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**IN THE UNITED STATES DISTRICT COURT**

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**FOR THE DISTRICT OF ARIZONA**

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In re Gorilla Companies LLC, et al., )

No. CV-10-01029-PHX-DGC

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Debtors. )

No. AP-09-00266-RJH

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No. BK-09-02898-RJH

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Robb M. Corwin; Jillian C. Corwin; and )

No. BK-09-02901-CGC

13 Holdings, LLC, )

No. BK-09-02903-GBN

13

Appellants, )

No. BK-09-02905-CGC

14

vs. )

**ORDER**

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Gorilla Companies LLC, et al., )

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Appellees. )

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Robb and Jillian Corwin are the sole owners of 13 Holdings, LLC. In June 2007, 13 Holdings sold the assets of an event-management company to Gorilla Companies LLC in exchange for an immediate cash payment, one million shares of Gorilla stock, a promissory note for \$1.5 million, and a second note that could pay up to \$6 million depending on Gorilla’s performance. In early 2008, Gorilla made a large payment to 13 Holdings as a prepayment on the second note. A dispute arose later that year regarding the amount that 13 Holdings should receive under the second note.

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Gorilla filed suit against the Corwins and 13 Holdings in state court. *See Gorilla Cos. LLC v. Corwin*, No. CV2008-032847 (Ariz. Super. Ct. Dec. 23, 2008). The case was removed to the bankruptcy court after Gorilla filed chapter 11 bankruptcy on February 20,

1 2009. *Gorilla Cos. LLC v. Corwin*, No. AP-09-00266-RJH (Bankr. Ariz. Mar. 10, 2009).  
2 Mr. Corwin and 13 Holdings subsequently filed proofs of claim in the bankruptcy  
3 proceedings. The trial was held on November 23 and 30, 2009. On March 22, 2010, the  
4 bankruptcy court entered final judgment in favor of Gorilla, awarding Gorilla more than \$4.7  
5 million in damages and nearly \$1.8 million in attorney fees and costs. *Id.*, Dkt. #332. The  
6 Corwins and 13 Holdings then brought this appeal from the final judgment pursuant to  
7 28 U.S. § 158. Dkt. #1.

8 Appellants have filed a motion to bifurcate issues on appeal. Dkt. #9. They argue that  
9 before deciding substantive challenges to the bankruptcy court’s judgment, the Court should  
10 first decide whether the bankruptcy court erred in finding Gorilla’s claims to be “core”  
11 proceedings. *Id.* The motion is fully briefed. Dkt. ##18, 19. For reasons stated below, the  
12 Court will grant the motion.<sup>1</sup>

13 “The bankruptcy court is empowered by 28 U.S.C. § 157(b)(1) to hear and finally  
14 determine ‘core proceedings arising under title 11, or arising in a case under title 11.’”  
15 *In re Marshall*, 600 F.3d 1037, 1040 (9th Cir. 2010). While the bankruptcy court may, under  
16 28 U.S.C. § 157(c)(1), hear non-core proceedings that are otherwise related to a case under  
17 title 11, “it may not issue final orders or judgments.” *In re Vylene Enters., Inc.*, 968 F.2d  
18 887, 889 (9th Cir. 1992). Instead, the bankruptcy judge submits proposed findings of fact  
19 and conclusions of law to the district court, “and any final order or judgment shall be entered  
20 by the district judge[.]” 28 U.S.C. § 157(c)(1); *see In re Marshall*, 600 F.3d at 1054 (the  
21 responsibility to “determine” a non-core proceeding “always remains with the district  
22 court”).

23 The determination whether Gorilla’s claims are core or non-core is “central to the  
24 disposition of this case and will affect the manner in which [the Court’s] analysis proceeds.”  
25 *In re Marshall*, 600 F.3d at 1050. If the Court determines that Gorilla’s claims constitute

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27 <sup>1</sup>Appellants’ request for oral argument is denied because the parties have briefed the  
28 issues and oral argument will not aid the Court’s decision. *See Fed. R. Civ. P. 78(b); Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998).

1 non-core proceedings otherwise related to the bankruptcy, then the bankruptcy court’s final  
2 judgment must be vacated and the case remanded for submission of proposed findings of fact  
3 and conclusions of law. *See In re Vylene*, 968 F.2d at 889. The Court will then enter final  
4 judgment “after considering the bankruptcy judge’s proposed findings and conclusions and  
5 after reviewing de novo those matters to which any party has timely and specifically  
6 objected.” 28 U.S.C. § 157(c)(1); *see* Fed. R. Bankr. P. 9033(d). If, on the other hand, the  
7 Court finds the bankruptcy court’s core/non-core determination to be correct, then the  
8 “bankruptcy court’s findings of fact are reviewed for clear error and its application of the  
9 legal standard is reviewed de novo.” *In re Nys*, 446 F.3d 938, 943 (9th Cir. 2006); *see In re*  
10 *Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990); Fed. R. Bankr. P. 8013. Because  
11 the distinction between core and non-core proceedings “has a significant impact on the  
12 standard of review that is [to] be applied” by the Court, *Herrans v. Mender*, 364 B.R. 463,  
13 468 (D.P.R. 2007), and because reversal of the bankruptcy court’s core/non-core  
14 determination will result in the final judgment being vacated and the case remanded, the  
15 Court finds that bifurcation of issues is appropriate.

16 Gorilla contends that Appellants “lost their opportunity to challenge the core/non-core  
17 status of Gorilla’s claims” when they failed to raise the issue in their motion to withdraw  
18 reference. Dkt. #18 at 12. Gorilla cites no legal authority in support of this apparent waiver  
19 argument. Moreover, the motion to withdraw explicitly argued that Gorilla’s claims are non-  
20 core. Dkt. #2, No. CV-09-02239-PHX-DGC (Oct. 26, 2009). Appellants have not waived  
21 their core/non-core argument.

22 Gorilla asserts that the law disfavors piecemeal appeals. Dkt. #18 at 15-17.  
23 Appellants note, correctly, that the cases cited by Gorilla involve interlocutory appeals, not  
24 bifurcation of issues on appeal. Dkt. #19 at 4. Considering first whether the bankruptcy  
25 court had authority to enter final judgment makes eminent sense and does not result in an  
26 improper “piecemeal” appeal.

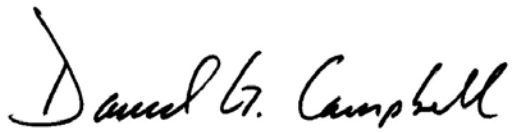
27 **IT IS ORDERED:**

- 28 1. Appellants’ motion to bifurcate appeal (Dkt. #9) is **granted**.

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- 2. The parties shall first address whether the bankruptcy court erred in finding Gorilla’s claims to be core and entering final judgment. Appellants shall file an opening brief on this issue by **July 16, 2010**. The response brief is due **July 30, 2010**, and the reply **August 6, 2010**. The opening and response briefs shall not exceed 10 pages each, and the reply is limited to 5 pages.
- 3. The Court, if necessary, will set a separate briefing schedule on remaining issues after it rules on the core/non-core issue.

Dated this 5<sup>th</sup> day of July, 2010.



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David G. Campbell  
United States District Judge