IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: NU RIDE INC. (f/k/a LORDSTOWN MOTORS CORP.), *et al.*,[1] Debtors.	Chapter 11 Case No. 23-10831-MFW (Jointly Administered)
LORDSTOWN MOTORS CORP. and LORDSTOWN EV CORPORATION, Plaintiffs, v. HON HAI PRECISION INDUSTRY CO., LTD. (a/k/a HON HAI TECHNOLOGY GROUP), FOXCONN EV TECHNOLOGY, INC., FOXCONN VENTURES PTE LTD., FOXCONN (FAR EAST) LIMITED, and FOXCONN EV SYSTEM LLC, Defendants.	Adv. Pro. No. 23-50414-MFW

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTIONS TO STAY PENDING APPEAL AND TO EXTEND ANSWER DEADLINE

[1] The Reorganized Debtors and the last four digits of their respective taxpayer identification numbers are: Lordstown Motors Corp. (3239); Lordstown EV Corporation (2250); and Lordstown EV Sales LLC (9101). The Reorganized Debtors' service address is: Nu Ride Inc. c/o William Gallagher, CEO, M 3 Partners, 1700 Broadway, 19th Floor, New York, NY 10019.

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Nu Ride Inc. f/k/a Lordstown Motors Corp. ("**Lordstown**") and Lordstown EV Corporation ("**LEVC**") (collectively, "**Plaintiffs**") submit this consolidated opposition to (1) Defendants' Motion to Stay Pending Appeal (D.I. 52) and the brief in support (D.I. 53); and (2) Defendants' Motion to Extend Time to File Responsive Pleading (D.I. 54).

STATEMENT OF THE NATURE AND STAGE OF PROCEEDINGS

This adversary proceeding seeks to hold Defendants accountable for making false promises and sandbagging contractual commitments until Plaintiffs' multi-billion-dollar electric-vehicle startup collapsed. Dissatisfied with this Court's straightforward refusal to compel arbitration—of claims between parties who never agreed to arbitrate and under contracts without arbitration clauses—Defendants have fallen back on trying to delay. Although this Court has already denied Defendants' previous stay request and specifically addressed it in its Opinion, D.I. 31, at 29–30, Defendants now insist that their appeal permits them to escape this Court's discretion. Not so. Longstanding precedent in the bankruptcy context makes clear that this Court has significant flexibility to retain jurisdiction during an appeal. Defendants' leading precedent, *Coinbase*, specifically confirms that an appeal like Defendants'—who are not parties to contracts with arbitration clauses—cannot affect this Court's jurisdiction and does not warrant a stay. Indeed, this Court addressed a virtually identical situation in *In re Magna Ent. Corp.*, a case that relied on Third Circuit precedent that the Supreme Court approved in *Coinbase*. The Court should deny Defendants' Motion to Stay.

By the same token, Defendants' Motion to Extend wrongly asserts that their appeal entitles them to an automatic, potentially indefinite stay of their answer deadline. Plaintiffs in fact agreed to the two previous extensions that Defendants requested, but notably, Defendants did not even ask for a third extension and instead used a Motion to Extend as grounds for not filing their Answer. Defendants further suggest that they are entitled to an automatic interim stay of this

adversary proceeding at least until the Court acts on their motion. That's also wrong. Because Defendants have not shown cause for the requested extension, the Court should deny it.

SUMMARY OF ARGUMENT

1. Defendants' appeal on arbitrability does not entitle them to an automatic stay of this case. Both legal and common-sense grounds lead to the same approach. Even if Defendants' appeal had any merit, this Court may retain jurisdiction at least to enforce the order on appeal and over all other matters not on appeal. During a bankruptcy appeal, this Court has explained, "so long as the lower court is not altering the appealed order, the lower court retains jurisdiction to enforce it." *In re Wash. Mut., Inc.*, 461 B.R. 200, 219 (Bankr. D. Del. Sept. 13, 2011) (collecting cases). That flexible rule finds statutory support in Section 158 of the bankruptcy appeals statute, which provides that "[a]n appeal taken under this paragraph does not stay any proceeding of the bankruptcy court." 28 U.S.C. § 158(d)(2)(D); *see In re Orchid Child Prods., LLC*, 2024 WL 1740741, at *20 (Bankr. C.D. Cal. Apr. 22, 2024) (observing that § 158(d)(2)(D) reflects "clear congressional intent that there would be no automatic stay pending appeal of a bankruptcy court order"). Indeed, the Supreme Court's decision in *Coinbase*—a non-bankruptcy case and Defendants' chief authority—observed that Section 158 contains a "non-stay" provision, meaning Congress "want[ed] to authorize an interlocutory appeal, but *not* to automatically stay district court proceedings pending that appeal." *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 744 & n.6 (2023).

2. Yet, since Defendants' appeal is not meritorious, it does not impact this Court's jurisdiction at all—as this Court previously has ruled when confronted with this issue in a case that Defendants do not even cite. *In re Magna Ent. Corp.*, 2012 WL 272847, at *2–3 (Bankr. D. Del. Jan. 30, 2012) (observing that a frivolous appeal on arbitrability does not affect the lower court's jurisdiction, and citing *Ehleiter v. Grapetree Shores, Inc.*, 482 F.3d 207, 215 n.6 (3d Cir. 2007)). Even if *Coinbase* had any impact on bankruptcy appeals (and it didn't), the Supreme Court

endorsed the rule that frivolous appeals never require an automatic stay. *Coinbase*, 599 U.S. at 741 n.3, 744 (citing with approval *Ehleiter*, 482 F.3d at 215 n.6). To prevent needless and intentional delay, this Court should refuse to stay these proceedings.

3. Similarly, the Court should deny Defendants' Motion to Extend, which reflects an effort to delay these proceedings and circumvent this Court's previous denial of a stay pending arbitration.

BACKGROUND

On June 27, 2023, Plaintiffs filed an eleven-count Adversary Complaint (the "**Complaint**") against Hon Hai Precision Industry Co., Ltd. (a/k/a Hon Hai Technology Group) ("**Hon Hai**"), Foxconn EV Technology, Inc. ("**Foxconn EV Tech**"), Foxconn Ventures Pte. Ltd. ("**Foxconn Ventures**"), Foxconn (Far East) Limited ("**Foxconn FE**"), and Foxconn EV System LLC ("**Foxconn EV System**") (collectively, "**Foxconn**" or "**Defendants**"). D.I. 1.

Counts Two through Seven and Nine assert seven breach-of-contract claims based on four contracts between various entities:

Count	Contract	Plaintiff Entity	Defendant Entity
Two	Investment Agreement § 2.01(b)	Lordstown	Foxconn Ventures
Three	Investment Agreement § 5.20	Lordstown	Foxconn Ventures
Four	Investment Agreement § 7.01	Lordstown	Foxconn Ventures
Five	Investment Agreement § 5.02(b)	Lordstown	Foxconn Ventures
Six	Limited Liability Company Agreement of MIH EV Design LLC ("**JVA**")	LEVC	Foxconn EV Tech
Seven	Asset Purchase Agreement ("**APA**")	LEVC	Foxconn EV Tech; Foxconn FE
Nine	Contract Manufacturing Agreement ("**CMA**")	LEVC	Foxconn EV System

Id. at ¶¶ 86–139, 146–52; D.I. 31, at 3 n.12, 4–5 & nn.15 & 17, 26 n.89 ("The JVA was between Lordstown EV and Foxconn Tech, the CMA was between Lordstown EV and Foxconn System, while the APA was between Lordstown EV and Foxconn Tech and the Investment Agreement was

between LMC and FVP."). Only the JVA and CMA contain arbitration clauses. D.I. 1-4 § 13.8; D.I. 1-3 § 23; *see also* D.I. 31, at 19 (finding "the arbitration provisions of the JVA and the CMA are not broad enough to cover the breach of contract claims related to the APA or the Investment Agreement which do not have arbitration provisions"). Counts One and Eight bring common-law fraud claims against Foxconn and Foxconn FE, while Count Ten asserts a tortious-interference claim against Hon Hai. D.I. 1 ¶¶ 80–85, 140–45, 153–58; D.I. 31, at 36, 48. And Count Eleven brings an equitable-subordination claim against all Defendants. D.I. 1 ¶¶ 159–63; D.I. 31, at 6, 21.

On September 29, 2023, Defendants moved to dismiss Plaintiffs' Complaint, arguing all claims are arbitrable, or in the alternative, fail to state a claim. D.I. 8–9, 19. On November 6, 2023, Plaintiffs filed a response opposing dismissal. D.I. 15. On August 1, 2024, the Court denied Defendants' motion to dismiss or compel arbitration as to all but two claims, Counts Six (breach of the JVA) and Nine (breach of the CMA). D.I. 31, at 29, 31, 59. The Court also denied Defendants' request for a stay pending arbitration of the CMA claim in Count Nine. D.I. 31, at 29–30. On August 12, 2024, Defendants filed a notice of appeal of "that portion of the Order denying in part their Motion to Dismiss in favor of arbitration," D.I. 33, at 2, invoking the Federal Arbitration Act ("FAA"), 9 U.S.C. § 16(a)(1)(B). D.I. 33, 50. Plaintiffs have filed a Motion for Reconsideration on the JVA claim regarding the substantive ruling there. D.I. 36, 37, 51, 55. That Motion for Reconsideration, which Defendants do not oppose, is unaffected by the stay motion.

Since then, at Defendants' request, Plaintiffs have agreed to two extensions of Defendants' deadline to answer the Complaint—the later extension pushing that deadline until August 29, 2024. D.I. 45, 47. Defendants have not asked Plaintiffs to agree to any further extensions. Instead, the day Defendants' Answer was due, Defendants filed a Motion to Stay Pending Appeal, D.I. 52, 53, and a Motion to Extend their deadline to answer the Complaint, seeking an extension until thirty

days after the later of this Court's denial of Defendants' Motion to Stay, or if that motion is granted, the expiration of any stay pending appeal. D.I. 54.

ARGUMENT

I. THIS ONE-YEAR-OLD CASE SHOULD NOT BE STAYED PENDING APPEAL

Defendants already attempted once to have these proceedings stayed. D.I. 9, at 16–17. The Court correctly rejected that request. D.I. 31, at 29–30, 59. Their second bite at the stay apple fares no better, for two separate reasons. *First*, Defendants rely entirely on a case, *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023), that by its terms and logic does not apply to appeals of bankruptcy court decisions to a district court. *Second*, even if *Coinbase* did apply in this context, this case should not be stayed because Defendants' appeal falls within the *Coinbase* exception for appeals that do not require a stay—an issue that this Court previously has addressed.

A. Coinbase *does not apply to bankruptcy proceedings.*

A stay pending appeal is an "extraordinary remedy." *Nken v. Holder*, 556 U.S. 418, 427–28 (2009) (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)); *Donald J. Trump for Pres., Inc. v. Sec'y of Pa.*, 830 F. App'x 377, 389 (3d Cir. 2020). To receive a stay pending appeal, "the movant must show both (1) a 'strong' likelihood of success on the merits and (2) irreparable injury absent a stay." *Trump for Pres.*, 830 F. App'x at 389 (citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). If the movant satisfies those first two "most critical" factors, the Court may proceed to "balance (3) whether a stay or injunction will injure other interested parties (also called the balance of equities) and (4) the public interest." *Id.* (citing *Hilton*, 481 U.S. at 776, and *In re Revel AC, Inc.*, 802 F.3d 558, 568–71 (3d Cir. 2015)); *In re Stream TV Networks, Inc.*, 2021 WL 2711982, at *3 (D. Del. July 1, 2021) ("[I]f the movant does not make the requisite showings on either of the[] first two factors, the inquiry into the balance of harms and the public interest is unnecessary, and the stay should be denied without further analysis." (quoting *Revel AC*, 802 F.3d at 571)).

Defendants have not even attempted to satisfy these stay factors. Instead, Defendants rely entirely on *Coinbase* to argue that this court *must* grant a stay, regardless of how the discretionary stay factors may cut. But *Coinbase* cannot get Defendants where they want to go. At the outset, *Coinbase* by its terms does not apply to appeals of bankruptcy court decisions. *Coinbase* was not a bankruptcy case. And its holding was very specific. It resolved a straightforward question: "whether a ***district court*** must stay its proceedings while [an] interlocutory appeal on arbitrability is ongoing." 599 U.S. at 740 (emphasis added). At the risk of stating the obvious, this Court is not a district court. It is a Bankruptcy Court. Appeals from Article I bankruptcy courts to district courts are governed by different statutes and rules than appeals from Article III district courts. *Compare* 28 U.S.C. § 158, Fed. R. Bankr. P. 8001–8028, *and* Fed. R. App. P. 6, *with* 28 U.S.C. §§ 1291, 1292, *and* Fed. R. App. P. 3–5, 7–12.1. *Coinbase* did not purport to issue *any* holding about appeals from bankruptcy courts to district courts.

1. The text of Coinbase does not apply to bankruptcy appeals.

Conspicuously, Defendants are forced in their brief to do some surgery on the language of *Coinbase*. Here, for example, is how defendants articulate *Coinbase* on page 4 of their brief:

> As the Supreme Court in *Coinbase* explained, "[b]ecause the question on appeal is whether the case belongs in arbitration or instead in the [lower] court, *the entire case is essentially 'involved in the appeal,'*" and longstanding precedent "*dictates that the [lower] court must stay its proceedings while the interlocutory appeal on arbitrability is ongoing*." 599 U.S. at 741 (citing and quoting *Griggs*, 459 U.S. at 58) (emphasis added). Otherwise, "many of the asserted benefits of arbitration (efficiency, less expense, less intrusive discovery, and the like) would be irretrievably lost." *Id.* at 743.

But *Coinbase* does not say "lower" in the bracketed, highlighted language. That is Defendants' alteration. What *Coinbase* actually says in the altered language is "district"—because it is referring specifically to "district courts," not generically to all "lower courts." *Coinbase*, 599 U.S. at 741. *Coinbase* does not even once refer to "lower courts." It does not even once refer to "bankruptcy courts." Defendants are attempting to stretch the holding of *Coinbase* beyond what it actually says. Instead, it is Defendants who must show that *Coinbase* should be *extended* into the context of bankruptcy appeals—and their request to do so runs contrary to longstanding bankruptcy rules, scores of district courts, and common sense.

In fact, the word "bankruptcy" appears only once in the entire *Coinbase* decision—in a footnote citing Section 158(d)(2)(D) of the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA"). *Id.* at 744 n.6. Section 158(d)(2)(D) provides:

> An appeal taken under this paragraph ***does not stay any proceeding of the bankruptcy court***, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal is pending, issues a stay of such proceeding pending the appeal.

28 U.S.C. § 158(d)(2)(D) (emphasis added). Why did *Coinbase* cite Section 158(d)(2)? Because Section 158(d)(2) is an example of a "statutory 'non-stay' provision" that overrides the background principle that appeals generally stay district court proceedings. *Coinbase*, 599 U.S. at 744 & n.6.

According to *Coinbase*, Section 158(d)(2)(D) demonstrates that "when Congress wants to authorize an interlocutory appeal, but *not* to automatically stay district court proceedings pending that appeal, Congress typically says so." *Id.* at 744. In other words, the only time *Coinbase* discusses bankruptcy, it is to say that bankruptcy court is *different* than district court, and that

appeals in bankruptcy, unlike ordinary appeals from a district court, *do not* normally stay the underlying proceedings.

Indeed, Section 158(d)(2)(D) reflects a congressional endorsement of the principle that bankruptcy appeals (unlike normal appeals) do not automatically stay bankruptcy proceedings. Many bankruptcy courts have read Section 158(d)(2)(D) to preclude automatic stays pending bankruptcy appeals to the district court. *See, e.g.*, *In re Thomason*, 642 B.R. 8, 12–13 (Bankr. D. Idaho 2022) ("The filing of an appeal [to the district court] does not bring the bankruptcy case to a halt." (citing § 158(d)(2)(D))); *In re SOL, LLC*, 2011 WL 2652155, at *3 (Bankr. S.D. Fla. July 5, 2011) ("[A]n appeal to the district court does not stay the remaining bankruptcy court proceedings unless the district court or bankruptcy court issues a stay pending appeal." (citing § 158(d)(2)(D))).[2] Common sense inheres in these courts' understanding of Section 158(d)(2)(D): the background rule against automatic stays must be consistent across all bankruptcy appeals under Section 158. Otherwise, any mandatory stay during a first-stage appeal to the District Court would vanish during the second-stage appeal to the Court of Appeals anyway. That inconsistency would not only be inefficient, but it would also illogically split the baby between the FAA (which is pro-arbitration) and BAPCPA (which is anti-automatic stay)—vitiating the policy objectives behind both statutes. *Cf. Coinbase*, 599 U.S. at 743–44 & n.6.

Section 158(d)(2)(D) makes clear that no automatic stay applies in a direct appeal from bankruptcy to the Court of Appeals. 28 U.S.C. §§ 158(d)(2)(B), (D). Thus, under Defendants' reading of the statute, no stay would apply in bankruptcy appeals from the District Court to the

[2] *See also In re Carol Marie Fenimore Safari*, 2024 WL 3929004, at *3 & n.28 (Bankr. D. Vt. Aug. 23, 2024) (citing § 158(d)(2)(D), and denying stay pending appeal to district court); *In re Wellington*, 631 B.R. 833, 837 (Bankr. M.D.N.C. 2021) (same); *In re Simpson*, 2018 WL 1940378, at *3 (Bankr. D. Vt. Apr. 23, 2018) (same); *In re ISE Corp.*, 2012 WL 1377085, at *5–6 (Bankr. S.D. Cal. Apr. 13, 2012) (same).

Court of Appeals, and no stay would apply from direct appeals from the Bankruptcy Court to the Court of Appeals. The *only* supposed automatic stay under Defendants' reading would occur in an appeal from Bankruptcy Court to District Court. Such a reading makes no sense, and would be wildly inefficient, injecting a random, interim stay in the middle of proceedings. Nor would such a temporary interim stay serve the purposes of *Coinbase*, which worried that "allowing a case to proceed simultaneously in the district court and the court of appeals creates the possibility that the district court will waste scarce judicial resources." *Coinbase*, 599 U.S. at 743. A temporary stay that is lifted under Section 158(d)(2)(D) would not avoid this result, because (by statute) litigation would still proceed while arbitrability was on appeal to the Court of Appeals. *Coinbase* did not so much as suggest that it was overruling the body of bankruptcy precedent interpreting Section 158. Nor did it have any occasion to, because (once again) *Coinbase* was not a bankruptcy case.

Section 158(d)(2) is not the only place where Defendants are trying to argue that *Coinbase* rewrote bankruptcy law without using the word "bankruptcy." According to Defendants, *Coinbase* makes a stay following an arbitrability appeal "automatic." D.I. 53, at 4. But bankruptcy procedure is clear that appellate stays are never "automatic." Instead, Bankruptcy Rule 8007(a)(1) provides that "a party ***must move*** first in the bankruptcy court for . . . the suspension or continuation of proceedings" pending appeal. Fed. R. Bankr. P. 8007(a)(1)(D), (e)(1) (emphasis added); *Thomason*, 642 B.R. at 12 ("The rule governing stays pending appeal, Rule 8007, echoes the statute [§ 158(d)(2)(D)]."); *see also, e.g.*, *In re Anderson*, 560 B.R. 84, 87–90 (S.D.N.Y. 2016) (applying Rule 8007 to deny stay pending appeal of arbitration denial). *Coinbase*, by its terms, does not say anything that would alter this ordinary rule of bankruptcy appellate procedure, but Defendants are arguing that the Supreme Court nevertheless upset this rule without so much as saying so.

2. Neither does Coinbase's logic extend to the bankruptcy context.

Just as the text of *Coinbase* does not demand a mandatory stay, the logic of the decision does not require one either. The basic holding of *Coinbase* was simple: "***At least absent contrary indications***, the background *Griggs* principle already requires an automatic stay of district court proceedings that relate to any aspect of the case involved in the appeal." *Id.* at 741, 744 (emphasis added). The "background *Griggs* principle" is the rule that "[a]n appeal, including an interlocutory appeal, 'divests the ***district court*** of its control over those aspects of the case involved in the appeal.'" *Coinbase*, 599 U.S. at 740 (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam)) (emphasis added). But the "*Griggs* principle," by its terms, does not apply to bankruptcy courts—only to "district courts." *See In re Gonzalez*, 2022 WL 11712036, at *2 (Bankr. C.D. Cal. Oct. 19, 2022) ("*Griggs* did not involve bankruptcy court proceedings, and is thus inapplicable.").

Bankruptcy courts, by contrast, follow a more flexible "divestiture rule." "The correct statement of the Divestiture Rule," this Court has explained, "is that ***so long as the lower court is not altering the appealed order, the lower court retains jurisdiction*** to enforce it." *In re Wash. Mut., Inc.*, 461 B.R. 200, 219 (Bankr. D. Del. Sept. 13, 2011) (citing *In re Dardashti*, 2008 WL 8444787, at *6 (9th Cir. BAP Feb. 12, 2008), and *In re Hagel*, 184 B.R. 793, 798 (9th Cir. BAP 1995)) (emphasis added), *vacated in part on other grounds*, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012); *Dardashti*, 2008 WL 8444787, at *6 ("[W]hen there is no stay pending appeal, the bankruptcy court retains jurisdiction to enforce an order that is on appeal, on condition that in doing so, the bankruptcy court does not significantly alter or expand upon the terms of that order."); *Hagel*, 184 B.R. at 798 ("[C]ourts have recognized a distinction between acts undertaken to enforce the judgment, which are permissible, and acts which expand upon or alter it, which are prohibited.").

Indeed, "[t]he rules are different in bankruptcy." *Bullard v. Blue Hills Bank*, 575 U.S. 496, 501 (2015); *see also, e.g.*, *In re Moody*, 817 F.2d 365, 367 (5th Cir. 1987) ("Litigation in bankruptcy proceedings is . . . different from litigation in ordinary civil suits."). And bankruptcy appellate procedure reflects a key difference between adversary proceedings and ordinary litigation, as the Supreme Court has explained in interpreting Section 158(a):

> A bankruptcy case involves "an aggregation of individual controversies," many of which would exist as stand-alone lawsuits but for the bankrupt status of the debtor. Accordingly, "Congress has long provided that orders in bankruptcy cases may be immediately appealed if they finally dispose of discrete disputes within the larger case."

Bullard, 575 U.S. at 501 (quoting 1 Collier on Bankruptcy ¶ 5.08[1][b] (16th ed. 2014), and *Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 657 n.3 (2006)); *see also, e.g.*, *In re Energy Future Holdings Corp.*, 904 F.3d 298, 308 (3d Cir. 2018) ("[T]he rules of finality and appealability are different in the bankruptcy context than in ordinary civil litigation."). These distinguishing features of bankruptcy litigation require a flexible application of the divestiture rule, as this Court has observed. *Wash. Mut.*, 461 B.R. at 219 ("The application of a broad rule that a bankruptcy court may not consider any request filed while an appeal is pending has the potential to severely hamper a bankruptcy court's ability to administer its cases in a timely manner." (quoting *In re Whispering Pines Ests.*, 369 B.R. 752, 758 (1st Cir. BAP 2007))); *see also, e.g.*, *In re CG Acquisitions, LLC*, 2023 WL 6396661, at *2–3 (E.D. Mich. Sept. 29, 2023) ("[D]ue to the multi-layered nature of bankruptcy cases, appellate courts have recognized that the divestiture rule is applied more flexibly in the bankruptcy context.") (collecting cases).

Aware of the differences between adversary proceedings and ordinary litigation, the Supreme Court did not silently disturb the flexible bankruptcy-specific divestiture rule in *Coinbase*—a non-bankruptcy case applying a non-bankruptcy "background principle." *Coinbase*,

599 U.S. at 740. Quite the opposite: the Court acknowledged the non-stay provision in Section 158(d)(2)(D) as a clear statement of congressional intent "*not* to automatically stay" bankruptcy proceedings pending appeal. *Id.* at 744 & n.6 (citing 28 U.S.C. § 158(d)(2)(D)). *Coinbase* in fact stands for the proposition that the ordinary district court rules do not overturn the longstanding distinction between district court and bankruptcy court litigation. It is why *Coinbase* cited Section 158's non-stay provision. *Id.* The Bankruptcy Code, the Bankruptcy Rules (such as Rule 8007) and longstanding bankruptcy precedent demonstrate that *Coinbase* does not apply to appeals from Bankruptcy Court to District Court. *Id.* Put differently, bankruptcy courts remain free to deny stays pending arbitrability appeals, as Congress intended.

In stark contrast to *Coinbase*, in which the appeal arose solely under 9 U.S.C. § 16(a), the District Court's jurisdiction over Defendants' appeal must also arise, if at all, under 28 U.S.C. § 158—which mandates *against* an automatic stay. *In re Mintze*, 434 F.3d 222, 227 (3d Cir. 2006) ("The District Court had appellate jurisdiction under 28 U.S.C. § 158(a)(1) and 9 U.S.C. § 16(a)(1)(B) (providing appeal from an order denying arbitration)."); *In re Trimble*, 2008 WL 782581, at *2–3 (Bankr. D.N.J. Mar. 18, 2008) (observing that § 158(a) "provides the statutory

authority for the district court to hear bankruptcy appeals," including appeals under FAA § 16(a)).[3] In short, nothing in Section 16 of the FAA suggests that Congress intended to override the background presumption against automatic stays pending appeal in bankruptcy cases. *Cf. In re MF Glob. Holdings Ltd.*, 296 F. Supp. 3d 662, 664–65 (S.D.N.Y. 2017) (holding 9 U.S.C. § 16(b), barring certain interlocutory appeals, does not override 28 U.S.C. § 158(a)(3)'s express authorization of interlocutory appeals since "[n]either the [FAA's] text nor its legislative history suggests that Congress had in mind appeals from bankruptcy courts to district courts when it drafted Section 16(b)," and "the statutory scheme governing bankruptcy suggests just the opposite").

Following this logic, at least one court has already refused to extend *Coinbase* to the bankruptcy context—finding the Court's "express reference to 28 U.S.C. § 158(d)(2)(D) that an appeal of an order of the bankruptcy court does not stay a proceeding of the bankruptcy court indicated clear congressional intent that there would be no automatic stay pending appeal of a

[3] Notably, Defendants have not sought leave from the District Court to appeal this Court's Order denying arbitration under 28 U.S.C. § 158(a)(3) because they believe they are entitled to appeal as of right under Section 158(a)(1). D.I. 33, 50; *see* D.I. 53, at 1. That is not so clear. *Compare Mintze*, 434 F.3d at 227 (implying, without analysis, that 28 U.S.C. § 158(a)(1) permits appeals under 9 U.S.C. § 16(a)(1)(B) as of right), *with Trimble*, 2008 WL 782581, at *3 (finding an appeal under 9 U.S.C. § 16(a)(1)(A) is interlocutory, so "compliance with 28 U.S.C. § 158(a)(3) is necessary in order for the district court to have jurisdiction"), *leave to appeal denied*, Ex. A, Order, *Cambridge Mgmt. Grp., LLC v. Liscinski*, No. 3:08-cv-01020 (D.N.J. June 24, 2008), ECF No. 5, *reconsideration denied*, Ex. B, Order, *Cambridge Mgmt. Grp., LLC v. Liscinski*, No. 3:08-cv-01020 (D.N.J. Aug. 4, 2008), ECF No. 7, and *Moses v. CashCall, Inc.*, 781 F.3d 63, 69 (4th Cir. 2015) (per curiam) (observing that the district court had granted leave to appeal the bankruptcy court's interlocutory arbitration denial under 9 U.S.C. § 16(a)(1)(B), "as required by 28 U.S.C. § 158(a)(3)"). Yet, Defendants did not even seek leave to appeal in the alternative—let alone bring this ambiguity to the Court's attention. Even assuming Defendants may appeal this Court's arbitration denial as of right under Section 158(a)(1)—or if their failure to seek leave under Section 158(a)(3) is later corrected—their decision not to seek leave to appeal underscores that their appeal is designed to circumvent this Court's stay denial and delay proceedings without respecting normal interlocutory appellate procedure.

bankruptcy court order." *In re Orchid Child Prods., LLC*, 2024 WL 1740741, at *20 (Bankr. C.D. Cal. Apr. 22, 2024) (citing *Coinbase*, 499 U.S. at 744 & n.6). Moreover, courts have largely "declined to extend *Coinbase* to new contexts." *Att'y Gen. of N.J. v. Dow Chem. Co.*, 2024 WL 3361395, at *10 (D.N.J. July 9, 2024) (collecting cases).[4] "Absent indication from the Supreme Court that its analysis applies to other statutory rights to appeal," one district court in this Circuit explained, "the Court cannot find that *Coinbase* governs this case. Such interpretation would be at odds with the Supreme Court's own longstanding precedent that a stay pending appeal is an extraordinary remedy." *Dow Chem.*, 2024 WL 3361395, at *9–10 (citing *Nken*, 556 U.S. at 427, and *Williams v. Zbaraz*, 442 U.S. 1309, 1311 (1979)).

Against these decisions, Defendants cite a single out-of-circuit case applying *Coinbase* in the bankruptcy context. *See* D.I. 53-1, Order, at 5–6, *Big Picture Loans, LLC v. Eventide Cred. Acquisitions, LLC*, No. 4:24-cv-00103-P (N.D. Tex. May 14, 2024), ECF No. 26 (granting stay), *clarified and modified*, 2024 WL 3239935 (N.D. Tex. June 27, 2024). Without much analysis, the district court in *Big Picture Loans* disagreed with the bankruptcy court's denial of an automatic stay pending appeal because it could not find "clear guidance from the Fifth Circuit or the Supreme Court that *Coinbase* does *not* apply to Bankruptcy Courts." D.I. 53-1, Order, at 5, *Big Picture*

[4] *See also Westchester County v. Mylan Pharms., Inc.*, 2024 WL 3043121, at *11 n.13 (S.D.N.Y. June 18, 2024) (holding *Coinbase* does not require stay pending appeal of remand order); *N. Miss. Med. Ctr., Inc. v. Quartiz Techs.*, 2024 WL 2262684, at *2, 7 (N.D. Miss. May 17, 2024) (refusing to apply *Coinbase* and denying stay pending appeal of preliminary-injunction denial); *Proto Gage, Inc. v. Fed. Ins. Co.*, 2023 WL 9112923, at *2–3 (E.D. Mich. Dec. 28, 2023) (declining to extend *Coinbase* and denying stay pending appeal of order compelling appraisal); *Miller v. Travel Guard Grp., Inc.*, 2023 WL 7106482, at *1–2 & n.1 (N.D. Cal. Aug. 1, 2023) (denying stay pending appeal of order confirming and denying vacatur of arbitration award because *Coinbase* did not apply and defendants did not seek a discretionary stay); *Harrison v. Envision Mgmt. Holding, Inc.*, 2023 WL 4945841, at *3–4 (D. Colo. Aug. 3, 2023) (holding *Coinbase* only requires a stay of district-court proceedings pending appeal to the court of appeals and does not extend through resolution of petition for writ of certiorari to the Supreme Court).

Loans. That reasoning gets the background rule in bankruptcy appeals *and* the correct role of federal courts backwards: by default, there are no automatic stays pending bankruptcy appeals. *See* 28 U.S.C. § 158(d)(2)(D); Fed. R. Bankr. P. 8007(a)(1), (e); *Wash. Mut.*, 461 B.R. at 218–19 ("[I]n the bankruptcy context the appeal of one ruling does not mean that the entire bankruptcy case is stayed."). And even the *Big Picture Loans* court later backtracked—narrowing its stay to cover only the issues directly on appeal: "The Supreme Court's decision in *Coinbase* does not support a blanket stay of all proceedings in the bankruptcy case; it specifically contemplates a stay of litigation *directly* related to the arbitrability issue." *Big Picture Loans*, 2024 WL 3239935, at *2–3.[5]

While few courts have considered the impact of *Coinbase*, if any, in the bankruptcy context, commentators have warned that extending *Coinbase* could cause disruptive—and clearly unintended—delays in bankruptcy cases, "where time is often of the essence." *E.g.*, Laura N. Coordes, *A Clash of Automatic Stays: Analyzing* Coinbase v. Bielski*'s Impact on Bankruptcy Proceedings*, 43 No. 8 Bankr. L. Letter NL 1 (Aug. 2023) (arguing *Coinbase* "should not apply in bankruptcy proceedings" because "bankruptcy is different from other types of federal litigation," and "no one at the Court was thinking about bankruptcy cases when they decided *Coinbase*"); Lawrence R. Ahern, III & Nancy Fraas MacLean, Bankr. Proc. Manual § 9019:5 (2024) ("If the rule in *Coinbase* does apply broadly in bankruptcy, a bankruptcy court could find itself unable to address issues involving a creditor that made an unsuccessful arbitration demand."); Kathleen P. March & Janet A. Shapiro, Cal. Prac. Guide Bankr. § 1:328.11 (2023) (observing that applying *Coinbase* to bankruptcy appeals "could delay or disrupt the course of a bankruptcy case").

[5] Defendants omit this subsequent history from their opening brief. D.I. 53, at 5–6.

Attempting nonetheless to stretch *Coinbase*, Defendants resort to broadly analogizing adversary proceedings to "traditional civil litigation." D.I. 53, at 5–6.[6] They suggest a backwards presumption—that the Supreme Court's mere acknowledgment of a non-bankruptcy background rule must automatically wipe away any bankruptcy-specific differences in the rule. Even if *Coinbase* had not specifically acknowledged that Section 158(d)(2)(D) reflects Congress's intentional departure from the general non-bankruptcy background rule in BAPCPA, nothing in the decision urges its uncritical expansion into the bankruptcy context—or justifies somehow divorcing adversary proceedings from Chapter 11 proceedings despite both being subject to Section 158 vis-à-vis appeals. And reading Supreme Court (or Third Circuit) decisions so broadly would prevent the development of any bankruptcy-specific rules. Likewise, Defendants misplace their reliance on *Mintze*, which merely observes that "[t]he FAA mandates enforcement of arbitration when applicable unless Congressional intent to the contrary is established." *Mintze*, 434 F.3d at 233. *Mintze* does not suggest that all non-bankruptcy background principles apply wholesale in bankruptcy appeals—let alone principles that clash with a clear directive in BAPCPA.

* * *

In sum, the background rule in bankruptcy cases is that an appeal does not mandate an automatic stay of all proceedings. *Coinbase*, did not by its words or logic overrule that background

[6] Defendants selectively quote *In re Mansaray-Ruffin*, which observed: "An adversary proceeding is essentially a self-contained trial—*still within the original bankruptcy case*—in which a panoply of additional procedures apply." *In re Mansaray-Ruffin*, 530 F.3d 230, 234 (3d Cir. 2008) (citing Fed. R. Bankr. P. 7001–7087)) (emphasis added); *see also In re Prosser*, 777 F.3d 154, 162 (3d Cir. 2015) ("[T]he adversary proceeding was only a part of the bankruptcy case . . . ."); *Cohen v. Bucci*, 905 F.2d 1111, 1112 (7th Cir. 1990) ("Adversary proceedings in bankruptcy are not distinct pieces of litigation; they are components of a single bankruptcy case . . . ."); *In re Selheimer & Co.*, 319 B.R. 395, 405 (Bankr. E.D. Pa. 2005) (same).

rule. Instead, it affirmed the principle that the ordinary divestiture rule does *not* apply to bankruptcy by citing Section 158.

B. Regardless, this case fits within the Coinbase exception for appeals that do not qualify for an automatic stay due to its non-meritorious nature.

Even if *Coinbase* applied to bankruptcy appeals, *Coinbase* specifically endorsed "a process by which a district court itself may certify that an interlocutory appeal is frivolous" and thus preserve its jurisdiction and deny a stay. 599 U.S. at 745; *see also Colum. Gas Transmission, LLC v. RDFS, LLC*, 2024 WL 973114, at *2 (N.D. W. Va. Feb. 27, 2024) (explaining that *Coinbase* approved the frivolousness exception). The Third Circuit has such a rule: its decision in *Ehleiter* made clear that frivolous appeals on arbitrability do not disturb a lower court's jurisdiction. *See Ehleiter*, 482 F.3d at 215 n.6 (observing that the divestiture rule can only apply "where the Section 16(a) appeal is neither frivolous nor forfeited"); *see also Kim v. Dongbu Tour & Travel Inc.*, 529 F. App'x 229, 233 (3d Cir. 2013) ("[T]he appeal will not stay the district court proceedings if it is 'frivolous or forfeited.'" (quoting *Ehleiter*, 482 F.3d at 215 n.6)). And *Coinbase* specifically cited *Ehleiter* as an example of an earlier decision that aligned with its understanding of Section 16(a). *Coinbase*, 599 U.S. at 741 & n.3 (citing with approval *Ehleiter*, 482 F.3d at 215 n.6). An appeal's frivolousness is not determined by the Rule 11 standard; rather, the frivolousness exception applies if the appeal "lacks colorable support or is wholly without merit." *Nagle v. Alspach*, 8 F.3d 141, 145 (3d Cir. 1993); *see also Hilmon Co. (V.I.) Inc. v. Hyatt Int'l*, 899 F.2d 250, 253 (3d Cir. 1990) (explaining that the frivolousness inquiry is objective and "focuses on the merits of the appeal regardless of good or bad faith") (citation omitted).

This Court has spoken directly to this issue. In *In re Magna Ent. Corp.*—a case Defendants ignore—this Court refused to apply the divestiture rule pending an appeal under FAA Section 16(a) where the movant was "not a party to the arbitration clause." *In re Magna Ent. Corp.*,

2012 WL 272847, at *2–3 (Bankr. D. Del. Jan. 30, 2012) ("[I]f SAC is not a party to the arbitration clause, then Caruso is not entitled to a stay of these proceedings under the FAA." (citing *Kirleis v. Dickie, McCamey & Chicolte, PC*, 2007 WL 3023950, at *3 (W.D. Pa. Oct. 12, 2007))). Applying the frivolousness exception in *Magna*, the Court relied on *Ehleiter*—the same Third Circuit decision the Supreme Court approved in *Coinbase*. *Id.* at *2 (citing *Ehleiter*, 482 F.3d at 215 n.6); *accord Coinbase*, 599 U.S. at 741 & n.3 (citing *Ehleiter*, 482 F.3d at 215 n.6).

This Court is not alone. Courts in this Circuit and beyond routinely refuse to stay proceedings pending appeals on arbitrability where the parties did not agree to arbitrate. *E.g.*, *Kirleis*, 2007 WL 3023950, at *3 ("[T]he appeal is frivolous because defendant failed to set forth a *prima facie* case that an agreement to arbitrate existed under Section 4 of the FAA," by not "address[ing] the fundamental issue of whether plaintiff had actually agreed to arbitrate her claims."); *NTCH-W. Tenn, Inc. v. ZTE USA, Inc.*, 2012 WL 13236935, at *4 (W.D. Tenn. Aug. 10, 2012) (certifying appeal of arbitration denial as frivolous and denying stay pending appeal where defendant failed to meet its burden in "seeking to enforce [an] arbitration provision against a nonsignatory"). For example, in *Bucher v. Am. Health & Life Ins. Co.*, the district court denied a stay pending a frivolous appeal on arbitrability where the defendants sought to arbitrate claims arising from a loan agreement based on arbitration clauses in separate loans. *Bucher v. Am. Health & Life Ins. Co.*, 2014 WL 5464857, at *1–3 (W.D. Pa. Oct. 28, 2014). That appeal lacked any "colorable support," the district court explained: although "other loans had arbitration clauses in them," "there is no evidence that Plaintiff agreed to arbitrate a dispute arising out of this loan in the documents that accompanied this loan." *Id.* at *2–3 (citing *Kirleis*, 2007 WL 3023950, at *3) (emphasis omitted).

Appeals are also frivolous where, as here, the underlying claims are clearly beyond the scope of the asserted arbitration clauses. *E.g.*, *In re Nortel Networks, Inc.*, 2013 WL 1909855, at *2 (Bankr. D. Del. May 7, 2013) (finding appeal frivolous and retaining jurisdiction where the court "believe[d] strongly in the correctness of the Opinion" denying arbitration), *order denying arbitration aff'd*, 737 F.3d 265, 269 (3d Cir. 2013) ("The language used by the parties in their agreement does not reveal an intent to arbitrate disputes about the allocation of the auction funds."); *Colum. Gas*, 2024 WL 973114, at *3 (finding appeal "frivolous and taken in bad faith" where "the parties agreed to arbitrate disputes over damages to crops, trees, or fences," but "the dispute in this case is not about damages to crops, trees or fences").

These holdings—both this Court's prior decision in *Magna* and the cases from other courts across the country—are on all fours here. This Court denied Defendants' motion to compel arbitration in this case as to clearly non-arbitrable claims involving parties who never agreed to arbitrate. D.I. 31, at 17–29. It was not a close call. The Court ruled that "***Plaintiffs did not agree to arbitrate any claims against the Defendants*** except those extant under the CMA and JVA," which are not at issue in Defendants' appeal.[7] D.I. 31, at 27 (emphasis added). As the Court pointed out, Defendants had relied on cases that "actually denied enforcement of an arbitration provision against a non-signatory." *Id.* (citing *Flintkote Co. v. Aviva PLC*, 769 F.3d 215, 220–21 (3d Cir. 2014), and *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates, S.A.S.*, 269 F.3d 187, 199–200 (3d Cir. 2001)). Further, the Court found "substantial equitable

[7] This Court dismissed the CMA claim in Count Nine pursuant to the CMA's arbitration clause and dismissed the JVA claim in Count Six for failure to state a claim, after finding that the JVA's arbitration clause is valid—a ruling which is the subject of Defendants' narrow motion for reconsideration. D.I. 31, at 59; D.I. 36, 37, 51, 55. Defendants' appeal does not implicate those claims. D.I. 50, at 2 (stating that the sole issue on appeal is "[w]hether the Bankruptcy Court erred in denying in part Appellants-Defendants' Motion to Dismiss in favor of arbitration").

reasons not to" enforce the arbitration clauses in JVA or CMA against non-parties, including Lordstown, Foxconn Ventures, and Foxconn FE—***none of whom signed any arbitration agreement***. *Id.* at 27–29. Those equitable considerations against including non-arbitrable claims into the JVA or CMA arbitration provisions include that (1) "the CMA and JVA require arbitration in two different fora"; (2) Plaintiffs' breach-of-contract claims in Counts Two through Five and Seven arose under separate contracts—the Investment Agreement and APA—without arbitration clauses; and (3) the CMA's and JVA's arbitration clauses "are not so broad as to cover the claims of fraud" in Counts One, Eight, and Ten, "which are premised on all of the actions of the Defendants." *Id.* Likewise, the Court found no "equitable reason to compel arbitration of the equitable subordination claim," in Count Eleven, "which is relevant specifically to the rights of the parties in this bankruptcy case to a distribution under the confirmed plan." *Id.* at 29.

These conclusions were straightforward and provided several independent reasons to reject Defendants' attempt to force arbitration based on an arbitration clause in a *different agreement* and often between *nonparties* to the present claims. Accordingly, even if *Coinbase* has any impact on bankruptcy appeals—and it doesn't—the Court can save that question for another day by certifying Defendants' appeal as frivolous. Doing so would make the divestiture rule entirely inapplicable, without regard to its flexibility in the bankruptcy context. This Court's prior precedent in *Magna* controls the frivolousness question, and *Magna* itself was based on the Third Circuit's decision in *Ehleiter* that the Supreme Court sided with and cited with approval in *Coinbase*. In other words, even prior to *Coinbase*, the Third Circuit had the same rule. Applying that rule to nearly identical facts in *Magna*, this Court refused to stay an appeal on arbitrability. And just like *Magna*, this appeal involves *nonparties* to the arbitration agreement. This Court should retain jurisdiction and allow the case to proceed pending appeal.

II. DEFENDANTS HAVE NOT SHOWN CAUSE FOR AN INDEFINITE EXTENSION OF THEIR ANSWER DEADLINE

Defendants also seek a third extension of their deadline to answer the Complaint. In the previous two requests, Plaintiffs agreed to the extensions. At no point did Defendants indicate they would make a subsequent request to extend, nor did Defendants ask Plaintiffs a third time. Instead of filing their Answer, they filed a Motion to Extend their answer deadline. This Court has discretion to extend Defendants' answer deadline "for cause shown" upon a request "made before the expiration of the period originally prescribed or as extended by a previous order." Fed. R. Bankr. P. 9006(b)(1); *JPMorgan Chase Bank, N.A. v. Pandolfelli*, 2010 WL 3745123, at *2 (Bankr. D.N.J. Sept. 14, 2010). "The burden falls on the party seeking enlargement to make . . . an adequate demonstration of good faith and some reasonable basis for noncompliance with governing time parameters." *In re Trout*, 1995 WL 1943410, at *2 (Bankr. D.N.D. Apr. 25, 1995) (collecting cases, including *MacCauley v. Wahlig*, 130 F.R.D. 302 (D. Del. 1990), *aff'd*, 919 F.2d 135 (3d Cir. 1990)). This Court should deny the Motion to Extend forthwith.

As explained above, Defendants' appeal does not require any automatic stay. Nor does Defendants' Motion to Stay justify extending Defendants' already-due answer deadline until thirty days after this Court resolves the motion or any appeal. *See, e.g.*, *In re J.K. Chems., Inc.*, 58 B.R. 225, 227 (Bankr. D.R.I. 1986) (denying unopposed motion for extension where several prior extensions had resulted in "unreasonable" and "intentional delay"); *Tittl v. Hilton Worldwide, Inc.*, 2012 WL 6863472, at *1 (E.D. Cal. Dec. 20, 2012) (finding no good cause to extend answer deadline where the parties' "stipulation fails to explain why Defendants should not be required to file a responsive pleading in this case *before or in conjunction with* their motion for change of venue or why such a filing would impose any prejudice on them").

Not only do Defendants ask this Court to give them an indefinite extension, but they also receive an interim bridge extension under Del. Bankr. L.R. 9006-2. D.I. 54 ¶ 9 n.2. This is not what the Local Rule was intended for: "Local Rule 9006-2 was adopted to address an uncertainty in the law and to abrogate a wasteful and time-consuming practice"—namely, obtaining bridge orders. *In re Maxus Energy Corp.*, 633 B.R. 215, 221–22 (Bankr. D. Del. 2021). The Rule does not offer an automatic de facto stay pending appeal. *Id.* at 222 (explaining that "the rule does not reference 'a motion to *stay the time* to take any action,'" and holding it "cannot and does not apply to a motion for a stay pending appeal from an order requiring production of documents by a date certain"). Defendants' Motion to Extend suggests that Local Rule 9006-2 entitles them to precisely the relief this Court already denied: a potentially indefinite extension to answer the Complaint and continue with these proceedings (at least until the Court has acted on their motion). Notwithstanding Defendants' misuse of a bridge extension, their Answer should have been due on August 29.

The Court should deny Defendants' Motion to Extend.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny both Defendants' (1) Motion to Stay; and (2) Motion to Extend.

Dated: September 9, 2024
Wilmington, Delaware

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served via CM/ECF on the following counsel of record, this 9th day of September, 2024, as indicated below.

Dated: September 9, 2024
Wilmington, Delaware

/s/ Patrick A. Jackson
Patrick A. Jackson (Del. Bar No. 4976)

VIA CM/ECF

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EXHIBIT A

Order, *Cambridge Mgmt. Grp., LLC v. Liscinski*,
No. 3:08-cv-01020 (D.N.J. June 24, 2008), ECF No. 5

NOT FOR PUBLICATION **CASE CLOSED**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CAMBRIDGE MANAGEMENT GROUP, LLC Petitioner, v. THEODORE LISCINSKI, JR., Trustee for Debtors Anthony Trimble and Nancy Trimble, Respondent.	Civil Action No. 08-1020 (JAP) **ORDER**

Presently before the Court is Petitioner, Cambridge Management Group, LLC's ("Petitioner") motion for leave to appeal the Bankruptcy Court's Order dated January 17, 2008. Respondent, Theodore Liscinski, Jr. does not oppose the motion.

On January 17, 2008, the Bankruptcy Court granted Petitioner's motion to extend the time to file an answer, but denied Petitioner's motion to dismiss or, in the alternative, stay the proceedings pending arbitration. On January 28, 2008, Petitioner filed with the Bankruptcy Court its notice of appeal and notice of motion to stay proceedings pending appeal, which this Court received on February 27, 2008. On March 18, 2008, the Bankruptcy Court granted Petitioner's request to stay the proceedings pending its appeal to this Court.

Upon review of Petitioner's motion, the Court finds no grounds upon which to grant Petitioner's leave to file an appeal of the Bankruptcy Court's January 17, 2008 order. The Bankruptcy Court did not act in clear error. Fed. R. Bankr. P. 8013. Therefore, the Court

determines that Petitioner's motion to stay is moot. Accordingly, **IT IS**

ON THIS 24th day of June, 2008,

ORDERED that Petitioner's motion to for leave to file an appeal is **DENIED**; and,

FURTHER ORDERED that this matter is hereby closed.

SO ORDERED.

/s/ Joel A. Pisano
JOEL A. PISANO, U.S.D.J.

EXHIBIT B

Order, *Cambridge Mgmt. Grp., LLC v. Liscinski*,
No. 3:08-cv-01020 (D.N.J. Aug. 4, 2008), ECF No. 7

NOT FOR PUBLICATION **CASE CLOSED**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CAMBRIDGE MANAGEMENT GROUP, LLC Petitioner, v. THEODORE LISCINSKI, JR., Trustee for Debtors Anthony Trimble and Nancy Trimble, Respondent.	Civil Action No. 08-1020 (JAP) **ORDER**

Petitioner, Cambridge Management Group, LLC's ("Petitioner") filed a motion for leave to file an appeal of the Bankruptcy Court's January 17, 2008 Order extending Petitioner's time to file an answer, but denying Petitioner's motion to dismiss or, in the alternative, stay the proceedings pending arbitration. On March 24, 2008, the Court denied Petitioner's motion. Petitioner now brings this motion for reconsideration of the Court's March 24, 2008 Order. Respondent, Theodore Liscinski, Jr., does not oppose the motion.

Local Civil Rule 7.1(i) states that a motion for reconsideration "setting forth concisely the matter or controlling decisions which the party believes the Judge or Magistrate Judge has overlooked" may be filed within ten business days after entry of an order. L. Civ. R. 7.1(i). Reconsideration, however, is an extraordinary remedy and should be granted "very sparingly." *See* L. Civ. R. 7.1(i) cmt. 6(d); *see also Fellenz v. Lombard Investment Corp.*, Nos. 04-3993, 04-5768, 04-3992, 04-6105, 2005 WL 3104145, at *1 (D.N.J. Oct. 18, 2005) (citing *Maldonado v.*

Lucca, 636 F. Supp. 621, 630 (D.N.J. 1986)). The party seeking reconsideration bears a heavy burden and "must show more than mere disagreement with the Court's decision." *G-69 v. Degnan*, 748 F. Supp. 274, 275 (D.N.J. 1990). Further, the moving party's burden requires more than a "recapitulation of the cases and arguments considered by the court before rendering its original decision." *Id.*

Upon review of Petitioner's submission, the Court finds that there are no grounds for granting Petitioner's motion for reconsideration. Petitioner has failed to demonstrate (1) an intervening change in controlling law has occurred; (2) evidence not previously available has become available; or (3) it is necessary to correct a clear error of law or prevent manifest injustice. *See, e.g., Carmichael v. Everson*, No. 03-4787, 2004 WL 1587894, at *1 (D.N.J. May 21, 2004); *Brackett v. Ashcroft*, No. Civ. 03-3988, 2003 WL 22303078, at *2 (D.N.J. Oct. 7, 2003). Petitioner merely reargues the grounds of his original motion for leave to file an appeal of the Bankruptcy Court's January 17, 2008 Order.[1] Accordingly, **IT IS**

ON THIS 4th day of August, 2008,

ORDERED that Petitioner's motion for reconsideration is **DENIED**; and,

FURTHER ORDERED that this matter is hereby closed.

SO ORDERED.

/s/ Joel A. Pisano
JOEL A. PISANO, U.S.D.J.

[1] Petitioner asserts that the Court applied the incorrect standard when deciding its June 24, 2008 Order. The Court finds this claims lacks merit. Petitioner has wrongly interpreted the Court's language in the June 24, 2008 Order and the correct standard was applied to his motion for leave to file an appeal of the Bankruptcy Court's January 17, 2008 Order.