UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. BANK NATIONAL ASSOCIATION Appellant, v. WINDSTREAM HOLDINGS, INC., *et al.*, Appellees.	Case No. 20-cv-04276 (VB)
In re: WINDSTREAM HOLDINGS, INC., *et al.*, Debtors.	Appeal From Chapter 11 Case No. 19-22312 (RDD) (Jointly Administered)

OPPOSITION BY THE DEBTORS TO APPELLANTS' MOTION TO PARTIALLY EXPEDITE THIS APPEAL OR FOR A STAY PENDING APPEAL

Appellees Windstream Holdings, Inc. and its debtor subsidiaries ("Debtors") respectfully submit the following opposition to the motion by Appellant U.S. Bank National Association ("U.S. Bank"), joined by Appellant CQS (US) LLC ("CQS"), for a "determination of post-effective date jurisdiction" or a stay pending appeal. *See* Dkt.44 ("Mot."); *see also* Dkt.45 (joinder).[1]

INTRODUCTION

1. Neither of the two forms of relief that Appellants seek is remotely proper. First, Appellants ask this Court for a "determination of post-effective date jurisdiction," by which they mean an expedited ruling on whether their appeal is equitably moot. Mot.2; *see* Mot.4-5 (asking the Court to "find in connection with this Motion" that it "will, in fact, retain jurisdiction post-

[1] Citations to "Dkt." refer to docket entries in No.20-cv-4276 unless otherwise indicated. Citations to "A___" refer to the Appellants' appendix on appeal (Dkt.16-1 to -11). Capitalized terms used but not defined in this response have the meanings given in the Debtors' opening brief (Dkt.37).

consummation" because "the appeals will not be rendered equitably moot"). That request flatly mischaracterizes the doctrine of equitable mootness, which—as this Court has already explained to Appellants in this very case—is "a prudential doctrine" and not a jurisdictional one. Dkt.18 at 4-5 (distinguishing constitutional and equitable mootness); *see In re Charter Commc'ns, Inc.*, 691 F.3d 476, 481 (2d Cir. 2012); *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 143-44 (2d Cir. 2005). In any event, Appellants are not entitled to seek an expedited ruling by motion on one of the numerous issues raised by their appeal, especially when they do not even try to meet the standard for expedition and when this Court already rejected their previous attempt to expedite. As for Appellants' substantive arguments that the appeal will never be equitably moot, they tacitly concede that it would be inequitable for this Court to vacate either the Settlement Order or Confirmation Order after the Plan's effective date, and the contrived alternative relief that Appellants now (for the first time) suggest as a replacement would be equally inequitable.

2. Second, Appellants ask in the alternative that this Court stay the Confirmation Order pending appeal. Appellants' extraordinarily belated request for a stay—which comes more than *two months* after the bankruptcy court issued the Confirmation Order—is both procedurally improper and wholly meritless. Appellants never properly requested that relief from the bankruptcy court, *see* Fed. R. Bankr. P. 8007(a)(1), and cannot satisfy any of the four stay factors. Their motion should be denied across the board.

BACKGROUND

3. Appellants challenge two orders on appeal: the Settlement Order, which the bankruptcy court entered on May 12, 2020, and the Confirmation Order, which the bankruptcy court entered on June 26, 2020. Bankr.Dkt.1807, 2243. Appellants made no attempt to expedite the appeal from the Settlement Order for more than two months after it issued, and no attempt to stay either order when they were entered.

4. On July 15, 2020—more than two months after the bankruptcy court entered the Settlement Order, and nearly three weeks after it entered the Confirmation Order—Appellants filed a purported "emergency" motion to expedite the appeals of both orders, claiming they faced irreparable harm from the risk of equitable mootness if their appeals were not expedited. Dkt.4, No.20-cv-5440; *see* Dkt.4, No.20-cv-5529 (joinder). On August 3, 2020, this Court denied the motion to expedite, holding that Appellants had failed to show irreparable harm. Dkt.18 at 6-7. In particular, the Court explained that "equitable mootness is a risk present in any post-confirmation appeal of a Chapter 11 plan," and "merely invoking that risk in a demand for expedition is not enough to show irreparable harm." *Id.* at 6 (citing *In re Calpine Corp.*, No.05-60200, 2008 WL 207841, at *4 (Bankr. S.D.N.Y. Jan. 24, 2008)).

5. The parties proceeded to brief the appeal according to the schedule ordered by the Court. *See* Dkt.22. Meanwhile, because the Confirmation Order remained in effect pending appeal (and Appellants had not even attempted to stay that order pending appeal), the Debtors continued to work toward consummation of the confirmed Plan, aiming to emerge from bankruptcy by the end of August or mid-September. Despite being well aware that the Debtors were aiming for the Plan to become effective by the end of August or mid-September, *see* A2231, A2241, Appellants did nothing to seek a stay of the Confirmation Order pending appeal for another four weeks after their motion to expedite was denied.[2]

6. Finally, on September 1—more than two months after the bankruptcy court confirmed the Plan, four weeks after Appellants' motion to expedite was denied, and one day

[2] The Debtors have consistently represented that they intend to consummate the Plan by the end of August or mid-September. *See* A2231, A2241. Appellants' suggestion that the Debtors should have specified a more precise date at the confirmation hearing, *see* Mot.4 n.3—some two months before the Debtors planned to emerge—is bizarre.

before the Debtors were due to file their response brief on appeal—U.S. Bank filed an unrelated objection in the bankruptcy court and appended a cursory and procedurally improper "request" to "stay the effective date" of the Plan pending this appeal. Bankr.Dkt.2482 at 3; *see* Dkt.37 at 16 n.2, 22. That "request" was not made in a properly noticed motion, did not request a hearing, and did not request a ruling from the bankruptcy court by any particular date. The bankruptcy court has thus far taken no action on that "request."

7. On September 2, the Debtors filed their response brief in this appeal. Dkt.37. That brief explained not only that Appellants' challenges to the Settlement Order and Confirmation Order are wholly meritless, but also that the appeal should be dismissed as equitably moot because the Plan will be substantially consummated before this Court decides the merits, and Appellants cannot overcome the presumption that their challenges will become equitably moot upon consummation of the Plan. *Id.* at 18-23. Two days later, U.S. Bank filed the present motion, which CQS later joined. Dkt.44, 45.

ARGUMENT

I. This Court Should Deny Appellants' Request for an Expedited Ruling on Equitable Mootness.

8. Appellants begin by asking the Court for a "determination of post-effective date jurisdiction," by which they mean an expedited ruling on whether their appeals will become equitably moot once the Plan is substantially consummated. Mot.2; *see* Mot.5 (asking the Court to find that "the appeals will not be rendered equitably moot"). As an initial matter, Appellants flatly mischaracterize the doctrine of equitable mootness by describing their request as seeking a determination of "jurisdiction." Mot.2; *see* Mot.4-5 (asking the Court to find that it will "retain jurisdiction post-consummation"). As this Court has already explained to Appellants in this very case, equitable mootness is "a prudential doctrine," not a jurisdictional one. Dkt.18 at 4-5

(distinguishing constitutional and equitable mootness); *see Charter Commc'ns*, 691 F.3d at 481 (same); *Metromedia*, 416 F.3d at 143-44 (same). Even setting that mischaracterization aside, however, Appellants are not entitled to obtain an expedited ruling on one of the numerous issues raised by their appeal just by filing a motion asking this Court to decide that issue early—especially when Appellants make no effort to meet the standard for expedition, and when this Court has already rejected their previous motion to expedite.

9. To begin with, Appellants have no plausible grounds for accusing the Debtors of trying to improperly "silence the court" by preparing to emerge from bankruptcy as scheduled in accordance with the bankruptcy court's Confirmation Order. *Contra* Mot.4. When the bankruptcy court entered its Confirmation Order confirming the Plan, it authorized the Debtors to immediately begin implementing the Plan's provisions and effectuating the approved restructuring transactions. A2605-2610, A2641, A2643. Appellants made no attempt to stay that order. As a result, the Debtors have since been working steadily to consummate the Plan and emerge from bankruptcy, and aim to emerge by mid-September (as they predicted at the confirmation hearing). *See* A2241. Those efforts were not part of some nefarious scheme to avoid appellate review; they were simply part of the Debtors' ongoing efforts to emerge from bankruptcy (and thus shed the massive costs associated with remaining in bankruptcy) as quickly as possible.

10. Put simply, the fact that the Plan will be substantially consummated before this Court rules on this appeal is not the result of "hubris" or any attempt to "silence the court" by the Debtors. Mot.4. Instead, it is the natural result of the fact that the Confirmation Order has been in full force and effect for the past two and a half months—a situation that Appellants made no attempt to avoid by seeking a stay. *See* Dkt.18 at 6 (noting that the risk of equitable mootness is "present in any post-confirmation appeal of a Chapter 11 plan" (quoting *Calpine*, 2008 WL

207841, at *4)); *see also In re Chateaugay Corp.*, 988 F.2d 322, 326 (2d Cir. 1993) ("The party who appeals without seeking [a stay] does so at his own risk."). Appellants cannot plausibly blame the Debtors for complying with the bankruptcy court's unstayed Confirmation Order, or for Appellants' own failure to seek a stay.

11. Setting aside their overblown rhetoric, Appellants do not even try to meet the applicable standard to seek an expedited ruling from this Court on whether their appeal is equitably moot. A motion to expedite "must explain what justifies considering the appeal ahead of other matters," Fed. R. Bankr. P. 8013(a)(2)(B), which normally requires some showing that irreparable harm would otherwise result. *See* Dkt.18 at 4-7 (rejecting Appellants' previous motion to expedite for failure to show irreparable harm); *In re Premier Operations*, 293 B.R. 334, 336 (S.D.N.Y. 2003). Appellants ignore that standard entirely, making no attempt to explain why their appeal should take precedence over other matters, or how they will suffer irreparable harm unless this Court rules on equitable mootness now rather than in the normal course of the appeal. This Court should deny Appellants' motion for an expedited ruling on equitable mootness for that reason alone.

12. Instead of explaining why this Court should rule on equitable mootness "in connection with this Motion" rather than in the normal course of the appeal, Mot.4, Appellants go straight to the purported merits of their equitable mootness argument, asserting their appeal will not become equitably moot because the Court "can still fashion a remedy" for the alleged errors that Appellants raise. Mot.7. Of course, it is entirely inappropriate for Appellants to use their motion to simply expand the number of words they have available to brief their arguments against equitable mootness—arguments that Appellants have already made in their reply brief on appeal.

See Dkt.47 at 34-38. In any event, Appellants' arguments for why their appeal will never become equitably moot are entirely meritless.

13. To begin, it is worth emphasizing what Appellants do *not* argue. Appellants do *not* contend (here or in their reply brief on appeal) that it would still be equitable for this Court to reverse or vacate the entire Settlement Order or Confirmation Order after the Plan becomes effective. Mot.7-9; *see* Dkt.47 at 34-38. It appears they concede that equitable mootness will prevent them from undoing the entire Uniti settlement, or forcing the Debtors back into bankruptcy and unwinding the complex transactions contemplated by the Plan. That takes off the table the relief that Appellants requested in their opening brief—that "the Settlement Order and the Confirmation Order should be reversed." Dkt.15 at 55; *see* Dkt.47 at 39.[3]

14. Instead, Appellants argue for the first time that this Court should award them completely *different* relief, which they have never before requested: namely, that this Court should order the Debtors to either (1) issue additional shares of stock in the reorganized Debtors to unsecured creditors (or transfer stock in the reorganized Debtors from secured creditors to unsecured creditors), or (2) redirect funds that Uniti owes to the Debtors under the settlement agreement to go to unsecured creditors instead. Mot.8-9. Of course, Appellants make no attempt (here or in their reply brief) to explain why either of those two unusual forms of relief would be an appropriate remedy for the purported errors they have raised on appeal—presumably because the relief Appellants suggest plainly is *not* appropriate.[4] *Contra* Mot.8-9; Dkt.47 at 34-38.

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[3] Indeed, the second form of relief that Appellants suggest is actually predicated on the Settlement Order remaining in force, since it depends on the settlement payments that Uniti owes the Debtors under that order (and that Appellants seek to divert to unsecured creditors).

[4] To take only the most obvious example, any purported error by the bankruptcy court in approving the Uniti settlement could not somehow be remedied by a random award of stock or cash to the Debtors' unsecured creditors.

15. Even if the peculiar remedies that Appellants now suggest were theoretically appropriate relief for Appellants' claims, neither of them would avoid equitable mootness. To overcome the presumption of equitable mootness that arises upon substantial consummation of a plan, Appellants must satisfy all five of the *Chateaugay* factors. *In re Chateaugay Corp.*, 10 F.3d 944, 952-53 (2d Cir. 1993); *see, e.g.*, *In re Kassover*, 98 F. App'x 30, 31 (2d Cir. 2004) ("*All* of these five factors must apply—otherwise the appeal of the transaction is equitably moot."). Appellants' proposals for alternative relief fail to satisfy at least three of those factors.[5]

16. *First*, the remedies Appellants propose would still threaten the Debtors' ability to emerge from bankruptcy "as a revitalized corporate entity." *Chateaugay*, 10 F.3d at 953. The Debtors' Plan, and the Uniti settlement on which it depends, are the delicate results of many months of hard-fought negotiations, and the Plan provides the "exclusive option for Windstream to emerge from chapter 11 as a healthy and viable enterprise." A2008. Diluting or redistributing the reorganized Debtors' stock issuances, or diverting up to hundreds of millions of dollars of expected incoming revenues, would upend the Debtors' entire new capital structure and unquestionably threaten their successful emergence from bankruptcy and their ability to operate as a healthy and viable enterprise on a reorganized basis.

17. *Second*, and relatedly, Appellants' suggested relief would "unravel intricate transactions" and "knock the props out" from under the Plan, creating an "unmanageable, uncontrollable situation for the Bankruptcy Court." *Chateaugay*, 10 F.3d at 953. The Plan

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[5] Appellants miss the mark by arguing that the remedies they suggest would still be "available" even after substantial consummation. Mot.8-9. The question for equitable mootness purposes is not whether it would be *impossible* for this Court to grant the relief Appellants suggest, but whether "even though effective relief could conceivably be fashioned, implementation of that relief would be *inequitable*." *Charter Commc'ns*, 691 F.3d at 481 (emphasis added). For the reasons described below, the relief Appellants request would be clearly inequitable here.

depends critically on support from the secured creditors for the reorganized Debtors—support that the secured creditors agreed to provide only in exchange for specified consideration, including stock in the reorganized Debtor entities. Diluting or redistributing shares in the reorganized Debtors, or diverting hundreds of millions of dollars in funds from the reorganized Debtors to other entities, will eliminate much of the value on which the secured creditors' support for the Plan was conditioned, and knock the props out from the transactions with the secured creditors on which the Plan depends. The resulting chaos will not only leave the bankruptcy court with an unmanageable situation, but also "work incalculable inequity" to parties that have "extended credit, settled claims, relinquished collateral and transferred or acquired property in legitimate reliance on the unstayed order of confirmation." *In re Granite Broad. Corp.*, 385 B.R. 41, 52 (S.D.N.Y. 2008); *see also In re Source Enters.*, 392 B.R. 541, 551 (S.D.N.Y. 2008) (appeal equitably moot where requested relief would require unraveling transfers of property and distributions of money and stock).

18. *Third*, Appellants cannot meet the fifth *Chateaugay* factor regardless of the relief they seek, because they failed to "pursue[] with diligence all available remedies to obtain a stay" of the orders they challenge. *Chateaugay*, 10 F.3d at 953. Indeed, Appellants do not even try to argue otherwise, either here or in their reply brief on appeal. Mot.7-9; *see* Dkt.47 at 34-38. Despite the established requirement that an appellant must seek a stay "even if it may seem highly unlikely that the bankruptcy court will issue one," *Metromedia*, 416 F.3d at 144, and despite knowing the Debtors' anticipated timeline for Plan consummation and being fully aware of the possibility of equitable mootness, Appellants made no effort whatsoever to seek a stay of either order for more than *two months* after the Plan was confirmed. And when U.S. Bank finally decided (two months later) to ask for a stay from the bankruptcy court, it did so only in a procedurally improper

"request" tacked on to an objection to an unrelated motion. *See* Bankr.Dkt.2482. That belated and perfunctory afterthought comes nowhere near the diligence required to satisfy the fifth *Chateaugay* factor.[6]

II. This Court Should Also Deny Appellants' Extraordinarily Belated, Procedurally Improper, and Meritless Request For A Stay Pending Appeal.

19. As an alternative to their unsupported request for an expedited ruling on equitable mootness, Appellants belatedly ask this Court to stay the challenged orders pending appeal. Mot.9-12. That request is both procedurally improper and wholly meritless.

20. First, Appellants' request for a stay is procedurally flawed. Under Federal Rule of Bankruptcy Procedure 8007, a party seeking to stay a bankruptcy court order pending appeal ordinarily "must move first in the bankruptcy court" for that relief. Fed. R. Bankr. P. 8007(a)(1). A party that fails to take that preliminary step must explain that failure by "show[ing] that moving first in the bankruptcy court would be impracticable." Fed. R. Bankr. P. 8007(b)(2)(A).

21. Appellants never took that required preliminary step. Instead, three days before filing the present motion (and more than two months after the bankruptcy court issued the

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[6] The cases that Appellants cite in their reply brief on appeal only underscore their inability to overcome the presumption of equitable mootness. *See* Dkt.47 at 36-38. In *Chateaugay*, the court recognized that it could order disgorgement only "to the extent" it could be done "manageably" and "without imperiling [the debtor's] fresh start." 10 F.3d at 953. Moreover, the court found it "significant" that the party opposing equitable mootness—unlike Appellants here—"sought to stay confirmation of the Plan in urgent applications" before the bankruptcy court, the district court, and the court of appeals. *Id.* at 954. Similarly, in *Matter of MPM Silicones, LLC*, 874 F.3d 787 (2d Cir. 2017), the court placed "special emphasis" on the fact that the appellants "promptly and consistently sought a stay in three different courts," thereby taking "all appropriate steps to secure judicial relief." *Id.* at 805. It was that "diligence," together with the fact that a relatively small additional annual payment would not unravel the plan or threaten the debtors' emergence, that prompted the court to hold the appeal not equitably moot. *Id.*; *accord In re Tribune Media Co.*, 799 F.3d 272, 283 (3d Cir. 2015) (relatively small "modification" reallocating $30 million in context of $7.5 billion reorganization would not unravel plan).

Confirmation Order), U.S. Bank filed an objection in the bankruptcy court to an unrelated motion by the Debtors to establish procedures in furtherance of Plan distributions, and tacked on a cursory "request" to "stay the effective date" of the Plan. Bankr.Dkt.2482 at 3; *see* Bankr.Dkt.2469. To the extent Appellants believe that "request" makes their present motion for a stay procedurally proper, *see* Mot.5 n.4, they are plainly incorrect. That "request" for a stay in the bankruptcy court, tacked on to an objection to an unrelated motion, was not an "initial motion in the bankruptcy court" for a stay at all. Fed. R. Bankr. P. 8007(a) (capitalization altered). And even if that request could be described as a motion, it was itself procedurally improper. Under the bankruptcy court's governing case management order in this case, a party must properly notice any motion it files, request a hearing date, and attach a proposed order. Bankr.Dkt.392, Ex.1, ¶¶21, 24. U.S. Bank's "request" for a stay met none of those requirements. Nor did it ask the bankruptcy court to rule on its stay request by any particular date, or alert the court that (absent an expedited ruling) it planned to seek the same relief from this Court a mere three days later. Nor have Appellants made any effort to show why making a proper motion in the bankruptcy court would have been "impracticable," Fed. R. Bankr. P. 8007(b)(2)(A)—a showing they cannot possibly make, given that Appellants have now had more than two months since the Confirmation Order issued in which to seek a stay. Appellants' utter failure to comply with the requirements of Rule 8007 warrants denying their motion on that ground alone.

22. Even if Appellants' motion were procedurally proper, which it is not, it should be denied on the merits. In evaluating a stay request under Rule 8007, a court must consider "(1) whether the movant will suffer irreparable injury absent a stay, (2) whether a party will suffer substantial injury if a stay is issued, (3) whether the movant has demonstrated 'a substantial possibility, although less than a likelihood, of success' on appeal, and (4) the public interests that

may be affected." *In re Country Squire Assocs. of Carle Place, L.P.*, 203 B.R. 182, 183 (B.A.P. 2d Cir. 1996) (quoting *Hirschfeld v. Bd. of Elections*, 984 F.2d 35, 39 (2d Cir. 1993)). None of those four factors weighs in favor of a stay here.

23. *First*, Appellants have not shown that they will suffer any irreparable injury absent a stay. As Appellants acknowledge, this Court has already ruled that a mere risk of equitable mootness is not sufficient to show irreparable harm. Mot.12 (quoting Dkt.18 at 6). In light of that ruling, U.S. Bank conceded in the bankruptcy court that it could not satisfy the first stay factor. Bankr.Dkt.2482 at 3. In their request to this Court, however—filed only three days after U.S. Bank's bankruptcy court filing—Appellants now contend that they face more than a mere risk of equitable mootness, because the Debtors have made clear that they intend to consummate the Plan by approximately mid-September. *See* Mot.12. But Appellants have been aware ever since the confirmation hearing in late June that the Debtors intended to consummate the Plan and emerge from bankruptcy by mid-September. *See* A2241. The risk of equitable mootness that Appellants have faced ever since the Plan was confirmed is a "risk that is present in any post-confirmation appeal of a chapter 11 plan," and "merely invoking equitable mootness" is "not sufficient to demonstrate irreparable harm." *Calpine*, 2008 WL 207841, at *4; *see also, e.g.*, *In re 15375 Mem'l Corp.*, No. 06-10859, 2009 WL 393948, at *1 (D. Del. Feb. 18, 2009) (noting that "equitable mootness of an appeal, without more, does not constitute irreparable harm"); *In re Baker*, No. 01-cv-24227, 2005 WL 2105802, at *9 (E.D.N.Y. Aug. 31, 2005) ("As other courts have noted, the possibility that an appeal will be rendered moot … does not, in and of itself, constitute irreparable harm."); *In Re Trans World Airlines, Inc.*, No. 01-0056, 2001 WL 1820325, at *10 (Bankr. D. Del. Mar. 27, 2001) (It "is well settled that an appeal being rendered moot does not itself constitute irreparable harm.") (quoting *In re 203 N. LaSalle Street P'ship*, 190 B.R. 595, 598 (N.D. Ill.

1995)); *In re Sunflower Racing, Inc.*, 223 B.R. 222, 225 (D. Kan. 1998) (collecting cases). The passage of time in the two months since the Confirmation Order issued (and Appellants' failure to seek a stay during that time) may have made the risk of equitable mootness more *imminent*, but that does not mean that risk now suddenly suffices to show irreparable harm.

24. *Second*, Appellants are flat wrong to claim that staying the challenged orders pending appeal would "caus[e] little, if any, harm to the Debtors" and other parties. *Contra* Mot.12. Staying the challenged orders would delay the Debtors' emergence from bankruptcy for as long as it takes this Court to decide the consolidated appeal, a period that could last for weeks if not months (especially in light of Appellants' request for oral argument, *see* Dkt.15 at 1, and the fact that these appeals are proceeding on a normal rather than an expedited schedule, Dkt.18). During that time, the Debtors would be forced to continue spending *millions of dollars every week* on professional fees and other bankruptcy-related expenses for as long as they remain in bankruptcy, draining their assets and placing them in a correspondingly worse position upon their eventual emergence. A stay would likewise keep the cloud of bankruptcy hanging over the Debtors' business for as long as it takes this Court to decide the appeal, degrading the Debtors' relations with their vendors and customers and postponing indefinitely the day that the Debtors will again be able to operate as a healthy enterprise. Those substantial injuries, which Appellants entirely ignore, should weigh overwhelmingly against Appellants' belated stay request.

25. *Third*, Appellants have not demonstrated anything close to a substantial possibility of success on appeal. *Contra* Mot.10-11. As the Debtors' brief explains at length, if this Court were to reach the merits of Appellants' challenges to the Settlement and Confirmation Orders, it should readily affirm. *See generally* Dkt.37. The bankruptcy court came nowhere near abusing its discretion in concluding that the more than $1.2 billion in value that the Debtors received from

the Uniti settlement was "well above the lowest range of reasonableness," A1486, and it acted well within its discretion in confirming the Plan and determining that the secured creditors' superpriority adequate-protection claim left no unencumbered value to distribute to unsecured creditors.

26. *Fourth*, the public interest weighs strongly against a stay here. *Contra* Mot.11. Most notably, there is a strong public interest in allowing the Debtors to complete their emergence from bankruptcy, which will benefit not only the Debtors themselves, but also their creditors, vendors, customers, and employees. And contrary to what Appellants suggest, there is no countervailing public interest in overturning the entirely correct decision below, *see* Dkt.37, or in punishing the Debtors for their wholly appropriate efforts to finally emerge from bankruptcy in accordance with the governing (and unstayed) Confirmation Order. *Contra* Mot.11. Quite the opposite: in reality, there is a compelling public interest in preventing the kind of litigation gamesmanship that Appellants have engaged in here, in making no effort whatsoever to seek a stay for months after the Confirmation Order issued, attempting to evade the clear requirement to move for that relief in the bankruptcy court before seeking it in this Court, and then filing a last-minute motion for a stay in this Court in a last-ditch effort to unilaterally derail a proper and widely supported plan of reorganization. Appellants' belated attempt to stay the challenged orders, like their request for an expedited ruling on equitable mootness, should be denied.

CONCLUSION

For the foregoing reasons, this Court should deny Appellants' motion.

Dated: September 11, 2020
New York, New York

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CERTIFICATE OF COMPLIANCE
WITH TYPE-VOLUME LIMITATION

I hereby certify that:

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September 11, 2020

s/Stephen E. Hessler
Stephen E. Hessler, P.C.

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Southern District of New York by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/Stephen E. Hessler
Stephen E. Hessler, P.C.