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

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

THE AD HOC GROUP OF MINORITY SECURED LENDERS' 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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Appellants, the Ad Hoc Group of Minority Secured Lenders (the "Minority Ad Hoc Group" or "Appellants"),[1] file this motion ("Stay Motion" or "Motion") to stay pending appeal the order [Bankr.Dkt. 1592, Wolpert Decl. Exhibit G][2] ("Confirmation Order") of the United States Bankruptcy Court for the District of New Jersey confirming the *First Amended Joint Chapter 11 Plan* [Bankr.Dkt. 1592-1] ("Plan") of Del Monte Foods Corporation II Inc. and its debtor affiliates (the "Debtors"). Appellants timely appealed the Confirmation Order on May 27, 2026 (the "Appeal"). [Bankr.Dkt. 1601]. Appellants file their Motion under Federal Rule of Bankruptcy Procedure 8007(b)(2)(B).

In short order, the Debtors will seek to substantially consummate their Plan and then, having done so, argue that the Appeal should be dismissed as "equitably moot." *See In re Semcrude, L.P.,* 728 F.3d 314, 317 (3d Cir. 2013) (discussing equitable mootness doctrine). Although Appellants do not concede that their Appeal would be moot, Appellants seek a stay pending appeal to safeguard their statutory appellate rights and prevent irreparable harm. On June 2, 2026, the bankruptcy court

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[1] The members of the Minority Ad Hoc Group (the "Members") are listed in the *Second Verified Statement of the Ad Hoc Group of Minority Secured Lenders Pursuant to Bankruptcy Rule 2019* [Bankr.Dkt. 1262] (the "Second Rule 2019 Statement").

[2] All citations to the bankruptcy court case docket, at Case No. 25-16984, will be referred to using "Bankr.Dkt."

denied Appellants' initial request for a stay pending appeal, but granted a temporary stay of the Confirmation Order until the close of business on June 10, 2026 to permit Appellants to seek stay relief in this Court prior to the Debtors' implementation of their Plan.

To enable this Court to have a meaningful opportunity to evaluate Appellants' request for a stay pending appeal before the Debtors substantially consummate their Plan, Appellants request that the Court enter a temporary 21-day administrative stay from June 10 (the expiration of the current stay) through July 1, 2026. As Justices Barrett and Kavanaugh have explained:

> Administrative stays do not typically reflect the court's consideration of the merits of the stay application. Rather, they freeze legal proceedings until the court can rule on a party's request…Deciding whether to grant a stay pending appeal requires consideration of the four *Nken* factors, which include an assessment of the applicant's likelihood of success on the merits. That is not always easy to evaluate in haste, and an administrative stay buys the court time to deliberate.

United States v. Texas, 144 S. Ct. 797, 798 (2024) (Barrett, J., joined by Kavanaugh, J., concurring in denial of applications to vacate stay); *see also Doe #1 v. Trump*, 944 F.3d 1222, 1223 (9th Cir. 2019) ("A temporary stay in this context (sometimes referred to as an administrative stay) is only intended to preserve the status quo until the substantive motion for a stay pending appeal can be considered on the merits, and does not constitute in any way a decision as to the merits of the motion for stay pending appeal.").

Appellants have sought consent to this temporary relief from the Debtors, the Ad Hoc Super-Senior Term Lender Group (the "Majority Ad Hoc Group"), and the Official Committee of Unsecured Creditors (the "Committee," and together, "Appellees"). Appellees have indicated their opposition. *See* accompanying declaration of G. Eric Brunstad, Jr. ¶13. In the event the Court denies a temporary administrative stay, Appellants request that the Court expedite briefing on the Motion with Appellees filing any response thereto by June 9, and Appellants filing any reply by June 12, 2026.

PRELIMINARY STATEMENT

The Court should grant a stay pending appeal of the Confirmation Order because (1) there is a substantial likelihood that Appellants will prevail; (2) Appellants will be irreparably harmed if their statutory appellate rights are impaired owing to the Debtors' efforts to invoke "equitable mootness" upon substantial consummation of their Plan; (3) no parties will be harmed by a stay; and (4) the public interest lies in the correct determination of the important legal principles at issue.

As the Court is aware, Appellants previously appealed the Bankruptcy Court's *Order Approving the Settlement Reached Among the Mediation Parties* [Bankr.Dkt. 1211] (the "Settlement Order" approving the "Settlement") and that appeal (the "Settlement Appeal") has now been fully briefed and awaits the Court's disposition.

Among other things, the Plan implements the Settlement. As Appellants have argued in their submitted briefs, the Settlement is unlawful and should not have been approved. By extension, the Plan implementing the Settlement also should not have been confirmed. There are numerous other reasons why the Plan should not have been confirmed (elaborated below), but for all of the reasons already briefed to the Court, the Settlement should not have been approved and a stay pending appeal of the Confirmation Order is warranted to prevent the Debtors from seeking to moot the Settlement Appeal by implementing their Plan. In addition, a stay pending appeal is also warranted because the Plan is, by itself, fatally defective and Appellants qualify for a stay under the factors outlined above.

As the Supreme Court has explained, a fundamental principle of bankruptcy law "is 'equality of distribution'…and if one claimant is to be preferred over others, the purpose should be clear from the statute." *Nathanson v. N.L.R.B.*, 344 U.S. 25, 29 (1952) (citations omitted). Subsequent decisions of the Court have reiterated and applied this foundational concept. *See, e.g., Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 655 (2006) (the "preferential treatment of a class of creditors is in order only when clearly authorized by Congress"); *Begier v. IRS*, 496 U.S. 53, 58 (1990) ("Equality of distribution among creditors is a central policy of the Bankruptcy Code."). And to further safeguard equal treatment, a debtor cannot manipulate plan voting by including claimants within a class who have incentives to

favor the plan because they are receiving benefits others in the class do not share. *See Am. United Mut. Life Ins. Co. v. City of Avon Park*, 311 U.S. 138, 147–48 (1940) ("if a vote is influenced by the expectation of advantage, though without any positive promise, it cannot be considered an honest and unbiased vote," and "[t]he fact that the vast majority of security holders may have approved a plan is not the test of whether that plan satisfies the statutory standard. The former is not a substitute for the latter. They are independent.") (internal citations omitted).

The Plan flouts these principles. To begin with, the Plan places Appellants' claims in Class 3 (as defined in the Plan) and provides that they are to receive nothing. In contrast, the Plan places the claims of other unsecured creditors in Class 4 (as defined in the Plan) and provides that they are to receive substantial sums. In an effort to prevent Appellants from challenging this unfair discrimination, the Plan includes in Class 3 the claims of certain other creditors—Appellees, the Majority Ad Hoc Group—who (1) are receiving consideration Appellants are not receiving, and (2) hold stakes of a sufficient size to outvote Appellants, thus ensuring that Class 3 would vote in favor of the Plan, ostensibly blocking Appellants' ability to challenge the Plan's unfair discrimination. Because this scheme is contrary to law, the Plan should not have been confirmed and Appellants are likely to prevail on appeal.

In addition, Appellants properly hold an "administrative expense" claim for no less than $25 million that, under the Bankruptcy Code, must be paid in full. *See*

11 U.S.C. § 1129(a)(9). Because the Plan does not ensure the full payment of this claim, it should not have been confirmed.

Moreover, Appellants are likely to be substantially, and potentially irreparably, harmed if the Court does not grant a stay. Absent a stay, the Debtors will seek to consummate the Plan and make distributions as quickly as possible. They will then argue that, under the doctrine of equitable mootness, the appellate courts should abstain from reviewing the Confirmation Order. Although Appellants disagree that the Appeal would be equitably moot, there is a substantial risk that the appellate courts might rule that it is, thereby causing irreparable harm to Appellants by extinguishing their appellate rights, preventing them from recovering pecuniarily on their claims, and depriving them of the benefit of their lien rights. Thus, the Court should preserve the status quo and stay the effectiveness of the Confirmation Order pending the outcome of the Appeal.

In contrast, there would be no harm to the Debtors from granting a stay. Having sold substantially all of their assets, the Debtors no longer conduct any business operations. Thus, the rush to have an operating entity emerge from bankruptcy often associated with Chapter 11 cases is absent here. Rather, the Debtors now exist solely to distribute liquidation proceeds to stakeholders, which proceeds may be held in interest-bearing accounts to prevent diminution. Although a stay would cause some delay in making distributions, the Debtors and other parties

in interest would benefit from a final adjudication of the parties' rights to those proceeds before such distributions commence. Otherwise, if Appellants are successful on Appeal, the Debtors may be required to claw back distributions. Because the Debtors and others would actually benefit from the stay, the balance of harms weighs in favor of granting one.

Finally, the public interest lies in the correct application of the important legal principles at stake in this matter. Accordingly, Appellants have satisfied the factors applicable to stays pending appeal, and the Court should grant the Motion.

BACKGROUND

I. Events Leading to Plan Filing

1. As discussed in the *Brief for Appellants* filed in the Settlement Appeal [Case No. 26-02379, Dkt. 17] (the "Settlement Brief"), Appellants, the members of the Minority Ad Hoc Group hold, in the aggregate, approximately $111.29 million in principal amount of prepetition Super-Senior Term Loans. *See* [Bankr.Dkt. 1262].

2. With respect to events leading to the filing of the Plan, Appellants incorporate the background facts from pages 10 to 36 of the Settlement Brief.

II. The Plan

A. Treatment of Claims

3. The Plan places Appellants' unsecured claims in Class 3. Class 3 claims are projected to receive a 0% recovery under the Plan. *See* Disclosure

Statement § III.E [Bankr.Dkt. 1337, Wolpert Decl. Exhibit A].

4. The claims of other unsecured creditors represented by Appellee, the Committee, are placed in Class 4. Class 4 claims are entitled to receive the $8 million proceeds of the Settlement. *See* Plan art. I.216.

5. The Plan also includes in Class 3 unsecured claims of Appellees, the Majority Ad Hoc Group. *Id*. art. III.B. Notwithstanding section 1123(a)(4) of the Bankruptcy Code (which requires that all creditors in a class receive the same treatment), the Majority Ad Hoc Group members are to receive additional consideration not provided to Appellants. *See* Settlement Term Sheet at 6-7 [Bankr.Dkt. 1211-1].

6. Notwithstanding section 1126(g) of the Bankruptcy Code (which directs that, if a class is to receive nothing under a plan, the class may not vote on the plan and is deemed conclusively to reject the plan), the Plan provides that creditors in Class 3 are entitled to vote. Plan art. III.A. Because the claims of the Majority Ad Hoc Group are larger and more numerous than those of Appellants, the Majority Ad Hoc Group was able to outvote Appellants. *See* Sanchez Decl. at 7 [Bankr.Dkt. 1479].

B. Appellants' Administrative Expense Claim

7. Appellants' claims are secured by liens on the Debtors' assets. Disclosure Statement § IV.F. After the Debtors commenced their bankruptcy cases,

however, the Debtors borrowed additional sums (the "DIP Loan") from the Majority Ad Hoc Group secured by liens of a priority greater than the priority of Appellants' liens. As compensation for the loss of their liens' priority, Appellants were given the right to assert an administrative expense claim against the Debtors for the value of the lien rights they lost, including any value left over after the payment of the DIP Loan. *See* Final DIP Order ¶¶8(a), 8(b) [Bankr.Dkt. 359].

8. In the proceedings below, the Debtors submitted a "Wind Down Budget" [Bankr.Dkt. 1427, Wolpert Decl. Exhibit B], illustrating the value of their assets, amounts necessary to pay the DIP Loan in full, and amounts left over from that value and available to pay other claims.

9. The budget illustrates that no less than $28 million of value is left over, which is property secured by Appellants' liens. *See* Majority Ad Hoc Group Reply at 4 [Bankr.Dkt. 1510]. Rather than use this $28 million to pay Appellants, however, the Debtors propose to use the funds to pay claims more junior than Appellants' claim.

III. Proceedings and Ruling Regarding the Plan

10. On April 28, 2026, Appellants filed an objection (the "Objection") to confirmation of the Plan. [Bankr.Dkt. 1476, Wolpert Decl. Exhibit C]. On May 20, 2026, Appellants also filed a request for payment of their administrative expense claim [Bankr.Dkt. 1538, Wolpert Decl. Exhibit D] (the "507(b) Claim") in the

aggregate amount of no less than $25 million.

11. On May 22, 2026, the bankruptcy court entered the Confirmation Order overruling Appellants' Objection and approving the Plan. On May 27, 2026, Appellants timely filed a notice of appeal of the Confirmation Order. *See* [Bankr.Dkt. 1601]. On the same day, Appellants filed their *Emergency Motion to Stay Order Confirming Debtors' First Amended Joint Chapter 11 Plan of Reorganization Pending Appeal* in the Bankruptcy Court [Bankr.Dkt. 1602].

12. On June 3, 2026, the bankruptcy court entered an order denying the motion. [Bankr.Dkt. 1624, Wolpert Decl. Exhibit I]. Under Bankruptcy Rule 8007(b)(1), Appellants bring the present Motion in this Court.

ARGUMENT

I. The Minority Ad Hoc Group Satisfies the *Nken* Factors for a Stay.

13. "[A] party can move to stay the effect of a Bankruptcy Court order pending a resolution on appeal." *In re Revel AC, Inc.*, 802 F.3d 558, 567–68 (3d Cir. 2015) (citing Fed. R. Bankr. P. 8007). "The factors considered 'overlap' the familiar [*Nken* factors] courts look to in ruling on applications for preliminary injunctions." *Id.* at 568 (citing *Nken v. Holder*, 556 U.S. 418, 434 (2009)).

14. The four *Nken* factors are: (a) whether appellant has made a strong showing it is likely to succeed on the merits; (b) whether appellant will be irreparably injured absent a stay; (c) whether a stay will substantially injure other parties; and

(d) where the public interest lies. *Id.* In *Revel*, the Third Circuit held that the first two factors were most critical, and (under a "sliding scale" approach), "the necessary level or degree of possibility of success" on the first factor "varies according to the court's assessment" of the other factors. *Id.* at 569.

A. The Minority Ad Hoc Group is Likely to Succeed on Appeal.

15. To satisfy the first factor, the Third Circuit has held that an applicant must make a showing that its chances of winning on the merits are "significantly better than negligible but not [necessarily] greater than 50%." *Id*. at 571. In other words, there is "'a reasonable chance, or probability, of winning.'" *Id.* at 568–69 (quoting *Singer Mgmt. Consultants, Inc. v. Milgram*, 650 F.3d 223, 229 (3d Cir. 2011) (*en banc*)).

16. A movant presents a "substantial case" when the appeal raises a question that involves the application of law for which there is no definitive authority. *See In re Genesis Health Ventures,* 367 B.R. 516, 521 (Bankr. D. Del. 2007) (granting stay pending appeal where the Third Circuit had not yet decided an issue of law). Indeed, the first factor may be satisfied even if the law merely fails to *conclusively* establish the propriety of the court's decision, *see In re St. Johnsbury Trucking Co.,* 185 B.R. 687, 689 (S.D.N.Y. 1995), when the court has had to rely on law that is in flux and subject to varying interpretations, *see In re Porter,* 511 B.R. 785, 811 (Bankr. E.D. La. 2014), or when the facts are disputed and complex—

which, when the law is unsettled, renders the application of law to the relevant facts difficult and uncertain. *See In re Miraj & Sons,* 201 B.R. 23, 26 (Bankr. D. Mass. 1996).

17. Appellants readily satisfy this standard.

i. Egregious Classification, Discrimination, and Voting Issues Rendered the Plan Unconfirmable.

18. The Bankruptcy Code directs that a plan must designate classes of claims and prescribe their treatment, *see* 11 U.S.C. §§ 1123(a)(1), 1123(a)(3), 1122(a).

19. Although the Code does not state in so many words that claims of the same priority must always be classified together, courts have consistently recognized that there are constraints on a debtor's ability to separately classify claims. *See, e.g., John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs.*, 987 F.2d 154, 159 (3d Cir. 1993). One constraint is that claims must not be classified differently "in order to gerrymander an affirmative vote on a reorganization plan." *In re Fairfield Exec. Assocs.*, 161 B.R. 595, 604 (D.N.J. 1993) (quoting *In re Greystone III Joint Venture,* 948 F.2d 134, 139 (5th Cir. 1991), *as republished at* 995 F.2d 1274, 1279 (5th Cir. 1991)); *see also In re One Times Square Assocs. Ltd. P'ship*, 165 B.R. 773, 776 (S.D.N.Y. 1994) (Debtor's "discretion is limited by the principle that classification may not be used for the sole purpose of manipulating the vote."). Similarly, the Third Circuit has held that, when similar claims are classified

separately, "each class must represent a voting interest that is sufficiently distinct and weighty to merit a separate voice in the decision whether the proposed reorganization should proceed," or else "the classification scheme would simply constitute a method for circumventing…1129(a)(10)." *John Hancock,* 987 F.2d at 159.

20. The Plan's classification, voting, and treatment scheme violates these and other basic bankruptcy principles.

21. *First*, although Appellants' claims are secured by liens on the Debtors' property and those liens attached to the proceeds of the liquidation of the Debtors' assets, the Plan assumes that Appellants' claims are fully unsecured "deficiency" claims. The Plan then places those deficiency claims in Class 3 and provides that they are to receive nothing. In contrast, the Plan places the claims of other unsecured creditors in Class 4 and provides that they are to receive substantial sums. The bankruptcy court approved the separate classification on the theory that the deficiency claims "arise from a distinct credit facility" and that general unsecured creditors have "different legal rights." *See* May 18, 2026 Hearing Transcript (Wolpert Decl. Exhibit F, "Bench Ruling Tr.") at 19:13-22. That rationale, however, conflicts irreconcilably with the reasoning the Third Circuit adopted in *John Hancock*. There, the Court held that, even if the holders of deficiency claims have legal rights distinct from the rights of trade creditors outside of bankruptcy, those

differences do not render deficiency claims dissimilar from unsecured trade claims in bankruptcy. *Id*. at 161; *see also id*. at 159 ("the Code has eliminated the legal distinction between non-recourse deficiency claims and other unsecured claims") (quoting *In re Greystone III Joint Venture*, 948 F.2d at 139).

22. *Second*, the obvious point of the Debtors' disparate classification scheme is to discriminate against Appellants and ensure that they receive nothing, while creditors in Class 4 receive substantial sums—all in plain violation of bankruptcy law's fundamental principle of equality of treatment. Significantly, the Debtors could not accomplish this illicit objective if all of the unsecured claims were classified together in a single class. *See* 11 U.S.C. § 1123(a)(4) (claims in the same class must receive the same treatment, unless the disadvantaged claimant agrees to less favorable treatment). That is why the Debtors split the groups of claims into two classes—so the Debtors could zero out Appellants' claims in Class 3 while paying substantial sums to creditors in Class 4.

23. *Third*, ordinarily this would not be permissible. That is because when a class is to receive nothing, section 1126(g) mandates that the class is deemed to vote "no." 11 U.S.C. § 1126(g). And if a class votes "no," section 1129(b) of the Code directs that the plan cannot be confirmed if it unfairly discriminates between different classes of claims, 11 U.S.C. § 1129(b) (prohibiting unfair discrimination), which this Plan plainly does.

24. To get around this, the Debtors concocted *yet another* artifice: even though Class 3 will receive nothing and section 1126(g) directs conclusively that the class is deemed to vote "no," the Plan provides that creditors in the class are entitled to vote. And to ensure a favorable vote, the Debtors included in Class 3 the claims of the Majority Ad Hoc Group, which are sufficiently large and numerous to outvote Appellants.

25. Normally, this, too, would be impermissible. Again, the statute directs that Class 3 is deemed to vote "no." *See* 11 U.S.C. § 1126(g). In addition, the Supreme Court has directed that, "if a vote is influenced by the expectation of advantage, though without any positive promise, it cannot be considered an honest and unbiased vote," and "[t]he fact that the vast majority of security holders may have approved a plan is not the test of whether that plan satisfies the statutory standard. The former is not a substitute for the latter. They are independent." *Avon Park*, 311 U.S. at 147–48. In this instance, the Majority Ad Hoc Group is advantaged under the Plan in ways that Appellants are not. Among other things, they get releases and also the benefit of the Settlement, which absolves them of extensive liability. *See* Plan art. VIII; Disclosure Statement § VII.A. They also obtained almost all the value from the sale of the Debtors' assets. In short, the Plan accomplishes exactly what the Supreme Court has condemned—the disparate treatment of similar claims sheltered under the guise of an improper voting scheme.

26. To get around that, the Debtors concocted *still another* artifice: the idea that the blatant discrimination between the treatment of Classes 3 and 4 is not really discrimination at all. But that argument does not even begin to approach any threshold of plausibility.

27. The bankruptcy court sought to justify the unfair treatment by labeling it a "gift." *See* Bench Ruling Tr. at 22:25-23:16. "Gifting" is said to occur when a senior creditor voluntarily provides a portion of its recoveries under a plan to a junior class. This may take the form of a "vertical gift," when the "gift" is provided to a junior class by skipping over the priority of a more senior class, and a "horizontal gift," when the "gift" is provided to one class of claims and not another of the same priority.

28. But the Supreme Court has rejected vertical gifting as an unauthorized violation of the Bankruptcy Code's priority scheme. *See Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 464 (2017). So has the Third Circuit. *See In re Armstrong World Indus., Inc.*, 432 F.3d 507, 514 (3d Cir. 2005). In addition, the District Court opinion that the Third Circuit quoted with approval in *Armstrong* likewise rejected horizontal gifting on the basis that "[t]o accept [the secured lender's] argument that [it] can, without any reference to fairness, decide which creditors get paid and how much those creditors get paid, is to … read the § 1129(b) requirements out of the Code" and "[t]o accept that argument is simply to start down a slippery slope that

does great violence to history and to positive law." *In re Armstrong World Indus., Inc.,* 320 B.R. 523, 540 (D. Del. 2005) (quoting *In re Sentry Operating Co. of Tex., Inc.*, 264 B.R. 850, 865 (Bankr. S.D. Tex. 2001)). The Debtors cannot through the guise of "gifting" create their own bankruptcy priority scheme that avoids the fundamental principle of equality of treatment. *See*, *e.g., In re Ultra Petroleum Corp.*, 51 F.4th 138, 146–47 (5th Cir. 2022) (debtors in bankruptcy cannot effectuate end runs around the Code's provisions).

ii. The Plan Also Violates Sections 1129(a)(9) and (11).

29. Section 1129(a)(9) requires that a plan provide for the full payment of all allowed administrative claims, unless the holder has agreed to different treatment. 11 U.S.C. § 1129(a)(9). This dovetails with the requirement under section 1129(a)(11) that the plan must be feasible. *See In re Am. Cap. Equip., LLC*, 688 F.3d 145, 155–56 (3d Cir. 2012). Because administrative claims *must* be paid in full, a plan that does not provide for such treatment is, by definition, not feasible. In this instance, however, the Plan fails to provide for the full payment of Appellants' administrative 507(b) Claims.

30. There is ample evidence that the value of the Debtors' assets was $533.8 million. Objection ¶¶37-38; May 12, 2026 Combined Hearing Tr. (Wolpert Decl. Exhibit E) at 65:24-67:12. After paying off the DIP Loan, and accounting for the value of remaining assets and certain administrative costs, there is at least $28

million of value properly assigned to Appellants' liens. *See* Wind Down Budget at 3; Objection ¶39. Accordingly, Appellants are entitled to an administrative expense claim for the Debtors' use of this value. Because the Plan does not provide for the full payment of this claim, the Plan should not have been confirmed.

B. Appellants May Be Irreparably Harmed.

31. If a stay is not issued, the Plan is likely to be quickly "substantially consummated," imposing on Appellants a significant risk that the pending appeal of the Settlement Order, as well as the present Appeal, may be subject to "equitable mootness." The potential loss of appellate rights amounts to a "potential harm which cannot be redressed by a legal or an equitable remedy following a trial" sufficient to satisfy the irreparable harm standard. *Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharm. Co.*, 290 F.3d 578, 595 (3d Cir. 2002) (internal citation omitted).

32. Courts have concluded that parties satisfy the irreparable harm standard when their ability to vindicate their rights in a pending appeal would be vitiated absent a stay. *See In re Adelphia Commc'ns Corp.*, 361 B.R. 337, 348 (S.D.N.Y. 2007) ("[W]here the denial of a stay pending appeal risks mooting *any* appeal of *significant* claims of error, the irreparable harm requirement is satisfied," as "loss of appellate rights is a quintessential form of prejudice.") (emphasis in original); *see also In re Country Squire Associates of Carle Place, L.P.*, 203 B.R. 182, 183 (B.A.P.

2d Cir. 1996). Courts have also concluded that the irreparable harm standard is satisfied where debtors may be able to effectuate potentially unlawful Chapter 11 plans prior to the adjudication of appeals on the merits. *See In re Tribune Co.*, 477 B.R. 465, 477 (Bankr. D. Del. 2012). As the Second and Third Circuits have both held, the irreparable harm standard is satisfied "where, but for the grant of equitable relief, there is a substantial chance that upon final resolution of the action the parties cannot be returned to the positions they previously occupied." *Guardian Life Ins. Co. of Am. v. Estate of Cerniglia*, 446 F. App'x 453, 456–57 (3d Cir. 2011) (quoting *Brenntag Int'l Chems., Inc. v. Bank of India*, 175 F.3d 245, 249 (2d Cir. 1999)). Accordingly, the irreparable harm factor is satisfied when "a plaintiff demonstrates a significant risk that he or she will experience harm that cannot adequately be compensated after the fact by monetary damages." *Id.* at 456. Those circumstances are present in this case.

33. As the Sixth Circuit has noted, "[a]n orderly bankruptcy process depends on a concomitantly efficient appeals process." *In re Syncora Guarantee Inc.*, 757 F.3d 511, 517 (6th Cir. 2014). Denying a stay pending appeal is squarely contrary to Appellants' right to participate in that efficient appeals process and provide them with a meaningful opportunity for appellate review of both the Settlement Order and the Confirmation Order. *See In re Voluntary Purchasing Grps., Inc.*, 196 F.3d 1258, at *2 (5th Cir. 1999) (per curiam) (reversing the district

court's decision to deny a stay, noting that in view of the doctrine of equitable mootness, "[a]bsent a stay, the [appellants'] right to contest the confirmation order could be thwarted"). Appellants have satisfied the second *Nken* factor.[3]

C. A Stay of the Confirmation Order Will Not Harm Other Parties.

34. In determining whether a party will suffer "substantial" injury if a stay pending appeal is granted, a court must balance the likely harm to the movant absent a stay (the second factor) against the likely harm to stay opponents if it is granted (the third factor). *See In re Revel AC, Inc.*, 802 F.3d at 569–70.

35. As explained above, if a stay is not granted, Appellants could well be deprived of their appellate rights and their ability to recover pecuniarily on their valid claims and enjoy the benefit of their liens. In contrast, the Debtors cannot point to any irreparable harm. A stay would only delay distributions. Moreover, there is no urgency in this case, as the Debtors do not have an operating business, much less one that needs to emerge quickly from Chapter 11. The Debtors are already in the

[3] Even if the Court declined to find that the irreparable harm factor is satisfied by the risk of equitable mootness alone, the *Revel* test is still satisfied. In the Third Circuit, courts *must* consider the threat of equitable mootness and the loss of appellate rights as part of the analysis. *See Rep. of Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 658 (3d Cir. 1991) (while noting that equitable mootness alone does not ordinarily meet the standard for irreparable harm, it is a "factor that an appellate court must consider"). Since a strong showing of likelihood of success can compensate when other factors are not independently satisfied, Appellants' strong likelihood of success combined with the potential loss of their appellate rights is sufficient even if the prospect of equitable mootness by itself is insufficient.

process of conducting liquidation activities, and a delay of the Plan's effective date and distributions thereunder will have little to no effect on those activities. Moreover, the Debtors' estate is now mostly comprised of cash, which can be held in interest bearing accounts. In any event, the immaterial harm that may result from a delay is outweighed by the potential for significant harm to Appellants.

D. The Public Interest Favors a Stay of the Confirmation Order.

36. In enacting the Bankruptcy Code, Congress directed the proper and consistent application of its standards for final distributions from Chapter 11 bankruptcy estates. *See Jevic*, 580 U.S. at 464 ("The Code's priority system constitutes a basic underpinning of business bankruptcy law."); *see also In re Boy Scouts of Am.*, 137 F.4th 126, 156 (3d Cir. 2025). Because Appellants have made a substantial case that those standards were not properly applied here, the public interest favors the ability to seek appellate review, which may only be possible if a stay is granted.

37. Conversely, the public interest would not be disserved by delay in the implementation of the Debtors' Plan. Instead, there is a clear public interest in only allowing those Chapter 11 plans that satisfy the requirements of the Bankruptcy Code to be confirmed and enforced.

CONCLUSION

For the reasons stated, Appellants request that the Court issue an order staying the effective date of the Plan and distributions thereunder pending the outcome of their Appeal.

Dated: June 4, 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 motion complies with the type-volume limitations of Fed. R. Bankr. P. 8013(f)(3) because it contains 5,200 words or less, excluding the parts exempted by Fed. R. Bankr. P. 8015(g).

2. This motion 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 motion has been prepared in a proportionally spaced typeface using Microsoft Word, in 14-point Times New Roman.

Dated: June 4, 2026

By: */s/ John W. Weiss*

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