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*Attorneys for the Debtors
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

EIGER BIOPHARMACEUTICALS, INC., *et al.*¹

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Jointly Administered)

**DEBTORS' OBJECTION TO INNOVATUS LIFE SCIENCES
LENDING FUND I, LP'S EMERGENCY MOTION FOR STAY PENDING APPEAL**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") in these chapter 11 cases (the "Chapter 11 Cases") submit this objection (this "Objection")² to *Innovatus Life Sciences Lending Fund I, LP's Emergency Motion for Stay Pending Appeal* [Docket No. 595] (the "Motion"). In support of this Objection, the Debtors respectfully state as follows:

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are: Eiger BioPharmaceuticals, Inc. (1591); EBPI Merger Inc. (9986); EB Pharma LLC (8352); Eiger BioPharmaceuticals Europe Limited (N/A); and EigerBio Europe Limited (N/A). The Debtors' service address is 2100 Ross Avenue, Dallas, Texas 75201.

² Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Plan or the Estimation Motion (each as defined herein).



PRELIMINARY STATEMENT

1. The latest Innovatus Motion is simply another example of Innovatus distorting and manipulating the record in a blatant attempt to relitigate issues that this Court has already decided. Innovatus objected and had a chance to be heard on each of the issues in previous hearings. The Court overruled each of Innovatus's objections. Innovatus's displeasure with the Court's rulings is not an appropriate basis to request a stay pending appeal.

2. Additionally, while styled as a "stay pending appeal,"³ Innovatus's Motion actually requests standing to raise any and all objections to the *Fourth Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 606 Ex. A] (as modified, amended, or supplemented from time to time hereafter, the "Plan"). While the *Debtors' Supplemental Memorandum of Law in Support of Confirmation of the Fourth Amended Joint Plan of Liquidation of Eiger Biopharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 620] (the "Supplemental Confirmation Brief") responds directly to Innovatus's standing request, the Debtors urge the Court to see this Motion for what it is: a desperate attempt to continue to distract the Debtors and delay confirmation of these Chapter 11 Cases in order to strong-arm the Debtors into paying all alleged outstanding amounts without any Court consideration or approval of whether such amounts are appropriate.

³ Notwithstanding the title of the Motion and the proposed order attached thereto, both of which relate to a stay pending Innovatus's appeal of the Court's *Order Estimating Claim of Innovatus Life Sciences Lending Fun I, LP for the Purposes of Establishing Sufficient Reserves to Unimpair Claim* [Docket No. 561] (the "Estimation Order"), all discussion and support included in the Motion relate to a stay *limited to the time required for the Court's ruling on the Debtors' Plan* (i.e., a potential single-day stay). Innovatus attempts to minimize the impact on the other stakeholders in these Chapter 11 Cases and the overall cost and risk by noting the extremely brief stay but inappropriately proposes an order that, in Innovatus's own estimation, may result in a five-year stay of these proceedings.

3. Innovatus fails to meet the threshold for a stay, whether it be pending appeal or until confirmation of the Plan. To obtain a stay under Fifth Circuit law, Innovatus is required to prove by a preponderance of the evidence: (i) a strong showing of likelihood of success on the merits of the appeal; (ii) irreparable injury absent a stay; (iii) no substantial harm to other parties in interest arising from the granting of the stay; and (iv) that the granting of the stay would serve the public interest. Innovatus cannot prove any of these.

- **First**, the Court exercised its discretion in establishing an estimate of the value of Innovatus’s claim pursuant to 11 U.S.C. § 502(c) and rule 3007-3 of the Bankruptcy Local Rules for the Northern District of Texas (the “Local Rules”). Specifically, the Court found that the Prepetition Term Loan Claims Escrow Amount does not impair Innovatus and an indemnity of \$1 million for attorneys’ fees is reasonable.
- **Second**, irreparable harm does not arise from the inability to relitigate resolved issues and the potential of equitable mootness.
- **Third**, creditors will be substantially harmed by being forced to wait for distributions due to a stay implemented for a secured creditor that already received \$27 million and will receive an additional \$10 million following confirmation on a loan that matures in 2027.
- **Fourth**, a stay of the Estimation Order only serves the interests of Innovatus, not the public interest, which favors compliance with existing court orders and distribution to creditors.

4. The Debtors respectfully request that this Court deny Innovatus’s Motion as it clearly fails to satisfy the requirements for a stay under Fifth Circuit law.

OBJECTION

I. A STAY PENDING APPEAL IS NOT WARRANTED.

5. A stay pending appeal is an extraordinary remedy.⁴ Thus, the movant seeking a stay bears a heavy burden because a stay is an “intrusion into the ordinary process of administration

⁴ *Belcher v. Birmingham Trust Nat’l Bank*, 395 F.2d 685, 686 (5th Cir. 1968).

and judicial review.”⁵ For this reason, a stay pending appeal “is not a matter of right, even if irreparable injury might otherwise result to the appellant.”⁶

6. Courts only grant a stay pending appeal if a movant establishes *each* of the following four elements by a preponderance of the evidence: (1) substantial likelihood of success on the merits of the appeal; (2) irreparable injury if the stay is not granted; (3) the stay will not substantially harm other parties; and (4) the stay would serve the public interest.⁷ Innovatus has failed to establish any of the four elements—let alone all the elements—required to warrant the extraordinary remedy of a stay pending appeal of the Estimation Order.⁸

A. Innovatus Fails to Show a Likelihood of Success on the Merits.

7. Innovatus cannot demonstrate a “substantial case on the merits” or that there is a “serious legal question” at issue. In the estimation hearing, Innovatus had the opportunity to present evidence, raise objections, and be heard on impairment. Simply disagreeing with the Court’s ruling is not sufficient to show a likelihood of success on the merits on the appeal. Innovatus’s attempt to demonstrate that the “balance of the equities weighs *heavily* in favor of granting the stay”⁹ ignores the circumstances at issue here. Innovatus had the opportunity to object to estimation, impairment, and the reserve for attorneys’ fees. Innovatus was overruled. Innovatus’s desire to relitigate these matters does not indicate a need for “extraordinary relief.”

⁵ *Nken v. Holder*, 556 U.S. 418, 426-27 (2009).

⁶ *Id.*

⁷ *Id.* at 426; *see also* *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *In re First S. Sav. Assoc.*, 820 F.2d 700, 704 (5th Cir. 1987).

⁸ *See e.g., Saldana v. Saldana*, 2015 U.S. Dist. Lexis 112164, at *2 (N.D. Tex. Aug. 25, 2015) (“The *movant* seeking a stay of a bankruptcy court order pending appeal *has the burden to satisfy all four requirements.*”) (emphasis added).

⁹ *In re Texas Equipment Co.*, 283 B.R. 222, 227 (Bankr. N.D. Tex. 2002) (emphasis added).

i. The Court Properly Estimated Innovatus’s Claim.

8. A court may authorize the estimation and approximation of the value of a claim using “whatever method is best suited to the circumstances” at issue and recognizing that absolute certainty is not possible.¹⁰ A court has wide discretion in establishing the method to be used to arrive at an estimate of the value of a claim or claims.¹¹

9. Section 502(c) of the Bankruptcy Code provides that “[t]here shall be estimated for purposes of allowance under this Section – (1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case.”¹² Innovatus argues that estimation was improper because Innovatus’s claim was neither contingent nor unliquidated and fixing Innovatus’s claim did not threaten undue delay. These arguments have already been made and overruled. Reiterating the same arguments in the Motion does not change that fact.

10. *First*, with respect to whether a claim is “unliquidated” and therefore proper for estimation, a court generally looks at whether the claim’s value has been determined or the relative ease with which that value can be determined.¹³ Innovatus’s Proof of Claim states that “amounts due for compensation, expenses, and indemnity are presently **contingent and unliquidated**.”¹⁴

¹⁰ *Matter of Trendsetter HR L.L.C.*, 949 F.3d 905, 910 (5th Cir. 2020) (citing 4 COLLIER ON BANKRUPTCY ¶ 502.04 (16th ed. 2019)); see *In re Brints Cotton Marketing, Inc.*, 737 F.2d 1338, 1341 (5th Cir. 1984); *Kool v. Coffey*, 300 F.3d 340, 356-57 (3d Cir. 2002) (affirming an estimation based on claim objection papers rather than conducting an estimation hearing).

¹¹ *Bittner v. Borne Chemical Co.*, 691 F.2d 134, 135 (3d Cir. 1982) (estimation requires only “sufficient evidence on which to base a reasonable estimate of the claim”); *In re Windsor Plumbing Supply Co., Inc.*, 170 B.R. 503, 521 (Bankr. E.D.N.Y. 1994) (advocating use of probabilities in estimation of claims rather than more simplistic all or nothing approach); *In re Baldwin-United Corp.*, 55 B.R. 885, 898 (Bankr. S.D. Ohio 1985) (estimation “does not require that a bankruptcy judge be clairvoyant”).

¹² 11 U.S.C. § 502(c)(1).

¹³ *Mazzeo v. United States (In re Mazzeo)*, 131 F.3d 295, 304 (2nd Cir. 1997).

¹⁴ Proof of Claim ¶ 20 (emphasis added).

Despite Innovatus’s attempt to recharacterize its prior representations of the claim, the claim itself is proper for estimation. Also, the Debtors objected to the “amounts due for compensation, expenses, and indemnity” in the *Debtors’ Objection to the Proof of Claim No. 55 of Innovatus Life Sciences Lending Fund I, L.P.* [Docket No. 530] (the “Claim Objection”).¹⁵ This claim amount rests with the Court for ultimate determination and therefore is unliquidated.

11. **Second**, “claims are contingent as to liability if the debt is one which the debtor will be called upon to pay only upon the occurrence or happening of an extrinsic event which will trigger the liability of the debtor to the alleged creditor.”¹⁶ The Claim Objection seeks a determination as to whether this “triggering event” (*i.e.*, the event of default based upon a MAC) actually occurred. Innovatus’s claim thus remains contingent.

12. **Third**, determining “undue delay” under section 502(c) of the Bankruptcy Code “ultimately rests on the exercise of judicial discretion in light of the circumstances of the case.”¹⁷ Courts have found estimation to be appropriate where a failure to do so would jeopardize the debtor’s ability to consummate a chapter 11 plan, as is the case here.¹⁸

13. As Innovatus noted, the Debtors had two alternative options to the Prepetition Term Loan Claims Escrow Account: (1) to pay Innovatus its full claim or (2) “fund a reserve for Innovatus with the entire amount of its Cash Collateral and provide that creditors junior to

¹⁵ See Claim Objection ¶¶ 50-67.

¹⁶ *In re All Media Properties, Inc.*, 5 B.R. 126, 133 (Bankr. S.D. Tex. 1980), *aff’d*, 646 F.2d 193 (5th Cir. 1981).

¹⁷ *In re Roman Catholic Archbishop of Portland*, 339 B.R. 215, 222 (Bankr. D. Or. 2006) (internal quotation marks omitted).

¹⁸ See, e.g., *In re Lionel L.L.C.*, No. 04–17324, 2007 WL 2261539, at *4 (Bankr. S.D.N.Y. Aug. 3, 2007) (noting “[a] liquidation or further reorganization contingency cannot realistically be provided for in a plan, when neither the likelihood of an adverse judgment, nor the timing and amount of such a judgment, can be predicted with any certainty”); *In re Lane*, 68 B.R. 609, 611 (Bankr. D. Haw. 1986) (ordering estimation in part because “[n]o plan of reorganization can be confirmed so long as this claim remains unliquidated and not estimated”).

Innovatus will be paid under a liquidating plan waterfall with any excess.”¹⁹ To be clear, both options likely would have delayed consummation of the plan, including effectuating distributions to creditors. The Prepetition Term Loan Claims Escrow Account avoids this delay and relies on a liquidated number to fund the account—Innovatus refused to provide a final, liquidated number and, therefore, estimation was essential to avoid delay.

ii. The Prepetition Term Loan Claims Escrow Amount Does Not Impair Innovatus.

14. Principally, Innovatus does not raise any new arguments beyond those that were previously rejected by this Court. Notwithstanding this fact, the Motion asserts that the Prepetition Term Loan Claims Escrow Amount results in Innovatus’s impairment for various reasons, each of which can be refuted. **First**, the Court’s reliance on its own experience in determining that two years of interest was sufficient for unimpairment and exclusion of the expert report of Mr. Keltner under rule 702 of the Federal Rules of Evidence was appropriate as the Court is well-versed in bankruptcy appellate procedure, having been on the bankruptcy bench since 2006.²⁰

15. **Second**, the Prepetition Term Loan Claims Escrow Amount itself does not impair Innovatus. Despite already having been considered and resolved by the Court’s Estimation

¹⁹ Motion ¶ 72; see also *Innovatus Life Sciences Lending Fund I, LP’s Objection to Debtors’ Motion for Entry of an Order Estimating Claim of Innovatus Life Sciences Lending Fund I, LP for the Purposes of Establishing Sufficient Reserves to Unimpair Claim* [Docket No. 526] (the “Estimation Objection”) at ¶ 13.

²⁰ Docket No. 557 (order granting Debtors’ motion *in limine* excluding the Keltner Report); Aug. 20, 2024 Hr’g Tr., 53:17—19, 53:22—54:1 (“So can we just short-circuit this and let me decide after all of this what’s reasonable based on my own experience with appeals? . . . When I heard that there were 37 appeals since 2020 from the bankruptcy court, I think probably all of those are related to this little case I have called *Highland* where I’ve had more appeals from that case than the prior decades on the bench.”); see also *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (“There can be no informed and independent judgment as to whether a proposed compromise is fair and equitable until the bankruptcy judge has apprised himself of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated. Further, the judge should form an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.”) (emphasis added).

Order,²¹ the Fifth Circuit explained that “a creditor is impaired under § 1124(1) only if ‘the plan’ itself alters a claimant’s ‘legal, equitable, [or] contractual rights’”—alteration of a claimant’s rights by the Bankruptcy Code is not impairment under section 1124(1).²² Here, Innovatus’s claim is not impaired by the Plan—Innovatus’s legal, equitable, and contractual rights remain in place through the Plan and any reduction of Innovatus’s claim would only occur if the Court upholds the Claim Objection.²³

16. **Third**, regarding Innovatus’s complaints with respect to contractual and other forms of impairment under the Plan, the Debtors have voluntarily amended the Plan to resolve such concerns that have only been raised in hearings and now via pleadings.²⁴ As Innovatus has already made many of the same arguments in confirmation pleadings. Accordingly, the Debtors have also included the following chart in the Supplemental Confirmation Brief and are including the chart herein for reference:

Plan Provision	Innovatus’s Objection	Debtors’ Response
Article III.B (Treatment)	Holders of Claims in Class 3 are not entitled to 100% of their Allowed Claims.	The Court has already addressed this in the Estimation Order. Innovatus will receive 100% recovery on its <i>Allowed Claim</i> .

²¹ Estimation Order ¶ 1.

²² *In re Ultra Petroleum Corp.*, 943 F.3d 758, 763 (5th Cir. 2019); *see also In re Texas Rangers Baseball Partners*, 434 B.R. 393, 406-07 (Bankr. N.D. Tex. 2010) (“a creditor receives under a plan everything to which the creditor would be entitled in a judgment entered immediately following the plan’s effective date, the creditor is receiving treatment that, as required by section 1124(1), honors all the creditor’s legal, equitable, and contractual rights.”) (internal citations omitted); *In re Mirant Corp.*, No. 03-46590, 2005 WL 6440372, at *3 (Bankr. N.D. Tex. May 24, 2005) (“[T]he Court also must distinguish between an effect of the Plan and an effect brought about by operation of the Code. If the ‘impairment’ asserted is a consequence of the proper operation of the statute, it is not an impairment entitling the affected class to a vote.”); *In re American Solar King Corp.*, 90 B.R. 808, 817-20 (Bankr. W.D. Tex. 1988) (“A closer inspection of the language employed in Section 1124(1) reveals ‘impairment by statute’ to be an oxymoron. Impairment results from what the plan does, not what the statute does.”).

²³ *See, e.g., In re Landing Associates, Ltd.*, 157 B.R. 791, 800-801, 823 (Bankr. W.D. Tex. 1993) (confirming plan that escrowed the funds necessary to pay claim in the event the 506(c) action was disallowed and constituted such treatment as unimpaired); *see also In re G-I Holdings Inc.*, 420 B.R. 216, 254-55 (D.N.J. 2009) (IRS claims were unimpaired because the plan provided that the IRS, if it succeeded in ongoing tax litigation, would receive full payment and full postpetition interest).

²⁴ Plan Articles III.B.3, IV.I, VI.F, and IX.F.

Plan Provision	Innovatus's Objection	Debtors' Response
Article IV.F (Vesting of Assets)	Assets vest free and clear of Innovatus's Liens.	This provision provides an exception that it applies "[e]xcept as otherwise provided in this Plan." As set forth throughout the Plan, Innovatus's rights are reserved pending further determination from the Court.
Article IV.G (Preservation of Causes of Action)	Innovatus's right to benefit from preclusion doctrines is eliminated.	Innovatus asserts that this is "fatal," but provides no support or explanation for such assertion.
Article IV.I (Cancellation of Existing Securities and Agreements)	Innovatus's securities and agreements are cancelled and of no effect upon the occurrence date.	This provision provides that "[a]ll parties' rights, defenses, and Causes of Action related to the Prepetition Term Loan Claims shall be reserved pending the Bankruptcy Court's determination of the Aggregate Allowed Prepetition Term Loan Claims Amount."
Article VI.C (Date of Distributions)	The Plan does not provide that interest, fees, or expenses will be allowed and will accrue—only that it may.	Whether the interest, fees, or expenses accrue depends on a further determination from the Bankruptcy Court. The Debtors' Plan includes the possibility that it will, which is sufficient for unimpairment purposes.
Article VI.F (Surrender of Instruments)	Innovatus is required to surrender its instruments or notes prior to being paid in full.	This provision provides that "[a]ll parties' rights, defenses, and Causes of Action related to the Prepetition Term Loan Claims shall be reserved pending the Bankruptcy Court's determination of the Aggregate Allowed Prepetition Term Loan Claims Amount."
Article VI.J (Setoffs and Recoupment)	The Debtors and the Liquidating Trustee have the absolute right to determine whether it can set off or recoup amounts and then effectuate such setoff and recoupment without any judicial determination.	Setoff is permitted under section 553 of the Bankruptcy Code.
Article VI.M (Distributions Free and Clear)	The Plan distributes Innovatus's property free and clear in violation of its loan documents, without just compensation.	This provision provides an exception that it applies "[e]xcept as otherwise provided in this Plan." As set forth throughout the Plan, Innovatus's rights are reserved pending further determination from the Court.
Article VII.J (No Distributions Pending Allowance)	The Plan contemplates that will be no distribution while an objection to a Claim that is pending, which is inconsistent with the Debtors' statement that they will distribute \$10 million to Innovatus.	At the request of Innovatus, the Debtors are happy to withhold the \$10 million distribution contemplated under Article III.B.3.b of the Plan.
Article VII.K (Distributions After Allowance)	Innovatus's interest <i>may</i> accrue, but there is no certainty that it will accrue.	This provision explicitly states that "[t]he Aggregate Allowed Prepetition Term Loan Claims Amount shall include any interest accrued, as applicable per the Bankruptcy Court's determination, with respect to the period from the Effective Date to the date a final distribution is made on account of such Claim."
Article IX.D (Injunction)	The Plan injunction is too broad and effectively enjoins Innovatus from asserting setoff and it enjoins Innovatus from taking any action that would interfere with consummation of the Plan.	Innovatus does not have standing to object to this provision.

Plan Provision	Innovatus’s Objection	Debtors’ Response
Article IX.F (Release of Liens)	Innovatus’s security interest in its collateral is eliminated without just compensation.	This provision provides that “[a]ll parties’ rights, defenses, and Causes of Action related to the Prepetition Term Loan Claims shall be reserved pending the Bankruptcy Court’s determination of the Aggregate Allowed Prepetition Term Loan Claims Amount.”
Article IX.G (Gatekeeper Provision)	The Plan requires Innovatus to obtain authority from the Court to pursue rights and remedies, but the loan documents include a forum selection clause laying venue in New York. Altering such provision impairs Innovatus.	Under the Bankruptcy Code, the Court has authority to hear such matters.
Article X (Retention of Jurisdiction)	The Court’s retention of jurisdiction impairs Innovatus’s rights under the Prepetition Term Loan Documents to litigate in New York.	Under the Bankruptcy Code, the Court has authority to hear such matters. Any such impairment is thus a result of the Bankruptcy Code and not the Debtors’ Plan.

17. As has been the practice through these cases, Innovatus continues to lob complaints and allegations without ever providing the Debtors with a mark-up or explanation of why the Debtors’ changes are not sufficient. The Debtors have made responsive edits and, at this point, it seems that Innovatus may be reviewing an outdated version of the Plan in drafting the Motion.

iii. The Court’s Ruling on Attorney’s Fees Was Not Unreasonable.

18. Once again, Innovatus raises an issue that was heard and determined at a prior hearing and alleges that the Court chose incorrectly between “dueling estimates for attorney’s fees.”²⁵ However, in the face of a reasonable estimate from the Debtors and an unreasonable, “outrageous” estimate from Innovatus, the Court ruled that an indemnity of \$1 million for attorney’s fees was reasonable.²⁶ Innovatus provides no further support or analysis as to why the Court’s prior ruling would be subject to a *de novo* appellate review. Innovatus cannot even make the barest of showings regarding its likelihood to succeed on the merits. Therefore, the first factor in determining whether a stay is appropriate has not been met.

²⁵ See Motion ¶ 58.

²⁶ See Aug. 20, 2024 Hr’g Tr., 80:19—25.

B. Innovatus Will Not Suffer Irreparable Harm Absent a Stay.

19. Inability to object at confirmation simply to argue impairment or a risk of equitable mootness does not constitute irreparable harm to Innovatus. The Estimation Order provides that:

The Innovatus claim amount shall be set at \$15,738,961.47 for the sole purpose of funding the Prepetition Term Loan Claims Escrow Account and *rendering Innovatus unimpaired*.²⁷

Innovatus requests this Court allow it to relitigate issues already resolved. This is improper and is not sufficient to show irreparable harm.

20. Additionally, the weight of the law in the Fifth Circuit, as well as the Northern District of Texas, weighs against finding that mootness constitutes irreparable harm for purposes of a stay pending appeal.²⁸ Taking Innovatus’s logic to its end that a risk of equitable mootness constitutes irreparable harm, any time there is risk of mootness, a stay would be required.²⁹ This cannot possibly be the case. Finally, Innovatus’s risk profile is now low—this Court has ordered a Prepetition Term Loan Claims Escrow Amount sufficient to unimpair Innovatus. Innovatus cannot substitute its judgment for that of the Court, and the Court has made clear its view on Innovatus’s overall risk in these cases.³⁰

²⁷ Estimation Order ¶ 1 (emphasis added).

²⁸ See, e.g., *SR Constr. Inc. v. Hall Palm Springs, LLC*, 2020 U.S. Dist. LEXIS 224334, at *7 (N.D. Tex. Dec. 1, 2020) (“Moreover, to the extent SRC argues it is entitled to a stay because its appeal will be mooted absent a stay, this does not constitute irreparable injury. This Court agrees with the majority of courts in this circuit finding that the risk of mooting a bankruptcy appeal, standing alone, does not constitute irreparable harm warranting a stay.”) (citing cases); *In re Scotia Dev. LLC*, 2008 Bankr. LEXIS 5127, *14-15 (Bankr. S.D. Tex. July 15, 2008) (“[T]he majority of courts addressing this issue have concluded that the risk of equitable mootness alone does not constitute irreparable harm sufficient to justify a stay pending appeal.”) (citing cases).

²⁹ See *In re National CineMedia, LLC*, 4:23-cv-02414, 4:23-cv-02485, 2023 WL 5030098, at *8 (S.D. Tex. Aug. 4, 2023) (citing *In re Camp Arrowhead*, No. 09-54693, 2010 WL 363773, *7 (W.D. Tex. Jan. 22, 2010)).

³⁰ See Aug. 20, 2024 Hr’g Tr., 81:8—14 (“We have such an over-secured creditor here and that impacts what a bankruptcy judge thinks is reasonable . . . You’re just in a lower risk posture when you’re so vastly over-secured”).

C. Parties in Interest Will Be Substantially Injured by the Stay.

21. Innovatus attempts to minimize the risk of injury to other parties. However, a stay pending Innovatus's appeal of the Estimation Order will necessarily delay distributions mere weeks before they are to be made.

22. Innovatus is not just requesting to be heard at confirmation. Rather, it is seeking to relitigate issues already resolved by the Estimation Order. Furthermore, the approval of a stay pending appeal would substantially increase harm to all parties due to further attorney's fees and costs for remaining in bankruptcy.³¹ It is not the Debtors role to mitigate the delay (and substantial costs) caused by entry of a stay. Rather, if the Court were to grant the Motion, Innovatus would rightfully be required to post a bond in an amount sufficient to compensate for the significant administrative burden a stay would impose on these Chapter 11 Cases and all professionals and parties in interest.

23. For these reasons, Innovatus has failed to establish that parties in interest will not be substantially harmed by a stay of the Estimation Order.

D. The Public Interest Does Not Weigh in Favor of Granting the Stay.

24. A stay of the Estimation Order will not serve the public interest; rather, it serves only to benefit Innovatus and further delay the conclusion to these Chapter 11 Cases. Claims estimation is meant to provide a "a means for a bankruptcy court to achieve reorganization, and/or distributions on claims, without awaiting the results of legal proceedings that could take a very

³¹ See *GVS Texas Holdings, I, LLC.*, Case No. 21-31121 (MVL) (Bankr. N.D. Tex. 2022) (denying motion for stay pending appeal).

long time to determine.”³² Granting a stay pending appeal now will prolong the same delay that the Estimation Order sought to avoid.³³

25. “[T]he public interest in the expeditious administration of bankruptcy cases as well as in the preservation of the bankrupt’s assets for purposes of paying creditors, rather than litigation of claims lacking a substantial possibility of success, outweighs the public interest in resolving the issues presented here on appeal.”³⁴ The public interest will not be served by allowing Innovatus to misuse the bankruptcy and appellate process to strong-arm the Debtors into payment. Courts recognize the “strong public ‘need for finality of decisions, especially in a bankruptcy proceeding’” and the “‘public interest requires bankruptcy courts to consider the good of the case as a whole, and not individual [. . .] investment concerns . . . the public interest cannot tolerate any scenario under which private agendas can thwart the maximization of value.’”³⁵ Innovatus’s appeal has no merit. There is no public benefit to further delaying these Chapter 11 Cases while they are on the precipice of finality.

E. If a Stay Is Granted, the Court Should Require Innovatus to Post a Bond.

26. Innovatus has not made its case for the extraordinary relief it requests in the Motion. However, if the Court disagrees, the Debtors respectfully request the Court require Innovatus to post a bond. Aside from the delay in distributions to creditors, Innovatus ignores the additional administrative burden a stay pending appeal would necessitate, including the professional fees that will continue to accrue unnecessarily.

³² *In re AMR Corporation*, Case No. 11-15463, 2021 WL 5016606, at *5 (Bankr. S.D.N.Y. Oct. 28, 2021) (quoting *In re Adelpia Bus. Sols., Inc.*, 341 B.R. 415, 422 (Bankr. S.D.N.Y. 2003)).

³³ *See id.* (denying stay of estimation ruling pending appeal).

³⁴ *In re Metiom, Inc.*, 318 B.R. 263, 272 (S.D.N.Y. 2004).

³⁵ *Yucaipa Corp. Initiatives Fund, ILP v. Piccadilly Rests., LLC*, Civil Action No. 14-0609, 2014 WL 1871889, at *5 (W.D. La. May 6, 2014) (citing *In re Adelpia Commc’ns Corp.*, 368 B.R. 140, 284 (Bankr. S.D.N.Y. 2007)).

CONCLUSION

For all of the reasons set forth herein, the Debtors respectfully request that the Court deny the Motion.

Dated: September 4, 2024
Dallas, Texas

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/s/ Thomas R. Califano

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Certificate of Service

I certify that on September 4, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ Thomas R. Califano

Thomas R. Califano