

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
WINDSTREAM HOLDINGS, INC., <i>et al.</i> , ¹)	Case No. 19-22312 (RDD)
Debtors.)	(Jointly Administered)
Windstream Holdings, Inc. and Earthlink Holdings Corp.,)	
Plaintiffs.)	Adversary Proceeding
v.)	Case No. 19-08247 (RDD)
Charlos Yadegarian, Robert Murray, Cindy Graham, and Larry Graham,)	
Defendants.)	

STIPULATION AND AGREED ORDER

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), and Carlos Yadegarian,² (“Plaintiff,” and, together with the Debtors, the “Parties”), through their undersigned counsel, hereby enter into this stipulation and agreed order (this “Stipulation and Agreed Order”).

RECITALS

WHEREAS, on February 25, 2019 (the “Petition Date”), the Debtors each filed voluntary

¹ The last four digits of Debtor Windstream Holdings, Inc.’s tax identification number are 7717. Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been granted, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/windstream>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.

² The docket reflects a misspelling for Mr. Carlos Yadegarian’s name.



petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), and such cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) [Docket No. 56];

WHEREAS, on April 5, 2019, the Debtors filed the *Complaint to Extend the Automatic Stay or, in the Alternative, to Obtain an Injunction or Other Equitable Relief* [Adversary Docket No. 1] to commence an adversary proceeding (the “Adversary Proceeding”) seeking to extend the automatic stay to certain Non-Debtor Defendants (as that term is defined in the Adversary Proceeding) pursuant to section 362 of the Bankruptcy Code to pending lawsuits in the Georgia state Business Court Division (the “Georgia Court”) and the Eastern District of Arkansas (the “Arkansas Court”). The cases are styled as: (a) *Carlos Yadegarian, on behalf of himself and others similarly situated, vs. Julie A. Shimer, Marc F. Stoll, Walter L. Turek, Windstream Holdings, Inc., Carol B. Armitage, Samuel E. Beall III, Jeannie H. Diefenderfer, Jeffrey T. Hinson, Joseph F. Eazor, William G. LaPerch, Larry Laque, Kristi Moody, Michael G. Stoltz, Tony Thomas, Alan L. Wells* (the “GA Class Action Matter”); (b) *Robert Murray, on behalf of himself and all others similarly situated, vs. Earthlink Holdings Corp., Susan D. Bowick, Joseph F. Eazor, Kathy S. Lane, Garry K. McGuire, R. Gerard Salemm, Julie A. Shimer, Marc F. Stoll, Walter L. Turek, Windstream Holdings, Inc., Carol B. Armitage, Samuel E. Beall III, Jeannie H. Diefenderfer, Robert E. Gunderman, Jeffrey T. Hinson, William G. LaPerch, Larry Laque, Kristi Moody, Michael G. Stoltz, Tony Thomas, and Alan L. Wells* (the “AR Class Action Matter”); (c) *Cindy Graham, Derivatively on Behalf of Nominal Defendant Windstream Holdings, Inc., vs. Alan L. Wells, Tony Thomas, Samuel E. Beall, III, Jeannie H. Diefenderfer, Jeffrey T. Hinson, William G. LaPerch, Julia A. Shimer, Michael G. Stoltz, Walter L. Turek, Carol B. Armitage, Larry Laque,*

Marc F. Stoll, Bob Gunderman, and Windstream Holdings, Inc. (“AR Shareholder Matter No. 1”); and (d) *Larry Graham, Derivatively on Behalf of Windstream Holdings, Inc., vs. Anthony W. Thomas, Kristi Moody, Robert E. Gunderman, Alan L. Wells, Jeffrey T. Hinson, Samuel E. Beall, III, William G. LaPerch, Michael G. Stoltz, Jeannie Diefenderfer, Julie A. Shimer, Walter L. Turek, Carol B. Armitage, Larry Laque, Marc F. Stoll, and Windstream Holdings, Inc.* (“AR Shareholder Matter No. 2,” collectively with AR Shareholder Matter No. 1, the “AR Shareholder Matters”).

WHEREAS, on June 17, 2019 this Court partially lifted the automatic stay, solely for the limited purpose of allowing the Arkansas Court to hear and rule on the pending motions to dismiss the AR Class Action Matter, and extend the stay to the Non-Debtor Defendants who are parties in the AR Class Action Matter (the “AR Class Action Order”) [June 17, 2019 Hr’g Tr. at 72 - 76];

WHEREAS, on July 1, 2019, the Debtors filed the *Debtors’ Motion for Entry of an Order Approving the Debtors’ and Carlos Yadegarian’s Stipulation and Agreed Order to Partially Lift the Automatic Stay* [Adversary Docket No. 10] (the “GA Class Action Motion”) seeking to partially lift the automatic stay, solely for the limited purpose of allowing the Georgia Court to hear and rule on the pending motion to dismiss and the motion to stay the GA Class Action Matter and extending the stay to the Non-Debtor Defendants who are party to the GA Class Action Matter;

WHEREAS, on July 3, 2019, the Debtors filed the *Debtors’ Motion for Entry of an Order Approving the Stipulation and Agreed Order Regarding Complaint to Extend the Automatic Stay or, in the Alternative, to Obtain an Injunction or Other Equitable Relief* [Adversary Docket No. 13] (the “AR Derivative Motion”) extending the stay to the Non-Debtor Defendants who are party to the AR Shareholder Matters, and dismissing the Adversary Proceeding as to the AR Shareholder Matter Plaintiffs.

WHEREAS, upon entry of the agreed orders attached as Exhibit A to the GA Class Action

Motion, and Exhibit A to the AR Derivative Motion, and pursuant to the AR Class Action Order, the relief requested in the Adversary Proceeding will have been effectively granted, and the remaining defendants in the Adversary Proceedings shall be the Plaintiffs in the GA Class Action Matter and the AR Class Action Matter.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the Parties, which agreement, when “so-ordered” by the Bankruptcy Court shall constitute an order of the Bankruptcy Court, as follows:

1. The foregoing recitals are hereby incorporated by reference into this Stipulation and Agreed Order.
2. The Adversary Proceeding is adjourned indefinitely with respect to Mr. Yadegarian pending a motion to re-open, if any, by the Debtors. For the avoidance of doubt, this Order suspends all mandatory deadlines that would be applicable to this case, whether under the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, or the Local Bankruptcy Rules for the Southern District of New York.

Except as otherwise provided herein, nothing in this Stipulation and Agreed Order, nor any actions taken pursuant hereto, shall be deemed: (a) an admission as to the validity of any claim against any Debtor entity; (b) a waiver of any Party’s right to dispute any claim on any grounds; (c) a promise or requirement to pay any alleged claim; (d) an implication or admission that any particular claim is of a type specified or defined herein; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors’ or the Plaintiffs’ rights under the Bankruptcy Code or any other applicable law.

Neither this Stipulation and Agreed Order, nor any actions taken pursuant hereto, shall constitute evidence admissible against the Parties in any action or proceeding other than one to enforce the terms of this Stipulation and Agreed Order.

The terms and conditions of this Stipulation and Agreed Order shall be immediately effective and enforceable upon entry by the Bankruptcy Court.

This Stipulation and Agreed Order is intended by the Parties to be binding upon their successors, agents, assigns, including bankruptcy trustees and estate representatives, and any parent, subsidiary, or affiliated entity of the Parties.

The undersigned hereby represent and warrant that they have full authority to execute this Stipulation and Agreed Order on behalf of the respective Parties and that the respective Parties have full knowledge of, and have consented to, this Stipulation and Agreed Order.

The Parties agree that each of them, through their respective counsel, has had a full opportunity to participate in the drafting of this Stipulation and Agreed Order and, accordingly, any claimed ambiguity shall be construed neither for nor against either of the Parties.

This Stipulation and Agreed Order constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior discussions, agreements, and understandings, both written and oral, among the Parties with respect thereto.

This Stipulation and Agreed Order shall not be modified, altered, amended, or supplemented except by a writing executed by the Parties or their authorized representatives.

The Bankruptcy Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Stipulation and Agreed Order, and the Parties hereby consent to such jurisdiction to resolve any disputes or controversies arising from or related to this Stipulation and Agreed Order.

IT IS SO ORDERED.

Dated: October 8, 2019
White Plains, New York

/s/Robert D. Drain

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

IN WITNESS WHEREOF, the Parties, by their authorized counsel, executed this

Stipulation and Agreed Order as of the date written below.

Dated: October 1, 2019
New York, New York

/s/ Stephen E. Hessler
Stephen E. Hessler, P.C.
Marc Kieselstein, P.C.
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

- and -

James H.M. Sprayregen, P.C.
Ross M. Kwasteniet, P.C. (admitted *pro hac vice*)
Brad Weiland (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
300 North LaSalle Street
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

Counsel to the Debtors and Debtors in Possession

Dated: October 1, 2019
La Jolla, California

/s/ Francis A. Bottini, Jr.
Francis A. Bottini, Jr.
Albert Y. Chang
Yury A. Kolesnikov
BOTTINI & BOTTINI, INC.
7817 Ivanhoe Avenue, Suite 102
La Jolla, CA 92037
Telephone: (858) 914-2001
Facsimile: (858) 914-2002

Counsel to Plaintiff Carlos Yadegarian