IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	:	Chapter 11
THE CONTAINER STORE GROUP, INC., *et al.*,	:	Case No. 24-90627 (ARP)
Reorganized Debtors.[1]	:	(Jointly Administered)

REORGANIZED DEBTORS' OBJECTION TO THE UNITED STATES TRUSTEE'S EMERGENCY MOTION FOR A STAY OF CONFIRMATION ORDER PENDING APPEAL
[Relates to Docket No. 210]

The above-captioned reorganized debtors (collectively, the "**Reorganized Debtors**") hereby object to *The United States Trustee's Emergency Motion for a Stay of Confirmation Order Pending Appeal* [Docket No. 210] ("**Stay Motion**") in which the Office of the United States Trustee for Region 7 ("**Trustee**") seeks to stay this Court's *Order (I) Approving Debtors' Disclosure Statement and (II) Confirming First Amended Prepackaged Joint Plan of Reorganization of The Container Store Group, Inc. and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 181] ("**Confirmation Order**") pending the Trustee's appeal of the Confirmation Order.

PRELIMINARY STATEMENT

1. The Court should deny the Stay Motion. Emboldened by the Supreme Court's decision in *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024), the Trustee's request for a

[1] The Reorganized Debtors in these cases, together with the last four digits of each Reorganized Debtor's taxpayer identification number, are: The Container Store Group, Inc. (5401); The Container Store, Inc. (6981); C Studio Manufacturing Inc. (4763); C Studio Manufacturing LLC (5770); and TCS Gift Card Services, LLC (7975). The Reorganized Debtors' mailing address is 500 Freeport Parkway, Coppell, TX 75019.

stay rests on his argument that third-party releases with opt-out provisions are categorically nonconsensual and thus categorically impermissible. This Court already rejected that argument, and for good reason: both before and after *Purdue*, courts in this District and elsewhere have repeatedly rejected the Trustee's position and held that third-party releases can be deemed consensual based on opt-out provisions. *Confirmation Hearing Tr.* 41-42 (Jan. 24, 2025) [Docket No. 201] ("Hr'g Tr."). Indeed, the Supreme Court stated in *Purdue* itself that "[n]othing" in its decision "should be construed to call into question consensual third-party releases" or to alter existing law on "what qualifies as a consensual release." 603 U.S. at 226.

2. Undeterred, the Trustee now seeks a stay of the Confirmation Order—or alternatively, a limited stay of the enforcement of the (a) third-party release under Section IX.C of the Plan,[2] (b) injunction provision under Section IX.E of the Plan, and (c) gatekeeping provision under Section IX.E of the Plan (collectively, the "**Third-Party Release Provisions**")—pending resolution of the Trustee's appeal. The Trustee has not come close to satisfying his heavy burden to obtain a stay.

3. As an initial matter, the Trustee has completely failed to demonstrate that he will suffer irreparable injury in the absence of a stay. The Plan approved in the Confirmation Order has already gone effective and the transactions have been consummated—and all of that happened before the Trustee sought a stay. So the Trustee's request to stay the Confirmation Order as a whole makes no sense. And as for the proposed stay of the Third-Party Release Provisions, the Trustee has not shown any concrete risk of irreparable harm. The most the Trustee can muster is the generic argument that his appeal might be dismissed as equitably moot without a stay. Courts

[2] The "**Plan**" is defined below. Capitalized terms not defined herein carry the meaning in the Plan or the Solicitation Procedures Order (defined below), as applicable.

in the Fifth Circuit have repeatedly explained that the possibility of equitable mootness does not constitute irreparable injury, and the argument itself runs headlong into the Trustee's own view that the equitable mootness doctrine does not apply in this case. Beyond that, the Trustee simply hypothesizes, with zero evidentiary support, that there might be some category of claimants who (a) have third-party claims subject to the Third-Party Release Provisions, (b) did not opt out of those provisions, and (c) might lose their ability assert those claims because the limitations period will have expired during the pendency of the appeal. This chain of logic is as speculative as it sounds, and it does not come close to justifying the extraordinary remedy of a stay. The failure to demonstrate irreparable injury is alone enough to deny the Stay Motion.

4. The Trustee has also failed to demonstrate the requisite strong likelihood of success on the merits, which independently warrants denial of the Stay Motion. Indeed, the Trustee's merits arguments—which involve jettisoning long-settled precedent in favor of inapposite state contract law principles—are no more convincing this time around than they were when this Court rejected them a month ago.

5. What is more, the harms on the other side of the balance weigh against a stay. The Trustee does not dispute that a stay would result in substantial disruption, producing confusion and uncertainty for the Reorganized Debtors and their employees, vendors, and commercial counterparties, while also inviting needless litigation over claims that the Plan releases and the Reorganized Debtors assert will remain released following the instant appeal. That needless litigation, moreover, could give rise to indemnification claims that the Reorganized Debtors would be required to pay, further undermining the benefit of the Third-Party Release Provisions to the Plan as a whole. And the Trustee offers no good reason to undermine the public interest in

facilitating a successful reorganization that was premised in part on the operation of the Third-Party Release Provisions.

6. In short, there are numerous reasons to deny the Trustee's request for a stay, and not a single reason to grant it. The Trustee's Stay Motion should be denied.

BACKGROUND

7. On December 22, 2024 (the "**Petition Date**"), The Container Store Group, Inc. and certain of its affiliates (collectively, the "**Debtors**") commenced their chapter 11 bankruptcy cases in the United States Bankruptcy Court for the Southern District of Texas (the "**Court**"). On the Petition Date, the Debtors filed their proposed *Disclosure Statement for Prepackaged Joint Plan of Reorganization of The Container Store Group, Inc. and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code,* [Docket No. 18] (the "**Disclosure Statement**"), and the *Prepackaged Joint Plan of Reorganization of The Container Store Group, Inc. and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code*, [Docket No. 19] (as amended, modified, or supplemented, including pursuant to Docket No. 165, the "**Plan**").

8. In the months leading up to the Petition Date, the Debtors and their advisors engaged in robust negotiations with the ad hoc group of lenders on the terms of a consensual and value maximizing restructuring. From the outset, the Third-Party Release Provisions were an integral component of the global settlement reflected in the Plan, and the parties to the Transaction Support Agreement may have been unwilling to support the Plan without the Third-Party Release Provisions. *See Declaration of Chad E. Coben In Support of (I) Approval of the Disclosure Statement and (II) Confirmation of the First Amended Prepackaged Joint Plan of Reorganization of The Container Store Group, Inc. and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* ¶ 56 [Docket No. 162] ("The Third-Party Release is a core consideration among the parties to the Transaction Support Agreement, instrumental in the development of the Plan, and crucial in

facilitating and gaining support for the Plan and the Chapter 11 Cases by the Released Parties, including the concessions resulting in substantial de-leveraging of the Debtors' business."). In fact, the Transaction Term Sheet attached to the Transaction Support Agreement, which set forth the global settlement and deal embodied in the Plan, required that the parties would incorporate release provisions, including the Third-Party Release Provisions, into the Plan. *See* Disclosure Statement, Ex. B.

9. Prior to the Petition Date, on December 21, 2024, Kurtzman Carson Consultants, LLC d/b/a Verita Global LLC, the Debtors' Solicitation Agent (the "**Solicitation Agent**"), transmitted the Disclosure Statement, the Plan, and the Class 3 Ballot to the parties identified on the service lists attached to the Prepetition Certificate of Service as Exhibit A. *Certificate of Service* [Docket No. 51].

10. On December 23, 2024, the Court entered its *Order (I) Scheduling Combined Hearing to Consider (A) Final Approval of Disclosure Statement, (B) Approval of Solicitation Procedures and Form of Ballot, and (C) Confirmation of Plan; (II) Establishing an Objection Deadline to Object to Disclosure Statement and Plan; (III) Approving the Form and Manner of Notice of Combined Hearing, Objection Deadline, and Notice of Commencement; (IV) Approving Notice and Objection Procedures for the Assumption or Rejection of Executory Contracts and Unexpired Leases; (V) Conditionally Waiving Requirement of Filing Schedules of Assets and Liabilities, Statements of Financial Affairs, and 2015.3 Reports; (VI) Conditionally Waiving Requirement to Convene the Section 341 Meeting of Creditors; (VII) Conditionally Approving the Disclosure Statement and (VIII) Granting Related Relief* [Docket No. 81] (the "**Solicitation Procedures Order**"), which, among other things, (a) approved the solicitation procedures with respect to the Plan, including the form of Ballot and Voting Instructions, (b) approved the form

and manner of the Non-Voting Status Notice and Release Opt-Out Forms, and (c) approved the form and manner of the Combined Notice, which provided notice of the commencement of the Debtors' Chapter 11 Cases, the Objection Deadline, and the Combined Hearing. The ballots and non-voting release documents incorporated comments from the Trustee.

11. In accordance with the terms of the Solicitation Procedures Order, on December 24 and December 27, 2024, the Debtors caused the Solicitation Agent to serve the Combined Notice on the Debtors' creditor matrix in accordance with the terms of the Solicitation Procedures Order. *See Certificate of Service* [Docket No. 116] (the "**Postpetition Certificate of Service**"). In addition, the Debtors caused a form of the Combined Notice to be published in the national editions of *The New York Times* and *USA Today* on December 27, 2024 (the "**Publication Notice**"), in accordance with the terms of the Solicitation Procedures Order. *See Affidavit of Publication of the Notice of Publication of the Notice of (I) Commencement of Chapter 11 Cases, (II) Combined Hearing on Disclosure Statement, Prepackaged Joint Chapter 11 Plan, and Related Matters, and (III) Objection Deadlines in The New York Times and USA Today* [Docket No. 117] (the "**Affidavit of Publication**").

12. All parties in interest had notice at least thirty-one (31) days prior to the Combined Hearing and at least twenty-eight (28) days prior to the deadline to opt-out of or object to the Third-Party Release. *See* Postpetition Certificate of Service.

13. Holders of (a) Claims in Class 1 (Other Secured Claims), Class 2 (Prepetition ABL Claims), Class 4 (General Unsecured Claims), Class 5 (Subordinated Claims), Class 6 (Intercompany Claims), Class 7 (Intercompany Interests); and (b) Interests in Class 8 (Existing Equity Interests) (collectively, the "**Non-Voting Classes**") were served with the Non-Voting Status Notice and applicable Release Opt-Out Form on or before December 27, 2024. *Declaration*

of Darlene S. Calderon Regarding the Solicitation and Tabulation of Votes on the Prepackaged Joint Plan of Reorganization of The Container Store Group, Inc. and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code ¶ 9 [Docket No. 164] ("**Voting Declaration**"); *see* Postpetition Certificate of Service; *Supplemental Certificate of Service* [Docket No. 149] ("**Supplemental Certificate of Service #1**"); *Supplemental Certificate of Service* [Docket No. 185] ("**Supplemental Certificate of Service #2**").

14. Furthermore, on or before December 27, 2024, the Solicitation Agent caused to be served the Combined Notice on the Debtors' full creditor matrix and on all other parties required to receive such notice pursuant to the Solicitation Procedures Order. *See* Postpetition Certificate of Service.

15. In total, the Solicitation Agent caused a total of 16,968 Release Opt-Out Forms to be served on Holders of Claims and Interests in the Non-Voting Classes. *See Supplemental Declaration of Darlene S. Calderon Regarding the Solicitation and Tabulation of Votes on the Prepackaged Joint Plan of Reorganization of The Container Store Group, Inc. and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 179] (the "**Supplemental Voting Certificate**").[3] In particular, the Solicitation Agent served: (a) 45 Release Opt-Out Forms on Holders of Other Secured Claims; (b) 3 Release Opt-Out Forms on Holders of ABL Claims; (c) 13,068 Release Opt-Out Forms on Holders of General Unsecured Claims; and (d) 3,852 Release Opt-Out Forms on Holders of Existing Equity Interests. *Id*. ¶ 6. With respect to the Holders of Existing Equity Interests, in accordance with the Solicitation Procedures Order, the Solicitation Agent prepared 3,549 opt-out packages for Nominees and third-party proxy agents, who were

[3] A total of 297 Notices of Non-Voting Status and applicable Release Opt-Out Forms had been returned as undeliverable. Of those, 2 were returned with a forwarding address, and, on January 15, 2025, the Solicitation Agent forwarded those Notices of Non-Voting Status and applicable Release Opt-Out Forms to all such addresses. *See* Supplemental Certificate of Service #1.

required to forward these materials to the beneficial Holders of Existing Equity Interests within seven days of the Nominee's receipt of such materials. *Id.* ¶ 6 n.3; *see* Solicitation Procedures Order ("Nominees are required to forward the Combined Notice and Non-Voting Status Notice or copies thereof to the beneficial Holders of Interests within seven (7) days of the receipt by such Nominee of the Combined Notice.").

16. In response to the wide service, the Solicitation Agent received a total of 165 Release Opt-Out Forms from Holders of Claims and Interests in the Non-Voting Classes, including 14 Release Opt-Out Forms from beneficial Holders of Existing Equity Interests. *Id.* ¶ 6 & n.3. In addition, any party that objected to the Third-Party Release Provisions was deemed to have opted out of the Third Party Release Provisions.

17. In addition to the foregoing direct mail service, on or before December 24, 2024, the Solicitation Agent posted links to the electronic versions of the Combined Notice, Solicitation Procedures Order, Plan, and Disclosure Statement on the face of the public access website at https://www.veritaglobal.net/thecontainerstore. Furthermore, as evidenced in the Affidavit of Publication, the Publication Notice was published in two national newspapers, ensuring robust notice of the Debtors' case, the Plan, and the Third-Party Release Provisions. The foregoing measures are intended to ensure that even if a party is not known to the Debtors, such party will be given notice of the effect of the Debtors' cases and the Plan on such party's rights and interests.

18. On January 24, 2025, this Court entered the Confirmation Order confirming the Plan and approving the Disclosure Statement.

19. As this Court found in the Confirmation Order, "[a]s evidenced by the Affidavits of Service, due, timely, adequate, and sufficient notice of the Disclosure Statement, the Plan, the Plan Supplement, the Combined Hearing, the opportunity to opt out of the Third-Party Release,

and other dates and deadlines described in the Solicitation Procedures Order, together with all deadlines for voting to accept or reject the Plan as well as objecting to the Disclosure Statement and the Plan, has been given in substantial compliance with the Court's orders, all applicable Bankruptcy Rules, and all other applicable rules, laws, and regulations, and no other or further notice is or shall be required. All parties in interest had the opportunity to appear and be heard at the Combined Hearing, and no other or further notice is or shall be required." Confirmation Order ¶ G. Further, this Court found that "Holders of Claims or Interests were given due and adequate notice that they would be consenting to the Third-Party Release by voting to accept the Plan or choosing not to opt out of the Third-Party Release, as applicable. The Third-Party Release is appropriate, important to the success of the Plan and consistent with established practice in this jurisdiction and others. The provisions of the Plan, including the Third-Party Release, were vigorously negotiated prepetition, and the Debtors' key stakeholders are unwilling to support the Plan without the Third-Party Release." *Id.* ¶ Z.

20. At the hearing, the Court overruled the Trustee's objection to the Third-Party Release Provisions. Hr'g Tr. 40-44. The Court noted that "[p]rior to *Purdue*, the Fifth Circuit did not have non-consensual third-party releases," so *Purdue* did not "really change[] anything in the Fifth Circuit as it relates to non-consensual third-party releases." *Id.* at 41-42. The Court also noted that *Purdue* did not alter the longstanding view in this District that providing claimants with "the opportunity … to opt out is consistent with having consensual third-party releases." *Id.* at 42.

21. The Court also acknowledged that the opt-out process here was effective: "the evidence is uncontroverted based on the declaration of Ms. Calderon, based on the numerous exhibits that were admitted showing service, that service was effective," and "[t]here is simply no evidence" that shareholders or other parties "misunderstood" or "misread" the Release Opt-Out

Forms. *Id.* at 42-43. The uncontroverted evidence in the record, the Court explained, "is sufficient to support the release, exculpation, third-party release, discharge, and injunction provisions contained in Article X of the Plan." Confirmation Order ¶ BB.

22. The Plan went effective on January 28, 2025 and the transactions contemplated thereunder have all been consummated. *See Notice of (I) Entry of Combined Order, (II) Occurrence of Effective Date, and (III) Rejection Damages Claims Bar Date* [Docket No. 200]. The Reorganized Debtors filed a motion to close certain of the Debtors' cases, they are operating under new ownership, and lenders have provided new exit loans. Simply put, the Plan and the Restructuring Transactions thereunder have all been consummated.

23. On February 3, 2025, the Trustee filed an appeal of the Confirmation Order. *Notice of Appeal and Statement of Election* [Docket No. 209]. He now seeks a stay pending appeal that rests entirely on his objection to the Third-Party Release Provisions. In the Trustee's view, these provisions—which rely on opt-out mechanisms to obtain consent—are categorically impermissible.

ARGUMENT

24. "A stay pending appeal is 'extraordinary relief' for which [the movant] bear[s] a 'heavy burden.'" *Plaquemines Parish v. Chevron USA, Inc.*, 84 F.4th 362, 373 (5th Cir. 2023). As the "party requesting a stay," the Trustee "bears the burden" to satisfy a four-factor test that considers "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id.* (quoting *Nken v. Holder*, 556 U.S. 418, 433-34 (2009)). The Trustee must establish that all four factors are met. *See Arnold v. Garlock, Inc.*, 278 F.3d 426, 438-39 (5th Cir. 2001) (noting that "each part [of the four-part test] must be met"); *Ruiz v. Estelle*,

666 F.2d 854, 856 (5th Cir. 1982) (noting that all four factors are "prerequisites" to a stay). The "first two factors" are "the most critical." *Nken*, 556 U.S. at 434.

25. In this case, the Trustee has failed to meet his burden to satisfy *any* of the four stay factors—let alone *all* of them. His request for a stay should be denied.

I. The Trustee Has Failed To Demonstrate Irreparable Injury

26. Although (as explained below) the Trustee has failed to satisfy the first factor by demonstrating a likelihood of success on the merits, the Court may readily dispose of his Stay Motion based on the second factor—which requires the Trustee to demonstrate that he "will be irreparably injured absent a stay." *Nken*, 556 U.S. at 434. That factor is equally "critical," *id.*, and the Trustee's attempt to satisfy it in this case is incredibly weak. That alone warrants denial of the stay. *See, e.g.*, *Rozelle v. Lowe*, 2015 WL 13236273, at *1 (W.D. Tex. June 1, 2015) (denying stay pending bankruptcy appeal for lack of irreparable injury alone); *In re Mem'l Prod. Partners LP*, 2018 WL 10593659, at *2 (S.D. Tex. Oct. 16, 2018) (same); *cf. Ruckelshaus v. Monsanto Co.*, 463 U.S. 1315, 1316-17 (1983) (Blackmun, J., in chambers) (noting that a stay applicant's "fail[ure] to show irreparable injury from the denial of the stay" obviates the need to even "consider[]" the "likelihood of success on the merits").

27. Specifically, the Trustee advances exactly one argument in an attempt to show that he will be irreparable injured absent a stay: The "potential" that his appeal could be dismissed "based on the doctrine of equitable mootness." Mot. ¶¶ 124-25. This argument fails.

28. First, as "[m]any district courts in this circuit have held," the "possibility of the application of equitable mootness" on appeal does not "demonstrate[] irreparable injury." *In re Nat'l CineMedia, LLC*, 2023 WL 5030098, at *8 (S.D. Tex. Aug. 4, 2023); *see also, e.g.*, *Yucaipa Corp. Initiatives Fund, ILP v. Piccadilly Rests., LLC*, 2014 WL 1871889, at *4 (W.D. La. May 6, 2014) ("Courts have consistently held the risk of equitable mootness alone does not establish the

irreparable injury needed to obtain a stay pending appeal."); *SR Constr. Inc. v. Hall Palm Springs, LLC*, 2020 WL 7047173, at *3 (N.D. Tex. Dec. 1, 2020) ("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."). The Trustee does not even mention this wall of authority, let alone try to overcome it.

29. Second, the Trustee himself does not even believe that this harm will materialize. Instead, he "vigorously maintains that [the equitable mootness] doctrine would *not* apply here," so his argument for irreparable harm rests entirely on the possibility that the Debtors will raise this issue and that the "appellate courts may disagree" with the Trustee. Mot. ¶ 124 (emphasis added). For purposes of seeking a stay, however, "simply showing some 'possibility of irreparable injury' fails to satisfy the second factor." *Nken*, 556 U.S. at 434-35 (internal citation omitted).

30. Beyond that, the Trustee suggests that parties whose claims are subject to the release might be "irreparably harmed if the statute of limitations applicable to their cause of action expires during the pendency of the appeal." Mot. ¶ 126. But the Trustee does not assert that the United States has any such claim, such that this concern has any bearing on "whether *the applicant*"—i.e., the Trustee—"will be irreparably injured absent a stay." *Nken*, 556 U.S. at 434 (emphasis added).

31. Seeking to skirt that problem, the Trustee conflates the stay factors, suggesting that this is a matter of "public interest" and that "when the government is a party, the injury and public interest factors merge." Mot. ¶¶ 122, 126. As the Fifth Circuit has explained, however, this argument is "mistaken." *U.S. Navy Seals 1-26 v. Biden*, 27 F.4th 336, 353 (5th Cir. 2022). "Those factors merge 'when the Government is the *opposing* party'"—i.e., "when the government is *not* the party applying for a stay." *Id.* (emphasis added) (quoting *Nken*, 556 U.S. at 435). But when,

as here, the government is "applying for a stay," "[t]he public interest factor" remains "distinct" from the others. *Id.*; *see Nat'l Ass'n for Gun Rts., Inc. v. Garland*, 2023 WL 11950658, at *5 (N.D. Tex. Nov. 16, 2023) ("[T]he public interest factor does not merge here because the government is the moving—rather than the opposing—party.").

32. In any event, the Trustee's fear of expiring claims is speculative and unsupported. Indeed, the Trustee has failed to identify *any* claimants who have claims subject to the Third-Party Release Provisions that are on the verge of expiring, let alone any claimants who would seek to bring such claims during the pendency of the appeal despite not opting out of the Third-Party Release Provisions. Rather, his entire argument rests on a vague and purely theoretical possibility that some undefined set of claims held by some undefined set of claimants may expire at some undefined point in time. Such speculative "possibility," devoid of any substantiating evidence, is "not enough" to justify a stay. *Nken*, 556 U.S. at 434-35; *see, e.g.*, *Chevron USA*, 84 F.4th at 376 (denying stay pending appeal where movants demonstrated "no more than a remote and avoidable possibility" of irreparable harm); *Mem'l Prod. Partners*, 2018 WL 10593659, at *2 (denying stay pending appeal where movants' irreparable harm arguments "amount[ed] to nothing more than speculation").[4]

33. Ultimately, the Trustee's failure to demonstrate a concrete threat of irreparable harm is reason enough to deny his motion. The Court need go no further.

II. The Trustee Has Failed To Demonstrate A Likelihood Of Success On Appeal

34. The Trustee also falls short on the other "critical" factor, which requires him to "ma[ke] a strong showing that he is likely to succeed on the merits" of his appeal. *Nken*, 556 U.S.

[4] The Trustee's theoretical argument also ignores that, to the extent there are claimants who (unlike the Trustee) actually have potentially expiring claims subject to the Third-Party Release Provisions, those claimants may have other avenues, such as tolling agreements and various tolling doctrines, for preserving the timeliness of their claims in the event the Trustee prevails on appeal.

at 434. Evidently realizing this, the Trustee starts by trying to dilute the standard for this factor, suggesting that he need show only that "this case raises sufficiently serious questions to make them a fair ground for litigation." Mot. ¶ 67. The Supreme Court and the Fifth Circuit have made clear, however, that "[i]t is not enough that the chance of success on the merits be 'better than negligible'"—to obtain the extraordinary remedy of a stay, the movant "must make a '*strong* showing'" that "'he is *likely* to succeed on the merits.'" *United States v. Texas*, 97 F.4th 268, 274 (5th Cir. 2024) (emphasis added) (citations omitted); *see Nken*, 556 U.S. at 434. The Trustee—who largely copies and pastes, verbatim, the arguments from his pre-confirmation objections that this Court has already rejected—has not satisfied that heavy burden in this case. Nothing suggests that the Trustee's arguments have suddenly become more promising for appeal.[5]

A. The Trustee's Merits Arguments Contradict Longstanding Precedent In This District

35. The Trustee's categorical objection to third-party releases with opt-out mechanisms contradicts settled law in this District. Hr'g Tr. 41-42. As the Trustee acknowledges, consensual third-party releases are permissible under the Bankruptcy Code. Mot. ¶ 69. And as the Trustee also concedes (with considerable understatement), "opt-out provisions have been approved" as permissible means of obtaining consent "in some cases in the Southern District of Texas." *Id.* ¶ 71. Indeed, the law governing "what constitutes consent, including opt-out features and deemed consent for not opting out, has long been settled in this District," and "[h]undreds of chapter 11

[5] Contrary to the Trustee's suggestion (Mot. ¶¶ 66-67), this case does not fall within the "limited subset of cases" in which "a 'movant need only present a substantial case on the merits.'" *Texas Democratic Party v. Abbott*, 961 F.3d 389, 397 (5th Cir. 2020). That standard applies only in cases in which "(1) 'a *serious legal question* is involved' and (2) 'the balance of the equities weighs *heavily* in favor of granting the stay.'" *Id.* (emphasis in original); *see Wildmon v. Berwick Universal Pictures*, 983 F.2d 21, 23 (5th Cir. 1992) (per curiam). Setting aside the Trustee's *ipse dixit* that the questions he raises are "serious," Mot. ¶ 67, the Trustee does not even try to argue that the balance of equities weighs "heavily" in favor of a stay.

cases have been confirmed in this District with consensual third-party releases with an opt-out." *In re Robertshaw US Holding Corp.*, 662 B.R. 300, 323 (Bankr. S.D. Tex. 2024).

36. Faced with this longstanding precedent, the Trustee primarily points to the Supreme Court's recent decision in *Purdue*. *See* Mot. ¶¶ 9, 68-69, 113-14. But that case—which held that the Bankruptcy Code does not authorize *nonconsensual* third-party releases, 603 U.S. at 226-27—does not help the Trustee, for two reasons. First, the Court's holding in *Purdue* did not change the law in the Fifth Circuit, where nonconsensual third-party releases were impermissible long before *Purdue*. *See In re Pac. Lumber Co.*, 584 F.3d 229, 252 (5th Cir. 2009) (citing cases dating back to 1993). Accordingly, for more than two decades, cases in the Fifth Circuit approving third-party releases with opt-out mechanisms have necessarily deemed those releases to be consensual. Second, the Supreme Court in *Purdue* went out of its way to make clear that its decision did not affect either the validity of consensual third-party releases or existing law governing consent: "Nothing in what we have said should be construed to call into question *consensual* third-party releases offered in connection with a bankruptcy reorganization plan; those sorts of releases pose different questions and may rest on different legal grounds than the nonconsensual release at issue here. Nor do we have occasion today to express a view on what qualifies as a consensual release or pass upon a plan that provides for the full satisfaction of claims against a third-party nondebtor." 603 U.S. at 226 (emphasis in original) (internal citation omitted).

37. Thus, when it comes to "third-party releases with an opt-out," the decision in "*Purdue* did not change the law." *Robertshaw*, 662 B.R. at 323. That is precisely why courts have continued to permit opt-out third-party releases after *Purdue*. *Id.*; *see also, e.g.*, Hearing Tr. 28-29, *In re Indep. Contract Drilling, Inc.*, No. 24-90612 (ARP) (Bankr. S.D. Tex. Jan. 9, 2025) [Docket No. 127] ("[The Trustee's] argument has been directly addressed by several courts

recently, including *Vroom*, *Wesco*, *Diamond Sports*, [and] *Robertshaw*, where the ability of the creditor to opt-out is deemed to be consent. And this Court will follow those rules.").

38. The Trustee also claims that a handful of cases from other districts—largely in other circuits—have rejected the use of opt-out mechanisms to obtain consensual third-party releases. *See* Mot. ¶¶ 100-06. At best, the Trustee has shown that his position reflects the short side of a lopsided split among bankruptcy courts, with most courts agreeing that opt-out provisions are permissible. *See In re Lavie Care Centers, LLC*, 2024 WL 4988600, at *11-16 (Bankr. N.D. Ga. Dec. 5, 2024) (surveying pre-*Purdue* and post-*Purdue* cases); 8 *Collier on Bankruptcy* ¶ 1141.02[5][b] (16th ed. 2024) (noting pre-*Purdue* that "bankruptcy courts have reflected favorably on opt-out-third-party releases"). Indeed, the Trustee's own cases acknowledge that they are in the minority. *See In re Emerge Energy Servs. LP*, 2019 WL 7634308, at *18 (Bankr. D. Del. Dec. 5, 2019) ("The Court understands that its position is a minority amongst the judges of this District."); *In re Chassix Holdings, Inc.*, 533 B.R. 64, 77 (Bankr. S.D.N.Y. 2015) ("[T]here are many cases in this District and elsewhere in which 'deemed consent' and 'opt out' arrangements have been approved that are nearly identical to the arrangements that the Debtors proposed in this case.").[6]

39. The Trustee's cursory attack on the injunction and gatekeeping provisions in Section IX.E of the Plan, Mot. ¶¶ 114-20, is also at odds with precedent. The injunction provision is simply a mechanism by which the Third-Party Release Provisions are enforced, and well-settled body of "[c]ase law in the Fifth Circuit allows the use of injunctions in consensual third party releases." Hearing Tr. 32, *In re Indep. Contract Drilling, Inc.*, No. 24-90612 (ARP) (Bankr. S.D.

[6] Some of the Trustee's cases are also distinguishable. For example, the plan in *In re SunEdison, Inc.*, 576 B.R. 453 (Bankr. S.D.N.Y. 2017) (cited at Mot. ¶¶ 101-03), did not involve an opt-out mechanism. *Id.* at 457; *see id.* at 460 n.8 ("[T]he *Plan* does not allow creditors to opt out of the Release.").

Tex. Jan. 9, 2025) [Docket No. 127]; *see also In re CJ Holding Co.*, 597 B.R. 597, 608 (S.D. Tex. 2019) (collecting cases); *In re Camp Arrowhead, Ltd.*, 451 B.R. 678, 701-02 (Bankr. W.D. Tex. 2011). Likewise, Fifth Circuit precedent has "long recognized [that] bankruptcy courts can perform a gatekeeping function," *In re Highland Cap. Mgmt., L.P.*, 48 F.4th 419, 439 (5th Cir. 2022), and the gatekeeping provision here is fully consistent with such provisions approved by this Court and other bankruptcy courts within this District, *see, e.g.*, *In re Indep. Contract Drilling, Inc.*, No. 24-90612 (ARP) (Bankr. S.D. Tex. Jan. 9, 2025) [Docket No. 124]; *In re Robertshaw US Holding Corp.*, No. 24-90052 (CML) (Bankr. S.D. Tex. Aug. 16, 2024) [Docket No. 960].

40. To be sure, the Trustee can try to convince the courts on appeal, after full briefing and argument, to buck the prevailing precedent. But for present purposes, what matters is that the Trustee at a minimum faces a steep uphill battle on the merits given the absence of binding precedent supporting his position and the "settled [law] in this District" refuting it. *Robertshaw*, 662 B.R. at 323; *cf. Patterson v. Mahwah Bergen Retail Grp., Inc.*, 2021 WL 2653732, at *8 (E.D. Va. June 28, 2021) (finding that even if "the Trustee may ultimately prevail on [appeal], a complete paucity of binding authority and a split of persuasive authority leaves him short of meeting his burden of making a strong showing of a likelihood of success on the merits").

B. The Trustee's Merits Arguments Are Meritless On Their Own Terms

41. The Trustee's attempt to break from settled law in this District fails on its own terms. Relying solely on his view of "state contract law," the Trustee makes the categorical assertion that "the failure to opt out" after receiving notice and an opportunity to opt out "does not constitute consent." Mot. ¶¶ 71-72; *see id.* ¶¶ 73-113. The Trustee's elaborate contract law argument is unconvincing.

42. As an initial matter, all parties agree that, under the Bankruptcy Code, a chapter 11 plan may include consensual third-party releases, *id.* ¶ 69, which are releases in which claimants

consent to extinguish claims against a non-debtor. In other words, the Trustee appears to concede—as his Region 2 counterpart and the Solicitor General's Office did in *Purdue*—that such releases are authorized by the Bankruptcy Code. The only question is whether consent for these releases can be obtained through a well-defined, court-supervised opt-out process under which a failure to opt out extinguishes the claimant's claims. The answer is yes.

43. The relevant analysis starts with the Bankruptcy Code and process, which contemplate various circumstances in which a party is deemed to have granted consent by failing to take affirmative action after receiving notice of a pending event. The most obvious example is the restrictions on "nonobjecting creditors' rights": "If a claimholder receives notice of the bankruptcy proceeding, including the bar date, the debtors' proposed plan, and the confirmation hearing, but has failed to timely file a proof of claim, appear in the bankruptcy proceeding, or object to the plan, that claimholder cannot appeal from the bankruptcy court's confirmation order." *CJ Holding*, 597 B.R. at 609. In that sense, "by failing to object," the claimholder is deemed to have "consented to the plan"—and that consent extends to the "third-party releases" included therein. *Id.* at 609-10.

44. Similarly, the Bankruptcy Code authorizes a negative notice process, under which courts may resolve certain motions without a hearing if notice is provided and no hearing is requested timely by the opposing party. 11 U.S.C. § 102(1)(B)(i); *see In re Pierce*, 435 F.3d 891, 892 (8th Cir. 2006) ("Negative notices are … authorized by the Code."). Treating the "non-return of the [opt-out] form" as "acceptance of the terms offered, in the mode and manner prescribed in the Third-Party Release[,] … essentially mimics the bankruptcy court's own negative-notice procedure." *In re Stein Mart, Inc.*, 629 B.R. 516, 523 (Bankr. M.D. Fla. 2021). And as explained in "numerous" decisions, bankruptcy courts "'may enter default judgments based on implied

consent resulting from a defendant's failure to respond to a summons and complaint.'" *In re Moden*, 2021 WL 5300020, at *5 n.27 (10th Cir. BAP Nov. 12, 2021) (collecting cases). Each of these examples confirms that consent may be implied following adequate notice of the need to take affirmative action and the failure to do so.[7]

45. Treating a failure to opt out as consent is not unique to bankruptcy. In the class action context, for example, both "[t]he U.S. Supreme Court and the Fifth Circuit" have held that the same sort of "opt-out" procedures used here suffice to "provid[e] consent" by class members to be bound by the judgment. *Robertshaw*, 662 B.R. at 323 n.120 (citing *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985); *In re Deepwater Horizon*, 819 F.3d 190 (5th Cir. 2016)). Specifically, class representatives must provide adequate "'notice'" to class members and instruct them of their right to "opt out." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997) (quoting Fed. R. Civ. P. 23(c)(2)); *see Shutts*, 472 U.S. at 812 ("[W]e hold that due process requires … that an absent plaintiff be provided with an opportunity to remove himself from the class by executing and returning an 'opt out' or 'request for exclusion' form to the court."). Each unnamed class member is "presumed to consent to being a member of the class"—and to have his "claims" "extinguished"—by "his failure to" "execute an 'opt out' form." *Shutts*, 472 U.S. at 811-13; *see* 1 Joseph M. McLaughlin, *McLaughlin on Class Actions* § 5:78 (21st ed. Oct. 2024) ("A class member who is afforded an opportunity to opt out, but who fails to exercise that option, will be deemed to have consented to jurisdiction and will be bound by the class action proceedings.").

---

[7] The Trustee suggests that applying these principles to opt-out provisions in the context of releases has no "limiting principle" and could result in creditors being unwittingly subjected to obligations like having to "make a $100 contribution to [a] college education fund." Mot. ¶¶ 111-12 (quoting *In re Smallhold, Inc.*, 665 B.R. 704, 710 (Bankr. D. Del. 2024)). This argument, however, ignores "the difference between a simple waiver or release of rights (which can happen through inaction) and a requirement to take affirmative action" in the future. *Lavie*, 2024 WL 4988600, at *16. It also ignores other constraints, such as "the good faith confirmation requirement" and the requirement that provisions must be "appropriate," each of which "would likely preclude requiring actions entirely unrelated to the Debtors like making a contribution to a college education fund." *Id.* at *16 & n.59 (citing 11 U.S.C. §§ 1129(a)(3), 1123(b)(6)).

46. Ultimately, "[t]he notion that an individual or entity is in some instances deemed to consent to something by their failure to act is one that is utilized throughout the judicial system," and "[t]here is no reason why this principle should not be applied in the same manner to properly noticed releases within a plan of reorganization." *In re Mallinckrodt PLC*, 639 B.R. 837, 879 (Bankr. D. Del. 2022), *abrogated in part on other grounds by Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024). And "the process here worked," as "the evidence is uncontroverted" that the parties followed a court-approved process for distributing and collecting opt-out forms and that, based on that process, "service was effective." Hr'g Tr. 42.

47. Rather than heed these principles, the Trustee insists that consent is determined exclusively by state contract law. This position suffers from several problems. For starters, the Trustee's assertion that this issue is governed by state law rather than federal law is dubious. The Trustee is correct (Mot. ¶ 6) that "the validity of any interest that may have accrued prior to the filing of the petition is resolved generally by state law." *In re W. Texas Mktg. Corp.*, 54 F.3d 1194, 1196 (5th Cir. 1995). But "once the petition is filed, federal law controls" as to matters other than validity. *Id.*; *cf., e.g.*, *In re Artha Mgmt., Inc.*, 91 F.3d 326, 328-29 (2d Cir. 1996) (explaining that "[t]his case arose under the Bankruptcy Code, thus [an agent's] authority to bind his clients to the agreement is defined by federal precedent" rather than state law). And as explained above, when it comes to releases that extinguish rights, federal law supports the notion of implied consent through inaction following adequate notice.

48. The government's arguments in *Purdue* support this view. *See* Mot. ¶ 69 (relying on the government's arguments in *Purdue*). In explaining the Trustee's position that "opt-out" procedures cannot be used to obtain "consent," Oral Argument Tr. 15-16, *Purdue*, *supra* (No. 23-

124),[8] the government did *not* suggest that the concern arose from state contract law. Instead, the government explained that certain opt-out procedures "may be different with respect to the constitutional concerns." *Id.* at 16; *see also Purdue* Gov't Br. 41-42 (No. 23-124), 2023 WL 6220089 (discussing constitutional concerns and citing *Shutts*). As explained above, the Supreme Court has made clear that obtaining consent through "opt out" processes avoids constitutional concerns, so long as the claimant is provided sufficient notice and the opportunity to opt out. *Shutts*, 472 U.S. at 812.[9]

49. Moreover, the application of state contract law in this context would raise more questions than answers. As multiple courts have recognized, "there is no answer to the question 'which state's law should be applied?'" *Lavie*, 2024 WL 4988600, at *14; *see* Hearing Tr. 105, *In re Wesco Aircraft Holdings, Inc.*, No. 23-90611 (MI) (Bankr. S.D. Tex. Dec. 16, 2024) [Docket No. 2502] ("[S]ome states might permit [opt-out consent], some states might not permit it. Where does that leave the bankruptcy court? I don't know."). At times, the Trustee seems to assume that Texas law applies here, Mot. ¶¶ 77, 81-82, but he supplies no basis for that assumption. And yet at other times, he cobbles together federal precedent from far-flung jurisdictions, *see, e.g.*, *id.* ¶¶ 86-89 (extended discussion of Ninth Circuit arbitration decision applying California law); and commentary from the Restatement of Contracts, *see id.* ¶¶ 78-80, 93, 97-98—"which itself is not the law anywhere," *Lavie*, 2024 WL 4988600, at *14.

---

[8] Available at https://www.supremecourt.gov/oral_arguments/argument_transcripts/2023/23-124_kp3g.pdf.

[9] Additionally, in contending that "consensual release[s]" are permissible based on "'the parties' agreement,'" *Purdue* Gov't Br. 48, the government did *not* suggest that consent might turn on the vagaries of state contract law. Instead, the government relied exclusively on cases applying principles of consent as a matter of *federal* law. *Id.* (citing *Lawyer v. Department of Justice*, 521 U.S. 567, 579 n.6 (1997) (involving consent for purposes of federal consent decrees); *Taylor v. Sturgell*, 553 U.S. 880, 893 (2008) (involving consent for purposes of federal res judicata); *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 674 (2015) (involving consent to adjudication by bankruptcy courts)).

50. The Trustee's theory of state contract law also ignores that the releases at issue here are not simply free-floating contracts; they are part of a federally approved bankruptcy plan. Thus, as in the case of other settlement agreements, "the release is not simply a contract entered into by private parties, but is one that has been given a stamp of approval by the court." *Grimes v. Vitalink Commc'ns Corp.*, 17 F.3d 1553, 1557 (3d Cir. 1994). As a result, it is "the plan that serves as the mechanism to have the release take effect and, thus, … the Federal Rules of Bankruptcy Procedure" are properly used to determine "whether someone has achieved proper notice and has, by not responding, given their implied consent." *Mallinckrodt*, 639 B.R. 837, 879-80 (citation omitted). In this respect, the releases here are akin to releases in a class action settlement. After all, "a class action settlement agreement is a contract," 4 William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 13:3 (6th ed. Nov. 2024), and yet the validity of the releases contained in such agreements are not premised on state-specific contract law. Instead, they are embodied in court-approved judgments based on precisely the same kinds of opt-out procedures used here. *See supra* ¶ 45. And again, "the process here worked." Hr'g Tr. 42.

51. Finally, the Trustee's categorical argument glosses over the well-recognized contract-law rule that "mere silence may amount to an acceptance if the offeror requested that mode of indicating assent, and, by remaining silent, the offeree intended to assent." 2 Richard A. Lord, *Williston on Contracts* § 6:70 (4th ed. May 2024); *see Restatement (Second) of Contracts* § 69(1)(b) (Am. L. Inst. 1981) ("Where an offeree fails to reply to an offer, his silence and inaction operate as an acceptance … [w]here the offeror has stated or given the offeree reason to understand that assent may be manifested by silence or inaction, and the offeree in remaining silent and inactive intends to accept the offer."). Courts in Texas have recognized this rule, including in the context of settlements. *See, e.g.*, *Union Carbide Corp. v. Jones*, 2016 WL 1237825, at *5-6 (Tex.

App. Mar. 29, 2016) ("Silence, plus forbearance [of litigation], may, in some cases, constitute an acceptance [of a settlement offer]."). And while the Trustee provides an extended discussion on arbitration agreements in adhesion contracts, Mot. ¶¶ 86-89, even in that context "silence [may] constitute[] acceptance." *Boomer v. AT&T Corp.*, 309 F.3d 404, 415 (7th Cir. 2002); *see also, e.g.*, *AT&T Mobility Servs. LLC v. Inzerillo*, 2018 WL 10160964, at *2 (W.D. Mo. Jan. 31, 2018) ("Missouri contract law does not require acceptance of an offer to be made 'by spoken or written word.' … Here, plaintiff was provided with ample notice of his right to opt out, the means by which to do so, and the date by which he was required to exercise his right to do so. By failing to opt out, he affirmatively accepted the arbitration agreement." (citation omitted)).

52. Ultimately, the Trustee's focus on state contract law reflects a misguided attempt to relieve creditors of any "obligation" to even "read a plan." Mot. ¶ 102. Given that "service by mail [is] the rule in bankruptcy, creditors are obligated to pay attention to, and read, their mail." *Lavie*, 2024 WL 4988600, at *15. And when creditors receive clear notice that, unless they opt out, the bankruptcy plan will discharge their claims against third parties, those that fail to opt out "may be 'deemed' to consent to the release." *Id.* The Court was on solid ground in reaching that conclusion in this case, and the Trustee has failed to make a strong showing that he is likely to prevail in overturning this Court's conclusion on appeal.

III. The Trustee Does Not Seriously Dispute That Granting A Stay Would Create Significant Disruption

53. The Trustee fares no better on the third stay factor, which requires him to establish that granting a stay would not "substantially injure the other parties interested in the proceeding." *Nken*, 556 U.S. at 434. A stay would produce significant harm to the Reorganized Debtors, their respective estates, and other parties in interest. The Plan has already taken effect, and the Third-Party Release Provisions are "important to the success of the Plan," as this Court already

recognized. Confirmation Order ¶ Y. Hence, by seeking to stay the enforcement of the Confirmation Order (or the Third-Party Release Provisions), the Trustee is ultimately undermining a highly successful Plan and sowing doubt about the validity of numerous actions that third parties took in reliance on the Plan—including the status of potential claims that have been compromised, settled, and/or released under the Plan.

54. For example, in the event a stay is granted, parties who have relied on the finality provided by the provisions of the Plan and Third-Party Release Provisions may now be forced to expend time, money, and resources on lawsuits involving claims that are subject to the Third-Party Release Provisions. Leaving the Third-Party Release Provisions intact during the pendency of this appeal would at a minimum ensure the litigation in such cases may be paused while this appeal plays out. Granting the Trustee's request for a stay, by contrast, would pave the way for that litigation to forge ahead. Any such lawsuits may also give rise to indemnification obligations of the Reorganized Debtors, creating further complications and costs while this appeal proceeds. *See* Plan Art. V.H; Confirmation Order ¶ 27. All parties have relied on the Confirmation Order and the protections afforded thereunder, and granting a stay would undermine the restructuring process and may cause harm to each of the parties who have relied on the provisions of the Plan and Confirmation Order, including the Third-Party Release Provisions.

55. The Trustee does not even attempt to address these problems beyond a conclusory suggestion that the Court could issue a "limited stay" that covers only the challenged provisions, which would "not otherwise delay plan implementation." Mot. ¶ 128. But "delay" is not the only problem for the reasons just explained—granting a stay would cause needless confusion, encourage costly litigation over claims subject to the Third-Party Release Provisions, and undermine the value-maximizing effect of the reorganization. Particularly given that the harms

the Trustee alleges are entirely theoretical, *see supra* ¶¶ 27-33, the Court should decline the Trustee's invitation to create chaos in both the implementation of the Plan and in the appellate process.

IV. The Trustee's Perfunctory Public Interest Argument Fails

56. Finally, the Trustee flunks the fourth stay factor, which asks "where the public interest lies." *Nken*, 556 U.S. at 434. "In a bankruptcy case, the public interest is in promoting a successful reorganization." *In re Raborn*, 2017 WL 4536090, at *4 (Bankr. M.D. La. 2017) (quoting *In re Babcock & Wilcox*, 2000 WL 1092434, at *3 (E.D. La. Aug. 2, 2000)); *see also In re Smith*, 397 B.R. 134, 148 (Bankr. D. Nev. 2008) ("great public interest in the efficient administration of the bankruptcy system" weighed against issuance of a stay pending appeal); *In re Stewart*, 604 B.R. 900, 909 (Bankr. W.D. Okla. 2019) (public interest in expeditious administration of bankruptcy cases weighs against issuance of stay). And "[c]ourts recognize the strong public 'need for finality of decisions, especially in a bankruptcy proceeding.'" *Piccadilly Rests.*, 2014 WL 1871889, at *5 (denying stay pending appeal) (quoting *In re Calpine Corp.*, 2008 WL 207841, at *7 (Bankr. S.D.N.Y. Jan. 24, 2008)). Indeed, "'[t]he strong public interest in the finality of bankruptcy reorganizations is particularly compelling' when a reorganization plan has been substantially consummated." *Alberta Energy Partners v. Blast Energy Servs., Inc.*, 2008 WL 1858919, at *2 (S.D. Tex. Apr. 24, 2008) (citation omitted).

57. These considerations weigh against a stay. The Plan has been substantially consummated. And implementation of the Plan has allowed the Reorganized Debtors to emerge as reorganized entities better positioned for long-term growth. This has benefited all parties, including the Reorganized Debtors' employees, vendors, and commercial counterparties. Granting the Trustee's request for a stay would severely hinder the public interest by delaying the reorganization process, causing uncertainty and potential harm to creditors and other stakeholders

who are relying upon the finality of the Confirmation Order, and undermining the success of the recently emerged Reorganized Debtors' reorganization. That result is in no one's interest, let alone the public's interest, and not a single actual claimant has raised any concern.

58. In response, the Trustee offers a vague "public interest in ensuring compliance with the law." Mot. ¶ 123. This argument assumes that the Trustee is right about the law. Not only is that assumption incorrect for the reasons explained above, but the argument itself conflates the likelihood-of-success factor with the public interest factor.

59. The Trustee also suggests that the "public interest" favors a stay based on his arguments about the potential expiration of certain claims. Mot. ¶ 126. As noted above, this argument is entirely speculative. *See supra* ¶¶ 30-32. And this interest is not shared by the public at large; rather, it is instead limited to a category of hypothetical (and quite possibly nonexistent) claimants who did not opt out of the Third-Party Release Provisions, have not raised these claims, and yet might seek to bring unknown hypothetical claims otherwise extinguished by the Third-Party Release Provisions at some unknown point in the future. Whatever the scope of that interest, it pales in comparison to the interest in preserving the tangible benefits of the highly successful restructuring.

CONCLUSION

60. The Trustee has failed to meet his burden to satisfy any of the four stay factors—let alone all of them. The Trustee's motion for a stay pending appeal should be denied.

[*Remainder of page intentionally left blank.*]

Dated: February 24, 2025
Houston, Texas

Respectfully submitted,

/s/ Timothy A. ("Tad") Davidson II

HUNTON ANDREWS KURTH LLP
Timothy A. ("Tad") Davidson II (Texas Bar No. 24012503)
Ashley L. Harper (Texas Bar No. 24065272)
Philip M. Guffy (Texas Bar No. 24113705)
600 Travis Street, Suite 4200
Houston, TX 77002
Telephone: (713) 220-4200
Email: taddavidson@HuntonAK.com
ashleyharper@HuntonAK.com
pguffy@HuntonAK.com

- and -

LATHAM & WATKINS LLP
George A. Davis (NY Bar No. 2401214)
Hugh Murtagh (NY Bar No. 5002498)
Tianjiao (TJ) Li (NY Bar No. 5689567)
Jonathan J. Weichselbaum (NY Bar No. 5676143)
1271 Avenue of the Americas
New York, NY 10020
Telephone: (212) 906-1200
Email: george.davis@lw.com
hugh.murtagh@lw.com
tj.li@lw.com
jon.weichselbaum@lw.com

Ted A. Dillman (CA Bar No. 258499)
355 South Grand Avenue, Suite 100
Los Angeles, CA 90071
Telephone: (213) 485-1234
Email: ted.dillman@lw.com

Co-Counsel for the Reorganized Debtors

Certificate of Service

I certify that on February 24, 2025, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ Timothy A. ("Tad") Davidson II
Timothy A. ("Tad") Davidson II