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United States Bankruptcy Court
Southern District of Texas
ENTERED
April 07, 2025
Nathan Ochsner, Clerk

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

IN RE:	§	
	§	**CASE NO: 24-90627**
THE CONTAINER STORE GROUP, INC., *et al.*,	§	
	§	
Debtors.	§	**Jointly Administered**
	§	**CHAPTER 11**

ORDER DENYING THE UNITED STATES TRUSTEE'S MOTION FOR A STAY OF CONFIRMATION ORDER PENDING APPEAL (ECF NO. 210)

I. BACKGROUND

The Container Store Group, Inc., along with certain affiliates ("Debtor" or "Debtors") are an industry-leading specialty retailer focused on offering consumers custom spaces, organizing solutions, and in home-services.[1] Debtors operate more than 100 store locations throughout the United States.[2]

Debtors filed for relief under chapter 11 of the Bankruptcy Code on December 22, 2024 (the "Petition Date")[3] and proposed a Prepackaged Joint Plan of Reorganization (as amended and supplemented, the "Plan")[4] and Disclosure Statement.[5] Prior to the Petition Date, Debtors reached agreements with their key stakeholder constituencies,[6] entering into (i) a Transaction Support Agreement ("TSA")[7] with prepetition lenders that collectively held over 90% of the outstanding principal amount of term loans, and (ii) a DIP & Exit ABL

[1] ECF No. 6 at 8.
[2] ECF No. 6 at 8.
[3] ECF No. 1.
[4] ECF No. 19; ECF No. 165.
[5] ECF No. 18.
[6] ECF No. 6 at 4.
[7] ECF No. 6-1.

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Commitment Letter.[8] The net effect was to convert the term loans to equity and to provide funding to implement the Plan and the go forward business. Because of these prepetition agreements, the Plan does not impair any of its general unsecured creditors, who are paid in full, and enjoys the overwhelming support of the Debtors' creditors.[9] As a result of the absolute priority rule, equity holders are impaired under the Plan and are deemed to reject the Plan.[10] The stock was delisted from the New York Stock Exchange on December 9, 2024, prior to the Petition Date.[11] At the time of the filing the stock was trading for pennies.

By any objective measure, the Debtors' restructuring was a success. The time between the Petition Date and the Effective Date was only 37 days. This short time frame saved the Debtors millions of dollars in administrative costs. No economic stakeholder objected to the Plan. Unlike many other retailers facing economic challenges, Debtors did not reject any leases or lay off any employees during this case. In fact, because the unsecured creditors rode through the case, there is no claims process to administer.

The United States Trustee ("US Trustee") submitted an Objection to Confirmation of Plan[12] ("US Trustee Objection") based on the third-party releases, the use of opt-out procedures, and the injunction and gatekeeping provisions.[13] On January 24, 2025, this Court held the Confirmation Hearing and heard argument on the US Trustee Objection.[14] The Court overruled the US Trustee Objection and entered an order approving Debtors' Plan and Disclosure Statement.[15] The Court also waived the fourteen-day stay period under 3020(e), finding

[8] ECF No. 6-2.
[9] ECF No. 6 at 4.
[10] ECF No. 162 at 16.
[11] ECF No. 167 at 74.
[12] ECF No. 150.
[13] ECF No. 150 at 2.
[14] ECF No. 182; ECF No. 201 (transcript).
[15] ECF No. 181.

waiver appropriate under the circumstances of the case.[16] The Plan became effective on January 28, 2025 (the "Effective Date")[17] and the transactions contemplated under the Plan were consummated. As of the Effective Date, the Debtors (hereinafter the "Reorganized Debtors") are operating under new ownership and the lenders have provided new exit loans.[18] These new exit loans include a $40 million term loan that was new money under the DIP loan and a $140 million ABL facility.[19] The new loans provided the Reorganized Debtors the liquidity needed to operate the business and pay unsecured creditors in full. The evidence at the Confirmation Hearing demonstrates that but for the new liquidity, the Debtors would have likely not been able to continue as a going concern.

On February 3, 2025, the US Trustee filed a Notice of Appeal[20] and an Emergency Motion for A Stay Of Confirmation Order Pending Appeal (the "Motion for Stay of Confirmation" and together with the alternative request for a stay of the third-party release, injunction, and gatekeeping provisions, the "Motion for Stay").[21] Also on February 3, 2025, Reorganized Debtors filed a Motion for Final Decree.[22] The Reorganized Debtors subsequently filed an Objection to the Motion for

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[16] ECF No. 201, 44:9-14, statement by the Court ("With respect to the request to waive the fourteen-day period under 3020(e), I believe it's appropriate under the circumstances. This is not a -- you know, a mega case, in terms of billions of dollars. And I think that being able to save on the administrative burden in this case is significant, so I will go ahead and approve that.").

[17] ECF No. 200.

[18] ECF No. 232 at 10.

[19] ECF No. 6-1 at 71, 89.

[20] ECF No. 209

[21] ECF No. 210.

[22] ECF No. 208. The Motion for Final Decree (ECF No. 208-1) requested closure of four Affiliate Cases. The lead case, 24-90637, would remain open and no parties' rights would be prejudiced. The purpose of this motion was to significantly reduce the US Trustee fees. If the Affiliate Cases had to remain open during the US Trustee's appeal, which could last 12 to 18 months, it could cost the Reorganized Debtors more than one million dollars in US Trustee fees. On February 21, 2025, the US Trustee filed an Objection to the Motion for Final Decree (ECF No. 231). This Court overruled the US Trustee's Objection to the Motion for Final Decree and the Final Decree was entered on March 11, 2025 (ECF No. 253).

Stay.[23] This Court denied the US Trustee's request for an emergency hearing, finding the US Trustee offered no explanation of the emergency requiring the emergency hearing.[24] The Court advised the parties to confer with the Court's Case Manager to schedule a prompt evidentiary hearing after full briefing on the Motion for Stay was complete.[25]

The stay issue was briefed by both parties: the Reorganized Debtors filed an Objection[26] and the US Trustee filed a Reply.[27] Both parties filed Witness and Exhibit Lists.[28] This Court heard arguments from both parties and conducted an evidentiary hearing on March 11, 2025.[29] The Court admitted exhibits at ECF Nos. 249-1 through 249-5 and 250-1, and took judicial notice of ECF Nos. 249-6 through 249-10.[30] The Court heard testimony from Chad Coben, the Chief Restructuring Officer of Debtors during the case.[31] The Court took the Motion for Stay under advisement.[32]

II. JURISDICTION AND VENUE

28 U.S.C. § 1334(a) provides the District Courts with jurisdiction over this proceeding. 28 U.S.C. § 157(b)(1) states that "Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title." This proceeding has been referred to this Court under General Order 2012-6 (May 24, 2012). This Motion for Stay stems from the Court's Order approving Reorganized Debtors' Plan and Disclosure

[23] ECF No. 212.
[24] ECF No. 213.
[25] ECF No. 213 at 2.
[26] ECF No. 232.
[27] ECF No. 245.
[28] ECF No. 249; ECF No. 250.
[29] ECF No. 252. The Court also incorporated the entire record from the Confirmation Hearing in connection with the hearing on the Motion for Stay.
[30] ECF No. 252.
[31] ECF No. 250-1 at 1.
[32] ECF No. 252.

Statement.[33] This is a core proceeding which the Court can consider under 28 U.S.C. §§157(b)(2)(A), 157(b)(2)(L), and 157(b)(2)(O). The Court has constitutional authority to enter final orders and judgments. *Stern v. Marshall*, 564 U.S. 462, 486–87 (2011). Venue is proper under 28 U.S.C. §§ 1408 and 1409.

III. LEGAL STANDARD

Under Rule 8007(a)(1)(A) of the Federal Rules of Bankruptcy Procedure, "[o]rdinarily, a party must move first in the bankruptcy court for . . .a stay of the bankruptcy court's judgment, order, or decree pending appeal." The Fifth Circuit has stated that a stay "is an extraordinary remedy." *Thomas v. Bryant*, 919 F.3d 298, 303 (5th Cir. 2019) (citing to *Nken v. Holde*r, 556 U.S. 418, 437 (2009) (Kennedy, J., concurring)). Additionally, a stay is an equitable remedy based on the court's discretion. *Thomas v. Bryant*, 919 F.3d 298, 303 (5th Cir. 2019) (citing to *Nken v. Holder*, 556 U.S. 418, 433 (2009)) and *Ruiz v. Estelle*, 666 F.2d 854, 856 & n.4 (5th Cir. 1982)). For the Court to grant the stay, the moving party "must prove whether a stay pending appeal should be granted by a preponderance of the evidence." *In re TMT Procurement Corp.*, 13–33763, 2014 WL 1577475, at *4 (Bankr. S.D. Tex. 2014). In determining whether a stay is appropriate, courts apply the following four factors:

> (1) Whether the movant has made a showing of likelihood of success on the merits;
> (2) Whether the movant has made a showing of irreparable injury if the stay is not granted;
> (3) Whether the granting of the stay would substantially harm the other parties; and
> (4) Whether the granting of the stay would serve the public interest.

In re First South Savings Ass'n, 820 F.2d 700, 704 (5th Cir. 1987). The United States Supreme Court has stated, "[t]he first two factors of the traditional standard are the most critical." *Nken v. Holder*, 556 U.S. 418,

[33] ECF No. 181.

434 (2009). The Fifth Circuit has stated previously, "[a]lthough four factors are relevant to determining entitlement to a stay, the first (likelihood of success on the merits) is arguably the most important." *Tesfamichael v. Gonzales*, 411 F.3d 169, 176 (5th Cir. 2005) (See also *Shrink Mo. Gov't PAC v. Adams*, 151 F.3d 763, 764 (8th Cir.1998)).

The Fifth Circuit has said, "[t]o satisfy the first element of likelihood of success on the merits, the [party's] evidence in the preliminary injunction proceeding 'is not required to prove [his] entitlement to summary judgment.'" *Janvey v. Alguire*, 647 F.3d 585, 595-96 (5th Cir. 2011) (citing to *Byrum v. Landreth*, 566 F.3d 442, 446 (5th Cir. 2009)). "All courts agree that plaintiff must present a prima facie case but need not show that he is certain to win." *Janvey v. Alguire*, 647 F.3d 585, 596 (5th Cir. 2011) (quoting Charles Alan Wright, Arthur R. Miller, Mary Kay Kane, 11A Federal Practice & Procedure § 2948.3 (2d ed. 1995)). Furthermore, "[t]o assess the likelihood of success on the merits, we look to "standards provided by the substantive law." *Janvey v. Alguire*, 647 F.3d 585, 596 (5th Cir. 2011) (quoting *Roho, Inc. v. Marquis,* 902 F.2d 356, 358 (5th Cir. 1990)). However, the first factor is more nuanced:

> In *Ruiz I,* 650 F.2d 555 (5th Cir. 1981), we stated that "on motions for stay pending appeal the movant need not always show a 'probability' of success on the merits; instead, the movant need only present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities weighs heavily in favor of granting the stay." *Id.* at 565. In *Ruiz II,* 666 F.2d 854 (5th Cir. 1982), we cautioned against reading *Ruiz I* as "a coup de grace for the likelihood-of-success criterion in this circuit." *Id.* at 856. We said: "Likelihood of success remains a prerequisite in the usual case even if it is not an invariable requirement. Only 'if the balance of equities (*i.e.* consideration of the other three factors) is ... *heavily tilted* in the movant's favor' will we issue a stay in its absence, and, even then, the issue must be one with patent substantial merit." *Id.* at 857 (quoting *Ruiz I,* 650 F.2d at 565–66) (emphasis added by *Ruiz II* court).

In re First South Sav. Ass'n, 820 F.2d 700, 709 & n.10 (5th Cir. 1987).

Like the first factor, simply showing some possibility of irreparable injury fails to satisfy the second factor. *Nken v. Holder*, 556 U.S. 418, 434-435 (2009). In assessing the second factor, the movant must demonstrate irreparable injury is likely.

Under the third factor the "Court [must] balance the hardships of the parties and find whether the harms outweigh any likely irreparable injury to the movant absent a stay." *In re Dernick*, 18-32417, 2019 WL 236999, at *4 (Bankr. S.D. Tex. 2019) (*See also Daniels Health Sciences, LLC v. Vascular Health Sciences, LLC*, 710 F.3d 579, 585 (5th Cir. 2013)).

Regarding the fourth factor, bankruptcy "public policy is to have an orderly administration of the debtor's assets via their bankruptcy estate . . .." *In re Dernick*, 18-32417, 2019 WL 236999, at *5 (Bankr. S.D. Tex. 2019) (Citing to *In re Lots by Murphy, Inc.*, 430 B.R. 431, 436 (Bankr. S.D. Tex. 2010); *See also In re Babcock & Wilcox*, No. Civ. A. 00-1410, 2000 WL 1092434, at *3 (E.D. La. 2000)).

IV. DISCUSSION

The US Trustee is asking this Court to grant a stay of the confirmation order, or in the alternative a stay of the plan's third-party release, injunction, and gatekeeping provisions, pending appeal.[34] These two versions of the stay are analyzed according to the same four-factor framework, and they are discussed together throughout this order as the Motion for Stay. The Conclusion addresses both versions of the stay individually.

As an initial matter, the US Trustee argues where the government is a party, the third and fourth factors (injury and public interest) merge.[35] According to *Nken* "the third and fourth factors…merge when the Government is the opposing party." *Nken v. Holder*, 129 U.S. 1749, 1753 (2009). In *Nken*, the defendant is the Attorney General. In this case, where the Government is applying for a stay, and is not the

[34] ECF No. 210 at 37.
[35] ECF No. 210 at 7.

opposing party, the third and fourth factor do not merge. *U.S. Navy Seals 1-26 v. Biden*, 27 F.4th 336, 353 (5th Cir. 2022). This court analyzes all four factors individually.

A. Factor 1: Whether the US Trustee Has Made a Showing of Likelihood of Success on the Merits.

According to the US Trustee, in situations where a serious legal question is involved, the movant only needs to present a substantial case on the merits and show the balance of the equities weigh heavily in favor of granting a stay. *Arnold v. Garlock*, 278 F.3d 426, 439 (5th Cir. 2001). Reorganized Debtors disagree with this standard, arguing both the Supreme Court and the Fifth Circuit require movant to make a "strong showing." *United States v. Texas*, 97 F.4th 268, 274 (5th Cir. 2024). Even if the US Trustee shows a serious legal question is involved, for the reasons outlined in factors two through four they have not demonstrated the balance of equities weighs heavily in favor of granting a stay. The court should only grant a stay if the consideration of factors two through four are heavily tilted in movant's favor. *In re First South Sav. Ass'n*, 820 F.2d 700, 709 & n.10 (5th Cir. 1987). Therefore, the appropriate standard requires the US Trustee to make a strong showing of success on the merits.

The US Trustee has three main arguments for why they should succeed on the merits: (i) creditor opt-out does not constitute consent to a third-party release in a chapter 11 plan, (ii) state law governs whether a release is consensual, and (iii) there is no authority for the Plan's injunction and gatekeeping provisions.[36] This Court has already heard the US Trustee arguments on why they believe the Plan is not confirmable, and the Motion for Stay is not an opportunity for the US Trustee to relitigate those arguments.

This Court analyzes the strength of the US Trustee's arguments, evaluating the arguments based on Supreme Court and Fifth Circuit case law and precedent, to determine whether on appeal the US Trustee

[36] ECF No. 210 at 9-10.

is likely to succeed on the merits. The court addresses these arguments in turn.

(1) Whether Opt-Out Third-Party Releases are Consensual.

"Bankruptcy courts within the Fifth Circuit commonly exercise jurisdiction to approve nonparty [third-party] releases based on agreed plans." *In re CJ Holding Co.*, 597 B.R. 597, 608 (S.D. Tex. 2019). In exercising jurisdiction, this Court must determine whether the release was "consensual and sufficiently related to the bankruptcy proceeding." *In re CJ Holding Co.*, 597 B.R. 597, 608 (S.D. Tex. 2019). In determining whether a release is consensual, this Court must look to factors like notice, the deadline to object, the voting deadline, the opportunity to opt-out, and whether the releases are narrowly tailored and core to the proceeding.[37] Courts in the Fifth Circuit have analyzed these factors for many years. *In re Wool Growers Cent. Storage Co.*, 371 B.R. 768, 775–76 (Bankr. N.D. Tex. 2007) ("Consensual nondebtor releases that are specific in language, integral to the plan, a condition of the settlement, and given for consideration do not violate section 524(e)."); *See also In re Bigler LP*, 442 B.R. 537, 543–44 (Bankr. S.D. Tex. 2010) (a bankruptcy court may approve a settlement that releases a third-party when it was based on creditor's consent, for consideration, and pursuant to arm's length negotiations).

According to the uncontradicted testimony of Chad Coben, the third-party releases were integral to the Plan, allowing unsecured creditors to become unimpaired, and given in exchange for consideration (i.e. the new money needed to provide liquidity).[38] Parties were provided notice of the Plan, the deadline to object to confirmation, the voting deadline,

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[37] Hearing Tr. 29-31, *In re Indep. Contract Drilling, Inc.*, No. 24-90612 (Perez) (Bankr. S.D. Tex. Jan. 9, 2025) [Docket No. 127] ("This Court must look to the factors like notice provided, the deadline to object, the voting deadline, and the opportunity to opt-out…. Furthermore, consensual third-party releases should be narrowly tailored and core to the proceedings."); See also In re Wool Growers Cent. Storage Co., 371 B.R. 768, 775–76 (Bankr. N.D. Tex. 2007)

[38] ECF No. 162 at 21.

and the opportunity to opt-out of the third-party releases.[39] The Disclosure Statement included a detailed description of the third-party releases and the opt-out procedures.[40] Parties that receive adequate notice may, consistent with due process, be bound by the Plan's third-party releases. *In re Arsenal Intermediate Holdings, LLC*, 2023 WL 2655592, at *6 & n.29 (Bankr. Del., 2023). At the Confirmation Hearing, this Court found service was effective[41] and "based on the facts in this case and the process that was run, that the releases are -- because of the opportunity for all the parties to have opted out, are consensual."[42] At the Motion for Stay hearing, the US Trustee argues that because only 165 of the parties in Classes 1, 2, 4, 5, and 8 who received an opt-out form returned the opt-out form, notice must not have been effective.[43] However, not returning an opt-out form does not mean a party did not receive notice of the opt-out, and the US Trustee failed to provide any evidence supporting its assertion. Here, unsecured creditors likely did not opt out of the third-party releases because they were being paid in full.

While not determinative, it is an important fact that unsecured creditors in this case were paid in full. Based on the Liquidation Analysis,[44] the company would have been "hopelessly insolvent" and secured creditors would have received pennies on the dollar.[45] As a

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[39] ECF No. 116.

[40] ECF No. 18 at 10-14.

[41] ECF No. 201, 42:9-13, statement by the Court ("Number two, having effective service of that mechanism, I think 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.").

[42] ECF No. 201, 43:4-7, statement by the Court.

[43] ECF No. 262, 35:3-10, statement by US Trustee. The US Trustee also argues the 297 opt-out forms returned as undeliverable did not receive notice. However, the issue of those 297 parties is not in front of this Court, as no party in that group has brought an objection to the Plan or its confirmation. Whether those 297 parties are bound by the third-party releases is a question for another day.

[44] ECF No. 159-4.

[45] ECF No. 201, 40:12-14, statement by the Court ("[I]f I look at the liquidation analysis, this company would be hopelessly insolvent, the secured creditor would receive pennies on the dollar.").

result of the TSA, unsecured creditors are getting a hundred cents on the dollar and the old ABL was paid off.[46] In these cases, facts matter, and the facts here support finding the opt-out third-party releases consensual.

While the US Trustee recognizes many courts in this jurisdiction have approved opt-out procedures, they argue the law is not settled as there is an absence of binding precedent on this issue.[47] As a result of this absence of binding precedent, the US Trustee argues their arguments are likely to succeed on appeal.[48] The US Trustee relies on *Purdue* and the Supreme Court's finding that the Bankruptcy Code does not authorize non-consensual releases of non-debtor claims against other non-debtors. *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 227 (2024). The US Trustee acknowledges the *Purdue* decision is consistent with already existing decisions in the Fifth Circuit, which have not authorized non-consensual releases for many years. *See In re Pacific Lumber Co.*, 584 F.3d 229, 252 (5th Cir. 2009). The US Trustee argues the releases in this case are non-consensual and therefore not permitted to be included in a chapter 11 plan. However, there is caselaw, both from courts in the Fifth Circuit and across the country, finding the use of opt-out provisions with constitutional due process to be a consensual release, rather than a non-consensual release.[49] Since

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[46] ECF No. 201, 40:16-19, statement by the Court ("[W]e have now reached a plan where the unsecured creditors are getting a hundred cents on the dollar; the ABL was paid off, they got a hundred cents on the dollar.").

[47] ECF No. 245 at 2.

[48] ECF No. 245 at 2.

[49] *In re Robertshaw US Holding Corp.*, 662 B.R. 300, 323-24 (S.D. Tex. 2024) ("[T]he consensual third-party releases in the Plan are appropriate, afforded affected parties constitutional due process, and a meaningful opportunity to opt out…The third-party releases in the Plan satisfy applicable law and the Procedures for Complex Cases in the Southern District of Texas…The third-party releases are also narrowly tailored to this case" an integral part of the plan and a condition of the settlement.); Hearing Tr., 64:6-10, *In re Diamond Sports Group, LLC*, No. 23-90116 (Lopez) (Bankr. S.D. Tex. November 18, 2024) [Docket No. 2680] ("But in this case, the consensual third-party releases are approved. I believe they are narrowly tailored, core to the proceedings, core to the settlements. The consent is approved consistent with customary releases that have been approved in this District."); Hearing Tr., 101:18-21, *In re Wesco Aircraft Holdings, Inc.*, No. 23-90611 (Isgur)

the Supreme Court in *Purdue* explicitly declined to express a view on what qualifies as a consensual release, lower court caselaw is informative, and in cases heard post-*Purdue*, courts have determined the ability of the creditor to opt-out to be deemed consent. As explicitly laid out in *Robertshaw*:

> There is nothing improper with an opt-out feature for consensual third-party releases in a chapter 11 plan. See, e.g., *In re Arsenal Intermediate Holdings, L.L.C.*, No. 23-10097 (CTG), 2023 WL 2655592, at *6–8 (Bankr. D. Del. 2023). And what constitutes consent, including opt-out features and deemed consent for not opting out, has long been settled in this District. See, e.g., *Cole v. Nabors Corp. Servs., Inc.* (*In re CJ Holding Co.*), 597 B.R. 597, 608–09 (S.D. Tex. 2019). Hundreds of chapter 11 cases have been confirmed in this District with consensual third-party releases with an opt-out. And, again, *Purdue* did not change the law in this Circuit.

In re Robertshaw US Holding Corp., 662 B.R. 300, 323 (Bankr. S.D. Tex. 2024).

For instance, recently in *Spirit Airlines*, a post-*Purdue* decision, Judge Lane authored a lengthy and very well-reasoned decision finding the opt-out mechanism in the third-party release to be consensual, and therefore, permissible. *In re Spirit Airlines, Inc.*, 2025 WL 737068, at *12 (Bankr. S.D.N.Y. 2025). Judge Lane's decision is in line with other

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(Bankr. S.D. Tex. December 14, 2024) [Docket No. 2502] ("As I read 1129 and as I believe the overwhelming case law supports, if a plan meets the requirements of 1129, confirmation is mandatory, not discretionary by the Court."); Hearing Tr. 31:6-16, *In re Indep. Contract Drilling, Inc.*, No. 24-90612 (Perez) (Bankr. S.D. Tex. Jan. 9, 2025) [Docket No. 127] ("The totality of the circumstances regarding this notice meets the level necessary to support a finding that the third-party release was consensual. Furthermore, consensual third-party releases should be narrowly tailored and core to the proceedings. Based on the testimony of Mr. Strom, the third party releases here are integral, are essential provisions of the Plan, and the third party releases have been provided in exchange for good and valuable consideration from the released party and are in the best interest of the Debtors and the estate, and are fair and equitable."); Hearing Tr., 19,21, *In re Vroom, Inc.*, No.24-90571 (Lopez) (Bankr. S.D. Tex. January 14, 2025) [Docket No. 128] (The Court found the procedures afforded constitutional due process, the releases were narrowly tailored to the plan, and there was consent.).

decisions in the Southern District of New York. *In re Spirit Airlines, Inc.*, 2025 WL 737068, at *9 (Bankr. S.D.N.Y. 2025) ("Decisions in this District generally permit use of an opt-out mechanism if the affected parties receive clear and prominent notice and explanation of the releases and are provided an opportunity to decline to grant them.").

The facts of this case, coupled with the relevant caselaw, does not result in a likelihood of success on the merits on appeal by the US Trustee.

(2) Whether State Law Governs Consensual Releases.

The US Trustee argues state contract law, not federal law, governs whether a release is consensual.[50] The only exception, according to the US Trustee, is if there is a federal law that preempts applicable state contract law.[51] This argument is also unlikely to succeed on the merits.

First, the caselaw in this Circuit does not support the US Trustee's argument. Once the petition is filed, federal law controls. *In re W. Texas Mktg. Corp.*, 54 F.3d 1194, 1196 (5th Cir. 1995). According to Judge Isgur in *Wesco*, "consensual releases in a bankruptcy case are not forbidden by law, nor are they forbidden by state law."[52] There is no requirement that the bankruptcy court must look to state law to resolve the question of the validity of consensual third-party releases.[53] Other courts have reached similar conclusions. According to Judge Lane in *Spirit*, "the question about whether a creditor has agreed to certain treatment is a matter of federal bankruptcy law, with an already existing and well-developed body of case law on consent in the context

[50] ECF No. 210 at 10.
[51] ECF No. 210 at 10.
[52] Hearing Tr., 104:20-21, *In re Wesco Aircraft Holdings, Inc.*, No. 23-90611 (Isgur) (Bankr. S.D. Tex. December 14, 2024) [Docket No. 2502].
[53] Hearing Tr., 105:11-14, *In re Wesco Aircraft Holdings, Inc.*, No. 23-90611 (Isgur) (Bankr. S.D. Tex. December 14, 2024) [Docket No. 2502] ("There's no requirement we comply with state law. Federal law can allow for consequences as a result of default. And I don't know why we look to state law at all to try and resolve this question.").

of a collective bankruptcy proceeding." *In re Spirit Airlines, Inc.*, 2025 WL 737068, at *18 (Bankr. S.D.N.Y., 2025).

The third-party releases in the Plan satisfy applicable law and the Procedures for Complex Cases in the Southern District of Texas. Based on the evidence presented at the Confirmation Hearing, this Court found service to be effective[54] and the parties had the opportunity to opt-out,[55] therefore making the releases consensual.[56] This case is like *Robertshaw*, where "[p]arties in interest were provided detailed notice about the Plan, the deadline to object to plan confirmation, the voting deadline, and the opportunity to opt out of the third-party releases." *In re Robertshaw US Holding Corp.*, 662 B.R. 300, 323 (S.D. Tex. 2024). As a result of the facts of this case, the US Trustee's argument that state contract law should govern whether a release is consensual is not likely to succeed on the merits.

(3) Whether the Injunction and Gatekeeping Provisions are Permissible.

The US Trustee objects to the inclusion of the gatekeeping provision as unlawful. The Fifth Circuit addressed the use of a gatekeeping provision in *Highland Capital I*, finding "[c]ourts have long recognized bankruptcy courts can perform a gatekeeping function." *Matter of Highland Capital Management, L.P.*, 48 F.4th 419, 439 (5th Cir. 2022) (*Highland Capital I*). *Highland Capital I* limits the gatekeeping provision to "Highland Capital [debtor], the Committee and its members, and the Independent Directors for conduct within the scope of

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[54] ECF No. 201, 42:10-13, statement by the Court ("I think 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.").

[55] ECF No. 201, 42:23-44:2, statement by the Court ("[T]here was no evidence as to why people didn't return it. There was no evidence that, because some of the shareholders returned it without having opted out, that they somehow misunderstood it, misread it, or I don't know what. There is simply no evidence.").

[56] ECF No. 201, 43:4-7, statement by the Court ("I agree that facts do matter. I think that, based on the facts in this case and the process that was run, that the releases are -- because of the opportunity for all the parties to have opted out, are consensual.").

their duties." *Matter of Highland Capital Management, L.P.*, 48 F.4th 419, 439 (5th Cir. 2022) (*Highland Capital I).* The US Trustee tries to argue the special circumstances in *Highland Capital I* – vexatious and bad faith conduct – supported the gatekeeping provision, and those circumstances are not present here.[57] However, the court in *Highland Capital I* did not establish guidelines for when a gatekeeping provision is appropriate, leaving that determination to the bankruptcy court administering the proceedings. *Matter of Highland Capital Management, L.P.*, 48 F.4th 419, 439 (5th Cir. 2022) (*Highland Capital I)* ("In other words, we need not evaluate whether the bankruptcy court would have jurisdiction under every conceivable claim falling under the widest interpretation of the gatekeeper provision. We leave that to the bankruptcy court in the first instance."). At the Confirmation Hearing, this Court found the gatekeeping provisions were appropriate[58] and not too broad in scope under *Highland Capital I*.[59] Therefore, the US Trustee's argument that the gatekeeping provision is unlawful is not likely to succeed on the merits.

In the Motion for Stay, the US Trustee argues the injunction is not permitted by *Purdue* or warranted by the traditional factors supporting injunctive relief.[60] The *Purdue* decision clearly states: "[c]onfining ourselves to the question presented, we hold only that the bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a nondebtor without the consent of affected claimants." *Harrington v. Purdue Pharma L. P.*, 603 U.S. 204, 227 (2024). To the

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[57] ECF No. 210 at 30.

[58] ECF No. 201, 44:3-8, statement by the Court ("So I think that, in terms of the scope of the releases and use of the "related party" definition, I think -- with the limitations that were included in the revised draft, I think those, again, are perfectly appropriate because it's you're only binding people who you could otherwise bind by the people who got notice.")

[59] ECF No. 201, 43:17-21, statement by the Court ("I believe that the other arguments raised by the trustee, similarly, the gatekeeping function, again, Highland Capital permits the gatekeeping function with respect to the exculpated parties, which, in this case, is only the Debtor, as well as the parties that are released.").

[60] ECF No. 210 at 27-28.

extent the releases in the present case are consensual, the *Purdue* holding has no application here. Chad Coben's testimony demonstrated the injunction provision is an integral part of the plan, and its inclusion serves to preserve and enforce the release, discharge, and exculpation provisions of the Plan.[61] At the Confirmation Hearing, this Court heard argument on the US Trustee's objection and determined the injunction works to enforce the release and has no impact on whether the release is consensual or non-consensual.[62] As a result, this Court determined the injunction is not prohibited by *Purdue* or any Fifth Circuit caselaw.[63]

Additionally, in *Highland Capital II*, the court clarified their holding in *Highland I*: the injunction should be narrowed in accordance with the exculpation provision. *Matter of Highland Capital Management, L.P.*, 2025 WL 841189 at *7 (5th Cir. 2025) (*Highland Capital II*). While *Highland Capital I and II* involve exculpation provisions, which are inherently non-consensual, this case involves a consensual release. Therefore, the *Highland Capital II* holding that the injunction be narrowed to include the same parties as the exculpation clause, should not have an impact on this case, where the parties entered a consensual release. The US Trustee has not appealed based on the Plan's exculpation provisions. Based on the totality of the circumstances, the US Trustee's argument that the injunction is not permitted is not likely to succeed on the merits.

B. Factor 2: Whether the US Trustee Has Demonstrated They Will be Irreparably Injured Absent a Stay.

The US Trustee argues if an appellate court determines the doctrine of equitable mootness applies, irreparable harm will result from this

[61] ECF No. 162 at 24.

[62] ECF No. 201, 43:8-12, statement by the Court ("I don't believe that the injunction is an additional thing that needs to be added in order to make non-consensual releases consensual. I think the injunction is the way that you enforce the mechanism.").

[63] ECF No. 201, 43:13-16, statement by the Court ("So I don't think that the use of the injunction to support a consensual release is in any way prohibited by the case law, either by Purdue or in the Fifth Circuit.").

issue not being reviewed on appeal.[64] However, many courts in the Fifth Circuit have held the possibility of the application of equitable mootness does not demonstrate irreparable injury. *In re National CineMedia*, LLC, 2023 WL 5030098 at *8 (S.D. Tex., 2023). This is because if equitable mootness could demonstrate irreparable injury, then anytime an appeal is mooted, a stay would be required. *In re National CineMedia*, LLC, 2023 WL 5030098 at *8 (S.D. Tex., 2023) (citing *In re Camp Arrowhead*, 2010 WL 363773 at *7 (W.D. Tex., 2010). The actual application of equitable mootness is looked upon with "great scrutiny, especially when it involves appeals concerning the rights of secured creditors. *In re National CineMedia*, LLC, 2023 WL 5030098 at *8 (S.D. Tex., 2023). The concept of equitable mootness is also narrowly interpreted in *Serta*, where the Court of Appeals rendered judgment after the plan had gone effective, stating equitable mootness cannot function as a shield for unauthorized practices. *In re Serta Simmons Bedding, L.L.C.*, 125 F.4th 555, 588 (5th Cir. 2024). While the US Trustee also makes arguments on the impact of an equitable mootness finding on third parties,[65] those arguments are not persuasive because they deal with harm to a third-party, not harm to the US Trustee. While the US Trustee represents the public,[66] they have no economic interest at stake, and no party with an economic interest at stake objected to the Plan. As a result of the facts, the US Trustee has not demonstrated they will be irreparably injured absent a stay.

C. Factor 3: Whether Granting a Stay Would Substantially Harm Reorganized Debtors.

During the hearing, Chad Coben was called to testify. Coben also filed a Declaration in Support of Reorganized Debtors' Objection to the

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[64] ECF No. 210 at 31.

[65] ECF No. 262, 47:9-14, US Trustee argument ("Your Honor has the right to overrule us, but we have the right to exhaust our appeal without equitable mootness arguments running interference and avoiding applied scrutiny. The public interest here requires that federalism plays out.").

[66] ECF No. 210 at 30 ("It is the United States Trustee's duty to advocate on behalf of the interest of the integrity of the bankruptcy system and the public interest in ensuring compliance with the law.").

Motion for Stay, which was admitted into evidence.[67] According to Coben's testimony, granting the Motion for Stay would "cause needless confusion and undermine the value-maximizing effect of the Reorganized Debtors' successful reorganization."[68] Coben testified he did not have a full appreciation of what it means to stay a plan that has already gone effective and that this is confusing to him and could be confusing to others.[69] At the hearing, the US Trustee asked if any creditor or non-debtors had let Coben know they relied on the finality of the third-party releases and were now expending time, money, and resources on lawsuits or claims that would have been barred under the third-party releases. Coben responded he was not aware of any such-situated parties.[70] However, the Motion for Stay had not been granted and no stay is in effect. The situations the US Trustee was asking Coben about would not take place until after the stay was granted, and according to Coben's testimony would cause substantial harm.[71] The US Trustee also tried to suggest that because there is no provision in the TSA or Plan limiting the number of opt-outs as a condition for the Plan to go effective, the third-party releases are not as integral to the Plan as the Reorganized Debtors have represented, and therefore, a stay of the third-party releases will not cause substantial harm.[72] However, as a

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[67] ECF No. 250-1.

[68] ECF No. 250-1 at 4.

[69] ECF No. 252, 18:4-8, US Trustee direct examination of Coben ("I don't have a full appreciation, for example, of what it means to stay a plan that's already gone effective. That -- that is confusing to me -- and could be confusing to others.").

[70] ECF No. 252, 19:3-16, US Trustee direct examination of Coben (Q. Okay. And in paragraph 9, you say, "parties have relied on the finality provided by the provisions may be forced to expend time, money, and resources on lawsuits involving claims that are subject to these provisions." Do you see that? A. I do. Q. I'm sorry. Did any creditor or non-Debtors that were subject to the third-party releases reach out to you to tell you that they were expending time, money, and resources on lawsuit on claims that would otherwise be barred by the third-party releases? A. No. Q. Are you aware of any? A. I am not aware of any.).

[71] ECF No. 250-1.

[72] ECF No. 252, 19:13-17, US Trustee direct examination of Coben (Q. But there is no provision, either the plan or the Transaction Support Agreement that says that the plan would not be effective if 100 percent of the holders of claim opted out of the third-party releases; is that correct? A. I believe so.).

condition to entering the TSA, lenders to the Reorganized Debtors had broad authority under Section 14 to terminate the TSA.[73] Therefore, adding language in the TSA or Plan limiting the number of opt-outs as a condition for the Plan to go effective was not necessary for lenders to achieve their goals. The US Trustee cannot rewrite the agreements between the parties. This is particularly true since the US Trustee did not file its Motion for Stay until after the Plan had gone effective and the parties that would be receiving the third-party releases had funded the liquidity needed for the Plan.

Additionally, the Plan has gone effective, and as of the Effective Date, the Reorganized Debtors are operating under new ownership and the lenders have provided new exit loans.[74] Granting the Motion for Stay would harm Reorganized Debtors by undermining the value-maximizing transactions that have already substantially occurred and cause confusion with respect to elements of the Plan that have already been agreed upon by creditors and non-debtors.

D. Factor 4: Whether Granting a Stay Serves the Public Interest.

As stated above, "[i]n bankruptcy, the public policy is to have an orderly administration of the debtor's assets via their bankruptcy estate . . .." *In re Dernick*, 18-32417, 2019 WL 236999, at *5 (Bankr. S.D. Tex. 2019) (Citing to *In re Lots by Murphy, Inc.*, 430 B.R. 431, 436 (Bankr. S.D. Tex. 2010); *See also In re Babcock & Wilcox*, No. Civ. A. 00-1410, 2000 WL 1092434, at *3 (E.D. La. 2000)). Furthermore, "'[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. 2008) (Citing to *In re Continental Airlines*, 91 F.3d 553, 561 (3d Cir. 1996)). As previously discussed, the Plan has been substantially consummated.[75] Granting

[73] ECF No. 6-1 at 31-33.
[74] ECF No. 232 at 10.
[75] ECF No. 232 at 10.

the Motion for Stay would harm the public interest by causing uncertainty in the reorganization process. These factors weigh in favor of denying the Motion for Stay.

The US Trustee argues there is an important public interest in knowing whether the bankruptcy court has the authority to approve third-party releases.[76] As demonstrated in the factor one analysis, bankruptcy courts in the Fifth Circuit have the authority to approve consensual third-party releases.

Finally, the US Trustee argues if a stay is denied, parties who had their cause of action extinguished will be irreparably harmed if the statute of limitations applicable to their cause of action expires during the pendency of the appeal.[77] However, this harm is speculative, and no causes of action have been identified or even surmised. Based on the testimony provided at the hearing on the Motion for Stay, the US Trustee has not identified any entity at risk of losing its rights if a stay is not entered and has not proved this by a preponderance of the evidence. Furthermore, no party with an economic interest in this case raised an objection to the Plan. This fact demonstrates granting the Motion for Stay is not necessary to protect the public interest.

E. Whether the Motion for Stay is Moot.

In addition to the US Trustee's failure to satisfy the four-factor framework outlined above, the Motion for Stay of Confirmation is moot and must be denied. Since the Plan has already been confirmed and taken effect,[78] the Court is unable to grant effective relief. The US

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[76] ECF No. 262, 10-17, US Trustee argument ("In this bankruptcy case where equity is getting absolutely nothing under the plan is required to give broad third-party releases, the public should have the right to know whether you have the authority and namely the jurisdiction to resolve these claims. This is an important public interest that is in play, and in this case and in all future cases, whether the Court has the authority to do that.").

[77] ECF No. 210 at 31.

[78] ECF No. 208 at 5 ("[T]he Effective Date has occurred, and (a) the Court's order confirming the Plan is final by virtue of the Confirmation Order entered on January 24, 2025; (b) the distributions and payments required under the Plan have been

Trustee has not appealed the waiver of the fourteen-day stay period under 3020(e) and they filed this Motion for Stay after the Effective Date. Given the totality of circumstances, the Court lacks the ability to alter the outcome and grant the requested relief. Unlike equitable mootness discussed above, real mootness occurs when a court is unable to alter the outcome. *In re Serta Simmons Bedding, L.L.C.*, 125 F.4th 555, 585 (5th Cir. 2024) (explaining that a bankruptcy appeal is moot when the court lacks the ability to alter the outcome). Judge Bennett dealt with this issue in *Core Scientific*. After the plan was confirmed, appellants filed an appeal asking the court to vacate the confirmation order with respect to third-party releases and injunctions related to a securities class action.[79] Judge Bennett held vacating that portion of the confirmation order would serve no practical purpose, and that the court would be unable to grant effective relief. Here, the confirmation order has been entered,[80] the Plan has gone effective,[81] and monetary distributions, with liquidity provided by the recipients of the third-party releases, have been made in accordance with the Plan. As a result, the Motion for Stay of Confirmation is moot and must be denied.

V. CONCLUSION

For the foregoing reasons, the US Trustee has not shown the Motion for Stay of Confirmation should be granted. The US Trustee also requests that if the Court denies the Motion for Stay of Confirmation, the Court instead stay the plan's third-party release, injunction, and gatekeeping provisions.[82] However, the US Trustee fails to demonstrate how this more limited stay would satisfy the four-factor framework

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made or will be made consistent with the timing anticipated under the Plan; (c) property has vested in the Reorganized Debtors under the Plan and any property to be transferred pursuant to the Plan has been transferred; (d) the Reorganized Debtors have assumed management and operation of the reorganized businesses; (e) the Reorganized Debtors have fully paid or have commenced paying administrative and priority claims under the Plan, including to professionals.").

[79] Case No. 22-90341, ECF No. 1839.

[80] ECF No. 181.

[81] ECF No. 200.

[82] ECF No. 210 at 33.

discussed throughout this order. In fact, this more limited stay would affect the rights of the parties to the TSA that funded the Plan and provided liquidity to allow the Reorganized Debtors to continue as a going concern. A stay is an extraordinary remedy based on the court's discretion, and here, none of the factors favor the US Trustee. For either version of the stay the US Trustee is arguing for, they have not made a showing of likelihood of success on the merits, nor have they made a showing of irreparable injury if the Motion for Stay is not granted. Granting the Motion for Stay would harm the Reorganized Debtors, and the US Trustee has failed to show how granting the Motion for Stay would serve the public interest. Furthermore, since the Plan has been consummated, the Motion for Stay of Confirmation is moot.

Therefore, this Court DENIES the Motion for Stay.

It is so ORDERED.

SIGNED 04/07/2025

Alfredo R Pérez
United States Bankruptcy Judge