

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

In re:

Case No. 26-13137-KHT

GLENWOOD CAVERNS HOLDINGS
LLC,¹

Chapter 11

Debtor.

¹ The Debtor in this Chapter 11 Case, along with the last four digits of its federal tax identification number, is Glenwood Caverns Holdings LLC (6861). The location of the Debtor's headquarters is 51000 Two Rivers Plaza Road, Glenwood Springs, CO 81601.

**ESTIFANOS CREDITORS' MOTION FOR CLARIFICATION OF THE
CONFIRMATION ORDER AND FOR A LIMITED STAY PENDING APPEAL**

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Estifanos Dagne and Rahel Estifanos (the “Estifanos Creditors”), the holders of the Class 2 Claim and more than 96% of the general unsecured claims in this case, move under 11 U.S.C. § 105(a) and Federal Rules of Bankruptcy Procedure 3020(e), 8007, and 8008 for an order clarifying the Order Confirming the Debtor’s Modified Second Amended and Restated Combined Disclosure Statement and Plan of Reorganization (Docket No. 509) (the “Confirmation Order”) and staying, pending appeal, the release and extinguishment of the estate claims that are the subject of the appeal.

I. PRELIMINARY STATEMENT

The Estifanos Creditors are appealing the Confirmation Order and the Court’s Findings of Fact and Conclusions of Law (Docket No. 504) (the “Findings”). The Debtor released or extinguished its claims against its own insiders and affiliates instead of transferring them to the Litigation Trust, and the Court approved that choice under the business judgment rule. The Estifanos Creditors contend that the rule does not apply when the decisionmakers are the beneficiaries of the decision, that the Court instead had to test the releases against the standards that govern the release of estate claims, including the probable success of the claims released, and that it could not do so after limiting the evidence the Estifanos Creditors could offer on that subject. Docket No. 450 at 1; Findings at 42-43 n.25. Citations to “Aug. 14 Tr.,” “Aug. 20 Tr.,” and “Aug. 21 Tr.” are to the confirmation hearing transcripts of those dates.

This Motion concerns the Debtor’s claims against its insiders and affiliates (the “Insider Claims,” defined in paragraph 5 below). Relief on those claims, by transferring them to the Litigation Trust or by remand for the findings the governing standard

requires, would not require GVC Glenwood LLC (the “Purchaser”), which bought the Debtor’s assets, to return or pay anything.

This Motion keeps that appeal reviewable. Paragraph 26 of the Confirmation Order declares every provision of the order “nonseverable and mutually dependent.” The Debtor and the Purchaser told the Court that the Purchaser would not close if the sale remained open to challenge. Aug. 21 Tr. 76:8-17; 112:10-114:13. Once the sale closes, the Estifanos Creditors expect them to cite paragraph 26 to argue that no part of the Confirmation Order can be revisited without unwinding the whole, and that the appeal is equitably moot. The Estifanos Creditors ask the Court to clarify what it intended: that the release and extinguishment of the Insider Claims are severable from the sale. They also ask the Court to confirm what the Debtor has already represented, that the Plan releases estate claims only and leaves third-party claims alone, Aug. 21 Tr. 62:5-8; 76:19-25, so that no provision of the order operates as a gatekeeper for claims the Estifanos Creditors own. Because the Tenth Circuit asks whether an appellant sought a stay, they also request a limited stay that preserves the Insider Claims during the appeal and leaves the closing and the Effective Date untouched.

II. JURISDICTION AND BACKGROUND

1. This Court has jurisdiction under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). A court that enters a confirmation order “plainly ha[s] jurisdiction to interpret and enforce its own prior orders,” including by entering a clarifying order construing the scope of an injunction in a confirmed plan. *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009) (upholding a bankruptcy court’s authority

to enter a “clarifying order” interpreting a confirmed-plan injunction). Section 105(a) supplies additional authority to determine the effect of a confirmation order on creditors and interested parties. *In re Gonzales*, 512 B.R. 255, 258-59 (Bankr. C.D. Cal. 2014) (“[B]ankruptcy court[s] have always been empowered to interpret and enforce their own orders,” and “the scope of an order confirming a . . . plan falls within” the broad power of § 105(a)).

2. The Estifanos Creditors hold a wrongful-death judgment against the Debtor of more than \$116 million (the “State Court Judgment”), which is on appeal in the Colorado Court of Appeals. Findings at 5-6. They are the Class 2 claimant and the Debtor’s largest creditor. They rejected the Plan.

3. On September 30, 2026, the Court entered the Confirmation Order. Confirmation Order at 1. The Confirmation Order incorporates the Findings, *id.* Finding A, and states that it “constitutes a final order within the meaning of 28 U.S.C. § 158(a),” *id.* ¶ 25. It confirms the Debtor’s plan (Docket Nos. 457 and 476) (the “Plan”) and approves the asset purchase agreement (Docket No. 419) (the “APA”). *Id.* at 1.

4. The Findings approve, as an exercise of business judgment, the Debtor’s decision to release or abandon its claims against its managers, directors, and officers, including GCAP Holdco LLC (“GCAP Holdco”), the Debtor’s sole member and manager, and Steve Beckley (“Mr. Beckley”), and against Iron Mountain Hot Springs LLC and the Off Road entities. Findings at 3, 43-46. The Court reached that result after limiting the evidence on whether the claims exist and have value, Docket No. 450 at 1;

Findings at 42-43 n.25, and it did not decide whether any of the claims exist, Docket No. 450 at 1; Aug. 20 Tr. 34:2-7.

5. The “Insider Claims” are the claims and causes of action of the Debtor and the Estate against (a) GCAP Holdco and its managers and board members; (b) Mr. Beckley and Glenwood Tramway LLC, the parties to the Services Agreement with the Debtor; and (c) Iron Mountain Hot Springs LLC, the Off Road entities, and the Debtor’s other insiders and affiliates, in each case other than the Purchaser and other than the Acquired Avoidance Actions transferred to the Purchaser under paragraph 37 of the Confirmation Order. Findings at 3-4, 44-46.

6. Paragraph 26 of the Confirmation Order provides that, “[t]o the extent of any conflict between the Plan or APA and this Order, the terms and provisions of this Order shall govern,” that “[t]he provisions of this Order are nonseverable and mutually dependent,” and that it is “the intent of the Court that the Plan, APA and other related documents be authorized and approved in their entirety.” Confirmation Order ¶ 26.

7. The relevant provisions are these. Only the Litigation Trust Cause of Action, the Debtor’s claims against NOVA, transfers to the Litigation Trust. Confirmation Order ¶ 28. “[A]ny Cause of Action not transferred to the Litigation Trust shall be extinguished and not preserved.” Plan § 5.03(iii). The Debtor’s Release in Plan Section 7.03 releases claims held “by the Debtor, the Reorganized Debtor, and the Estate, and any entity seeking to exercise the rights of” them, “including any derivative claims, asserted or that could possibly have been asserted directly or indirectly on behalf of the Debtor, the Reorganized Debtor, or the Estate.” Plan § 7.03. Finding KK approves the release and

provides that no provision of the order confers standing “upon the Debtor, the Reorganized Debtor, the Estate, the Litigation Trustee, or any other Person or Entity to assert any claim or Cause of Action released under Section 7.03 of the Plan against the Purchaser or any other Released Party.” Confirmation Order, Finding KK. The temporary injunction in Plan Section 7.02 is tied to 11 U.S.C. §§ 1141 and 524 and bars claims against “the Debtor, the Estate, or any of their assets or properties.” Plan § 7.02. Finding NN describes that injunction as “necessary to preserve and enforce the releases and exculpation provisions provided in the Plan.” Confirmation Order, Finding NN. Paragraph 9 enjoins holders of claims against the Debtor from pursuing claims “against the Purchaser or any Affiliate of the Purchaser . . . as an alleged successor or on any other grounds.” *Id.* ¶ 9. Paragraph 35 retains jurisdiction to “interpret, implement, and enforce the provisions of this Order and the Plan” and to “protect the Purchaser and its Affiliates” from “any Claims, Interests or obligations.” *Id.* ¶ 35(iv), (v).

8. The “Released Parties” include the Debtor and the Purchaser and their respective officers, directors, managers, members, and Professionals. Plan § 1.79. The Findings treat the Debtor’s claims against GCAP Holdco, its board members, and Mr. Beckley as released or abandoned. Findings at 44-45. Iron Mountain Hot Springs LLC and the Off Road entities are not Released Parties, and the Findings treat the Debtor’s claims against them as abandoned. *Id.* at 45-46. The Estifanos Creditors also assert single-enterprise and alter-ego theories against those entities.

9. The Estifanos Creditors will file a timely notice of appeal from the Confirmation Order. Fed. R. Bankr. P. 8002(a)(1). They file this Motion before or with

the notice so that the Court may rule while its authority is undisputed and, to the extent the appeal limits that authority, under Rules 8007(e) and 8008. As of this Motion, the sale has not closed and the Effective Date has not occurred. The Confirmation Order does not waive the stay in Rule 3020(e), which runs through October 14, 2026.

III. RELIEF REQUESTED

10. The Estifanos Creditors request an order (a) clarifying that paragraph 26, and the findings and provisions that support it, do not find or provide that the release or extinguishment of the Insider Claims is consideration for, a condition of, or integral to the sale, and that the provisions of the Plan and the Confirmation Order that release or extinguish the Insider Claims are severable from the sale and the APA; (b) clarifying that the Court's findings about the existence, value, and viability of the Insider Claims were made only to review the Debtor's exercise of business judgment and do not adjudicate the merits of any claim against any non-debtor; (c) clarifying that Plan Sections 5.03(iii), 7.02, 7.03, and 7.04, Finding KK, Finding NN, and paragraphs 9, 28, and 35 do not release, extinguish, bar, enjoin, or require this Court's approval of the Estifanos Creditors' direct, non-derivative claims against any non-debtor other than the Purchaser and its Affiliates, and do not limit the relief the Estifanos Creditors may seek on appeal or on remand, that the phrase "or any other Person or Entity" in Finding KK refers only to a person asserting claims released under Plan Section 7.03, and that paragraph 9 reaches only claims against the Purchaser and its Affiliates; (d) staying, pending final resolution of the appeal from the Confirmation Order, the release and extinguishment of the Insider Claims under Plan Sections 5.03(iii) and 7.03 and paragraph 28, and directing the Debtor

and the Reorganized Debtor to preserve the Insider Claims and related records and not to settle, dismiss, abandon, or transfer them, or to dissolve or seek a final decree, without fourteen days' written notice to counsel for the Estifanos Creditors; (e) providing that the relief in (d) does not stay the Confirmation Order, the closing, or the Effective Date and is not a stay of the Confirmation Order for purposes of Plan Sections 1.37 and 8.02(a) or Section 5.3(a)(i) of the APA; (f) requiring no bond or other security; (g) providing that the order is effective immediately upon entry and that the Court retains jurisdiction to interpret and enforce it; (h) to the extent the Court concludes the pending appeal limits its authority to grant any part of this Motion, stating under Rule 8008 that the Court would grant the Motion on a limited remand or that the Motion raises a substantial issue; and (i) granting such other relief as is just.

IV. ARGUMENT

A. The Court retains jurisdiction to decide this Motion notwithstanding the notice of appeal.

11. A notice of appeal divests the lower court of control only over “those aspects of the case involved in the appeal.” *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 379 (1985). Applying that rule in bankruptcy, the Tenth Circuit Bankruptcy Appellate Panel has held that a bankruptcy court “loses jurisdiction only over those aspects of a case involved in an appeal,” and retains jurisdiction over matters that are “distinct and separate” from the issue on appeal. *In re S. Med. Arts Cos.*, 343 B.R. 250, 254-55 (B.A.P. 10th Cir. 2006) (holding the court kept jurisdiction over a separable

matter despite a pending appeal). The relief sought here is separable. It asks the Court to construe discrete provisions and to preserve the status quo as to the Insider Claims.

12. The Court retains jurisdiction over the stay request in particular. The Panel has held that a court may consider a motion for stay pending appeal “filed simultaneously with or after the filing of a notice of appeal,” so long as no mandate has issued. *In re Fross*, 258 B.R. 26, 28-29 (B.A.P. 10th Cir. 2001) (adopting the majority rule). That authority rests on the settled exception that a lower court, although divested of the case by the notice of appeal, retains jurisdiction over “certain ministerial functions in aid of the appeal, such as . . . issuing stays or injunctions pending the appeal,” and retains the power to preserve the status quo. *Stewart v. Donges*, 915 F.2d 572, 575 n.3 (10th Cir. 1990), quoted in *Fross*, 258 B.R. at 29; see *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). Under Rule 8007, a party ordinarily “must move first in the bankruptcy court” for a stay pending appeal, and the motion “may be filed either before or after the notice of appeal is filed.” Fed. R. Bankr. P. 8007(a). While the appeal is pending, the Court may also “issue any appropriate order to protect the rights of all parties in interest.” Fed. R. Bankr. P. 8007(e)(2).

13. The Court retains authority to grant the clarification as well, because interpreting an order is not the same as altering it. Absent a stay pending appeal, a bankruptcy court “retains jurisdiction to enforce an order that is on appeal, on condition that in doing so, the bankruptcy court does not significantly alter or expand upon the terms of that order.” *In re Thomason*, 642 B.R. 8, 13 (Bankr. D. Idaho 2022). Divestiture turns on “whether the subject matter presented in the appeal is so ‘closely related’ to the

issues raised in the motion that the entry of the order ‘impermissibly interfere[s]’ with the appellant’s rights in its appeal.” *Id.* at 14 (quoting *In re Rickert*, No. 18-6037-BPH, slip op. at 4-5 (Bankr. D. Mont. June 20, 2020) (quoting *In re Old Cold, LLC*, 602 B.R. 798, 823 (B.A.P. 1st Cir. 2019))). The requested clarification confirms the Confirmation Order’s existing meaning without modifying it, so it does not interfere with the appeal. To the extent the Court concludes otherwise once the appeal is docketed, Rule 8008 supplies the remedy: the Court may “state that it would grant the motion if the court where the appeal is pending remands” or “state that the motion raises a substantial issue,” after which the Estifanos Creditors will notify the court where the appeal is pending and seek a limited remand. Fed. R. Bankr. P. 8008(a)-(c).

B. The release, injunction, and retention-of-jurisdiction provisions do not reach the Estifanos Creditors’ direct, non-derivative claims against non-debtors.

14. The Debtor has told the Court that the Plan releases only the estate’s claims. Debtor’s counsel represented that “there are no third-party releases such as, [in] *Purdue Pharma* or anything like that,” Aug. 21 Tr. 62:5-8, and that the claims at issue “would be properties of bankruptcy estate. They’re not third-party claims. Third-party claims are not released or interfered with under this Plan,” *id.* at 76:19-25. The United States Trustee described the release as “now purely a Debtor release.” Aug. 14 Tr. 20:18-22. The Estifanos Creditors ask the Court to say the same thing in an order, so that no party can read the Confirmation Order to say more.

15. The release and the standing bar reach only estate and derivative claims. By its terms, the Debtor’s Release runs only to claims of “the Debtor, the Reorganized

Debtor, and the Estate,” including “derivative claims . . . asserted . . . on behalf of the Debtor.” Plan § 7.03. Finding KK describes the release the same way, as given by the Debtor, the Estate, and “any Person or Entity seeking to exercise the rights of or assert claims derivatively on behalf of any of them,” and bars assertion only of claims “released under Section 7.03.” Confirmation Order, Finding KK. Neither provision purports to release a creditor’s own direct claims. The phrase “or any other Person or Entity” in Finding KK should be clarified to mean a person asserting the estate’s released claims, so that it is not misread to bar the Estifanos Creditors’ direct claims or their prosecution of this appeal.

16. The Estifanos Creditors’ requests concern two categories of claims. The first is claims the Estifanos Creditors own directly and that do not depend on the Debtor’s rights, such as the negligent-undertaking theory identified in their Objection. Docket No. 359 at 10. No one has suggested that those claims are estate property. The second is claims, such as alter ego and single enterprise, that may belong to the estate or to its creditors depending on Colorado law. The Estifanos Creditors asked the Court to transfer the estate’s claims to the Litigation Trust, Aug. 14 Tr. 31:4-10, and reserved whether any given claim is estate-owned or creditor-owned, Docket No. 359 at 18. The Court allowed the Estifanos Creditors to assert that claims exist but did not decide “whether any such causes of action do or do not exist.” Docket No. 450 at 1; *see* Aug. 20 Tr. 34:2-7. The Findings refer to claims the Debtor “may have.” Findings at 45. This Motion asks for no ruling on ownership. It asks the Court to confirm that, to the extent a claim belongs to a creditor, the Plan and the Confirmation Order do not release, extinguish, or enjoin it.

17. A creditor's own claims are not the estate's to release, and Colorado law treats alter-ego claims the same way: "an alter ego action to pierce the corporate veil belongs to the creditors of the corporation, not to the corporation itself," because the veil is not pierced for the debtor's benefit. *In re M & L Bus. Mach. Co.*, 136 B.R. 271, 278 (Bankr. D. Colo. 1992) (holding the trustee did not own the creditors' alter-ego action), *aff'd*, 160 B.R. 850 (D. Colo. 1993). Section 544 does not alter that result, because its avoidance powers "do not encompass the right to recover on an alter ego action." *Id.* at 277. This Court reaffirmed the rule in 2025, holding that upstream alter-ego claims against a debtor's owners and horizontal claims against sister entities "are not the Debtor's property as a matter of Colorado law," and that only creditors may pierce. *In re Signia, Ltd.*, No. 24-1214 TBM, 2025 WL 1409225, at *17, *20, *22 (Bankr. D. Colo. May 14, 2025) (declining to treat a creditor's alter-ego suit as a stay violation because the claim was not estate property). Whether a claim is estate-owned or creditor-owned turns on whether it redresses a general injury common to all creditors or a particularized injury to the claimant. *See In re M & L Bus. Mach. Co.*, 136 B.R. at 276 (a trustee cannot assert claims "based upon particular and distinct injuries to each" claimant). To the extent a claim belongs to the Estifanos Creditors, it is theirs to bring, and Section 7.03 does not and cannot release it.

18. Neither the *Barton* doctrine nor Section 105(a) authorizes gatekeeping over claims against non-debtors, and the Confirmation Order contains language that could be read to impose it. Paragraph 35(v) retains jurisdiction to protect the Purchaser and its Affiliates from "any Claims, Interests or obligations." Finding NN ties the Section 7.02

injunction to enforcing the releases and exculpation. Finding KK withholds standing to assert released claims against “any other Released Party.” In this Circuit, the *Barton* doctrine requires leave of the appointing court for suits against a bankruptcy trustee arising from “acts done in the trustee’s official capacity and within the trustee’s authority as an officer of the court.” *Satterfield v. Malloy*, 700 F.3d 1231, 1234 (10th Cir. 2012) (quoting *In re Triple S Rests., Inc.*, 519 F.3d 575, 578 (6th Cir. 2008)) (explaining that the doctrine extends to a bankruptcy trustee as “a statutory successor to the equity receiver”). The Released Parties here are not court-appointed fiduciaries. The Fifth Circuit has held that a gatekeeper provision is itself a pre-filing injunction and that it may protect only parties coextensive with the lawfully exculpated estate fiduciaries. *In re Highland Cap. Mgmt., L.P.*, 132 F.4th 353, 359-60 (5th Cir. 2025) (holding the circuit has “never extended the *Barton* doctrine to give bankruptcy courts gatekeeping power over claims against non-debtors”). The Estifanos Creditors ask the Court to confirm that none of these provisions requires them to obtain this Court’s approval before bringing a direct claim against a non-debtor.

19. A confirmed plan cannot bar a non-consenting creditor’s direct claims against non-debtors. The Supreme Court has held 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) (rejecting § 1123(b)(6) and § 105(a) as sources of that power). The Tenth Circuit held the same long before *Purdue*: a Section 105(a) stay protecting a non-debtor “may not be extended post-

confirmation in the form of a permanent injunction that effectively relieves the nondebtor from its own liability to the creditor.” *In re W. Real Est. Fund, Inc.*, 922 F.2d 592, 601-02 (10th Cir. 1990) (holding neither confirmation nor partial recovery under a plan bars a creditor’s independent claim against a third party). The Estifanos Creditors rejected the Plan, so the consensual-release path *Purdue* left open is unavailable. *See Harrington*, 603 U.S. at 226.

20. This Court’s jurisdiction over the direct claims is not exclusive. A bankruptcy court’s jurisdiction derives from 28 U.S.C. §§ 157 and 1334, and “plan provisions purporting to expand a bankruptcy court’s jurisdiction beyond its statutory authority are unenforceable and ineffective.” *In re In Play Membership Golf, Inc.*, 576 B.R. 15, 27-28 (Bankr. D. Colo. 2017) (holding a retention clause reserving “exclusive jurisdiction” cannot create jurisdiction broader than the statutory grant). “Related to” jurisdiction does not reach “independent, non-derivative claims against . . . non-debtors.” *In re Combustion Eng’g, Inc.*, 391 F.3d 190, 230, 233-34 (3d Cir. 2004) (vacating a § 105(a) injunction of independent non-derivative claims). Paragraph 35 should be clarified accordingly.

21. Paragraph 9 of the Confirmation Order enjoins claims against the Purchaser and its Affiliates “on any other grounds.” The Estifanos Creditors do not ask the Court in this Motion to modify paragraph 9 as it applies to the Purchaser and its Affiliates, and they reserve their right to challenge it on appeal. They ask the Court to confirm that paragraph 9 reaches only claims against the Purchaser and its Affiliates.

C. Paragraph 26 does not make the release and extinguishment of the Insider

Claims integral to the sale or moot the appeal.

22. Paragraph 26 does not strip appealability. The Confirmation Order is a final order under 28 U.S.C. § 158(a). Confirmation Order ¶ 25. Section 363(m) “is not a jurisdictional provision” and is subject to waiver, forfeiture, and estoppel. *MOAC Mall Holdings LLC v. Transform Holdco LLC*, 598 U.S. 288, 292, 298 (2023). In the Tenth Circuit, section 363(m) bars appellate relief that would affect the validity of an unstayed sale to a good-faith purchaser, including through reversal of orders on which the sale depends, but it does not bar relief that leaves the sale intact. *In re C.W. Min. Co.*, 740 F.3d 548, 552, 555, 557, 562 (10th Cir. 2014). The Bankruptcy Appellate Panel rejects “a per se rule that every appeal from an order approving a sale must be dismissed” and asks whether the sale was stayed and whether relief would affect the validity of the sale. *In re Telluride Income Growth LP*, 364 B.R. 407, 413-14 (B.A.P. 10th Cir. 2007) (internal quotation marks omitted) (holding an appeal not moot because “[t]he remedy sought . . . can be granted without affecting the validity of the sale”). Relief on the Insider Claims would not undo the sale, return the Purchased Assets, or change the Purchase Price, so section 363(m) does not bar it.

23. A boilerplate non-severability recital cannot by itself moot an appeal. The Tenth Circuit weighs six non-exclusive factors in assessing equitable mootness, places the burden on the party asserting mootness, and recognizes no presumption of mootness from substantial consummation. *In re Paige*, 584 F.3d 1327, 1331, 1339-40 (10th Cir. 2009); accord *In re Abengoa Bioenergy Biomass of Kan., LLC*, 958 F.3d 949, 955 (10th

Cir. 2020) (asking whether relief would “fatally scramble the plan” or harm reliant third parties). The factors include whether the appellant sought a stay. The Estifanos Creditors seek one here, at the first opportunity and in the court that entered the order. Fed. R. Bankr. P. 8007(a). The Second Circuit has held that “normally a nonseverability clause standing on its own cannot support a finding of equitable mootness,” because a boilerplate clause would give “the debtor and other negotiating parties too much power to constrain Article III review.” *In re Charter Commc’ns, Inc.*, 691 F.3d 476, 485 (2d Cir. 2012), quoted in *Patterson v. Mahwah Bergen Retail Grp., Inc.*, 636 B.R. 641, 693 (E.D. Va. 2022) (refusing to give a non-severability clause controlling effect and severing void third-party releases). In *Charter*, the release was part of a settlement the bankruptcy court found to be “a cornerstone of the Debtor’s Plan,” and relief would “unravel the Plan.” *In re Charter Commc’ns, Inc.*, 449 B.R. 14, 26 (S.D.N.Y. 2011) (quoting the confirmation order), *aff’d*, 691 F.3d 476 (2d Cir. 2012). Here, the non-severability language appears only in the Confirmation Order. The Plan contains no such term, and no finding makes the release or extinguishment of the Insider Claims the foundation of the sale. The Debtor and the Purchaser described the conditions to closing as the findings under section 363(m) and the free-and-clear findings. Aug. 21 Tr. 113:21-114:13. Finding Q ties the Purchaser’s reliance to title free and clear of Claims, Interests, and Encumbrances on the Purchased Assets, and Finding K addresses the conduct of the sale. Neither refers to the release or extinguishment of the Debtor’s claims against its insiders. Paragraph 26 should be clarified so that it is not read to bar review of the Insider Claims provisions.

24. Relief on the Insider Claims would not scramble the plan. Reversal would not require the Purchaser to return the Purchased Assets or change the Purchase Price. It would not alter the distribution waterfall in Plan Section 4.05 for Class 1, administrative claims, or Class 3. Confirmation Order, Finding OO. The Litigation Trust receives only the NOVA claim and \$100,000. Plan § 5.03. Adding the Insider Claims to the Trust, or remanding for the findings the governing standard requires, takes nothing from a party that relied on confirmation. The only parties affected are the released insiders, who are the targets of the claims and include GCAP Holdco, the Debtor's sole member and manager.

D. The Court should stay the release and extinguishment of the Insider Claims pending appeal.

25. A stay pending appeal under Fed. R. Bankr. P. 8007 turns on four factors: a strong showing of likelihood of success on the merits, irreparable injury to the movant absent a stay, substantial injury to other parties, and the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009) (identifying the first two factors as “the most critical”); *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (stating the four-factor standard); see *In re Abengoa Bioenergy Biomass of Kan., LLC*, No. 16-10446, 2018 WL 1613667, at *3 (Bankr. D. Kan. Mar. 29, 2018) (applying the four factors to a stay of a confirmation order). The stay requested here is limited. It preserves the Insider Claims in the Reorganized Debtor, bars their settlement, dismissal, abandonment, or transfer without notice, and does not stay the closing or the Effective Date. It is not a stay of the Confirmation Order, and the proposed order says so. That addresses Plan Section 8.02(a),

which conditions the Effective Date on the Confirmation Order not being “the subject of a stay,” and Plan Section 1.37, which requires that no stay of the Confirmation Order be in effect.

26. The appeal presents a substantial issue on the merits. The Court applied the business judgment rule to the Debtor’s decision to release or abandon its claims against GCAP Holdco, its board members, Mr. Beckley, Iron Mountain Hot Springs LLC, and the Off Road entities. Findings at 43-46. The Court described the rule as barring inquiry into “actions of corporate directors taken in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate purposes.” *Id.* at 43 (quoting *In re Genesis Glob. Holdco, LLC*, 660 B.R. 439, 525 (Bankr. S.D.N.Y. 2024)). The decisionmaker was GCAP Holdco, the Debtor’s sole member and manager, *id.* at 44, and the claims against it, its board members, and Mr. Beckley were among those released, *id.* at 44-45. The Court also recited the standard for approving a settlement, which includes “the probable success of the underlying litigation on the merits.” *Id.* at 42 (quoting *In re Kopexa Realty Venture Co.*, 213 B.R. 1020, 1022 (B.A.P. 10th Cir. 1997)); *see Kearney v. Unsecured Creditors Comm.*, 987 F.3d 1284, 1290 (10th Cir. 2021). The Estifanos Creditors argued that standard and the absence of any showing for Mr. Beckley, Glenwood Tramway, and the other individual insiders. Docket No. 448 at 2-4, 6; Aug. 21 Tr. 100:11-102:3. The Court limited the evidence on the claims’ viability, Docket No. 450 at 1, and then relied on conclusions about their likelihood of success and the statute of limitations, Findings at 45.

27. Without a stay, the Insider Claims are extinguished. Claims not transferred to the Litigation Trust are “extinguished and not preserved,” Plan § 5.03(iii); Confirmation Order ¶ 28, and the Court has so held, *see* Findings at 44 (a claim not assigned to the Trust “would, therefore, be extinguished upon confirmation”). The Reorganized Debtor will be managed by a wind-down officer subject to the direction of GCAP Holdco, a target of those claims, Plan § 5.05, and the Plan directs it to wind up and dissolve, Plan § 5.04. If the Estifanos Creditors prevail on appeal, there may be no claims left to transfer. That loss cannot be repaired after the fact, and it is the loss on which an equitable-mootness argument would rest.

28. A stay harms no one. It does not delay the closing or the Effective Date. It costs the Reorganized Debtor nothing beyond refraining from settling or abandoning claims that the Plan would otherwise extinguish. The public interest favors appellate review of a decision to release estate claims against the insiders who control the debtor. Because the stay requires no payment and preserves existing rights, the Court should not require a bond or other security. See Fed. R. Bankr. P. 8007(a)(1)(B).

29. The Effective Date is the first Business Day after the conditions to the APA closing are satisfied or waived and no stay of the Confirmation Order is in effect. Plan §§ 1.37, 8.02. The Debtor’s Release takes effect as of the Effective Date. Plan § 7.03. The Estifanos Creditors ask the Court to rule on this Motion promptly after the objection deadline.

E. Reservation of rights.

30. This Motion does not limit the issues the Estifanos Creditors may raise on appeal, including the findings under 11 U.S.C. § 363(m) and (n), and the Estifanos Creditors waive none of them.

V. CONCLUSION

For these reasons, the Estifanos Creditors respectfully request that the Court grant the relief described in paragraph 10.

Dated: October 13, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 13, 2026, I served a complete copy of the foregoing on all parties of record in compliance with the Federal Rules of Bankruptcy Procedure and the Court's Local Rules, to the extent service could be completed at this time.

Due to the nationwide service outage experienced by the Bankruptcy Noticing Center, as documented in Exhibit A attached hereto, we were unable to access the creditor list for this case and, consequently, were unable to identify all creditors requiring service or to serve physical copies of the foregoing on such creditors at this time. Service on those creditors remains pending until the creditor list becomes accessible and service can be completed in accordance with the applicable rules.

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- **Nicholas Zluticky** nicholas.zluticky@stinson.com

/s/ Ethan Epstein
Ethan Epstein, Paralegal to Marc A.
Lieberman, Esq.

Exhibit A

From: [Marc Lieberman](#)
To: [Addy Hernandez](#); [Ethan Epstein](#)
Subject: FW: Bankruptcy Noticing Center Service Outage
Date: Tuesday, October 13, 2026 2:27:14 PM

From: U.S. Bankruptcy Court for the Southern District of California <uscourts@updates.uscourts.gov>
Sent: Tuesday, October 13, 2026 1:59 PM
To: Marc Lieberman <marc.lieberman@flpllp.com>
Subject: Bankruptcy Noticing Center Service Outage

CASB Banner



Bankruptcy Noticing Center Service Outage

The Bankruptcy Noticing Center (BNC) is experiencing a nationwide service outage that has prevented the delivery of paper and electronic notices since Friday, October 9, 2026. This outage also impacts related websites including [bnc.uscourts.gov](#), [bankruptcynotices.uscourts.gov](#), [notices.uscourts.gov](#) websites, and the NCRS (National Creditor Registration Service) website that supports generating lists of creditors.

While the contractor is actively investigating the disruption and working to restore services, the interruption remains ongoing. The Court will provide further updates as information becomes available.

United States Bankruptcy Court
Southern District of California
325 West F Street
San Diego, CA 92101
(619) 557-5620

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