

Case No. 25-cv-05980 (CRE)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re: ZACHRY HOLDINGS, INC., *ET AL.*,
Reorganized Debtors.

ENCINA DEVELOPMENT GROUP, LLC,
Appellant,

v.

ZACHRY HOLDINGS, INC., *ET AL.*,
Appellees.

Appeal from the United States Bankruptcy Court for the
Southern District of Texas, Houston Division (Case No. 24-90377 (MI))

ANSWER BRIEF OF
APPELLEES ZACHRY HOLDINGS, INC., *ET AL.*

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Corporate Disclosure Statement

Pursuant to Federal Rule of Bankruptcy Procedure 8012, Zachry Holdings, Inc. and its affiliated reorganized debtors Zachry EPC Holdings, LLC, Zachry Engineering Corporation, ZEC New York, Inc., Zachry High Voltage Solutions, LLC, UE Properties, Inc., ZEC Michigan, Inc., Zachry Constructors, LLC, Zachry Industrial, Inc., Zachry Enterprise Solutions, LLC, Moss Point Properties, LLC, Zachry Nuclear Construction, Inc., Zachry Nuclear, Inc., Zachry Nuclear Engineering, Inc., Zachry Plant Services Holdings, Inc., JVIC Fabrication, LLC, Zachry Industrial Americas, Inc., Zachry Maintenance Services, LLC, J.V. Industrial Companies, LLC, Madison Industrial Services Team, LLC, and Computer Simulation & Analysis, Inc. (collectively, “**Zachry**”), by and through undersigned counsel, make the following disclosures:

1. Zachry Holdings, Inc. is the direct or indirect parent of each of the other Zachry entities listed above, and its equity securities are wholly owned by Zachry, LLC.
2. No publicly held corporation directly or indirectly owns 10% or more of the stock in Zachry, LLC.

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Statement Regarding Oral Argument

Pursuant to Rule 8019 of the Federal Rules of Bankruptcy Procedure, Zachry believes this Court can affirm the decision on appeal without oral argument. To the extent that this Court determines that oral argument is warranted or otherwise decides to schedule oral argument, Zachry will participate.

Preliminary Statement

The bankruptcy court faithfully applied undisputed facts to the well-settled excusable neglect standard articulated by the Supreme Court in *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380 (1993) (“*Pioneer*”).¹ In doing so, it concluded that Encina’s “extreme” and “unexplained” delay in filing its proof of claim—twenty-seven weeks after it received notice of Zachry’s chapter 11 cases, five weeks after Zachry served the claims bar date notice on Encina, and three weeks after Encina states that it actually received that notice—could not constitute excusable neglect, even if there was no prejudice to Zachry or evidence of bad faith. It reasonably and justifiably denied Encina’s motion to permit its late-filed claim. That determination is entitled to substantial deference and may be reversed only for abuse of discretion. Encina does not come close to satisfying that demanding standard—or, indeed, any standard—because it has offered no legitimate excuse for its unreasonable delay. This Court should affirm.

Question Presented and Standard of Review

Whether the bankruptcy court abused its discretion in denying Encina’s motion to permit its late-filed claim—filed twenty-seven weeks after it had notice of Zachry’s chapter 11 cases, five weeks after Zachry served notice of the claims bar

¹ Capitalized terms used but not otherwise defined in this Preliminary Statement have the meanings ascribed to such terms elsewhere in this answer brief.

date on Encina, and three weeks after Encina states that it actually received that notice—under the “excusable neglect” standard set forth in Rule 9006(b)(1)(B) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and as articulated in *Pioneer*.

A district court on appeal from a bankruptcy court order reviews the bankruptcy court’s legal conclusions *de novo* and findings of fact for clear error. *In re Perry*, 345 F.3d 303, 309 (5th Cir. 2003). A bankruptcy court’s refusal to permit a creditor to file a proof of claim after the bar date is reviewed for abuse of discretion, which is an “exceptionally deferential” standard of review. *In re CJ Holding Co.*, 27 F.4th 1105, 1111, 1119 (5th Cir. 2022).

Statement of the Case

I. ZEC Files a Prepetition State Court Action Against Encina for Breach of Contract, and Encina Counterclaims.

On January 15, 2021, Zachry Engineering Corporation (“**ZEC**”) commenced a state court action against Encina Development Group, LLC (“**Encina**”) for breach of contract (the “**Encina Action**”). *Zachry Eng’g Corp. v. Encina Dev. Grp., LLC*, No. 2021-02701 (Tex. Dist. Ct. Jan. 15, 2021); AA223; AA417.² On April 5, 2021,

² References to “AA” are to the appendix filed with Encina’s opening brief (“**Encina Br.**”), available at ECF No. 11-2. References to “Bankr. DE” are to the docket in Zachry’s bankruptcy cases, *In re Zachry Holdings, Inc.*, Case No. 24-90377 (Bankr. S.D. Tex.).

Encina filed a counterclaim for breach of the same contract, which it subsequently amended on April 7, 2022. AA224; AA434-44.

The Encina Action remains pending before the trial court, with pretrial proceedings underway. A trial is currently scheduled for May 4, 2026, and the parties have jointly requested an extension to January 19, 2027. *See* Joint Motion for Continuance, *Zachry Eng’g Corp. v. Encina Dev. Grp., LLC*, No. 2021-02701 (Tex. Dist. Ct. Mar. 2, 2026).

II. Zachry Commences Its Bankruptcy Cases and Promptly Files a Bankruptcy Notice in the Encina Action, but Encina Fails to File a Timely Proof of Claim or Otherwise Protect Its Rights for Twenty-Seven Weeks.

On May 21, 2024, ZEC and other Zachry entities filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Texas. AA2; AA7.

On June 3, 2024, ZEC filed a notice of bankruptcy in the Encina Action (the “**Bankruptcy Notice**”) and served it on Encina’s counsel. AA250-53. The Bankruptcy Notice informed Encina that ZEC had filed for bankruptcy, provided the case number, and identified the court in which the case was pending. *Id.* There is no dispute that Encina received the Bankruptcy Notice shortly after ZEC filed for bankruptcy. AA456, Hr’g Tr. 9:20-22. Encina, therefore, had actual knowledge of ZEC’s bankruptcy since at least June 3, 2024.

On July 26, 2024, the bankruptcy court entered an order (the “**Bar Date Order**”) establishing September 16, 2024 as the deadline for all non-governmental entities, such as Encina, to file a written proof of claim (the “**Bar Date**”). AA145-46. On the same day, Zachry’s claims and noticing agent served notice of the Bar Date (the “**Bar Date Notice**”) on individuals and entities on the master service list (the “**Master Service List**”) in Zachry’s bankruptcy cases. Bankr. DE 690.

On November 7, 2024, Zachry discovered that it had not served the Bar Date Notice on Encina. AA418. Zachry immediately added Encina to the Master Service List and served Encina’s counsel with the Bar Date Order via email and first-class mail. AA203-06. Encina states that it did not receive the Bar Date Notice until November 19, 2024. AA463, Hr’g Tr. 16:10-11 (Skagerberg).

Even after receiving the Bar Date Notice, Encina delayed taking any action in the bankruptcy cases. It waited until December 10, 2024—*three weeks* after it supposedly received the Bar Date Notice, *five weeks* after Zachry served the Bar Date Notice on Encina, *eleven weeks* after the Bar Date, and *twenty-seven* weeks after Zachry filed the Bankruptcy Notice in the Encina Action—to file its proof of claim (the “**Late Claim**”). AA430-46 (Encina’s Proof of Claim); AA463, Hr’g Tr. 16:10-11 (Skagerberg); AA203-06 (Bar Date Notice to Encina); AA250-53 (Bankruptcy Notice). The Late Claim asserts a claim for an “undetermined” amount and attaches the Encina Action counterclaim as an exhibit. AA430-46. Encina had

all relevant information in its possession prior to receiving the Bar Date Notice and could have filed its barebones proof of claim without any delay.

On January 23, 2025, Zachry filed the *Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates*, which the bankruptcy court confirmed on February 27, 2025. AA262. The plan of reorganization became effective on April 10, 2025. AA419. On June 27, 2025, the bankruptcy court entered the final decree closing all but one of Zachry's bankruptcy cases. Bankr. DE 3178.

III. The Bankruptcy Court Rightly Denies Encina's Motion to Permit Encina to File a Late Claim Because Encina Provided No Justification for Its "Extreme" and "Unexplained" Delay.

On February 11, 2025, *eight weeks* after filing the Late Claim, Encina filed its "emergency" motion to permit Encina to file the Late Claim (the "**Motion**"). AA430-46 (Encina's Proof of Claim); AA222-35 (Motion). Encina argued that because it did not receive the Bar Date Notice before the Bar Date, it should be permitted to file its Late Claim under the "excusable neglect" standard set forth in Bankruptcy Rule 9006(b)(1)(B) and *Pioneer*. AA228-31.³

³ Encina also sought permission to file the Late Claim on due process grounds and under Rule 3003-1 of the Bankruptcy Local Rules for the Southern District of Texas. AA227-28. The bankruptcy court rejected those arguments, AA420-21, and Encina does not appeal those parts of the decision. Encina Br. 6.

Zachry opposed the Motion. It argued that Encina had actual notice of Zachry's bankruptcy for weeks before the bankruptcy court entered the Bar Date Order and months before the Bar Date, yet took no action to assert its claim, which is inconsistent with the excusable neglect doctrine as interpreted by Supreme Court and Fifth Circuit precedent. AA237-44.

On November 17, 2025, the bankruptcy court held an evidentiary hearing on the Motion and Zachry's objection. *See generally* AA448-76. The bankruptcy court considered evidence, including testimony from Encina's counsel, and heard arguments from the parties. *See generally id.* It took the Motion under submission. AA474, Hr'g Tr. 27:17-24.

On November 24, 2025, the bankruptcy court issued an Order and Memorandum Opinion denying the Motion. AA417-23. The bankruptcy court analyzed the *Pioneer* factors in detail and concluded that Encina's neglect was not excusable due to, among other things, Encina's "extreme delay" in filing its Late Claim after receiving the Bankruptcy Notice and its "unexplained failure to follow established case law." AA421-23. Encina's appeal followed. AA425-28.

Summary of the Argument

The bankruptcy court's denial of Encina's Motion was a sound exercise of discretion. The bankruptcy court applied the correct legal framework under Bankruptcy Rule 9006(b)(1)(B) and *Pioneer*, examined each factor with findings

supported by the undisputed evidentiary record, and concluded that Encina's neglect was not excusable due to Encina's failure to justify its twenty-seven weeks of inaction, including several weeks of inaction following the receipt of the Bar Date Notice. That conclusion is entitled to substantial deference and cannot be disturbed absent evident arbitrariness—which Encina does not, and cannot, show.

Encina failed to protect its claim on three separate occasions: (i) it took no action for twenty-seven weeks after receiving actual notice of ZEC's bankruptcy; (ii) it waited five weeks to file its Late Claim after Zachry served the Bar Date Notice on Encina, or three weeks after Encina supposedly received such notice; and (iii) it then waited nearly two months before seeking permission to file the Late Claim. Courts in this Circuit have consistently held that a creditor who has actual knowledge of the debtor's bankruptcy case but fails to act to protect its claim cannot demonstrate excusable neglect, even if the creditor does not receive timely notice of the claims bar date. Encina's weeks-long delay after it received the Bar Date Notice, which Encina failed to explain in its Motion, in the evidentiary record in the bankruptcy court, or in its opening brief, provides a separate, independent basis for denying its attempt to avail itself of the excusable neglect exception for missing a deadline. This Court should affirm.

Argument

I. Encina Cannot Show That the Bankruptcy Court Abused Its Discretion Because the Bankruptcy Court Reached Its Well-Reasoned Conclusion After Applying the Correct Legal Standard to the Undisputed Factual Record.

The bankruptcy court denied Encina’s Motion for leave to file its Late Claim, concluding that under these facts, Encina failed to meet its burden of showing excusable neglect under Bankruptcy Rule 9006(b)(1)(B) and *Pioneer*. Doing so was well within the bankruptcy court’s discretion.

A bankruptcy court’s refusal to grant a creditor leave to file a proof of claim after the claims bar date is reviewed for abuse of discretion, which is an “exceptionally deferential” standard of review. *In re CJ Holding Co.*, 27 F.4th at 1111, 1119. Under this standard, appellate courts refuse to substitute their judgment for the lower court’s unless the lower court acted in an evidently arbitrary manner. *Id.* at 1119 (quoting *In re Enron Corp.*, 419 F.3d 115, 129 (2d Cir. 2005)).

A court abuses its discretion only when it applies an incorrect legal standard, relies on clearly erroneous findings of fact, or reaches a conclusion that is not supported by the record. *See, e.g., In re Moore*, 608 F.3d 253, 257–58 (5th Cir. 2010) (bankruptcy court abused discretion where it relied on an incorrect legal premise in approving a settlement); *In re TikTok, Inc.*, 85 F.4th 352, 360 (5th Cir. 2023) (lower court “clearly” abused discretion where “nothing in the record support[ed] its conclusions”); *Def. Distributed v. Bruck*, 30 F.4th 414, 436 (5th Cir.

2022) (lower court abused discretion where it “erred legally and factually in virtually every aspect” of the issue before it). Encina cannot demonstrate that kind of fundamental error, for three reasons.

First, the bankruptcy court applied the correct legal standard. The parties do not dispute that Bankruptcy Rule 9006(b)(1)(B) and *Pioneer* set the relevant “excusable neglect” standard. The bankruptcy court applied that standard by examining each *Pioneer* factor in turn and made detailed findings supported by the record. And although the bankruptcy court ascribed more weight to one of the *Pioneer* factors, doing so is not an abuse of discretion. *See, e.g., In re CJ Holding Co.*, 27 F.4th at 1113–14, 1119 (holding that the bankruptcy court did not abuse its discretion even though it assigned disproportionate weight to one of the *Pioneer* factors); *In re Prism Graphics, Inc.*, 666 F. App’x 355, 357–58 (5th Cir. 2016) (holding that the lower courts did not abuse their discretion when they gave greater weight to the “reason for the delay” factor because they “devote[d] several pages to the *Pioneer* factors and explain[ed] their reasoning in detail”).

Second, the bankruptcy court did not rely on any erroneous facts. It could not have done so, as all relevant facts are undisputed, including Encina’s unexplained failure to do anything to preserve its claim for twenty-seven weeks after receiving the Bankruptcy Notice or to file a proof of claim for weeks after receiving the Bar Date Notice. The bankruptcy court admitted all of the parties’ evidence into the

record without objection, including Encina's counsel's testimony. AA462-63, Hr'g Tr. 15:12-16:16; AA474, Hr'g Tr. 27:6-12. Encina does not identify any facts that the bankruptcy court ignored or misunderstood in its analysis.

Third, there is abundant support in the record for the bankruptcy court's decision. The bankruptcy court engaged in a thorough, fact-specific analysis under the applicable legal standard and concluded, in an exercise of its discretion, that Encina failed to justify missing the relevant deadline by weeks. That conclusion is entitled to substantial deference on appeal and cannot be reversed even if this Court would weigh the *Pioneer* factors differently or if the facts present a close call (which they do not). *Off. Comm. of Equity Sec. Holders v. Sorrento Therapeutics, Inc.*, No. 24-00031, 2025 WL 933723, at *6 (S.D. Tex. Mar. 27, 2025) ("If the lower court's account of the evidence is plausible in light of the record viewed in its entirety, the reviewing court may not reverse it even though convinced that had it been sitting as a trier of fact, it would have weighed the evidence differently.") (citations omitted); *see also Midwest Emps. Cas. Co. v. Williams*, 161 F.3d 877, 886 (5th Cir. 1998) ("[A] lower court may conclude that circumstances like those in this case either constitute excusable neglect or do not; both decisions are acceptable—that is, neither one leaves a firm conviction that a clear error in judgment was committed."); *Roussell v. Brinker Int'l, Inc.*, 441 F. App'x 222, 234 (5th Cir. 2011) (upholding the district court's decision under abuse of discretion when the district court noted it was

a “very close call” because “[t]he district court’s thorough analysis in the present case was sufficient”). Encina’s disagreement with the bankruptcy court’s conclusion does not establish an abuse of discretion.

II. Bankruptcy Rule 9006 and *Pioneer* Support Denial of Encina’s Motion For Leave to File a Late Claim.

In determining whether a claimant’s neglect is “excusable” under Bankruptcy Rule 9006, courts consider the following factors: (1) the danger of prejudice to the debtor; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith. *Pioneer*, 507 U.S. at 395. This inquiry is “at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission.” *Id.*

The bankruptcy court correctly denied Encina’s Motion because its delay was not excusable.

(a) Encina Provides No Excuse for Its Multiple Delays.

Encina failed to protect its claim timely on three different occasions. ***First***, Encina had actual knowledge of the bankruptcy cases for months before the Bar Date, yet it did not file its Late Claim for twenty-seven weeks after it received the Bankruptcy Notice. AA250-53 (Bankruptcy Notice); AA430-46 (Encina’s Proof of Claim). ***Second***, Encina waited three-to-five weeks after receiving the Bar Date Notice before filing its Late Claim, which was a barebones proof of claim that merely

attached documents that Encina already had in its possession. AA203-06 (Bar Date Notice to Encina); AA430-46 (Encina's Proof of Claim). *Third*, Encina then waited almost two months after filing its Late Claim before filing its "emergency" Motion for leave to file the Late Claim. AA222-35. Each is grounds for denial of the Motion.

As to the first, most egregious period of delay, the bankruptcy court correctly found that Encina provided no legitimate excuse because it had actual knowledge of ZEC's bankruptcy case. AA422 ("Encina provides no reason for delay after it received actual notice of the bankruptcy case."). Encina contends that Zachry's failure to serve the Bar Date Notice caused the delay and the bankruptcy court improperly disregarded that fact. Encina Br. 12-13. Not so. The bankruptcy court considered the service deficiency and concluded that it undermined any argument Zachry had regarding prejudice. AA418; *see also, e.g.*, AA 469, Hr'g Tr. 22:6-9 (Court: "[I]t's hard to then say that a hardship on [Zachry] is that [Zachry] now need[s] to deal with something that [Zachry] would have been able to deal with had [Zachry] not messed up."). The bankruptcy court also concluded in a sound exercise of its discretion that the service deficiency was not dispositive. AA422. That is consistent with several decisions in this Circuit. *See, e.g., In re Bison Bldg. Holdings, Inc.*, Nos. 09-34452-56, 2012 WL 3230472, at *2-3 (Bankr. S.D. Tex. Aug. 3, 2012) (holding that even though the debtor was partially at fault for not

serving a notice of the bar date on the claimant timely, the claimant's failure to file a proof of claim was not due to excusable neglect because the claimant had actual notice of the bankruptcy case before the bar date); *In re Tex. Tamale Co.*, 219 B.R. 732, 734-36 (Bankr. S.D. Tex. 1998) (refusing to allow a late-filed claim where the debtor failed to list the claimant because the claimant may have had "actual knowledge of the case prior to the claims bar date" and offered "no adequate reason" for the delay); *Unit Corp. v. Gilmore*, No. 4:21-CV-435, 2022 WL 956226 (S.D. Tex. Mar. 30, 2022) (refusing to allow a late filed proof of claim where the claimant received a suggestion of bankruptcy months before the bar date but did not receive notice of the bar date until after it passed).

Encina's attempt to distinguish *Unit Corp.* fails. Encina Br. 13-14. Under facts nearly identical to this case, the district court considered the *Pioneer* factors and held that the claimant's failure to timely file his proof of claim was not due to excusable neglect because the claimant had actual notice of bankruptcy before the bar date. *Unit Corp.*, 2022 WL 956226, at *7-8. Contrary to Encina's suggestion, in doing so the court did not "conflate[]" a due process analysis with an excusable neglect inquiry. Encina Br. 14. Rather, the court considered the claimant's failure to act after receiving the notice of bankruptcy as one of the relevant facts, just as *Pioneer* instructs and just as Encina argues courts should. *Pioneer*, 507 U.S. at 395

(holding that excusable neglect is an equitable inquiry requiring consideration of “all relevant circumstances”); Encina Br. 9.

Encina attempts to justify its neglect by relying on *In re William B. Wilson Mfg. Co.*, 59 B.R. 535 (Bankr. W.D. Tex. 1986) and *In re Eagle Bus Mfg., Inc.*, 62 F.3d 730 (5th Cir. 1995). Encina Br. 12-13. That reliance is misplaced. *William B. Wilson Mfg.* is substantially undermined by subsequent Fifth Circuit precedent establishing that a claimant with actual notice of the bankruptcy—but not notice of the bar date—must inquire into the bar date and take action to protect its claim. *In re Sam*, 894 F.2d 778, 781–82 (5th Cir. 1990) (“When Grossie received the Notice of Automatic Stay eighteen days prior to the bar date, he was on notice that his section 1983 claim against Sam was affected by Sam’s bankruptcy, and he had eighteen days to inquire as to the bar date and file his complaint or a motion to extend the bar date.”). And *Eagle Bus* is inapposite because there, the claimants’ delay in filing their proofs of claim was caused by the debtors’ gamesmanship, which Encina does not allege here. *Eagle Bus*, 62 F.3d at 739 (assigning less weight to the “length of the delay” factor because the delay was caused by the debtors’ “unsavory tactics”).

The bankruptcy court properly considered Encina’s delay in filing its Late Claim after it received the Bar Date Notice. AA422 (“[Encina] also failed to file the proof of claim until five weeks after it was served notice of the bar date.”). Encina did not address that delay in the Motion or its opening brief, and there is no evidence

or testimony in the record explaining the reasons for that delay. Nor is there anything in the record explaining why Encina waited almost two months after filing its Late Claim to file the Motion. As Zachry argued to the bankruptcy court, these unexplained delays and Encina's lack of prompt action *after* it received the Bar Date Notice are by themselves not excusable and thus sufficient grounds for not permitting Encina's filing of its Late Claim. See AA242-43. Encina's failure to challenge those findings provides more reasons to affirm the bankruptcy court's ruling. See, e.g., *In re Fieldwood Energy III LLC*, No. 4:21-CV-2201, 2023 WL 2402871, at *4 (S.D. Tex. Mar. 7, 2023), *aff'd sub nom. In re Fieldwood Energy LLC*, 93 F.4th 817 (5th Cir. 2024) (holding that the appellants waived an argument by failing to object to the bankruptcy court's finding of fact).

The bankruptcy court correctly held that this *Pioneer* factor weighs against permitting Encina to file its Late Claim after a fact-based analysis, and this Court should affirm.

(b) Encina's Delay Is Objectively Unreasonable.

Encina does not dispute the bankruptcy court's finding that the delay between Encina's receipt of the Bankruptcy Notice and the date it filed its Late Claim is unreasonable. Encina Br. 11; see also AA472, Hr'g Tr. 25:15-16 (Court: "So 27 weeks is a long time." Encina's counsel: "It is."). The bankruptcy court's conclusion is consistent with other cases declining to find excusable neglect for

delays of similar length. *See* AA242-43 (collecting cases); *see also In re Prism Graphics*, 666 F. App'x at 357-58 (applying *Pioneer* to a notice of appeal filed twelve days late and affirming the lower courts' determination that the appellant failed to demonstrate excusable neglect); *Eagle Bus*, 62 F.3d at 739 (finding a six-to-eight month delay to be "egregious").

Encina complains that the bankruptcy court improperly applied this *Pioneer* factor because it gave "no weight" to its second part—the impact on judicial proceeding. Encina Br. 12. Not so. The bankruptcy court assigned some weight to it in the analysis, but concluded that, on balance, the "sheer length" of Encina's delay tilted the scale in favor of Zachry. AA422. Encina cites no case law requiring a court to treat the two prongs of the second *Pioneer* factor as equally weighted or to conclude that a minimal impact on the proceedings automatically overrides an extreme length of delay.

(c) The Remaining Pioneer Factors Do Not Outweigh Encina's Unreasonable and Inexcusable Delay, and the Bankruptcy Court Properly Balanced the Factors Under the Circumstances.

The bankruptcy court found that although the "prejudice to the debtors" factor favored Encina and the "good faith" factor was neutral, on balance, Encina's neglect was not excusable. AA421-22. Zachry does not challenge those findings. But lack of prejudice to the debtors does not automatically entitle a claimant to relief under Bankruptcy Rule 9006(b)(1)(B). Courts in the Fifth Circuit have denied similar

relief where the other factors weighed against allowance of a late proof of claim. *See, e.g., In re CJ Holding Co.*, 27 F.4th at 1113, 1119 (affirming the bankruptcy court’s decision to deny the claimant’s motion to allow a late proof of claim because the “prejudice factor does not outweigh the other three *Pioneer* factors”). The bankruptcy court gave the prejudice finding appropriate consideration—it simply concluded that this single factor in Encina’s favor did not outweigh the significant factors that cut against the relief it sought.

Encina incorrectly asserts that the bankruptcy court’s balancing of the *Pioneer* factors was improper. Encina Br. 15. Encina’s argument is, at its core, simply a preference for the bankruptcy court to have placed more weight on the lack of prejudice—the sole factor that is sympathetic to Encina. The bankruptcy court’s detailed *Pioneer* analysis is not, as Encina suggests, an arithmetical scorecard inconsistent with the legal framework. The bankruptcy court engaged in a detailed analysis under the *Pioneer* framework and concluded, as an equitable matter, that the extraordinary and unexplained twenty-seven-week delay following Encina’s actual knowledge of ZEC’s bankruptcy outweighed the findings in favor of Encina.

The bankruptcy court engaged in the exact equitable analysis that *Pioneer* requires and concluded that Encina’s delay was not excusable. This Court should not disturb that conclusion on appeal. Contrary to Encina’s suggestion that reversal is necessary to correct an injustice, the decision below merely prevents Encina from

recovering affirmatively under the plan of reorganization. Encina retains all of its counterclaims and defenses in the underlying Encina Action.

Conclusion

For these reasons, Zachry requests that the Court affirm the bankruptcy court's decision denying Encina's Motion.

Dated: March 16, 2026
Houston, Texas

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The undersigned hereby certifies that the foregoing document complies with the type-volume limit of Fed. R. Bankr. P. 8015(a)(7)(B)(i) because, excluding the parts of the document exempted by Fed. R. Bankr. P. 8015(g), this document contains 4,181 words.

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