UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CITIBANK, N.A., LONDON BRANCH *in its capacity as Indenture Trustee for the €290 million 11.75% Senior Secured Notes Due 2019*,

Plaintiff,

-v-

NORSKE SKOGINDUSTRIER ASA, *et al.*,

Defendants.

No. 16-cv-850 (RJS)
ORDER

RICHARD J. SULLIVAN, District Judge:

Plaintiff Citibank, N.A., as Indenture Trustee for €290 million in 11.75% Senior Secured Notes Due 2019 (the "SSNs"), seeks to enjoin Defendants Norske Skogindustrier ASA (the "Parent"), Norske Skog AS (the "Company"), and certain subsidiary guarantors – Norske Skog Golbey SAS, Norske Skog Saugbrugs AS, and Norske Skog Skogn AS (collectively, the "Subsidiary Guarantors," and together with the Parent and the Company, "Defendants," and together with all of the Parent's consolidated subsidiaries, "Norske") – from consummating an exchange offer (the "Exchange Offer") that would allow holders of notes due in 2016 and 2017 to exchange their unsecured notes for secured notes with later maturity dates (the "Exchange Notes"). Plaintiff obtained a temporary restraining order in state court before this case was removed to this Court by Defendants. Now before the Court is Plaintiff's motion for a preliminary injunction to prevent the Exchange Offer. (Doc. No. 47.) For the reasons that follow, the Court denies the motion.

I. BACKGROUND[1]

Norske is a Norwegian-headquartered paper company with global operations and paper mills in several countries, including Austria, France, Germany, Norway, Australia, and New Zealand. In recent years, Norske has faced significant financial challenges and incurred a large quantity of debt. Part of this debt includes senior unsecured notes due in 2016 and 2017 (the "Parent Notes"). The Parent Notes comprise two issuances of debt: €121,421,000 worth of 11.75% Notes due 2016 (the "2016 Notes") and €218,106,000 worth of 7% Senior Notes due 2017 (the "2017 Notes"). (*See* Doc. No. 47-13, Affidavit of Deniz Akgul ("Akgul Aff."), dated December 1, 2016, at 84-85.) The Parent Notes are not currently guaranteed by any subsidiary of the Parent.

In February 2015, in light of financial difficulties and approaching debt maturity dates, Norske raised new capital to improve its liquidity and issued the €290 million in SSNs. The holders of the SSNs are represented by Plaintiff in this action. Pursuant to an indenture contract between Plaintiff and the Company, the SSNs are guaranteed by the Parent, the Subsidiary Guarantors, and two non-party entities – Norske Treindustrier AS and Norske Skog Holding AS – and are secured by share capital issued by certain Subsidiary Guarantors, as well as assets located in Australia and Tasmania, but, significantly, not Norske's assets located in Europe or certain bank accounts. (*See id.*, Ex. B (the "Indenture"), § 1.01.) The Indenture governing this debt issuance also places limits on Defendants' ability to incur new debt or to refinance existing debt. (Indenture § 4.09.)

[1] In ruling on the motion, the Court has considered Plaintiff's Memorandum of Law (Doc. No. 47-14 ("Mem.")), Defendants' Opposition (Doc. No. 32 ("Opp'n")), and Plaintiff's Reply (Doc. No. 50 ("Reply")), along with all declarations and exhibits attached thereto (Doc. Nos. 33-37, 47, & 51-52), as well as the parties' oral arguments at the February 9, 2016 hearing (Transcript of proceedings, dated February 9, 2016 ("Feb. 9 Tr.")) and the March 2, 2016 hearing (Transcript of proceedings, dated March 2, 2016 ("Mar. 2 Tr.")).

Despite the added liquidity from the SSNs, Norske's financial situation continued to deteriorate in 2015. Accordingly, Norske sought to take additional steps to avoid insolvency. In the fall of 2015, Defendants entered into negotiations with GSO Capital Partners LP ("GSO") and Cyrus Capital Partners, LP ("Cyrus"), holders of 37.6% and 68.2% of the outstanding 2016 and 2017 Notes, respectively. (Akgul Aff., Ex. A at 10.) As part of those negotiations, Norske attempted to pursue a short-term exchange offer in November 2015 that would have allowed Norske to delay payment on the 2016 and 2017 Notes, a payment which Norske admits it cannot make based on its current liquidity. (*See* Feb. 9 Tr., 9:4-7 ("Absent this exchange offer, we are unaware of any other way in which we're going to be able to make the $121 million bond payment that's due on the 15th of June.").) After that exchange offer failed, GSO and Cyrus acquired more of the Parent's stock and voting rights. (Akgul Aff. at 9, 74.) As of December 30, 2015, they are the largest shareholders of the Parent. (*Id.*)

On December 22, 2015, Defendants resumed negotiations with GSO and Cyrus, and an agreement was reached to launch the Exchange Offer at issue here. (See Akgul Aff., Ex. A, Offering Memorandum, dated January 5, 2016, at 9-10.) Under this Exchange Offer, the €330 million of debt from the 2016 and 2017 Notes, which would otherwise start to be due in June of this year, would be extended. (*Id.* at 10.) As consideration for this extension, noteholders who tender their notes will receive a package of new Exchange Notes, unsecured notes, perpetual notes, and equity subscription rights. (*Id.*) Importantly, the Exchange Notes are to be secured by assets of the Subsidiary Guarantors that are not already encumbered, including paper mills and bank accounts in Europe. The proposed Exchange Offer specifies that the new secured debt will not exceed €110 million. (*Id.*) The Exchange Offer is contingent on at least 90% of 2016 noteholders and 75% of 2017 noteholders tendering their notes (*id.*), although Defendants have conceded that this requirement may be waived to allow the Exchange Offer to go through with a lower threshold of noteholders tendering (*see* Mar. 2 Tr., 19:23-24 ("The company has the ability to waive that requirement.")).

With the Exchange Offer initially set to close on February 3, 2016 (Akgul Aff., Ex. A at xiii), Plaintiff commenced an action on February 2, 2016 in New York State Supreme Court, New York County, to enjoin the Exchange Offer. That same day, the Honorable Eileen Bransten held a hearing, granted a temporary restraining order, and issued an order to show cause with respect to Plaintiff's motion for a preliminary injunction. (Doc. No. 1.) On February 3, 2016, Defendants removed the action to this Court (*id.*) and, on February 5, 2016, Plaintiff filed a motion to remand the case back to state court (Doc. No. 17). On February 9, 2016, the Court held a conference in which it denied Plaintiff's motion to remand and set a briefing schedule for Plaintiff's motion for a preliminary injunction. Plaintiff and Defendants subsequently submitted briefing along with a number of exhibits and affidavits. (Doc. Nos. 32-37, 47, & 50-52.) Finally, on March 2, 2016, the Court held a hearing on Plaintiff's motion for a preliminary injunction to block the proposed Exchange Offer. In light of the temporary restraining order issued by the state court, Defendants have extended the deadline of the Exchange Offer to March 11, 2016.

II. Legal Standard

"'A preliminary injunction is an extraordinary remedy never awarded as of right.'" *UBS Fin. Servs., Inc. v. W.Va. Univ. Hosps., Inc.*, 660 F.3d 643, 648 (2d Cir. 2011) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008)). Rather, a district court may grant a preliminary injunction only if a plaintiff has demonstrated (i) "irreparable harm," and (ii) either (a) "a likelihood of success on the merits" or (b) "sufficiently serious questions going to the merits of its claims to make them fair ground for litigation, plus a balance of the hardships tipping decidedly in favor of the moving party." *Otoe–Missouria Tribe of Indians v. N.Y. Dep't of Fin. Servs.*, 769 F.3d 105, 110 (2d Cir. 2014) (quoting *Lynch v. City of New York*, 589 F.3d 94, 98 (2d Cir. 2009)). The Second Circuit has suggested that the balance of the hardships analysis may also require a determination as to whether the injunction would be in the public interest. *See id.* Finally, the party seeking the injunction carries the burden of persuasion to demonstrate "by a clear showing" that the necessary elements are satisfied. *See Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997).

III. DISCUSSION

A. Likelihood of Success

To establish a likelihood of success on the merits, a plaintiff "need not show that success is certain, only that the probability of prevailing is 'better than fifty percent.'" *BigStar Entm't, Inc. v. Next Big Star, Inc.*, 105 F. Supp. 2d 185, 191 (S.D.N.Y. 2000) (quoting *Wali v. Coughlin*, 754 F.2d 1015, 1025 (2d Cir. 1985)). Here, Plaintiff argues that it is likely to succeed on its claims that Defendants have breached the terms of the Indenture because the proposed Exchange Offer is a prohibited refinancing.

The elements of breach of contract are: "(1) the existence of a contract; (2) performance by the party seeking recovery; (3) non-performance by the other party; and (4) damages attributable to the breach." *RCN Telecom Servs., Inc. v. 202 Centre St. Realty LLC*, 156 Fed. App'x 349, 350-51 (2d Cir. 2005). Here, the parties do not appear to contest the existence of the Indenture or Plaintiff's performance of its obligations. Rather, this case turns on whether the Exchange Offer constitutes a violation of the Indenture's prohibition against refinancing transactions in Section 4.09. In general terms, Section 4.09 of the Indenture places broad limits on the Company's ability to take on additional debt. However, the Indenture carves out certain specific exceptions for "permitted refinancing indebtedness" (Indenture § 4.09(b)(5)), which is defined in Section 1.01 and explicitly excludes "Indebtedness of a Restricted Subsidiary of the Parent Guarantor that refinances the Existing Parent Notes" (*id.* § 1.01). The parties agree that this prohibition encompasses the proposed Exchange Offer, which would refinance the Parent Notes in part by providing collateral in currently unencumbered assets of the Parent's subsidiaries. Nevertheless, Defendants argue that the Exchange Offer is permissible as a "qualified securitization financing" ("QSF"), which is included as a separate type of permitted indebtedness under Section 4.09(b)(13) of the Indenture.[2] Section 1.01 of the Indenture defines a QSF as:

> [A]ny *financing* pursuant to which the Issuer or any Guarantor may sell, convey or otherwise transfer to any other Person or grant a security interest in, any Securitization Assets (and related assets) in any aggregate principal amount equivalent to the Fair Market Value of such Securitization Assets (and related assets) of the Issuer or any of its Restricted Subsidiaries . . . .

(*Id.* § 1.01 (emphasis added).) This definition contains several restrictions, including significantly that (1) the "provisions applicable to such financing shall be on market terms;" and (2) "the interest rate applicable to such financing shall be a market interest rate." (*Id.*)

As an initial matter, Plaintiff contends that Section 4.09(b)(5) expressly prohibits refinancing of the type contemplated by the Exchange Offer, and that the QSF exception applies only to "financing[s]," not a refinancing such as the Exchange Offer. Defendants, by contrast, argue that the QSF provision's use of the term "any financing" should be broadly construed to

[2] Section 4.09(c) permits the Parent to choose to rely on any exception in determining whether a transaction involves permitted indebtedness. (Indenture § 4.09(c) ("[T]he Parent Guarantor, in its sole discretion, will be permitted to classify such item of Indebtedness on the date of its incurrence and will only be required to include the amount and type of such Indebtedness in one of such clauses and will be permitted on the date of such incurrence to divide and classify an item of Indebtedness in more than one of the types of Indebtedness described in Sections 4.09(a) and 4.09(b) hereof and from time to time to reclassify all or a portion of such item of Indebtedness, in any manner that complies with this Section 4.09.").)

include the refinancing undertaken by the Exchange Offer. (Opp'n at 13.) The Court is skeptical of Defendant's proposed interpretation of the term "financing" to include the very type of refinancing that is explicitly prohibited by Section 4.09(b)(5). Throughout the Indenture the terms "financing" and "refinancing" are used to mean different things. For example, the definition of "permitted refinancing indebtedness" includes a number of scenarios in which indebtedness is "renewed, refunded, refinanced, replaced, exchanged, defeased or discharged." (Indenture § 1.01.) In contrast, the definition of "qualified securitization financing" makes no mention of refinancing and instead refers only to "any financing." (*Id.*) While Defendants suggest that refinancing is merely a "subset" of financing (Opp'n at 13), this definition does not accord with the Black's Law Dictionary definition of "financing" as "[t]he act or process of raising or providing funds," *FINANCING*, Black's Law Dictionary (10th ed. 2014). Put simply, the Exchange Offer does not raise new funds for Defendants, but rather allows them to delay payment on unsecured notes that would otherwise be due in 2016 and 2017 – thus increasing their short-term liquidity – in exchange for secured notes collateralized by assets of a subsidiary. This is a quintessential refinancing. *See REFINANCING*, Black's Law Dictionary (10th ed. 2014) (defining "refinancing" as an "exchange of an old debt for a new debt").

In essence, Defendants' interpretation of a QSF would permit an end-run around the Indenture's explicit prohibition against the refinancing of the Parent Notes set forth in the definition of "permitted refinancing indebtedness." (Indenture §§ 1.01 & 4.09.) Accepting Defendants' position – which implicitly construes "any financing" to mean "any financing or refinancing" – would effectively render Section 4.09(b)(5) meaningless, since it would allow any refinancing through the back door of the QSF provision. The Court is not inclined to read additional language into the contract when a reading of both provisions – the definitions of "permitted refinancing indebtedness" and "qualified securitization financing" – using the plain meaning of the terms "financing" and "refinancing" can allow the two provisions to coexist without directly contradicting each other. *See Pig Newton, Inc. v. Bds. of Dirs. of Motion Picture Indus. Pension Plan*, 95 F. Supp. 3d 366, 382 (S.D.N.Y. 2015) ("[I]t is a 'cardinal principle of contract construction[ ] that a document should be read to give effect to all its provisions and to render them consistent with each other.'" (quoting *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 63 (1995))). Accordingly, the Court agrees with Plaintiff that the Exchange Offer is explicitly prohibited by the Indenture.

Nonetheless, notwithstanding the Court's finding that Plaintiff has shown a likelihood of success or "serious questions going to the merits of [Plaintiff's] claims to make them fair ground for litigation," *Otoe–Missouria Tribe of Indians*, 769 F.3d at 110, the Court must still deny Plaintiff's request for a preliminary injunction for the simple reason that Plaintiff has failed to demonstrate that it will be irreparably harmed in the absence of an injunction.

B. Irreparable Harm

"Irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction." *Rodriguez ex rel. Rodriguez v. DeBuono*, 175 F.3d 227, 233-34 (2d Cir. 1999) (citation and internal quotation marks omitted). In order to demonstrate irreparable harm, a plaintiff must show an injury that is "actual and imminent" and that "cannot be remedied by an award of monetary damages." *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328, 332 (2d Cir. 1995) (citation and internal quotation marks omitted); *accord Moore v. Consol. Edison Co. of N.Y., Inc.*, 409 F.3d 506, 510 (2d Cir. 2005) ("Where there is an adequate remedy at law, such as an award of money damages, injunctions are unavailable except in extraordinary circumstances."); *see also Beautiful Home Textiles (USA), Inc. v. Burlington Coat Factory Warehouse Corp.*, No.

13-cv-1725 (LGS), 2014 WL 4054240, at *7 (S.D.N.Y. Aug. 15, 2014) ("[I]t is settled law that when an injury is compensable through money damages there is no irreparable harm." (quoting *JSG Trading Corp. v. Tray–Wrap, Inc.*, 917 F.2d 75, 79 (2d Cir. 1990) (internal quotation marks omitted))). If the movant fails to make a showing of irreparable harm, the motion for a preliminary injunction must fail. *See Rodriguez*, 175 F.3d at 234.

Here, the mere articulation of Plaintiff's alleged harm demonstrates its theoretical nature and supports the Court's conclusion that the alleged harm is neither actual nor imminent. Essentially, Plaintiff attempts to argue that it will be irreparably harmed if the Exchange Offer occurs because it will lose priority over currently unencumbered assets in the event of a potential bankruptcy – which Plaintiff claims is likely to occur with or without the Exchange Offer. This alleged harm simply does not satisfy the exacting standard of irreparable harm that must be met before a preliminary injunction may issue.

Plaintiff first focuses on Defendants' distressed current financial condition and their lack of liquidity to pay out the SSNs. For example, Plaintiff emphasizes that Norske's CEO has stated that Norske will not, in the foreseeable future, be able to pay all amounts due under the SSNs because of the company's lack of liquidity. (Reply at 1.) However, Plaintiff does not allege that Defendants have missed any interest payments on the SSNs, nor does it suggest that the Exchange Offer would have a negative effect on Defendants' ability to make these payments. (*See* Mar. 2 Tr., 39:9-11 ("We have made all interest payments. There is no indication we are not going to be able to make the interest payments.").) Significantly, Plaintiff does not argue that enjoining the Exchange Offer will serve to improve Defendants' financial condition or its liquidity. To the contrary, Plaintiff seems to accept that, without the Exchange Offer, Defendants will be forced into bankruptcy sooner and that their financial condition will be *worse*. (*See id.* at 9:11-13 ("[Defendants] do not have 120 million euros to pay these people in just a few months. So they want runway.").) As such, the Court finds that with respect to Defendants' current financial condition and ability to continue to make payments on Plaintiff's notes, Plaintiff has made no showing that the Exchange Offer will cause irreparable harm.

Judge Failla's decision in *Marblegate Asset Management v. Education Management Corp.*, on which both parties rely, is instructive on this point. 75 F. Supp. 3d 592 (S.D.N.Y. 2014). In *Marblegate*, the court declined to grant a preliminary injunction blocking a restructuring plan that would "force [plaintiffs] either to convert their debt to equity or to risk the elimination of their practical ability to recover their principal and remaining interest payments." *Id.* at 595. Despite this seemingly significant harm and evidence that defendants were "experiencing significant financial distress," including a 95% drop in stock price, *id.* at 594, the court concluded that plaintiffs had not shown an actual or imminent harm because they did not "convince the Court that the cure they seek would not be worse than the disease of which they complain," *id.* at 605. In other words, the plaintiffs in *Marblegate* – like Plaintiff here – simply did not show that the injunction would serve to improve defendants' financial condition and, more to the point, plaintiffs' ability to get paid.

To the extent that Plaintiff's argument turns on the harm that will occur in an eventual bankruptcy proceeding, this argument also fails. First, as has been recognized by many courts before, the mere possibility that a defendant will be insolvent is simply too remote and theoretical a proposition for the Court to evaluate with respect to irreparable harm. *See, e.g*, *Mitsubishi Power Sys., Inc. v. Shaw Grp., Inc.*, No. 04-cv-1251 (RMB), 2004 WL 527047, at *4 (S.D.N.Y. Mar. 16, 2004) (collecting cases); *Gen. Transp. Servs., Inc. v. Kemper Ins. Co.*, No. 5:03-cv-620, 2003 WL 21703635, at *3-4 (N.D.N.Y. June 25, 2003) (finding that defendant's default on $700 million of its notes and layoff of 1,000 employees were insufficient to show that defendant was "in 'imminent' danger of becoming insolvent"). Indeed, the parties here offer conflicting scenarios as to what will happen as a result of the Exchange Offer, with Defendants arguing that the Exchange Offer "is critical to the near-term liquidity of Norske and is in the legitimate best interest of the SSN holders," (Opp'n at 6; *see also* Mar. 2 Tr., 25:23-25-24:1-4 ("As the company indicated in its investor presentation that was given in February [2016] for the fourth quarter results, pricing's up, utilization of their mills is up, so it is very improved prospects for the future. . . . So this is not a going-out-of-business scenario no matter what happens.")), while Plaintiff argues that the Exchange Offer is unlikely to fix Norske's financial problems and that Norske's bankruptcy is more or less inevitable (*see id.* at 19:23-24 ("We think we are going to be facing bankruptcy either way. . . .")). Based on these conflicting accounts of Defendants' financial future, the Court concludes that Plaintiff's prediction of Defendants' bankruptcy is speculative, especially to the extent that Plaintiff argues that the Exchange Offer will only delay a bankruptcy that is otherwise inevitable and will occur "either way." (*Id.* at 19:24.)

Second, even if the Court were to accept Plaintiff's representation that Defendants' bankruptcy is imminent and unavoidable, Plaintiff has not demonstrated an irreparable harm that will result from such a bankruptcy. Plaintiff's theory of irreparable harm relates to assets that do not provide collateral for the SSNs, but as to which Plaintiff would merely have recourse in the event of a bankruptcy. While Plaintiff focuses on the fact that it will lose priority over the currently unencumbered assets if the Exchange Offer goes forward, Plaintiff has not rebutted Defendants' evidence that the collateral currently securing the SSNs is itself sufficient to cover the value of the SSNs. Specifically, Defendants identify more than €400 million in assets securing the €290 million in SSNs. (Akgul Aff., Ex. A, E1-58.) Plaintiff offers no argument or evidence to contradict this valuation or to suggest that the collateral securing its notes would be insufficient to satisfy the debt in the event of a bankruptcy. Accordingly, Plaintiff's argument that it might lose priority over the assets securing the Exchange Note is highly speculative, as the evidence currently before the Court indicates that the holders of the SSNs will be able to recover on the full value of their notes through the collateral already securing them.

Rather than confront Defendants' assertions concerning the value of the collateral, Plaintiff attempts to rely on the so-called "insolvency exception," whereby courts have found that a harm that might ordinarily be remedied through monetary damages may still be deemed irreparable in the context of an impending insolvency. *See generally Brenntag Int'l Chemicals, Inc. v. Bank of India*, 175 F.3d 245, 250 (2d Cir. 1999) ("[C]ourts have excepted from the general rule regarding monetary injury situations involving obligations owed by insolvents."); *see also Am. Hosp. Supply Corp. v. Hosp. Prods. Ltd.*, 780 F.2d 589, 596 (7th Cir. 1986) (recognizing that "defendant's insolvency is a standard ground for concluding that a plaintiff's harm if the preliminary injunction is denied will not be cured by an award of damages at the end of the trial"); *Marblegate*, 75 F. Supp. 3d at 607 ("It is thus not sufficient that a monetary remedy be theoretically calculable; there must actually be a solvent defendant at the close of litigation from whom to recover such damages."). However, the insolvency exception is not particularly relevant here. Typically, the insolvency exception is applied because the debtor's insolvency will compromise a creditor's ability to collect on a subsequent money judgment, thereby rendering the judgment meaningless. Here, however, Plaintiff seems to accept Defendants' bankruptcy – and the costs associated with it – as an inevitable event, regardless of whether the Court grants an injunction or not. In fact, Plaintiff implicitly acknowledges that insolvency is *more* likely to occur imminently if the preliminary injunction is *granted*. (*See* Mar. 2 Tr., 9:11-14 ("[Defendants] do not have 120 million euros to pay these people in just a few months. . . . They want the ability to just buy a little bit more time.").)

Rather than seeking an accelerated payment or the prevention of a dissipation of assets, Plaintiff here seeks a preliminary injunction to secure its priority with respect to certain currently unencumbered assets in the event of Defendants' bankruptcy. However, the insolvency exception is not designed to protect potential creditors' priority over assets in speculative bankruptcy proceedings. *See Am. Hosp. Supply Corp.*, 780 F.2d at 596 ("To use the defendant's insolvency as a reason for granting the plaintiff an injunction now rather than making him wait for damages till the end of the trial may seem to give the plaintiff a preference in the distribution of the defendant's assets and thus impose harms on third parties, the defendant's other creditors. The responsibility for assessing those harms, however, has been placed in the bankruptcy court . . . rather than the court asked to grant a preliminary injunction."). Such determinations are far better suited for a bankruptcy court than for a district court deciding whether to grant a preliminary injunction. More importantly, the record reflects that, even in a bankruptcy, Plaintiff should still get 100 cents on the dollar for its notes so long as the SSNs are secured by assets that exceed the notes' €290 million value. If Plaintiff alleged that Defendants were selling off *those* assets to meet their payroll or their obligations on the 2016 or 2017 Notes, this might be a different story. But as it stands, Plaintiff is merely speculating that it *might* want recourse to the unencumbered assets in the event – however unlikely – that the collateral proves insufficient to pay off the SSNs. That is simply too speculative for Plaintiff to meet the exacting standard for an irreparable harm.

As Plaintiff has not identified any other likely and imminent harm that will result from the Exchange Offer, the Court concludes that Plaintiff has not shown irreparable harm warranting a preliminary injunction. Accordingly, Plaintiff's motion for a preliminary injunction is denied.

IV. CONCLUSION

For the reasons stated above, IT IS HEREBY ORDERED THAT Plaintiff's motion for a preliminary injunction is DENIED. IT IS FURTHER ORDERED THAT the temporary restraining order against the Exchange Offer, which was imposed by New York State Supreme Court Justice Bransten on February 2, 2016, is lifted. Defendants shall respond to Plaintiff's Amended Complaint, filed on March 7, 2016 (Doc. No. 60), by Monday, March 21, 2016.

SO ORDERED.

Dated: March 8, 2016
New York, New York

RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE