IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re VILLAGE ROADSHOW ENTERTAINMENT GROUP USA INC., *et al.*,[1] Debtors.	Chapter 11 Case No. 25-10475 (TMH) (Jointly Administered) **Requested Hearing Date:** **To Be Determined** **Requested Objection Deadline:** **Three Days Prior to the Hearing at 4:00 p.m. (ET)** **Re: D.I. 1043**

WARNER BROS. ENTERTAINMENT INC.'S
EMERGENCY MOTION TO STAY PENDING APPEAL

Warner Bros. Entertainment Inc. and its affiliates (collectively, "Warner Bros.") respectfully move (this "Motion") for entry of an order pursuant to Rule 8007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), substantially in the form attached hereto as **Exhibit A** (the "Proposed Order"), granting a stay of the Debtors' sale (the "Sale") of the Derivative Rights (as defined in the Order) to Alcon Media Group, LLC ("Alcon"), which such Sale includes the assumption and assignment of the Warner Bros. Derivative Rights Agreements,[2]

[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] The "Derivative Rights Agreements" include all of Warner Bros.' Co-Ownership Agreements with the Debtors for prequels, remakes, and sequels of Warner Bros.' films, the 2017 Omnibus Amendment and the Omnibus Amendment No. 2, as well as the agreement incorporated therein (*i.e.*, the MPRPAs and earlier QCSAs) and the Assignments, as such capitalized terms are defined in Warner Bros.' Omnibus and Supplemental Objections to the Sale.

pending Warner Bros.' appeal of this Court's *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 "Order")[3] that adopts by reference the Court's *Memorandum Opinion* [D.I. 1027] regarding the Sale therein. In support of this Motion, Warner Bros. respectfully states as follows:

I. PRELIMINARY STATEMENT[4]

1. Warner Bros. files this Motion to preserve the status quo pending its appeal of the Court's Order. If the Sale were to proceed notwithstanding Warner Bros.' appeal, even a successful appeal could not afford Warner Bros. any effective relief. To secure a stay, Warner Bros. need only show that there is a likelihood of success of the merits on appeal or at least a substantial case on the merits, and that Warner Bros. will be irreparably injured absent a stay. After Warner Bros. makes that requisite showing, the Court must assess the harm to other opposing parties, and whether the public interest favors a stay. Here, Warner Bros. more than satisfies the stay request standard for several reasons:

2. *First*, Warner Bros. is likely to succeed on the merits, or at least presents a substantial merits case justifying a stay, for three separate reasons. The first is that the Derivative Rights Agreements constitute financial accommodations that are non-assumable and unassignable thus barring consummation of the Sale to Alcon. The documentary evidence and testimony at the Hearing showed that the Derivative Rights Agreements place Warner Bros. in the contractually

[3] Capitalized terms used but not otherwise defined in this Motion shall have the meanings as otherwise set forth in the Order.

[4] Capitalized terms used but not otherwise defined in this Preliminary Statement shall have the meanings ascribed to them as set forth later herein or in the Order, as applicable.

defined position of "Production Lender," obligating it to finance tens or hundreds of millions of dollars to produce films for the benefit of the counterparty to those agreements. That position is a risky one for Warner Bros.—a position it took on only as part of a trusted, long-standing business relationship with the Debtors. If the Sale closes, though, Alcon would benefit from this "no money down" financing whenever Warner Bros. makes derivative works subject to those agreements and Alcon elects to participate. In that situation, Alcon would only repay Warner Bros. its share of production costs for such works upon release, potentially years in the future. During that lengthy process, Alcon will receive highly confidential information and market analysis indicating the likelihood of a derivative film's or television project's commercial success. The obvious risk is that Alcon at some point decides it made a bad bet and refuses to pay. This is the exact scenario that occurred when the Debtors breached their co-financing obligations after Warner Bros. produced *Matrix IV*, resulting in an initial arbitration determination against the Debtors of over $100 million, forcing both sides to spend millions of dollars on litigation. More than three years into litigation, the Matrix Arbitration remains ongoing, with a final damages hearing scheduled for early December.

3. Such a financial arrangement leaves Warner Bros. with all the financing uncertainty that befalls lenders who extend credit to borrowers: does it commit hundreds of millions of dollars with only a promise of repayment that is ***years*** down the road? That is the textbook risk that the "financial accommodation" exception to section 365 of the Bankruptcy Code is intended to protect against. Indeed, representatives of the Debtors and Alcon both admitted on cross-examination that Warner Bros. assumes all of the risk of non-payment for its multi-million dollar advances under the Derivative Rights Agreements. Despite this, the Court determined that it was "unnecessary to decide whether the up-front payment term of the agreement is a financial

accommodation," because "the nature of the entire transaction is not one of financial accommodation." Mem. Op. at 11. In doing so, however, the Court contradicted its later conclusions that both Warner Bros.' and the Debtors' "primary" duty or obligation under the Derivative Rights Agreements was to "co-finance derivative projects." *Id.* at 14. The Derivative Rights Agreements are plainly financial accommodations, the assumption and assignment of which the Bankruptcy Code prohibits.

4. Moreover, the Derivative Rights Agreements are so personal in nature that they cannot be assigned absent Warner Bros.' consent. In determining that Warner Bros. could not overcome the presumption that a contract between two corporate entities was not indicative of one for personal services, the Court neglected to consider the ample evidence that the Derivative Rights Agreements were founded on trust and confidence, and as such, constitute agreements that are protected from assignment over Warner Bros.' objection.

5. In addition, Alcon has failed to provide Warner Bros. with adequate assurance of future performance. The Court's Opinion focused on Alcon's past and potential future ability to upsize its capital availability, rather than the evidence demonstrating that Alcon is highly leveraged, and—similar to the Debtors' own relationship with its principal owner—Alcon has no contractual commitment from the Smith family to supply it with additional funds. Alcon also initiated outside litigation against Warner Bros. that, contrary to the Court's determination otherwise, fails to provide Warner Bros. with assurance that Alcon can serve as a trusted partner in connection with the Derivative Rights. Simply put, on the current record, Warner has no good reason to believe Alcon can perform, and its objection on that ground is at least substantial enough to justify a stay pending appeal.

6. *Second*, Warner Bros. will suffer irreparable harm absent a stay. Warner Bros. faces immediate potential obligations under the Derivative Rights Agreements with an objectionable counterparty it did not select, including sharing highly confidential and sensitive information about upcoming film projects. That information-sharing has already occurred in connection with *Practical Magic 2* without Warner Bros.' consent.[5] In addition, section 363(m) would statutorily moot the relief that would be afforded to Warner Bros. if it succeeds on appeal. Thus, a stay is critical to ensure Warner Bros. can be afforded effective relief.

7. *Third*, no other party will suffer substantial harm from a stay. The Debtors have shown no urgency to close the Sale: they extended the Sale Hearing for over four months, delayed providing Warner Bros. with the Derivative Rights APA during that period, and have otherwise shown no exigency to close a Sale. The Debtors are in the process of winding down, with no chapter 11 plan yet on file, and the bankruptcy estate will remain relatively unaffected by any delay. Importantly, Warner Bros. is not seeking to deprive the estate of value. Should the Order be reversed on appeal, the estate will receive—***at a minimum***—$17.5 million from Warner Bros.' in connection with the Sale in light of the fact that the Debtors designated Warner Bros.' offer in that amount as a Back-Up Bid. The Warner Bros. Back-Up Bid will automatically become the winning bid in the event of a reversal. However, during the extended delay in the sale process, Warner Bros. offered to increase its bid to $19.5 million ($1 million more than the Alcon bid). Warner Bros. remains ready, willing, and able to close at its revised October 19, 2025 bid of $19.5 million for the Sale, meaning that the estate will be *better off* if Warner Bros. prevails on the appeal. Nor is there any meaningful harm to other creditors. At most, they would face a delay of

[5] Warner Bros. reserves all rights in connection with *Practical Magic 2*, including that the Debtors failed to timely issue any proper Project Notice Acceptance related thereto.

distribution on account of the appeal—a minor inconvenience. In any event, Warner Bros.—the Debtors' largest asserted unsecured creditor—should not be unduly prejudiced solely to benefit other creditors of the estate who are structurally subordinate to Warner Bros.' claims. By contrast, Warner Bros.' rights to terminate the Derivative Rights Agreements will be eviscerated if a stay is not granted.

8. *Fourth*, to the extent the public interest is implicated in this dispute, it supports staying the Order until Warner Bros.' legal impediments to closing under section 365(c)(2), 365(c)(1), 365(f)(2) and 365(b)(1) are addressed. The public maintains an interest in the correct application of the law, and Warner Bros. has a strong likelihood of success on the merits of its appeal. Moreover, the Derivative Rights Agreements cover future motion pictures to be created by Warner Bros. and there is an important federal interest in protecting creators of copyrighted material. The present appeal also presents the District Court and Third Circuit with an opportunity determine whether the Derivative Rights Agreements constitute financial accommodations—a question not squarely or recently addressed in this Circuit. At a minimum, the public interest favors appellate review, and Warner Bros. should not be deprived of its rights to an appeal. That result will otherwise effectively occur absent a stay here. Finally, if the sale to Alcon closes, there is a substantial likelihood of future litigation over newly financed films, with the attendant waste of the parties' and the courts' resources.

9. For all the reasons set forth in this Motion, the Court should grant an immediate stay of the Order.

II. JURISDICTION

10. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and *the Amended Standing*

Order of Reference from the United States District Court for the District of Delaware. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

11. Pursuant to Rule 9013-1(f) of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), Warner Bros. confirms its consent to the Court entering a final order in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. In doing so, however, Warner Bros. reserves all rights to seek arbitration of its claims, including as set forth in *Order Approving Stipulation* [D.I. 545] with respect to the Matrix Arbitration, and as such rights are otherwise preserved with respect to Warner Bros. in other orders of this Court. *See* D.I. 280, 562, and 782.

12. The statutory basis for relief requested herein is Bankruptcy Rule 8007, in conjunction with title 11 of the United States Code, 11 U.S.C. 101, *et seq*. (the "Bankruptcy Code").

III. RELEVANT BACKGROUND

13. On March 17, 2025 (the "Petition Date"), the Debtors each filed a voluntary petition for relief under the Bankruptcy Code. The Debtors are continuing in possession of their property and are operating and managing their businesses as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

14. On March 27, 2025, the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed the Official Committee of the Unsecured Creditors (the "Committee").

15. On May 22, 2025, the Debtors designated Alcon as the Successful Bidder for the Library Assets, with a bid of $417.5 million. *See Notice of Successful Bidder for Library Assets* [D.I. 396]. May 28, 2025, the Debtors conducted an auction (the "Auction") at which Alcon was also selected as the successful bidder for the Derivative Rights and the Studio Business, with bids of $18.5 million and $4.25 million, respectively. *See Notice of (I) Successful Bidder for Derivative Rights and Studio Business and (II) Back-Up Bidder for Derivative Rights* [D.I. 446]. The Debtors designated Warner Bros. as the "Back-Up Bidder" for the Derivative Rights, with a bid of $17.5 million. *See* D.I. 446.

16. On June 13, 2025, Warner Bros. filed its Omnibus Objection to the Debtors' proposed sales of the Library Assets, Derivative Rights, and Studio Business.[6]

17. On June 16, 2025, the Debtors filed the *Debtors' Reply in Support of the Sale of the Library Assets to the Successful Bidder and in Response to Warner Bros.' Objection* [D.I. 525] (Filed Under Seal), D.I. 533] (Redacted Version) (the "Reply") and declaration in support thereof [D.I. 527] (Filed Under Seal).

18. After a hearing held on June 18, 2025, and upon Warner Bros. having resolved its objections to the Library Asset sale with the Debtors and Alcon, the Court on June 20, 2025, entered an *Order (I) Approving the Sale of Library Assets 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* (the "Library Assets Sale Order") [D.I. 562], with the sale price of $417.5 million.

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[6] *See 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 Warner Bros. Agreements* [D.I. 518] (Filed Under Seal) and [D.I. 521] (Redacted Version) (the "Omnibus Objection"). As set forth in the Omnibus Objection, Warner Bros.' deadline to object to the Derivative Rights sale was extended by agreement with the Debtors.

19. The contested hearing for the sale of Derivative Rights was subsequently adjourned on numerous occasions for approximately five (5) months, and ultimately held on October 20-21, 2025 (the "Hearing").

20. Pursuant to the Agreed Scheduling Order, Warner Bros. (and Regency Entertainment (USA) Inc., "Regency") filed supplemental objections to the Debtors' proposed sale of the Derivative Rights to Alcon, alongside additional declarations in support, and the Debtors and Alcon filed additional replies. *See* D.I. 908-10, 915, 917, 932-34, 940, 941.[7]

21. Warner Bros. made every effort to resolve these objections informally. On September 8, 2025, Warner Bros. sent an offer to Debtors' counsel increasing its initial $17.5 million bid. *See* Ex. 26 (Admitted). The offer provided, among other consideration and subject to Court approval, $18.5 million for the Derivative Rights plus an additional $10 million reduction to the Warner Bros. Reserve to pay other general unsecured claims, among other consideration. *Id.* Warner Bros. renewed the offer through the Derivative Rights sale hearing (the "Revised Warner Bros. Bid"), and further increased the cash component to $19.5 million on October 19, 2025. *See* Oct. Hr'g Trans. [101:10-20].

22. On November 5, 2025, the Court published its Opinion approving the Sale to Alcon, overruling Warner Bros.' objections thereto.

23. On November 11, 2025, the Court entered the Order.

IV. EVIDENCE PRESENTED AT THE HEARING

24. While the issues on in Warner Bros.' appeal predominantly involve questions of law, the facts are largely undisputed. At the Hearing, Warner Bros., Alcon, the

[7] *See Agreed Scheduling Order for the Pending Contested Matter Regarding the Sale of the Debtors' Derivative Rights Assets* [D.I. 800] (the "Agreed Scheduling Order").

Debtors, and Regency presented evidence consisting of witness testimony and exhibits from the *Joint Witness and Exhibit List* [D.I. 948]. The overwhelming weight of evidence and authority demonstrates that the Derivative Rights Agreements cannot be assumed nor assigned absent Warner Bros.' consent. Accordingly, Warner Bros. is likely to succeed on the merits of its appeal, as set forth in greater detail below.

A. The Derivative Rights Agreements Are Financial Accommodations That Cannot be Assumed or Assigned Over Warner Bros.' Objection.

25. The evidence at the Hearing conclusively established that: (1) the primary purpose of the Derivative Rights Agreements is financing; (2) Warner Bros. is "the bank" that fronts all production costs; and (3) Warner Bros. takes on all of the risk of the Debtors' credit worthiness. Specifically, Warner Bros. serves as the "Production Lender" under the Derivative Rights Agreements, and fronts all production and marketing costs for such films, only to receive the Debtors' co-financing share with interest that has accrued ("Production Interest")[8] when the film or project premieres. *See* Oct. 20 H'rg Tr. at 44:10-18, 46:15-20, 66:3-6, 193:14-25, 194:9-14, 196:2-7. The deposition testimony of Warner Bros.' President of Business Affairs, Steve Spira, highlighted that Warner Bros. is essentially serving as the Debtors' bank until the Debtors eventually pay Warner Bros. back with interest. *See* S. Spira Dep. [107:4-8; 108:21-109:10]. Kevin Berg, the Debtors' general counsel, confirmed this financial arrangement on cross examination as follows:

> [Warner Bros.' counsel] Q: . . . I believe what you're referring to there is with respect to the picture agreement or the right to picture agreement for all 10 of those films co-financed by Village that were derivative works, Warner Bros. would pay the production costs as they were incurred, and Village would not pay anything until the pickup date. True?

[8] As defined in the 2014 MPRPA, as incorporated by reference in the 2017 Omnibus Amendment to the Co-Ownership Agreements.

> [Mr. Berg] A: Correct.

Oct. 20 H'rg Tr. at 44:7-14. In addition, Wayne Smith, Executive Vice President (Legal) for Warner Bros. Studio, testified to Warner Bros.' role as Production Lender:

> [Warner Bros.' counsel] Q: Okay. What does Section 8.1 of the 2014 MPRPA provide?
>
> [Mr. Smith] A: This section is the section that addresses the funding of the film toward its completion and it provides that Warner Bros., or an affiliate of Warner Bros., shall fund the production of the film, and it defines that Warner Bros. or its affiliate as the production lender.

Oct. 20 H'rg Tr. at 192:18-23; *see also* Oct. 20 H'rg Tr. at 193:14-25, 196:2-7. The Debtors admit that the obligation to pay back their share of production costs is the "primary obligation" under the Derivative Rights Agreements. *See* Ex. 354, *Debtors' Reply in Support of the Derivative Rights Sale* [D.I. 956] at ¶ 73 ("Following assignment, Alcon's primary obligations under the Derivative Rights Agreements would be to fund its co-investment share for Derivative Works . . . .").

26. The evidence is undisputed that Warner Bros. is typically carrying these costs—upwards of tens or hundreds of millions of dollars—for one or two years after the Debtors elect to participate in a film. *See* Oct. 20 H'rg Tr. at 46:24-47:13, 50:3-7. During this time, Warner Bros. bears the entire credit risk for the film's production. *See id.* at 47:1-23, 159:25-160:22, 163:8-17. Mr. Johnson, Alcon's co-CEO and co-founder, testified:

> [Warner Bros.' counsel] Q: And given that Warner is fronting and carrying all the costs of production this entire time, you would agree that Warner is taking the credit risk of whether Village will satisfy its payment obligation at the end, correct?
>
> [Mr. Johnson] A: Yes.

Id. at 160:18-22. Mr. Berg, the Debtors' general counsel, confirmed the same:

> [Warner Bros.' counsel] Q: And during that time where Warner Bros. is fronting all the production costs, Warner Bros. is bearing the risk if Village does not pay Warner Bros. at the pickup date, right?
>
> [Mr. Berg] A: Yes.

Id. at 47:20-23.

27. The risk Warner Bros. takes on is "considerable" and requires a "responsible" partner:

> [Warner Bros.' counsel] Q: So all these factors you've discussed, both good or bad, do they create any risk for Warner Bros. not getting paid?
>
> [Mr. Smith] A: Yes, they create considerable risk because if -- especially if negative factors occur and it becomes apparent that the movie is not going to perform well. If you don't have a responsible partner, you know, in place, it was willing to pay you, notwithstanding the fact that they know they're going to incur many millions of dollars of losses, that does put us at financial risk and that's why it's important that we have complete trust in the partner.
>
> *Id.* at 190:10-19.

28. This risk materialized even prior to the Petition Date. Warner Bros. bore the full cost of production of the *Matrix IV* when the Debtors refused to pay their ~$107 million in co-financing share—a decision they made "after Matrix had actually been released" and its performance was known. *Id.* at 52:6-9 (Berg testimony); *see also* Oct. Oct. 20 H'rg Tr. at 98:10-21; 200:4-9.

B. The Derivative Rights Agreements Are Contracts Founded on Trust and Confidence.

29. Warner Bros. entered into the original iterations of the Derivative Rights Agreements with the Debtors decades ago, in part due to the Debtors' then-association with the Kirby family. *See* Oct. 20 H'rg Tr. at 45:19-46:5, 201:11-21. That relationship began to sour in 2017 after the Debtors were acquired by Vine Alternative Investment Group ("Vine"), which, despite having assets worth billions of dollars, refused to backstop the Debtors' co-financing share for the *Matrix IV*. *See id.* at 39:18-21, 199:15-200:7.

30. Alcon's co-CEO, Mr. Johnson, testified that trust-based relationships are unique in the studio-financing business, in which few companies participate. *See* Oct. 20 H'rg Tr.

at 156:19-157:7, 158:16-21. Mr. Berg, the Debtors' general counsel, agreed that relationships were important in the movie studio business, and that the Debtors and Warner Bros. had maintained a close, "sister"-like, relationship prior to 2017. *See* Oct. 20 H'rg Tr. at 39:11-25, 45:25-46:1-5.

C. Alcon Cannot Provide Adequate Assurance of Future Performance.

31. Evidence at the Hearing further reflects that Alcon cannot provide Warner Bros. with adequate assurance of future performance. Alcon's co-CEO Mr. Johnson testified that Alcon relies on third-party financial institutions and the Smith family, who have no enforceable commitment to provide financing to Alcon to acquire and fund previous purchases in these chapter 11 cases. Oct. 20 H'rg Tr. at 120:13-123:19, 124:22-24, 163:14-24.

32. Warner Bros., alongside other parties, also testified about the ongoing Tesla litigation and other out-of-court disputes between Alcon and Warner Bros. that have generated "friction" between the two parties. Oct. 20 H'rg Tr. at 136:11-139:9, 147:17-24, 150:4-18, 154:6-155:9. Mr. Johnson, Alcon's co-CEO and co-founder, confirmed that the Tesla litigation remains ongoing:

> [Warner Bros.' counsel] Q: All right. And since those articles, Alcon has also sued Warner Bros., the Tesla litigation, correct?
>
> [Mr. Johnson] A: Yes.
>
> [Warner Bros.' counsel] Q: And that litigation –
>
> [Mr. Johnson] A: Well, specifically, Warner Bros. [D]iscovery.
>
> [Warner Bros.' counsel] Q: And that litigation is still currently pending, correct?
>
> [Mr. Johnson] A: Yes.

Oct. 20 H'rg Tr. at 147:17-24.

V. RELIEF REQUESTED

33. Warner Bros. seeks entry of an order pursuant to Rule 8007 of the Bankruptcy Rules, substantially in the form attached as hereto as **Exhibit A**, granting a stay of the Debtors' Sale of Derivative Rights Alcon, including the Debtors' assumption and assignment of the Derivative Rights Agreements, pending Warner Bros.' appeal of this Court's Order.

VI. BASIS FOR RELIEF

34. Within the Third Circuit, courts consider four factors when deciding whether to grant a stay pending appeal: (i) whether the appellant has a made a strong showing that it is likely to succeed on the merits, or at least a "substantial case" on the merits; (ii) whether the appellant will be irreparably injured absent a stay; (iii) whether the stay will substantially harm other interested parties in the litigation; and (iv) whether the stay is in the interest of the public. *In re Revel AC, Inc.*, 802 F.3d 558, 565 (3d Cir. 2015) (citing *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987), which provides, in relevant part, that on the first factor, the movant need only show "a strong likelihood of success on appeal, or where, failing that, it can nonetheless demonstrate a substantial case on the merits."); *see also, e.g.*, *S.S. Body Armor I., Inc. v. Carter Ledyard & Milburn LLP*, 927 F.3d 763, 771 (3rd Cir. 2019); *In re AIO US, Inc., et al.*, No. 24-11836, at 5 (Bankr. D. Del. Oct. 30, 2025) [D.I. 1673]. The first two factors are "the most critical." *Body Armor*, 927 F.3d at 772 (citing *Nken v. Holder*, 556 U.S. 418, 434 (2009)). Among those two factors, the Third Circuit has opined "the former [likelihood of success on the merits] is arguably the more important piece of the stay analysis." *Id.*

35. It is only upon satisfaction of the first two factors that courts assess the harm to the opposing parties and weigh the public interest. *Id.* In employing this test, Third Circuit courts "balance the harms by weighing the likely harm to the movant absent a stay, the second

factor, against the likely harm to stay opponents if the stay is granted, the third factor." *Id*. (citing *Revel*, 802 F.3d at 569). The public-interest factor calls for gauging "consequences beyond the immediate parties." *Id.* (internal quotations omitted). Ultimately, the Third Circuit has adopted a "sliding-scale" approach, where, as here, "the more likely the [movant] is to win, the less heavily need the balance of harms weigh in [its] favor; the less likely [it] is to win, the more [heavily] need [the balance of harms] weigh in [its] favor." *Id.*

36. For the reasons set forth below, all four factors favoring a stay of the Sale pending appellate review of the Order are met here. Accordingly, the Motion should be granted.

A. Warner Bros. Is Likely to Succeed on the Merits.

37. In light of the record, Warner Bros. is likely to succeed in its appeal of the Order and the Court's underlying determinations that (a) the Derivative Rights Agreements do not constitute financial accommodations, (b) the Derivative Rights Agreements are not unassignable personal services contracts, and (c) Alcon has demonstrated adequate assurance of future performance in connection with assumption and assignment of those agreements.

38. Though the caselaw recites whether a "strong showing" has been made, in actuality, the law embraces a relaxed standard in assessing likelihood of success for purposes of a stay pending appeal. To satisfy this factor, Warner Bros. need only show that it has "a reasonable chance or probability, of winning" on appeal. *Body Armor*, 927 F.3d at 772; *see also Revel*, 802 F.3d at 568 ("[T]he likelihood of winning on appeal need not be 'more likely than not[.]'"). This can include instances where "the appeal raises serious and difficult questions of law in an area where the law is somewhat unclear." *Evans v. Buchanan*, 435 F. Supp. 832, 844 (D. Del. 1977); *cf. generally In re Los Angeles Dodgers LLC*, 465 B.R. 18, 30-34 (D. Del. 2011) (granting the appellant's stay motion, citing its "strong likelihood of success on the merits" because the

"Bankruptcy Court likely erred in concluding that the 'no shop' provision is unenforceable in bankruptcy," further noting "[t]he enforceability of the no shop provision is also "a question upon which there is a substantial difference of opinion, *i.e.*, a 'genuine doubt as to the correct legal standard'"). This prong may also be met where, as here, the law does not conclusively establish the propriety of the court's decision. *See In re St. Johnsbury Trucking Co.*, 185 B.R. 687, 689 (Bankr. S.D.N.Y. 1995).

39. On appeal, Warner Bros. will demonstrate more than a likelihood of success on the merits because it has three strong arguments, all of which amount to at least a substantial case. The core of all three arguments is section 365 of the Bankruptcy Code. *See* Agreed Scheduling Order ¶ 4 (Sale stipulated to include assumption and assignment of Derivative Rights Agreements to Alcon pursuant to section 365, subject to Warner Bros.' objections). That statute permits a debtor to "assume or reject any executory contract or unexpired lease of the debtor" if defaults are cured and the contract counterparty is provided adequate assurance of future performance, with few exceptions. *See* 11 U.S.C. § 365(a)-(b). As relevant here, section 365(c)(2) prevents a debtor from assuming or assigning any executory contract if "such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor . . . ." 11 U.S.C. § 365(c)(2). Section 365(c)(1) also bars a debtor from assuming or assigning an executory contract where applicable law—*i.e.*, California law—excuses the non-debtor contract counterparty from rendering performance to an entity other than the Debtors. *See id.* at § 365(c)(1). That is, if the contract is personal to the Debtors under California law, it cannot be assigned under the Bankruptcy Code absent Warner Bros.' consent, which Warner Bros. has not given. In addition, the Debtors are statutorily required to provide adequate assurance of future performance in connection with the assumption and assignment of the Derivative Rights

Agreements, which they failed to do. *See id.* at §§ 365(f)(2)(b), 363(b)(1). Warner Bros. addresses each point in turn below.

a. The Derivative Rights Agreements constitute financial accommodations that cannot be assumed or assigned over Warner Bros.' objection.

40. In its November 5, 2025 Opinion, the Court concluded that the Derivative Rights Agreements were not financial accommodations, and therefore are assumable and assignable notwithstanding 365(c)(2), because, the "nature of entire transaction" was "not one of financial accommodation." Mem. Op. at 10-11. Without addressing the Derivative Rights Agreements' plain and unambiguous text, nor the cumulative and consistent testimony and evidence that Warner Bros.' role under the Derivative Rights Agreements was one of a "Production Lender," the Court held that the purpose of the Derivative Rights Agreements was to jointly exploit intellectual property rights—"not for Warner Bros. to provide financing to the Debtors, but for the Debtors to provide financing to Warner Bros. to mitigate [] risk. . . ." Mem. Op. at 11, n.38. Warner Bros. submits that this result is contrary to the Derivative Rights Agreements' plain terms, as well as the extensive record developed at the Hearing. Warner Bros. further submits that it maintains at least a reasonable probability that the District Court or Third Circuit will view the evidence as requiring a contrary conclusion.

41. In reaching its decision, the Court relied on the standard set forth by the Seventh Circuit in *United Airlines*, which held "that a court must determine the nature of the entire transaction rather than hunt for features that look like loans or guarantees" when assessing whether a contract is a financial accommodation under section 365(c)(2). *In re United Airlines, Inc.*, 368 F.3d 720, 724 (7th Cir 2004); Mem. Op. at n.37. However, to complete the analysis of what is or is not a financial accommodation, the Seventh Circuit emphasized that it was important to focus on "the actual features of the transaction":

> to the extent that the eleventh circuit called this a quest for the principal or primary 'purpose,' we are skeptical; the context of business entities' heads are elusive. 'Purpose' usually is covered by quicksand. Who can tell what the negotiators were thinking? Why should their thoughts matter? Nothing in the statutory text requires resort to anyone's purposes. *Better to concentrate on the actual features of the transaction—an objective rather than a subjective approach*.

United Airlines, 368 F.3d at 724 (emphasis added).

42. In its Opinion, the Court does exactly what the Seventh Circuit cautioned against. *See* Mem. Op. at n.38 (describing the general purpose of the documents). The testimony of each of the Debtors', Warner Bros.', and Alcon's witnesses was consistent: under the Derivative Rights Agreements, Warner Bros. finances upwards of tens or hundreds of millions of dollars to produce a film over a years' long period before the Debtors make any payments to Warner Bros. Oct. 20 H'rg Tr. at 47:1-23, 159:25-160:22, 163:8-17.

43. Moreover, the provisions of the Derivative Rights Agreements (namely, the Co-Ownership Agreements, as amended by the 2017 Omnibus Amendment, and applicable provisions of the 2014 and 2020 MPRPAs as referenced therein), make clear that the primary purpose is for Warner Bros. to provide the Debtors with a financial accommodation through its extension of credit. The contracts give the Debtors the right to participate in derivative works, but they do not have to pay up front—rather, Warner Bros. loans them money in every instance.

44. Paragraph 4(b) and 4(d) of attachment 1 to the 2017 Omnibus Amendment describes the process pursuant to which Warner Bros. offers Village the opportunity to co-finance certain derivative work: Warner Bros. sends Village a project notice, which Village must accept within 15 business days.[9] If Village accepts, Warner Bros. will then produce the project *and front all production and marketing costs* for the picture, including Village's share of such costs. *Id.*

[9] Admitted as Ex. 5 at the Hearing.

Village must then repay Warner Bros. for its co-financing share (which is roughly its share of the film's production costs) by the time the film is released—which is generally years after Village accepted the project notice.[10]

45. Article 8 of the 2014 MPRPA—an agreement that is specifically referenced in, and which such form is incorporated by, the 2017 Omnibus Amendment—outlines Warner Bros.' role as the Production Lender, who, in return for accommodating the entire cost of producing a film, is entitled to collect accrued Production Interest along with the co-financing payment. *See* 2014 MPRPA, Ex. 2 at 18-19; *see also* Oct. 20 H'rg Tr. at 44:10-18, 46:15-20, 66:3-6, 193:14-25, 194:9-14, 196:2-7. The promissory notes and loan agreements executed by Warner Bros. and the Debtors for specific pictures also evidence a commitment for the Debtors to repay Warner Bros with interest at a usual rate of LIBOR plus 4%. *See, e.g.*, *American Sniper* Promissory Note;[11] May 26, 2010 Loan Agreement;[12] *Yes Man* Promissory Note.[13] Oct. 20 H'rg Tr. at 57:8-60:7, 194:9-195:2. The same financial accommodations are present for all of the other pictures, whether or not the parties documented them through separate notes. In all cases, Warner Bros. commits to fronting all production costs in connection with the projects Village accepts from the time the picture is "greenlighted" until shortly before the picture is released, and oftentimes for an even longer period of time. Thus, the Derivative Rights Agreements' clear terms and corroborating testimony of the witnesses at the Hearing establish that Warner Bros. has at least a "reasonable chance" of demonstrating on appeal that the Agreements are financial accommodations. *Body Armor*, 927 F.3d at 772; *see also Revel*, 802 F.3d at 568.

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[10] *See* 2014 and 2020 MPRPAs § 5.1 & Ex. F (form RPA) § 2(b) thereto, admitted as Exs. 2 and 3 at the Hearing.

[11] Admitted as Ex. 52 at the Hearing.

[12] Admitted as Ex. 53 at the Hearing.

[13] Admitted as Ex. 62 at the Hearing.

46. The facts at bar are therefore clearly distinguishable from *United Airlines*, where the Court held a credit card merchant's agreement with the debtor was not a financial accommodation. Central to the Seventh Circuit's decision was the fact that the merchant did not actually deposit anything in the debtor's account, and was only an intermediary akin to an "[i]nterent service provider" or a "courier that moves paper." 368 F.3d at 723. Further, the Seventh Circuit noted that the "[t]he promise to extend credit . . . is not something [the debtor] has assumed . . . ." *Id.* Neither of those facts are shared with the Derivative Rights Agreements. Warner Bros. is not a pass-through intermediary or courier of funds; instead, Warner Bros. finances the production of films for the Debtors under the terms of the Derivative Rights Agreements.

47. *In re Sportsman's Warehouse, Inc.*, 457 B.R. 372 (Bankr. D. Del. 2011) is not to the contrary—rather, it supports Warner Bros. *See* Mem. Op. at 10 n.28-29. Indeed, the court determined that an agreement to create a non-residential real property lease could nevertheless constitute a financial accommodation due to a single provision that included a purchase obligation at the end of the lease term. 457 B.R. 372, 392-94. The Delaware bankruptcy court noted that, when viewed holistically, "'[a] contract is not a 'financial accommodations' contract if the extension of credit is merely incidental to the broader contractual arrangement involving the debtor.'" *Id*. at 392-93.

48. Here, as pled in *Sportsman's Warehouse*, the financial accommodations Warner Bros. provides to the Debtors are far from incidental to the broader contractual arrangement. To be sure, Debtors', Alcon's and Warner Bros.' corporate representatives uniformly testified that Warner Bros. bears an immense amount of financial risk during the production of a Derivative Rights film by essentially offering the Debtors (and now potentially Alcon) a no-money-down loan for production costs. *See* Oct. 20 H'rg Tr. at 47:1-23, 159:25-160:22, 163:8 17,

190:10-19. What Warner Bros. receives in return for this risk is payment on accrued Production Interest. In other words, the financing provided by Warner Bros. is not incidental to the Derivative Rights Agreements, it is the main feature of them. This primary purpose, and the risk Warner Bros. assumes as a result, was proven by the Debtors' failure to pay Warner Bros. as the Production Lender in connection with *Matrix IV*.

49. The Court's Opinion, as referenced and incorporated in the Order, also fails to consider the persuasiveness of the Ninth Circuit's recent decision in *Svenhard's Swedish Bakery v. Bakery (In re Svenhard's Swedish Bakery)*, 154 F.4th 1100, 1104-05 (9th Cir. 2025). There, the court held that section 365(c)(2)'s financial accommodations exception includes "*more* than just loans and other debt financing" and can include arrangements for "*financial favor[s]*" that are "supplied for convenience or to satisfy a need." *Id.* (emphasis added). The court held that a settlement agreement contained financial accommodation that were not merely incidental to it because the agreement accepted a schedule of payments and involved the forbearance and reduction of the amount to which the counterparty would otherwise be entitled. *Id.* at 1104-06. Similarly, because the Derivative Rights Agreements commit Warner Bros. to front all production costs in connection with derivative works that the Debtors, and now Alcon, agree to co-finance under their terms, the agreements are ones for "financial favor[s]" that cannot be assigned.

50. *Svenhard* also examined an earlier Ninth Circuit decision where the court found financial accommodations present when a lender offered loans to third parties that were an "indispensable means of financing the debtor's business." *Id.* at 1106 (citing *In re Sun Runner Marine, Inc*., 945 F.2d 1089, 1092 (9th Cir. 1991)). Here, not only is Warner Bros.' financing the only way the Debtors can participate in derivative works, but Warner Bros. pays third parties the costs of producing derivative films that arise under the Derivative Rights Agreements, which

directly benefit the Debtors' business. The Derivative Rights Agreements are therefore unassignable financial accommodations.

b. In the alternative, the Derivative Rights Agreements are personal trust and confidence contracts that cannot be assigned without Warner Bros.' consent.

51. Warner Bros. also can demonstrate a likelihood of success on appeal in showing that the Derivative Rights Agreements contracts for personal services, which precludes assignment over Warner Bros.' objection under section 365(c)(1). *See* Mem. Op. at 12. In its ruling on that issue, the Court correctly noted that under applicable California law, "contracts involving relationships of personal confidence and trust or personal services are not assignable by either party without the consent of the other party[.]" Mem. Op. at 12-13 (citing *In re Planet Hollywood Int'l Inc.*, No. 99-3612, 2000 WL 36118317, at *4 (D. Del. Nov. 21, 2000)). But the Court erred in concluding that Warner Bros. could not overcome the presumption that a contract between two corporations is not a contract for personal services. *See id.*

52. Importantly, Warner Bros.' corporate representative, Mr. Smith, testified that the Derivative Rights Agreements were entered into at a time when Warner Bros.' personnel maintained a close relationship with the Debtors and the Kirby family. *See* Oct. 20 H'rg Tr. at 50:3-23, 201:11-21. His testimony further explained how the sensitive commercial information that is exchanged pursuant to the Derivative Rights Agreements requires the parties to trust each other. *Id.* at 210:5-11, 225:8-226:4. In similar cases, Delaware courts have held that section 365(c)(1) bars assignment of contracts rooted in personal trust and confidence among two corporate parties. *See In re Planet Hollywood Int'l, Inc*., 2000 WL 36118317, at *1 (unpublished) ("[B]ased on unique relationships involving the reputation and character of the contracting parties," the agreements were ones for personal services and unassignable under section 365(c)(1)); *see also EBC I, Inc. v. Am. Online, Inc. (In re EBC I, Inc.)*, 380 B.R. 348, 363 (Bankr.

D. Del. 2008), *aff'd*, 382 F. App'x 135 (3d Cir. 2010) ("The identity of a party is material to the performance of a contract if the contract *is founded on* one of the parties maintaining trust or confidence in the ability to perform, judgment, or business experience of the other party.") (emphasis added). This caselaw provides Warner Bros. with a likelihood of success on appeal, or at least a substantial case on the merits, that the Agreements are unassignable personal trust and confidence contracts.

53. Witnesses for both the Debtors and Alcon also testified regarding the importance and function of close, trusted relationships in the studio-financing business. Mr. Berg testified that the relationship between Warner Bros. and the Debtors was so close that project notices, despite being required under the Derivative Rights Agreements, were not even sent out for nearly two decades and were only implemented when the relationship soured following Vine's acquisition of the Debtors in 2017. Oct. 20 H'rg Tr. at 39:15-19; 45:19-48:4, 199:15-20. Similarly, Alcon's co-CEO, Mr. Johnson, testified that few companies operate in this unique area of business, and that trusting relationships are important for partnerships between studios and co-financers. Oct. 20 H'rg Tr. at 156:19-157:7, 158:16-21.

c. Alcon cannot provide adequate assurance of future performance.

54. Warner Bros. can also demonstrate a likelihood of success on appeal because neither the Debtors nor Alcon can provide Warner Bros. with adequate assurance of future performance as required by section 365 of the Bankruptcy Code. *See* 11 U.S.C. §§ 365(b)(1), 365(f)(2). What constitutes "adequate assurance of future performance" hinges on "the facts and circumstances of each case." *In re Carlisle Homes, Inc*., 103 B.R. 524, 538 (Bankr. D.N.J. 1988). Such facts and circumstances include a purchaser's ability to maintain a healthy relationship with a primary contract counterparty. *See generally, e.g*., *In re Texas Health Enters., Inc.*, 246 B.R.

832, 836 (Bankr. E.D. Tex. 2000) (holding that the debtor failed to provide adequate assurance of future performance, emphasizing the parties' historical relationship and the adverse impact of their "poor" relationship on operations under the agreement at issue). This is particularly relevant to the circumstances of this case given the established adversarial relationship between Alcon and Warner Bros. Oct. 20 H'rg Tr. at 147:17-150:7; 154:6-155:12, 230:24-231:4.

55. Furthermore, the evidence casts doubt on Alcon's ability to continuously perform co-financing obligations under the Derivative Rights Agreements. Alcon appears to be highly leveraged, having already pledged its recently acquired assets from these chapter 11 cases to different debt facilities, and its current available liquidity may not be enough to cover the co-financing share for even one film—*Practical Magic 2*. *See* Oct. 20 H'rg Tr. at 121:20-122:5, 123:22-124:2, 125:9-14, 163:20-24. Alcon's primary argument for adequate assurance at the Hearing was that the Smith family would be available to invest and fund Alcon's business ventures due to the parties' close relationship—but that claim is backed by no enforceable obligation whatsoever. *See id*. at 121:20-122:5, 123:22-124:2, 125:9-14, 163:20-24. This unenforceable belief that the Smith family will financially support Alcon in the future is insufficient to demonstrate adequate assurance. *See generally, e.g.*, *Richmond Leasing Co. v. Cap. Bank, N.A.*, 762 F.2d 1303, 1309-10 (5th Cir. 1985) (adequate assurance of future performance, as intended by the Bankruptcy Code's legislative history, is a practical concept and courts assess it by examining factors such as whether a guarantee is provided) (internal citations omitted); *In re Harnischfeger Indus., Inc.*, 294 B.R. 47, 54 (Bankr. D. Del.), *aff'd*, 316 B.R. 616 (D. Del. 2003) (concluding that a mere statement by a subsidiary in a letter that its corporate parent would provide a guarantee is insufficient to bind the parent company to guarantee the subsidiary's obligation). Alcon also initiated the Tesla litigation against Warner Bros. that, contrary to the Court's determination

otherwise, fails to provide Warner Bros. with assurance that Alcon can serve as a trusted partner in connection with the Derivative Rights. Mem. Op. at 16; *but see* Oct. Hr'g Tr. 233:24-25, 234:1. Accordingly, Warner Bros. has demonstrated a likelihood of success on appeal as to Alcon's ability to provide adequate assurance.

B. Warner Bros. Will Suffer Irreparable Injury Absent a Stay.

56. The second factor requires that Warner Bros. demonstrate likely irreparable injury in the absence of a stay. *See Body Armor*, 927 F.3d at 772. That standard is met here for two key reasons. *First*, absent a stay, Warner Bros. faces ongoing, immediate obligations under the Derivative Rights Agreements, which section 365(c)(2) was enacted to prevent. *Second*, consummation of the Sale will foreclose Warner Bros.' ability to seek an effective remedy on appeal under Bankruptcy Code section 363(m).

57. First, if the Sale of the Derivative Rights to Alcon closes, Warner Bros. faces immediate, potential obligations under the Derivative Rights Agreements. The Derivative Rights Agreements are executory and, as demonstrated by both *Matrix IV* and *Practical Magic 2*, require Warner Bros. to share commercially sensitive "key" documents with its contract counterparty.[14] To the extent Alcon elects to co-finance a derivative work pursuant to the Derivative Rights Agreements' terms, Warner Bros. will be forced to share with Alcon the draft screenplay for the film, proposed cast, and project budget, and also to share credits on major blockbuster films that far exceed any relationship between Alcon and Warner Bros. Oct. 20 H'rg Tr. at 50:3-23, 127:12-14, 154:3-5, 160:4-12, 188:4-15, 201:22-202:6, 225:8-226:4. Once this highly confidential information is provided to Alcon, the disclosure cannot be undone through legal or equitable remedies. *See e.g.*, *Hiken v. Dep't of Def.*, No. C 06-02812 JW, 2012 WL

[14] *Supra*, n. 5.

1030091, at *2 (N.D. Cal. Mar. 27, 2012); *Providence J. Co. v. Fed. Bureau of Investigation*, 595 F.2d 889, 890 (1st Cir. 1979). Indeed, this information can and has been weaponized against Warner Bros.—in 2022, the Debtors filed a state court action involving *Matrix IV* and another film, *Wonka* (which Warner Bros. quickly compelled to arbitration) that disclosed confidential plot details. *See* Ex. 933 (Admitted) at ¶¶ 48-49.

58. In addition, Warner Bros. will face irreparable harm if the Sale of the Derivative Rights closes before an appellate court can render an opinion. Section 363(m) of the Bankruptcy Code provides (with an exception for bad faith conduct) that "[t]he reversal or modification on appeal of an authorization . . . of a sale or lease of property does not affect the validity of a sale or lease . . . *unless such authorization and such sale or lease were stayed pending appeal*." 11 U.S.C. § 363(m) (emphasis added). Section 363(m) thus expressly limits potential relief following reversal or modification of a sale order on appeal unless that order is stayed. *See In re BSA*, 137 F.4th 126, 152, 155 (3d Cir. 2025) (Section 363(m) "prohibits the reversal or modification of § 363(b) sales," and "kicks in when (1) the appeal is from an authorization of a sale [under § 363(b)]; (2) the purchase was made in good faith; and (3) the sale was not stayed.") (internal quotations omitted).[15]

59. Courts have long recognized that irreparable harm exists where, as here, effective relief cannot be granted absent a stay. *See In re Adelphia Comms. Corp.*, 361 B.R. 337, 351 (S.D.N.Y. 2007) (finding irreparable harm where it would "become impracticable to ever fashion effective relief for Appellants" absent a stay); *In re Tribune Co.*, 477 B.R. 465, 476 (Bankr. D. Del. 2012) (same); *see also Revel AC, Inc.*, 802 F.3d at 571 (recognizing that irreparable harm

[15] For this reason, even if the Court declines to grant a stay pending appeal, Warner Bros. requests that the Court continue a limited stay of the Order for fourteen (14) days so that Warner Bros. may seek a stay from the District Court.

exists where injury "cannot be prevented or fully rectified by the tribunal's final decision") (internal quotations omitted). Although certain cases suggest that mootness, alone, may not constitute irreparable injury,[16] at least one Delaware bankruptcy court has recently found otherwise in an analogous statutory context under section 364(e). *See 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) (noting "it is not clear that [appellants] will obtain meaningful relief, absent a stay, if they prevail on their appeal from the declaratory judgment ruling").

60. Given the risk of reputational harm and statutory mootness, along with the likelihood of success on the merits of its appeal, Warner Bros. respectfully submits that a stay of the Order and closing of the Sale pending appeal is necessary to avoid irreparable harm.

C. No Substantial Harm to Other Parties Would Result from a Stay.

61. In determining whether a party will suffer "substantial" injury if a stay is granted, a court must balance the likely harm to the movant absent a stay against the likely harm to opponents if the stay is granted. *Body Armor*, 927 F.3d at 772. Stay opponents must offer more than "speculative," unsupported assertions of harm. *Revel*, 802 F.3d at 572 ("Absent some sort of declaration or other evidence in the record that a stay would cause substantial harm, the harm to [the debtor] was at best speculative."). Here, the potential harm to other parties is minimal, and the equities of the case favor granting Warner Bros. a stay pending appeal.

62. As an initial matter, the dispute over the Sale and the Derivative Rights primarily impacts only three parties: the Debtors, Alcon, and Warner Bros. Other creditors are relatively unaffected. If the Sale is overturned and the Debtors close on the Sale of the Derivative

[16] *See, e.g., In re Glob. Home Prods., LLC*, No. 06-10340-KG, 2006 WL 2381918, at *1 (D. Del. Aug. 17, 2006); *In Re Trans World Airlines, Inc.*, No. 01-0056 (PJW), 2001 WL 1820325, at *10 (Bankr. D. Del. Mar. 27, 2001), *aff'd sub nom. In re Trans World Airlines, Inc*., 322 F.3d 283 (3d Cir. 2003).

Rights with Warner Bros. instead of Alcon, the Debtors' estates will not be deprived of value. Instead, the estate will receive funds for distribution: *at least* $17.5 million as part of the Debtors' designated Back-Up Bid in the event the appellate court strictly construes the Debtors' business judgment in designating Warner Bros. as the Back-Up Bidder at $17.5 million following the Auction. *See* D.I. 446. Warner Bros., however, stands ready, willing, and able to close on its $19.5 million in consideration in accordance with Warner Bros.' revised October 19, 2025 bid. Oct. 20 H'rg Tr. at 101:10-20; Oct. 21 H'rg Tr. at 83:3-16. Even if there is potential for harm to creditors through a delay of distributions on account of the appeal, Warner Bros. is the Debtors' largest asserted unsecured creditor and should not be unduly prejudiced solely to benefit other creditors of the estate.[17]

63. Next, there is no indication that Alcon and the Debtors have any imminent need to close the Sale, other than to moot an appeal pursuant to section 363(m). The Debtors first sought a hearing on the Derivative Rights sale in connection with the Library Asset sale hearing on June 18, 2025, but continued it for several months until October. *See, e.g.*, *Notice of Adjournment of Sale Hearing with Respect to the Derivative Rights Only* [D.I. 511]; *see also* Agreed Scheduling Order. Despite Warner Bros.' repeated requests to review, the Debtors did not file nor exchange their proposed Derivative Rights sale asset purchase agreement with Alcon (the "APA") until the deadline under September 15, 2025 [D.I. 824]. The Debtors subsequently filed a further revised APA October 17, 2025 [D.I. 954]—*mere days* before the Hearing and after Warner Bros. had filed its objections to the Sale.

[17] Notwithstanding the lack of substantial harm to the Debtors or other parties, the Debtors are holding Warner Bros.' deposit in connection with its Back-Up Bid, which Warner Bros. submits constitutes a sufficient bond, should the Court require one, to safeguard against any actual damages to other parties caused by a stay of the Order.

64. These subsequent filings, and the corresponding changes made to the APA, show that neither Alcon nor the Debtors need to close the Sale quickly. Indeed, none of the APAs that were filed were signed by the Debtors. And the initial APA was entirely unsigned notwithstanding the Agreed Scheduling Order's mandate to the contrary. Agreed Scheduling Order ¶ 10 ("The Debtors shall file a proposed final form of sale order *and executed APA* with all schedules and exhibits with respect to the Derivative Rights Sale . . . on September 15, 2025") (emphasis added).

65. Likewise, the Debtors and Alcon amended the deadline in APA Section 7.01 to "use reasonable best efforts to seek entry of the Sale Order" from June 18, 2025 in the initial APA, to December 15, 2025 in the revised APA. *Cf.* D.I. 824 (September 15, 2025 APA, § 7.01); D.I. 954 (October 17, 2025 APA, § 7.01) and D.I. 1043-1 (same). The Debtors and Alcon similarly amended the outside date to close the Sale in Section 8.01(d) of the APA from July 7, 2025, to December 31, 2025. *Cf.* D.I. 824 (September 15, 2025 APA, § 8.01(d)); D.I. 954 (October 17, 2025 APA, § 8.01(d)) and D.I. 1043-1 (same). APA Section 7.01 also requires the Debtors to "use commercially reasonable efforts to defend" an appeal of any Sale Order, demonstrating that Alcon and the Debtors have planned and accounted for an appeal.

66. Moreover, the Derivative Rights Agreements pertain to future films and there is no evidence of any imminent need to close the Sale transaction. The only derivative work currently in production under the Derivative Rights Agreements is *Practical Magic 2*. Warner Bros. disputes the Debtors' right to participate in *Practical Magic 2*, and also contends that the Debtors' purported, conditional Project Notice Acceptance is invalid. *See* Ex. 57 (Admitted), Sept. 8, 2025 Warner Letter Re: Village Purported Acceptance of PM2 Project Notice [D.I. 910-38]. The Debtors have not yet sought to assign their purported acceptance of the Project Notice for

Practical Magic 2. Mem. Op. at 15. Indeed, that Warner Bros. remains in limbo while the Debtors and Alcon gain more and more knowledge about the film's potential commercial success underscores the risks that make the Derivative Rights Agreements unassignable. *See* Oct. 20 H'rg Tr. at 52:1-5 (Warner Bros.' Counsel: "And so all those things that occur between the project notice acceptance and the release date when Village has to pay, Village has now gained more information about whether or not the film may become a financial success. True?" Mr. Berg: "True.").

67. Based on the foregoing, the harm in delaying the Sale pending appeal is minimal. Thus, the third factor weighs in favor of the Court awarding Warner Bros. a stay.

D. The Public Interest Favors a Stay.

68. Finally, the public interest supports staying the closing of the Sale until the legal impediments to closing Warner Bros. identifies under section 365 of the Bankruptcy Code are addressed, for three main reasons.

69. First, "the public has an interest in correct application of the law." *In re Nw. Missouri Holdings, Inc.*, Case No. 15-10728-BLS, 2015 WL 3638000, at *3 (D. Del. June 11, 2015). The issues outlined above present significant issues of law, and Warner Bros. has a strong likelihood of success on the merits with respect to those issues on appeal. Along similar lines, there is limited Third Circuit case law regarding financial accommodations under section 365(c)(2) of the Bankruptcy Code. This case, therefore, presents an opportunity for the District Court or Third Circuit Court of Appeals to resolve a question previously raised, but not addressed, at the appellate level. *See Watts v. Pennsylvania Hous. Fin. Co.*, 876 F.2d 1090, 1095 (3d Cir. 1989) (providing limited analysis of financial accommodations under section 365(c)(2)); *see also In re Weinstein Co. Holdings, LLC*, No. BR 18-10601-MFW, 2020 WL 1640296, at *9, n.13 (D. Del.

Apr. 2, 2020) (declining to address arguments regarding the assumption and assignment of film Investment Agreements under section 365(c)(2)), *aff'd sub nom. In re Weinstein Co. Holdings LLC*, No. 20-1878, 2021 WL 2023065 (3d Cir. May 21, 2021).

70. *Second,* there is also a strong federal interest in protecting creators and owners of copyrighted material, like Warner Bros. *See generally In re Patient Educ. Media, Inc*., 210 B.R. 237, 242 (Bankr. S.D.N.Y. 1997). Warner Bros. is the creative spark behind the derivative works with exclusive rights to, *inter alia*, exploit those works. *See, e.g.,* Admitted Ex. 5 (2017 Omnibus Amendment), attach. 1, ¶ 4(f). Such rights must be respected.

71. *Third,* the public interest favors the ability to seek meaningful appellate review. *See In re Adelphia Commc'ns Corp., Inc.*, 361 B.R. 337, 367 (Bankr. S.D.N.Y. 2007) ("[T]here is a significant public interest in vindicating the rights of the minority and preventing the will of the majority to go unchecked by appellate review."); *In re Revel AC, Inc.*, No. 14-22654 GMB, 2015 WL 567015, at *5 (D.N.J. Feb. 10, 2015) (noting the "public interest favoring the correct application of the law, and the ability to redress harm through appellate review."). As shown above, even if Warner Bros. is successful on appeal, it will not be able to unwind the Sale and terminate the unassignable Derivative Rights Agreements that constitute financial accommodations absent a stay.

VII. NOTICE

72. Notice of this Motion will be served on (i) counsel for the Debtors, (ii) counsel for the Office of the United States Trustee, (iii) counsel for the Official Committee of Unsecured Creditors, (iv) counsel for Alcon, and (v) on all parties who have requested notice pursuant to Bankruptcy Rule 2002.

VIII. CONCLUSION

Wherefore, Warner Bros. respectfully requests that this Court (i) grant the Motion and enter the Proposed Order and (ii) award all other relief as is just, equitable and appropriate.

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Dated: November 18, 2025
Wilmington, Delaware

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EXHIBIT A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re VILLAGE ROADSHOW ENTERTAINMENT GROUP USA INC., *et al.*,[1] Debtors.	Chapter 11 Case No. 25-10475 (TMH) (Jointly Administered) **Re: D.I. 1043**

ORDER GRANTING WARNER BROS. ENTERTAINMENT INC.'S EMERGENCY MOTION TO STAY PENDING APPEAL

Upon consideration of the motion (the "Motion")[2] by Warner Bros. Entertainment Inc. and its affiliates (collectively, "Warner Bros.") for entry of an order (this "Stay Order"), pursuant to Rule 8007 of the Federal Rules of Bankruptcy Procedure, staying 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") pending final appellate review; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 1334 and 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and it appearing that this is a core matter pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and it

[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] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them as set forth in the Motion.

appearing that venue of the Chapter 11 Case and of the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that due and adequate notice of the Motion has been given under the circumstances, and that no other or further notice need be given; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is GRANTED.[3]

2. The Sale Order is STAYED pending the final disposition of Warner Bros.' appeal of the Sale Order.

3. The terms and conditions of this Stay Order are immediately effective and enforceable upon its entry.

4. Warner Bros. is authorized to take all actions necessary to effectuate the relief granted in this Stay Order in accordance with the Motion.

[3] In the event the Court denies the Motion, Warner Bros. respectfully requests that the Court continue the stay of the effectiveness of the Order for fourteen (14) days to avoid creating an immediate emergency at the District Court while Warner Bros. seeks expedited relief from the District Court.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document and any corresponding attachments were served this 18th day of November 2025, via CM/ECF upon those parties registered to receive such electronic notifications, and in the manner indicated upon the counsel identified on **Exhibit A**, attached hereto.

/s/ Casey B. Sawyer
Casey B. Sawyer (No. 7260)

EXHIBIT A

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