrual of professional fees during stay is harm), *aff’d*, 2007 WL 7706743 (2d Cir. Feb. 9, 2007). As of confirmation, the Debtors incurred approximately \$350,000 per day, or \$2.5 million per week, in professional fees and expenses during these Chapter 11 Cases. Goulding Decl. ¶ 13(c). Under the Debtors’ conservative estimate that assumes substantially lower fees going forward, there are still likely to be significant

⁶ For example, the confirmation appeal in *Invitae* has been pending nearly two years. *In re Invitae Corp.*, Case No. 24-11362 (MBK), Dkt. No. 913 (Bankr. D.N.J.) (confirmation order); Case No. 25-2735 (3d Cir.), Dkt. No. 55 (argument calendared July 7, 2026). And in *Boy Scouts*, the confirmation appeal was pending for 32 months. 2022 WL 20541782 (Bankr. D. Del. Sept. 8, 2022); *In re Boy Scouts of Am. & Del. BSA, LLC*, 137 F.4th 126 (3d Cir. 2025).

incremental professional fees of \$15,834,000, as well as Board fees of \$5,280,000 and employee costs of \$505,000 over a 24-month stay, exceeding \$21 million. *Id.*, Exs. A, B.

The Minority Group also argues that because the Debtors do not have an operating business, “there is no urgency in this case.” Stay Motion at 20. Not so. In addition to the mounting fees and the risks of the DIP default, a stay of distributions under the Plan would delay hundreds of creditors from sharing in the proceeds of the GUC Recovery Reserve for months or years. Goulding Decl. ¶ 13(d). The Bankruptcy Court agreed: a “stay would postpone these distributions for an uncertain period of time,” a delay which “itself constitutes a meaningful prejudice.” Stay Tr. 62:2-7; *see In re Akron Thermal, Ltd. P’ship*, 414 B.R. 193, 208 (N.D. Ohio 2009) (stay of confirmation prejudices creditors by delaying payments to “some uncertain date into the future”).

D. A Stay Is Not in the Public Interest.

The Minority Group also cannot satisfy the fourth *Revel* factor, that “a stay is in the public interest.” *Revel*, 802 F.3d at 565. The Third Circuit has held that public policy is served by promoting the finality of bankruptcy judgments. *See Nordhoff Invs. Inc. v. Zenith Elecs. Corp.*, 258 F.3d 180, 190 (3d Cir. 2001).

Further, “[t]he public interest requires bankruptcy courts to consider the good of the case as a whole, and not [just] [objecting] creditors’ [] concerns.” *In re Adelpia Commc’ns Corp.*, 368 B.R. 140, 284 (S.D.N.Y. 2007). The Plan enjoyed “overwhelming creditor support.” Confirmation Ruling Tr. 7:17. Thus, “the public interest . . . strongly dictate[s] against any . . . stay” because “[i]t would be grossly unconscionable . . . to thwart the will of such an overwhelming majority [of voting creditors] to accommodate the desires of such a small minority, who are simply dissatisfied with the Settlement under the Plan.” *Adelpia*, 368 B.R. at 283-84.

The public interest also disfavors allowing “private agendas [to] thwart the maximization of value for all.” *In re Boy Scouts of Am. & Del. BSA, LLC*, 2023 WL 6442586, at *9 (D. Del.

Oct. 3, 2023) (denying stay motion that would satisfy the “private agendas of less than 0.2% of abuse claimants to the detriment of the 99.8%”). The Bankruptcy Court noted here that “[g]ranted a stay under these circumstances would delay implementation of a confirmed plan supported by the vast majority of the stakeholders based upon objections advanced by a limited constituency whose arguments have already been fully litigated.” Stay Tr. 62:16-19.

II. The Court Should Not Grant an Administrative Stay

The Minority Group’s request for a 21-day administrative stay through July 1, 2026, should also be denied. Under the schedule set by the Court, the Stay Motion will be fully briefed by June 10, permitting its resolution well before the 21-day administrative stay extension that the Minority Group has requested.

Critically, the Minority Group does not acknowledge that a stay through July 1, 2026 would cause the exact same potential harm as a full-blown stay pending appeal. As discussed above, the Debtors’ DIP Term Loan Facility matures on June 30, 2026. Any stay past June 30, 2026, puts the Debtors’ Plan and Chapter 11 Cases at risk. Moreover, if the Stay Motion is denied, the Minority Group will likely seek the same relief at the Third Circuit. Any such proceedings would need to be resolved before June 30, 2026, which would be impossible if the requested administrative stay is granted.

III. If This Court Were to Issue a Stay, It Should Require a Substantial Bond.

While the Court should not issue a stay, if it were inclined to do so, it should require that the Minority Group post a bond in an amount sufficient to protect the interests of debtors and other creditors. The Minority Group bears the burden to show why the Court should deviate from the “ordinary” requirement that a “full security” appeal bond be posted. *W.R. Grace & Co.*, 475 B.R. at 209. They have utterly failed to meet that burden and fail to even mention bonds in the Stay Motion. Courts view a movant’s failure to address the necessity of a bond as a “factor weighing

against the imposition of a stay.” *Id.*; *see also Jurista v. Amerinox Processing, Inc.*, 492 B.R. 707, 784 (D.N.J. 2013).

Courts routinely impose bonds in the rare cases in which they grant stays, in order to protect the non-moving parties. *See Adelpia Commc 'ns Corp.*, 361 B.R. at 352-54, 368 (imposing \$1.3 billion appeal bond based on estimate of the interest on post-petition debt and continuing professional and administrative expenses); *In re Tribune Co.*, 477 B.R. at 479-82 (imposing \$1.5 billion bond calculated using estimated professional fees and administrative costs, lost opportunity costs, and other harms), *aff'd sub nom. In re Tribune Media Co.*, 799 F.3d 272 (3d Cir. 2015).

The Debtors have analyzed two scenarios for the purpose of calculating a bond, which are reflected in the Goulding Declaration. In summary (and to avoid repetition), under **Scenario 1**, the Debtors estimate total projected costs of approximately **\$63,069,000**; and under **Scenario 2**, the Debtors estimate total projected costs of approximately **\$22,259,000**.

Below, the Minority Group suggested that the Debtors’ Scenario 1 would not come to pass. Stay Tr. 40:14-18. But they presented no evidence on this point (or, indeed, any on a bond at all), and the Bankruptcy Court correctly concluded that “[a]ccording to the record presented, a stay could create the prospect of a default under the [DIP] facility potentially affecting the debtors’ ability to access cash collateral and complete the orderly wind down contemplated by the confirmed plan.” *Id.* 61:17-21.

The Minority Group also challenged certain projections in Scenario 1 and 2, but the Bankruptcy Court correctly found that the Debtors “have raised substantial concerns regarding the potential economic consequences of a stay including increased professional fees, administration expenses, delayed distributions and risks associated with the maturing DIP facility.” *Id.* 62:24-63:2. Thus, the Bankruptcy Court noted that if a stay had been warranted, which it was not, then

“those expressed concerns would have required serious consideration in determining whether a substantial bond should be imposed as a condition of relief.” *Id.* 63:3-6.

The Minority Group’s quibbling on this issue was misplaced. The purpose of a bond is to “preserve the status quo and protect the bankruptcy estate and its creditors from incurring costs incident to the stay.” *W.R. Grace & Co.*, 475 B.R. at 209. To do that, it should be sufficient to cover all reasonably anticipated harms. The amount ultimately paid may only be determined in the future based on proof—but, for that to occur, the quantum posted in the first instance should be sufficient. *See Adelpia*, 361 B.R. at 368 n.167 (requiring a bond greater in size than Appellants wanted so it would be sufficient to cover potential harms, but noting that “if Appellants ultimately lose the appeal . . . [Appellees] will be required to prove up the amount of damages they actually suffered during and as a result of the stay.”).

If the Court is inclined to grant the Stay Motion, it should therefore direct the Minority Group to post a bond in an amount no less than \$63,069,000. If the Minority Group is unwilling or unable to post such a bond, the Court should deny the Motion.

CONCLUSION

For the reasons set forth herein, the Stay Motion should be denied. If the Court were inclined to grant the Stay Motion, the Debtors respectfully request that the Court require the Minority Group to post a bond of no less than \$63,069,000 as a condition of granting a stay.

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Dated: June 8, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Bankruptcy Procedure 8015(h), I hereby certify that:

1. The foregoing brief complies with the page limit of L.Civ.R. 7.2(b) and L.Civ.R. 7.2(d) made applicable to this proceeding through L.Civ.R. 601.1(c) and L.Civ.R. 601.2(d) because, excluding pages required for the table of contents and authorities, the brief uses a 12-point proportional font (Times New Roman) and does not exceed 30 pages.

2. This document complies with the typeface requirements of L.Civ.R. 7.2 as the document is in black lettering, using a proportional font, on paper size 8.5 x 11 inches with margins not less than one inch on every side.

/s/ Michael D. Sirota
Michael D. Sirota

CERTIFICATE OF SERVICE

I hereby certify that, on June 8, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the District of New Jersey by using the CM/ECF system. I certify that all participants here are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Michael D. Sirota
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