IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
VILLAGE ROADSHOW ENTERTAINMENT GROUP USA INC., *et al.*,[1]	Case No. 25-10475 (TMH)
	(Jointly Administered)
Debtors.	**Ref. Nos. 1047, 1048, 1056, 1065**

ALCON MEDIA GROUP, LLC'S (I) JOINDER TO THE DEBTORS' OBJECTION TO WARNER BROS.' MOTION FOR A STAY OF THE DERIVATIVE RIGHTS SALE ORDER PENDING APPEAL AND (II) OBJECTION TO WARNER BROS.' MOTION FOR STAY PENDING APPEAL

Alcon Media Group, LLC ("Alcon"), by and through its undersigned counsel, submits this joinder (the "Joinder") (I) joining the *Debtors' Objection to Warner's Motion for a Stay of the Derivative Rights Sale Order Pending Appeal* [D.I. 1065] (the "Debtors' Objection"), to Warner Bros. Entertainment Inc.'s ("Warner Bros." or "WB") *Emergency Motion to Stay Pending Appeal* [D.I. 1048] (the "Motion") and (II) separately objecting to the Motion. In support of this Joinder, Alcon respectfully states as follows:

PRELIMINARY STATEMENT[2]

1. To secure a stay pending appeal—an extraordinary remedy—Warner Bros. must make a strong showing of its likelihood of success. Yet after eight months to gather evidence, a

[1] The last four digits of Village Roadshow Entertainment Group USA Inc.'s federal tax identification number are 0343. The mailing address for Village Roadshow Entertainment Group USA Inc. is 750 N. San Vicente Blvd., Suite 800 West, West Hollywood, CA 90069. Due to the large number of debtors in these cases, which are being jointly administered for procedural purposes only, a complete list of the Debtors and the last four digits of their federal tax identification is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://www.veritaglobal.net/vreg.

[2] Terms utilized but not otherwise defined in this Preliminary Statement shall have the meanings ascribed to them in the body of this Joinder or in the *Notice of Filing of Revised Asset Purchase Agreement for the Derivative Rights* [D.I. 954] (the "APA").

two-day hearing, over 400 exhibits, seven live witnesses, dozens of pages of briefing, and multiple hours of argument, all Warner Bros. offers in its Motion is a rehash of the same arguments the Court already considered and rejected. The Motion falls far short of meeting Warner Bros.' heavy burden on this prong.

2. Nor has Warner Bros. articulated any irreparable harm if the Sale closes. Under established Third Circuit law, an objector to a sale is not irreparably harmed simply because the Bankruptcy Code moots its appeal without a stay. Bankruptcy Code Section 363(m) would have little teeth otherwise. Warner Bros.' other contention that it would be irreparably harmed if it has to share confidential material regarding unspecified future film projects with Alcon is speculative and has no basis in the record. Warner Bros. fails to meet this element also.

3. To the extent the Court reaches the third factor, harm to third parties, it too favors denial of the Motion. Under the APA, Alcon is obligated to step into the pending Derivative Rights litigation with Warner Bros. to obtain a determination that it can exploit the Derivative Rights for close to 20 motion pictures, including *Wonka 2*. Delay in the Sale will impair Alcon from timely moving forward and protecting the rights it acquired.

4. Finally, the public interest favors denial of the Motion. The Sale here was a result of a duly-conducted auction, the fairness and conduct of which Warner Bros. never questioned. The public has an interest in the finality and efficiency of such auction processes that would only be undermined by further delay. Warner Bros. should not be permitted to prevent the Sale from closing and Alcon, the successful bidder, from moving forward with the rights it acquired fair and square. The Motion should be denied.

ARGUMENT

I. WARNER BROS. FAILS TO ESTABLISH ANY OF THE FOUR FACTORS REQUIRED FOR A STAY PENDING APPEAL.

5. Whether or not to grant a stay pending appeal is a matter of judicial discretion. *David v. Weinstein Co. Hldgs., LLC*, No. 21-171 (MN), 2021 U.S. Dist. LEXIS 49063, at *6 (D. Del. Mar. 16, 2021) (quoting *In re TWA*, No. 01-0056 (PJW), 2001 Bankr. LEXIS 723, at *7 (Bankr. D. Del. Mar. 27, 2001)); *Strong v. Burtch (In re Strong)*, No. 17-1271 (GMS), 2018 U.S. Dist. LEXIS 24022, at *8 (D. Del. Feb. 14, 2018) ("The granting of a motion for stay pending appeal is discretionary with the court.").

6. A stay pending appeal is an "extraordinary remedy[.]" *El v. Marino*, 722 F. App'x 262, 267 (3d Cir. 2018); *In re URSA Operating Co. LLC*, 2021 U.S. Dist. LEXIS 85031, at *11 (D. Del. May 4, 2021). Under Third Circuit precedent, "[t]he movant bears the burden of establishing that imposition of a stay is warranted." *Weinstein*, 2021 U.S. Dist. LEXIS 49063, at *6; *see also Strong*, 2018 U.S. Dist. LEXIS 24022, at *2–3; *Republic of Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 663 (3d Cir. 1991).

7. Courts in the Third Circuit follow *Revel* and the "sliding-scale approach[.]" *Revel AC, Inc. v. IDEA Boardwalk LLC (In re Revel AC, Inc.)*, 802 F.3d 558, 568-70 (3d Cir. 2015). Using this approach, courts consider:

> (1) whether the stay applicant has made a strong showing that [it] 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. at 568; *see also Weinstein*, 2021 U.S. Dist. LEXIS 49063, at *6.

8. "'[T]he most critical' factors, according to the Supreme Court, are the first two: whether the stay movant has demonstrated (1) a strong showing of the likelihood of success and (2) that it will suffer irreparable harm." *Weinstein*, 2021 U.S. Dist. LEXIS 49063, at *6 (quoting

Revel, 802 F.3d at 568); *see also Strong*, 2018 U.S. Dist. LEXIS 24022, at *8-9. The movant must make a "sufficient showing" of the first two factors before the court proceeds to "balance the relative harms considering all four factors using a sliding scale approach." *Revel*, 802 F.3d at 572 (internal quotations omitted). If the movant fails to make such a sufficient showing, the stay should be "denied without further analysis." *Id*.

9. Warner Bros. has failed to make a sufficient showing as to ***any*** of the four *Revel* factors for why a stay of the *Order (I) Approving the Sale of the Derivative Rights Free and Clear of Liens, Claims, Interests, and Encumbrances, (II) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith, and (III) Granting Related Relief* [D.I. 1043] (the "Sale Order") should be granted. Therefore, the Motion should be denied.

A. Warner Bros. is Unlikely to Succeed on Appeal.

10. The first *Revel* factor requires Warner Bros. to make "a strong showing that it is likely to succeed on the merits" by demonstrating "a reasonable chance, or probability of winning." *Revel*, 802 F.3d at 568–69, 570–71. Warner Bros. must demonstrate that its chances of succeeding on appeal are "significantly better than negligible." *Weinstein*, 2021 U.S. Dist. LEXIS 49063, at *7 (citing *Revel*, 802 F.3d at 571); *see also In re MTE Hldgs.*, LLC, No. 19-12269 (CTG), 2021 Bankr. LEXIS 2512, at *11 (Bankr. D. Del. Sep. 15, 2021).[3]

11. Warner Bros. has not done so. It simply repeats the same arguments that the Court already rejected. Third Circuit courts do not credit "rehash[ing] the same arguments considered and rejected by the Bankruptcy Court based on the same evidence." *Winters Nursery LLC v. Color*

[3] Warner Bros. attempts to claim—***without citation***—that this is a "relaxed standard[.]" Motion ¶ 38. This is incorrect. The caselaw clearly requires "a strong showing" demonstrating "a reasonable chance, or probability of winning." *Revel AC, Inc. v. IDEA Boardwalk LLC*, 802 F.3d 558, 568-69, 570-71 (3d Cir. 2015). Warner Bros.' attempt to recharacterize the standard for a stay pending appeal must be rejected.

Spot Hldgs., Inc. (In re Color Spot Hldgs., Inc.), No. 18-1246 (UNA), 2018 U.S. Dist. LEXIS 141221, at *10 (D. Del. Aug. 21, 2018). "Merely repeating rejected arguments does not meet the substantial burden appellants have to show a likelihood of success on the merits of their appeal. In other words, repeating the same arguments do not make a better th[a]n negligible showing." Hr'g Tr., at 5:16-22, *In re Imerys Talc America, Inc.*, No. 19-10289 (Bankr. D. Del. Jan. 13, 2025) (the Court) [D.I. 7012] (citing *Color Spot*, 2018 U.S. Dist. LEXIS 141221, at *10–11) (internal quotations omitted); *see also Weinstein*, 2021 U.S. Dist. LEXIS 49063, at *22.

12. There is nothing new in the Motion. But in the interest of completeness, Alcon will briefly respond to Warner Bros.' three arguments (the same three it presented at the hearing):

13. ***First***, the Court correctly rejected Warner Bros.' argument that the Assumed Contracts constitute financial accommodations. *Memorandum Opinion* (Nov. 5, 2025) [D.I. 1027] (the "Memorandum Opinion") at 9–12. Warner Bros. asserts that "[t]he evidence at the Hearing conclusively established that: (1) the primary purpose of the Derivative Rights Agreements is financing." Motion ¶ 25. This is false. The Debtors clearly stated that they never "view[ed] the relationship with Warner Bros. as one of a lending relationship[.]" Oct. 20, 2025 Hr'g Tr. at 64:10–12. And Warner Bros.' own witness testified that [redacted] Smith Depo. Tr. at 38:6-22 (emphasis added).

14. The plain text of the Assumed Contracts similarly is not evidence of financial accommodation, contrary to Warner Bros.' argument that the defined term "Production Lender" is dispositive. Motion ¶ 25. This defined term does not even appear in the Assumed Contracts; it appears in the MPRPA, which is *not* an Assumed Contract. *Id.,* n.8. As the Court reasoned, even

if the Assumed Contracts refer to the MPRPA (while also giving the parties freedom ***not*** to use the structure of the MPRPA), the primary purpose of the Assumed Contracts was not for Warner Bros. to make a financial accommodation to the Debtors. Mem. Op. at 11–12.

15. Rather, the primary purpose was "***for the Debtors to provide financing to Warner Bros.*** to mitigate the risk (or share in the profit) of the project. Essentially, they are an investment for the Debtors. While the terms of this investment do not require that the Debtors pay their share until later into the development of the project, that does not change that this overall agreement is not one intended to financially accommodate the Debtors ***so much as to provide funding to Warner Bros. for the project***." Mem. Op. at 11–12 (emphasis added) (internal citation omitted).

16. Warner Bros. is not saved by rearguing the case law. Warner Bros. asserts that *Sportsman's Warehouse* stands for the proposition that "a single provision" can transform an agreement into a financial accommodation. Motion ¶¶ 47–48. To the contrary, *Sportsman's Warehouse* maintains the traditional rule that "the contract as a whole [must be] a 'financial accommodation,' not whether one clause could be so characterized[,]" while recognizing an exception ***for leases***—which the Assumed Contracts are not—that "a lessee's contractual obligation to purchase the leased property at the end of the term operates to convert what is normally a lease into what is really a loan transaction[.]" *Sportsman's Warehouse, Inc. v. McGillis/Eckman Invs.-Billings, LLC (In re Sportsman's Warehouse, Inc.)*, 457 B.R. 372, 393 (Bankr. D. Del. 2011) (internal quotations omitted). This limited holding is not applicable to the Assumed Contracts.

17. Warner Bros. also attempts to reargue *Svenhard*, claiming it expanded the definition of "financial accommodation." Motion ¶ 49. But *Svenhard* reaffirmed that financial accommodations should be strictly construed. *In re Svenhard's Swedish Bakery*, No. 23-60045,

2025 U.S. App. LEXIS 23641, *12-13 (9th Cir. Sept. 12, 2025). The *Svenhard* court applied this narrow definition to reach the non-controversial determination that far from the financial accommodation there being "incidental," the "only apparent purpose was to accommodate [the debtor's] financial needs[.]" *Id*. at *13. This holding is similarly not applicable to the Assumed Contracts.

18. Warner Bros.' position that by performing services ahead of payment, it is providing a financial accommodation, is not the law. This interpretation would bring within its purview ***every contract on which goods or services are provided in advance of payment***. It is established, however, that Bankruptcy Code section 365(c)(2) "applies only to extensions of credit that are 'loans,' 'debt financing' or 'financial accommodations,' and not to all contracts to extend credit. These terms are strictly construed and do not extend to an ordinary contract to provide goods or services that has incidental financial accommodations or extensions of credit." 3 Collier on Bankruptcy P 365.07.

19. The Court correctly applied this law, determining that the "nature of the ***entire*** transaction is not one of financial accommodation." Mem. Op. at 11 (emphasis added) (internal quotes and citations omitted).

20. ***Second***, the Court also correctly rejected Warner Bros.' argument that the Assumed Contracts are personal services contracts. Mem. Op. at 12–14. The Motion repeats Warner Bros.' argument that because the Assumed Contracts are based on some level of trust they must be for personal services. But the proper test for a personal services contract requires more than a trusted relationship—it requires a contract that calls for "special knowledge, judgment, taste, skill, or ability." *In re Rooster, Inc.*, 100 B.R. 228, 232 (Bankr. E.D. Pa. 1989).

21. That is not the character of the Assumed Contracts. The Court correctly determined that there is a strong indication that contracts between corporate entities—such as the Assumed Contracts—are not contracts for personal services and that "[t]he nature and obligations of the underlying contracts here are not those of personal service contracts[.]" Mem. Op. 13–14. The service provided by the Debtors under the Assumed Contract is co-financing—the provision of money to Warner Bros.—which is paradigmatically ***not*** a personal service.

22. ***Third***, the Court already considered and rejected Warner Bros.' argument that Alcon cannot provide adequate assurance of future performance. Alcon presented abundant evidence regarding its current liquidity, ability to close on the sale, track record of successful funding, and ability to raise more funds—most if not all of which was factually uncontested. It was uncontroverted that Alcon has never failed to meet its funding obligation for any film to TV show it committed to in its nearly 30 years in the film business. Oct. 20, 2025 Hr'g Tr. at 119:16–19.

23. Warner Bros.' Motion disregards most of this evidence entirely. Warner Bros. contests only the firmness of the financial support of the Smith Family, the majority owners of Alcon. But as the Court noted, the testimony supporting the Smith Family's commitment to Alcon was "uncontroverted" at the hearing. Mem. Op. at 16. Molly Smith, a member of the Smith family and an Alcon Board member, testified to the Smith Family's long-standing relationship with and support of Alcon and support for the purchase of the Derivative Rights. *See e.g.* Oct. 20, 2025 Hr'g Tr. at 176:10–180:16. When asked if she had any reason to believe the Smith Family would not continue to support Alcon in the future, she testified, "No, not at all." Oct. 20, 2025 Hr'g Tr. at 180:14–16. Warner Bros. did not cross-examine Ms. Smith on this point or present any evidence to the contrary.

24. Warner Bros. also reiterates its complaint that Alcon and Warner Bros. are involved in unrelated litigation. But the only authority it cites for its contention that adequate assurance considers an "ability to maintain a healthy relationship" is an inapplicable case where the Court was concerned about the welfare of nursing home residents. Motion ¶ 54 (citing *In re Texas Health Enters.*, 246 B.R. 832, 836 (Bankr. E.D. Tex. 2000)). The Court correctly determined that the unrelated litigation "will have no bearing on Alcon's ability to perform under the [Assumed Contracts]." Mem. Op. at 16.

25. Warner Bros. presented no evidence or explanation of how that litigation could impact Alcon's performance under the Assumed Contracts. In fact, evidence presented at the hearing showed that Warner Bros. itself recently sought out and entered into a separate multi-million dollar distribution deal with Alcon—showing that Warner Bros. itself knows that the litigation is no bar to a contractual relationship between them. Oct. 20, 2025 Hr'g Tr. at 141:10–23. In any event, Warner Bros. itself is forcing Alcon to litigate with it once the Sale closes, as Alcon must step into the Debtors shoes as defendants in the Derivative Rights Litigation that Warner Bros. commenced. APA § 6.08.

26. Both the law and the facts support the Court's conclusions that (1) the Assumed Contracts are not financial accommodations, (2) the Assumed Contracts are not personal services contracts, and (3) Alcon has provided sufficient proof of adequate assurance of future performance. Additionally, a stay pending appeal is particularly inappropriate here because of the extent of opportunities already afforded to Warner Bros. to press these arguments.

27. A hearing for approval of the Sale was initially scheduled for June 18, 2025. *Notice of (I) Successful Bidder for Derivative Rights and Studio Business and (II) Back-Bidder for*

Derivative Rights [D.I. 446]. Warner Bros. objected to the Sale,[4] and mediation ensued causing the Sale hearing to be adjourned for multiple months. *See Letter to the Court by Justin R. Bernbrock re: Status Conference Regarding Sale of Derivative Rights* [D.I. 729]; *see also Notice of Adjournment of Sale Hearing with Respect to the Derivative Rights Only* [D.I. 511]; *Notice of Agenda for Hearing of Matters Scheduled for June 30, 2025 at 10:00 A.M. (ET)* [D.I. 606]; *Notice of Agenda for Hearing of Matters Scheduled for July 21, 2025 at 11:00 A.M. (ET)* [D.I. 644].

28. On September 2, 2025, the Court entered the *Agreed Scheduling Order for the Pending Contested Matter Regarding the Sale of the Debtors' Derivative Rights Assets* [D.I. 800] (the "Scheduling Order"). The Scheduling Order permitted fulsome discovery including interrogatories, requests for admissions, requests for production, and depositions. *Id*. This gave Warner Bros. more than sufficient opportunity to investigate and build its supplemental objection to the Sale. Warner Bros. took advantage of this opportunity to serve multiple discovery requests[5] and take multiple depositions.[6] Warner Bros. proceeded to file amended objections to the Sale.[7]

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[4] *Warner Bros. Entertainment Inc.'s Omnibus Objection to (I) The Debtors' Motion for an Order Approving the Sale of the Debtors' Assets, (II) The Debtors' Sale Supplement with Respect Thereto and (III) The Debtors' Assumption and Assignment of Certain Warner Bros. Agreements* [D.I. 518] (the "Initial WB Objection").

[5] *Notice of Service of Avery Jue Meng re: 1) Warner Bros. Entertainment Inc.'s Initial Requests for Production to the Debtors in Connection with Derivative Rights Sale Hearing; 2) Warner Bros. Entertainment Inc.'s Initial Interrogatories to the Debtors in Connection with Derivative Rights Sale Hearing; and 3) Warner Bros. Entertainment Inc.'s Initial Requests for Admission to the Debtors in Connection with Derivative Rights Sale Hearing (Filed by Warner Bros. Entertainment Inc., and its Affiliates)* [D.I. 811]; *Notice of Service of Avery Jue Meng re: 1) Warner Bros. Entertainment Inc.'s Initial Requests for Production to Alcon in Connection with Derivative Rights Sale Hearing; 2) Warner Bros. Entertainment Inc.'s Initial Interrogatories to Alcon in Connection with Derivative Rights Sale Hearing; and 3) Warner Bros. Entertainment Inc.'s Initial Requests for Admission to Alcon in Connection with Derivative Rights Sale Hearing (Filed by Warner Bros. Entertainment Inc., and its Affiliates)* [D.I. 812].

[6] *Warner Bros. Entertainment Inc.'s Notice of 30(B)(6) Deposition to Alcon Media Group, LLC (Filed by Warner Bros. Entertainment Inc., and its Affiliates)* [D.I. 873]; *Warner Bros. Entertainment Inc.'s Notice of 30(b)(6) Deposition to Debtors-in-Possession (Filed by Warner Bros. Entertainment Inc., and its Affiliates)* [D.I. 874]; *Warner Bros. Entertainment Inc.'s Notice of Deposition to Kevin P. Berg (Filed by Warner Bros. Entertainment Inc., and its Affiliates)* [D.I. 875].

[7] *Supplemental Objection to (I) the Debtors' Motion for an Order Approving the Sale of the Debtors' Assets, and (II) the Debtors' Assumption and Assignment of Certain Warner Bros. Agreements* [D.I. 908].

29. When the Sale Hearing occurred on October 20, 2025, and October 21, 2025, it was on a full evidentiary record that included over 400 exhibits,[8] seven live witnesses, dozens of pages of briefing, and multiple hours of argument. *See e.g.* Oct. 20 Hr'g Tr. and Oct. 21 Hr'g Tr. Warner Bros. thoroughly investigated and presented its arguments, and the Court had more than sufficient evidence to support its well-reasoned Memorandum Opinion and entry of the Sale Order. Warner Bros. has not raised any arguments in the Motion demonstrating a likelihood of success in overturning the Sale Order on appeal.

B. Warner Bros. Has Not Shown Irreparable Harm Absent a Stay Pending Appeal.

30. In addition to failing to demonstrate a likelihood of success on appeal, Warner Bros. also has failed to articulate any irreparable harm that it would suffer absent a stay pending appeal.

31. To determine "whether the applicant will be irreparably injured absent a stay[,]" *Revel*, 802 F.3d at 568, courts in the Third Circuit look for "harm that cannot be prevented or fully rectified by a successful appeal." *Strong*, 2018 U.S. Dist. LEXIS 24022, at *9. To satisfy the second *Revel* factor, "the applicant must 'demonstrate that irreparable injury is ***likely*** not merely possible in the absence of a stay.'" *Revel*, 802 F.3d at 569 (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22, (2008)) (internal alterations omitted) (emphasis in original). "To establish irreparable harm, a stay movant must demonstrate an injury that is neither remote nor speculative, but actual and imminent." *Revel*, 802 F.3d at 571 (internal quotation marks and citation omitted).

32. The Third Circuit has been consistently clear that "a purely economic injury, compensable in money, cannot satisfy the irreparable injury requirement[.]" *Minard Run Oil Co. v. United States Forest Serv.*, 670 F.3d 236, 255 (3d Cir. 2011) (citing *Frank's GMC Truck Ctr.,*

[8] *Joint Witness and Exhibit List* [D.I. 948].

Inc. v. GMC, 847 F.2d 100, 102 (3d Cir. 1988)).[9] Purely economic injuries include situations where the movant "still has its contract" which "will be enforceable post-assumption and assignment in total against the new [purchaser]." Hr'g Tr. at 48:20–25, *In re Color Spot Holdings, Inc.*, No. 18-11272 (LSS) (Bankr. D. Del. Aug. 15, 2018) (the Court) [D.I. 320]. In those situations, movant has suffered a purely economic harm because "[m]onetary damages will be available if the [purchaser] does not pay [any] obligation that it has. State law remedies will be available to it, to the extent that there's a non-monetary obligation that the [purchaser] breaches. And so, there are clearly legal remedies available to the movant [] in the event that [the purchaser] fails to fulfill any obligation that it has under the contract." *Id*. at 48:25-49:7.

33. Here, Warner Bros. fails to articulate any irreparable injury that is likely to occur. Warner Bros. advances two arguments: (1) that if there is no stay pending appeal Warner Bros. will be forced to share sensitive information with Alcon and (2) in the absence of a stay, consummation of the Sale will statutorily moot the appeal. Neither has merit.

34. ***First***, Warner Bros.' argument that it "will be forced to share" sensitive information with Alcon is a red herring. Motion ¶ 57. The Motion does not articulate why sharing information with Alcon would be any detriment to Warner Bros. The only evidence on this point in the record is the testimony of Warner Bros.' witness that over the course of their decades-long relationship, Alcon has never breached confidentiality regarding Warner Bros.' sensitive information. Oct. 20, 2025 Hr'g Tr. at 225:16–19 (Q: "Okay. Well, in your experience with Alcon, has Alcon ever breached confidentiality with regard to sensitive information in their dealings with Warner Bros.?

[9] "[A]n exception exists where the potential economic loss is so great as to threaten the existence of the movant's business." *Revel*, 802 F.3d at 573. However, Warner Bros. has not and cannot reasonably allege that this dispute could threaten the existence of its business.

[Wayne Smith:] I'm not aware of any."). In fact, Warner Bros.' witness testified that Alcon has never breached ***any*** obligation to Warner Bros. Oct. 20, 2025 Hr'g Tr. at 224:22–225:7.

35. ***Second***, courts in this district have "repeatedly held that the possibility of statutory mootness does not constitute irreparable harm for purposes of obtaining a stay." Hr'g Tr., at 9:11–16, *In re Imerys Talc America, Inc.*, No. 19-10289 (Bankr. D. Del. Jan. 13, 2025) (the Court) [D.I. 7012]; *see also In re Color Spot*, 2018 U.S. Dist. LEXIS 141221, at *11 ("the possibility that an appeal may become moot does not alone constitute irreparable harm for purposes of obtaining a stay"). This is true even if "the Court denies a stay pending appeal and the sale closes before a determination of the[] appeals, [meaning] § 363(m) may preclude the Court of Appeals from unwinding the sale." Memorandum Opinion, *Caliber North Dakota, LLC v. Nine Point Energy Holdings, Inc. (In re Nine Point Energy Holdings, Inc.)*, No. 21-972 (D. Del. Aug. 4, 2021) [D.I. 18], at 9.

36. Warner Bros. cites only one countervailing opinion in which a Delaware bankruptcy court mentions, in *dicta*, that statutory mootness may support a finding of irreparable harm. Motion ¶ 59 (citing *Bayside Cap. Inc. v. TPC Grp. Inc. (In re TPC Grp. Inc.)*, Nos. 22-10493 (CTG), 22-50372 (CTG), 2022 Bankr. LEXIS 1901, at *19 (Bankr. D. Del. July 11, 2022)). Not only did the *Bayside* Court ultimately decline to issue a stay pending appeal, but a singular *dicta* statement cannot overcome decades of precedent holding that statutory mootness does not constitute irreparable harm. *See e.g., In re TWA*, 2001 Bankr. LEXIS 723, at *28 ("Even if § 363(m) adversely impacts the [movant's] objection, it is well settled that an appeal being rendered moot does not itself constitute irreparable harm.") (internal quotations omitted); *Regal Ware, Inc. v. Glob. Home Prods., LLC (In re Glob. Home Prods. LLC*), 2006 U.S. Dist. LEXIS 57839, at *3-4 (D. Del. Aug. 17, 2006) ("the fact that [movant's] appeal could be rendered moot by the closing

of the sale does not in and of itself constitute irreparable harm."); *In re Color Spot*, 2018 U.S. Dist. LEXIS 141221, at *11 ("the possibility that an appeal may become moot does not alone constitute irreparable harm for purposes of obtaining a stay."); *Memorandum Opinion, Caliber In re Nine Point Energy Holdings, Inc.*, No. 21-972 (D. Del. Aug. 4, 2021) [D.I. 18], at 9 (stay denied where "[movant] argues that, if the Court denies a stay pending appeal and the sale closes before a determination of these appeals, § 363(m) may preclude the Court of Appeals from unwinding the sale. . . . A purely economic injury generally is not irreparable harm."); Hr'g Tr. at 9:11–16*, In re Imerys Talc America, Inc.,* No. 19-10289 (Bankr. D. Del. Jan. 13, 2025) (the Court) [D.I. 7012] ("this District has repeatedly held that the possibility of statutory mootness does not constitute irreparable harm for purposes of obtaining a stay.").

37. Warner Bros. has failed to articulate irreparable injury. Under Third Circuit precedent, Warner Bros.' allegations of irreparable injury are either entirely speculative and avoidable or insufficient as a matter of law in this district. As succinctly put by the Third Circuit:

> [I]f the movant does not make the requisite showings on ***either*** of these first two factors, the inquiry into the balance of harms and the public interest is unnecessary, and the stay should be denied without further analysis.

Revel, 802 F.3d at 571 (emphasis added) (internal alterations omitted); *see also Weinstein*, 2021 U.S. Dist. LEXIS 49063, at *6-7 (same) (emphasis in original); *S.S. Body Armor I, Inc. v. Carter Ledyard & Milburn LLP*, 927 F.3d 763, 772 (3d Cir. 2019) (same).

38. Warner Bros. has unequivocally failed to make a sufficient showing on either of the first two factors. To the extent the Court reviews the remaining *Revel* factors, the balance of harms or the public interest, both factors also support denying the Motion.

C. The Balance of Harms Weighs Against a Stay Pending Appeal.

39. A stay pending appeal would harm Alcon. Under the APA, Alcon purchased the Assumed Contracts and the associated rights thereunder. APA at Annex II. A stay pending appeal

would deprive Alcon of these purchased rights for an indefinite period while an appeal winds its way through the courts.

40. For example, Alcon purchased the right to independently develop derivative works based on the 2001 film, *Don't Say a Word*. *See "Don't Say a Word" Co-Ownership Agreement*, dated as of December 14, 2001. Regency Entertainment (USA), Inc.'s ("Regency") has disclosed that it intends to create a television series based on *Don't Say a Word*. Oct. 20, 2025 Hr'g Tr. at 243:9-13. Time is thus of the essence for Alcon to receive the benefits of its purchase of the derivative rights in *Don't Say a Word*.[10]

41. Additionally, under the APA, Alcon will step into the shoes of the Debtors in relation to the Wonka Dispute (*i.e.,* the Derivative Rights Litigation) and the PM2 Dispute. APA § 6.08. These disputes relate to significant assets purchased under the APA. A stay pending appeal would delay Alcon from taking over the litigation to advocate on its own behalf and in connection with rights it purchased, thus preventing Alcon from obtaining the benefit of its bargain for years. As Warner Bros. highlights in the Motion, the Matrix Litigation has already spanned three years, during which time the Derivative Rights Litigation has been stayed. Motion ¶ 2. A stay of the Sale Order will greatly prejudice Alcon's ability to exploit the Derivative Rights that it purchased during the stay and then the subsequent Derivative Rights Litigation.

42. Further, Alcon acquired consultation rights whereby it is permitted to make suggestions about the derivative works being developed. Oct. 20, 2025 H'rg Tr. at 188:16-19. A stay of the Sale Order also will delay Alcon's exercise of these consultation rights as to existing projects, impairing the value of the rights purchased by Alcon. The evidence presented at the

[10] It is irrelevant that Regency has chosen not to appeal the Sale Order. Warner Bros.' proposed stay of the Sale Order puts the entire transaction at risk and prevents Alcon's exercise of its rights the same as if Regency had chosen to appeal.

hearing demonstrated that Alcon has a strong track record and deep experience in film production. But Alcon cannot add value to existing projects if it cannot exercise its consultation rights before it is too late.

43. Similarly unavailing is Warner Bros.' suggestion that the delays occasioned by Warner Bros.' conduct and the parties agreement to a closing by no later than December 15, somehow evidence that Alcon will not be harmed by the Stay. Motion ¶¶ 63-65. However, as already described above, the Sale was delayed to accommodate a meditation between the Debtors and Warner Bros. and to permit Warner Bros. to take extensive discovery and fully litigate its sale objections. The December 15 outside closing date in the APA certainly does not suggest that Alcon will not be harmed by a stay. Alcon should not be punished for making good faith accommodations for Warner Bros.' litigation.

44. Based upon the foregoing, the balance of harms weighs against granting a stay pending appeal, particularly given Warner Bros.' failure to show a strong likelihood of success on the merits or articulate any cognizable irreparable injury it will face.

D. The Public Interest Favors Denial of a Stay Pending Appeal

45. The public interest favors denial of a stay pending appeal. Warner Bros. advances three primary arguments as to why a stay pending appeal is in the public interest. Each fails.

46. ***First***, Warner Bros.' argument that "the public has an interest in correct application of the law[,]" Motion ¶ 69, cuts against a stay because the Court has already correctly applied the law. Warner Bros. also claims that "there is limited Third Circuit case law regarding financial accommodations" and therefore there is public interest in having this case proceed. *Id*. But there is no shortage of caselaw in this Circuit and around the Nation endorsing the principle governing this case—that where the extension of credit is merely incidental, a contract is not a financial

accommodation. Warner Bros. provides no support for its argument that the public has any real interest in seeing an appeal of how this principle applies to the Assumed Contracts specifically.

47. ***Second***, Warner Bros. argues that there is a public interest in protecting copyright owners. This is a red herring. The thrust of Warner Bros.' appeal involves contract rights, not copyrights. Any public interest in copyright ownership is not implicated.

48. ***Third***, Warner Bros. asserts that there is a public interest in meaningful appellate review. This argument is merely a repackaging of Warner Bros.' argument that the Court should issue a stay to prevent statutory mootness. The law in this Circuit forecloses this argument. Any public interest in preventing statutory mootness is also at a minimum balanced by "the general public policy weighing in favor of affording finality to bankruptcy judgments." *In re W.R. Grace & Co.*, 475 B.R. 34, 208 (D. Del. 2012); *In re Glob. Home Prods. LLC*, 2006 U.S. Dist. LEXIS 57839, at *4 ("the public interest favors the finality of sales in bankruptcy proceedings, and [movant] has not demonstrated that a countervailing public policy interest favors a stay in these circumstances").

49. Warner Bros.' asserted public interests are not supported. By contrast, there is a strong interest in the finality of bankruptcy auctions. "[T]he concept of finality of a proper auction is a bedrock principle" and "a bidder's willingness to pay more money, even a lot more money, is not a basis to undo an auction that was otherwise properly conducted and concluded." Hr'g Tr. at 191:15-16, 192:2-5, *In re Radioshack Corp.*, No. 15-10197 (BLS) (Bankr. D. Del. May 20, 2015) (the Court).[11] As the Court determined, "the finality of an auction should only be undone in exceptional circumstances." Mem. Op. at 7. No circumstances—exceptional or otherwise—exist

[11] Even now, Warner Bros. attempts to undermine the Auction process through peppered statements about its willingness to pay additional consideration above and beyond what was elicited at the Auction, having finally obtained the authority it failed to get prior to the Auction. *See e.g.* Motion ¶¶ 7, 21, 62.

here. Further delay in the Sale would undermine the public interest in effective and final bankruptcy auctions. Thus, the public interest weighs in favor of denying the stay pending appeal.

50. Because Warner Bros. failed to carry its burden regarding any *Revel* factor, the Motion should be denied. The Court also should deny Warner Bros.' request to continue a stay while Warner Bros. seeks a stay from the district court. Warner Bros. fails to meet its burden for a stay pending appeal, so it should not receive one while Alcon continues to wait in limbo. Any timing issue is a problem of Warner Bros.' own making.

II. IF A STAY IS GRANTED, THE MOVANTS SHOULD BE REQUIRED TO POST A SUPERSEDEAS BOND.

51. Should the Court issue a stay pending appeal, it must preserve the status quo while protecting Alcon, the Debtors, and other parties in interest. The Third Circuit has recognized that courts may condition a stay pending appeal on the posting of a supersedeas bond. *See Tribune Media Co. v. Aurelius Capital Mgmt., L.P.*, 799 F.3d 272, 281 (3d Cir. 2015) ("The purpose of requiring such a bond in a bankruptcy court is to indemnify the party prevailing in the original action against loss caused by an unsuccessful attempt to reverse the holding of the bankruptcy court." (quoting *In re Theatre Holding Corp.*, 22 B.R. 884, 885 (Bankr. S.D.N.Y. 1982)) (internal quotations omitted). Bankruptcy courts routinely require appellants to post a bond as a condition of any stay pending appeal absent "exceptional circumstances." *In re Adelphia Communs. Corp.*, 361 B.R. 337, 350–51 (S.D.N.Y. 2007).

52. There are no "exceptional circumstances" here that would warrant the waiver of a bond. Accordingly, the Court should require the Movants to post a bond in an amount no less than $18.5 million—the value of the consideration provided by Alcon for the sale. However, Alcon respectfully requests that the issue of the appropriate bond amount be deferred until after the Court decides whether a stay is warranted.

JOINDER

53. Alcon joins in and adopts all of the Debtors' arguments made in the Debtors' Objection in opposition to the Motion as if set forth in full herein.

RESERVATION OF RIGHTS

54. Alcon reserves the right to supplement or amend this pleading, and to make other and further arguments at the hearing.

CONCLUSION

WHEREFORE, Alcon respectfully request that the Court deny the Motion and grant such further relief as is necessary.

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