PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DAVID J. EIGEL, *et al.*,	)	
	)	CASE NO. 5:17CV0328
Plaintiffs,	)	
	)	
v.	)	JUDGE BENITA Y. PEARSON
	)	
UTILITY PIPELINE, LTD., *et al.*,	)	
	)	
Defendants.	)	**ORDER** [Resolving ECF No. 36]

Pending is the Motion for Preliminary Injunction (ECF No. 36) filed by Plaintiffs David J. Eigel, Bonnie L. Eigel, and Camelback, Ltd. (collectively, "Plaintiffs"). Defendants Utility Pipeline, Ltd. ("UPL"), UPL Investors, LLC, Utility Pipeline Holding Co., LLC, and UPL Merger Sub, LLC (collectively, "Defendants") jointly filed an opposition (ECF No. 43). Plaintiffs replied (ECF No. 46).

Plaintiffs seek to enjoin Defendant Utility Pipeline, Ltd. and/or Defendant UPL Investors, LLC "from withholding and refusing to pay Plaintiffs[']*pro rata* portions of their Merger Consideration unless Plaintiffs agree to post-closing restrictive covenants." ECF No. 36 at PageID #: 504.[1] The Court has jurisdiction over the Motion pursuant to Article 11, Section 11.13

[1] The motion for preliminary injunction directly correlates to Count One of the Complaint (ECF No. 1-1 ¶¶ 41-52) seeking a declaration from the Court that: "Defendants cannot condition the payment of Plaintiffs' merger compensation on the execution of the Letter of Transmittal, and that the additional obligations contained in the Letter of Transmittal are void for lack of consideration or otherwise in violation of Ohio law." ECF No. 1-1 ¶ 51(b). *See also id.* at PageID #: 19, 22-23. Should the Court or an arbitrator grant declaratory relief (*see* Defendants' motions to stay proceeding pending contractual arbitration, ECF Nos. 15, 19, 20), Plaintiffs also seek "an order pursuant to Ohio Rev. Code § 1705.40 *et seq*. that Plaintiffs are entitled to receive the full cash value of their membership interest[.]" ECF No. 1-1 at PageID #: 23.

of the Agreement and Plan of Merger By and Among Utility Pipeline, Ltd., Utility Pipeline Holding Company, LLC, UPL Merger Sub, LLC and UPL Investors, L.L.C. August 17, 2016 (the "Merger Agreement").[2]

After notice to the parties, the Court held a hearing on the motion for preliminary injunction. *See* Mins. of Proceedings, July 12, 2017. The Court has been advised, having reviewed the record, the parties' briefs, the applicable law, and having heard oral argument. For the reasons set forth below, Plaintiffs' motion is granted.

II.

The balancing of four factors primarily determines whether a preliminary injunction

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[2] Defendants concede that "[t]he Merger Agreement provided the 'manner and basis' upon which shares were to be converted into 'securities, cash, rights, or any other property,' as required by Ohio's merger statute for limited liability companies" and "Plaintiffs were bound by the terms of the Merger Agreement." ECF No. 43 at PageID #: 718-19. Article 11, Section 11.3 of the Merger Agreement provides: "Any action or proceeding arising out of or relating to this Agreement or the transactions contemplated by this Agreement must be brought . . . , if it has or can acquire jurisdiction, in the United States District Court for the Northern District of Ohio." ECF No. 41 at PageID #: 650 (filed under seal).

The Court finds that Plaintiffs' Motion for Preliminary Injunction "arises out of or [is] relating to" Plaintiffs' rights and Defendants' obligations to pay Merger Consideration under Article 2, Section 2.5 of the Merger Agreement. ECF No. 41 at PageID #: 594-95. Defendants acquired jurisdiction in the Northern District of Ohio on removal of this action from the Stark County, Ohio Court of Common Pleas pursuant to 28 U.S.C. §§ 1331, 1441, and 1446. *See* Notice of Removal, ECF No. 1. There is no arbitration clause in the Merger Agreement. Moreover, even if an arbitration clause were applicable, the Sixth Circuit has ruled that "in a dispute subject to mandatory arbitration under the Federal Arbitration Act, a district court has subject matter jurisdiction under § 3 of the Act to grant preliminary injunctive relief provided that the party seeking the relief satisfies the four criteria which are prerequisites to the grant of such relief." *Performance Unlimited, Inc. v. Questar Publishers, Inc.*, 52 F.3d 1373, 1380 (6th Cir. 1995).

Accordingly, Plaintiffs' motion for preliminary injunction is properly before the Court and not arbitrable.

should issue. These are: (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction. *Frisch's Restaurant, Inc. v. Shoney's Inc.*, 759 F.2d 1261, 1263 (6th Cir. 1985); *Am. Family Life Ins. Co. v. Hagan*, 266 F. Supp. 2d 682, 687 (N.D. Ohio 2002) (O'Malley, J.). The test is a flexible one and the factors are not prerequisites to be met, but must be balanced. *In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985). "Although no one factor is controlling, a finding that there is simply no likelihood of success on the merits is usually fatal." *Gonzales v. Nat'l Bd. of Med. Examiners*, 225 F.3d 620, 625 (6th Cir. 2000).

III.

In balancing the four considerations applicable to preliminary injunctions, the Court finds that equitable relief is appropriate.

A. Strong Likelihood of Success on the Merits

On August 17, 2016, Defendants entered into the Merger Agreement (ECF No. 41) contemplating a reverse triangular merger of Defendants' limited liability companies.[3] [4] The

[3] *See* Merger Agreement, ECF No. 41 at PageID #: 581 ("This Agreement contemplates a transaction in which [Defendant Utility Pipeline Holding Company, LLC] will acquire all of [Defendant UPL's] outstanding membership interests . . . for cash through a reverse subsidiary merger of [Defendant UPL Merger Sub, LLC] with and into [Defendant UPL]."

[4] Throughout this writing, the Court, at times, adopts the Defendants' identities as they are listed in the Merger Agreement: Defendant UPL (the "Company"); Defendant Utility Pipeline Holding Company, LLC ("Purchaser"); Defendant UPL Merger Sub, LLC ("MergerSub"); and UPL Investors, L.L.C. (the "Company Representative"). *See* ECF No. 41 at PageID #: 581.

terms of the merger are memorialized in the Merger Agreement. The merger closed on April 18, 2017. *See* Joint Stipulation of Facts, ECF No. 44 ¶¶ 21-23.

Plaintiffs argue, among other things, that "as a condition closing" Article 2, Section 2.10(a) of the Merger Agreement requires Defendant UPL to: (1) provide letters of transmittal from certain company members; and (2) provide a restrictive covenant agreement ("RCA") from Plaintiff Eigel and others. ECF No. 36 at PageID #: 514. Plaintiffs contend that they are not included on the schedule of required letters of transmittal, therefore, "[t]here is no requirement in the Merger Agreement that Plaintiffs execute a Letter of Transmittal." *Id.* As to the RCA, Plaintiffs contend that pursuant to Article 6, Section 6.1 of the Merger Agreement "th[e] condition is waivable and has been waived because the merger closed without an executed RCA from Eigel." *Id.* Plaintiffs also contend that Article 2, Section 2.5 of the Merger Agreement provides that, "as of the closing of the merger, Plaintiffs' membership interests in [Defendants] UPL and [UPL] Investors were cancelled, and they possess only a right to receive their portion of the Merger Consideration." *Id.* at PageID #: 513. Plaintiffs assert that Defendant UPL Investors[5] has paid Plaintiffs some of their money but has withheld the rest. *Id.*

The Ohio merger statute for limited-liability companies, provides that: "The agreement of merger or consolidation shall set forth . . . the manner and basis of converting the interests in the constituent entities into . . .cash[.]" Ohio Rev. Code 1705.36(B)(5). Article 2, Section 2.5 of the Merger Agreement provides:

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[5] Article 10 of the Merger Agreement grants Defendant UPL Investors the authority to "distribute to Company Members their respective share of the Merger Consideration." ECF No 41 at PageID #: 645.

> Section 2.5 Effect of Merger on Outstanding Equity Interests. At the Effective Time, by virtue of the Merger and without further action on the part of the parties, the following shall occur: . . .
>
> (b) Each Company Membership Interest issued and outstanding immediately prior to the Effective Time (other than Rollover Interests) (i) shall be converted into the right to receive its respective portion of the Merger Consideration in accordance with the Allocation Schedule set forth on Schedule 2.5(b) (the "Allocation Schedule") and (ii) shall otherwise cease to be outstanding, shall be canceled and retired and cease to exist.

ECF No. 41 at PageID #: 594-95. "Company Member" is defined as "each Person who holds a Company Membership Interest immediately prior to the Effective Time." *Id.* at PageID #: 584. "Company Membership Interests" are defined as "membership interests of Company reflected on the Company Disclosure Schedule." *See* Merger Agreement Article 3, Section 3.4(a), *Id.* at PageID #: 604. "Effective Time" is defined as "such time as the Certificate of Merge is duly filed with the Ohio Secretary of State or at such time thereafter as is provided in the Certificate of Merger." *See* Merger Agreement Article 2, Section 2.1, *Id.* at PageID #: 594. There is no dispute that Plaintiff David J. Eigel is listed as a Company Member with Company Member Interests on the Company Disclosure Schedule and Allocation Schedule. *Id.* at PageID #: 603-04, 705-06. Accordingly, the Court finds that there is a strong likelihood that a trier of fact will find that Plaintiffs are entitled to their share of the Merger Consideration and Plaintiffs will succeed on the merits of this contention.

The issue here, however, is whether Plaintiffs are likely to succeed on their claims that their share of the Merger Consideration is being unlawfully withheld by Defendants. Plaintiffs contend that the language "without further action on the part of the parties" in Article 2, Section

2.5 of the Merger Agreement prohibits Defendants from imposing post-closing requirements on Plaintiffs' rights to receive their respective portion of the Merger Consideration in accordance with the Allocation Schedule. ECF No. 36 at PageID #: 513. Surmising that this is likely an issue of first impression, Plaintiffs rely on Delaware case law to support this assertion. *Id.* at PageID #: 513-16. Defendants, without addressing Plaintiffs' contention fully, have invited the Court to engage in an exercise of statutory interpretation as to the distinctions between the Ohio and Delaware merger statutes and case law. ECF No. 43 at PageID #: 725-26. The Court declines the invitation. The evidence before the Court, and that will likely be before a trier of fact, is more obvious.

In addition to addressing the manner and basis of converting constituent interests into cash, the Ohio merger statute for limited-liability companies, provides that: "[t]he agreement of merger or consolidation shall set forth . . . the mode of carrying the terms [of a merger] into effect[.]" Ohio Rev. Code 1705.36(B)(5). Article 2 Section 2.10(a) provides:

> **At the Closing**, Company will deliver or cause to be delivered to Purchaser: . . .
>
> (ix) a letter of transmittal, in substantially the form attached hereto as Exhibit D, from the Company Members identified on Schedule 2.10(a)(ix);
>
> (x) a restrictive covenant agreement, in substantially the form attached hereto as Exhibit E-1 and Exhibit E-2, as applicable, from each of the Persons listed on Schedule 2.10(a)(x)[.]

ECF No. 41 at PageID #: 599-600 (emphasis added). *See also* n.4 *infra* (defining Company). "The Closing" is defined as "the closing of the transactions contemplated by this Agreement." *Id.* at PageID #: 599. There is no dispute that the merger closed on April 28, 2017.

Schedule 2.10(a)(ix) (ECF No. 41 at PageID #: 708) does not list any of the Plaintiffs to this action. The Court notes, in particular that, the list includes the names of entities and individuals but does not list Plaintiffs. Thus, the Court finds there is a strong likelihood that a trier of fact will find that Plaintiffs are excluded from the requirement to provide letters of transmittal under the terms of the Merger Agreement. Moreover, a trier of fact could find that the "mode of carrying the terms into effect" means the conditions that the parties must meet prior to the merger closing. The trier of fact need only look to the plain language definition of "mode" to make this finding. Merriam-Webster defines "mode" as a particular condition. Plaintiffs contend that "as a condition of closing," Article 2, Section 2.10(a)(ix) of the Merger Agreement requires Defendant UPL to provide an RCA from Plaintiff David J. Eigel and others. *See* ECF No. 36 at PageID #: 514. Pursuant to Article 6, Section 6.1 of the Merger Agreement, Plaintiffs contend further that the "condition is waivable and has been waived because the merger closed without an executed RCA from [Plaintiff David J.] Eigel" —*i.e.*, the pre-merger condition in Article 2, Section 2.10(a)(ix) was waived.

Article 6 of the Merger Agreement provides:

> Section 6.1 Conditions to the Obligation of Purchaser and MergerSub. The obligation of Purchaser and MergerSub to consummate the transactions contemplated by this Agreement is subject to the satisfaction, **on or before the Closing Date**, of each of the following conditions (**any of which may be waived by Purchaser and MergerSub, in whole or in part**): . . .
>
> (b) Performance of Covenants. All of the covenants and obligations that Company is required to perform or comply with under this Agreement **on or before the Closing Date** must have been duly performed and complied with in all material respects[.]

> Section 6.2 Conditions to the Obligation of Company. The obligation of Company to consummate the transactions contemplated by this Agreement is subject to the satisfaction, **on or before the Closing Date**, of each of the following conditions (**any of which may be waived by Company, in whole or in part**): . . .
>
> (b) Performance of Covenants. All of the covenants and obligations that Purchaser and/or MergerSub is required to perform or comply with under this Agreement **on or before the Closing Date** must have been duly performed and complied with in all material respects[.]

ECF No. 41 at PageID #: 631-32 (emphasis added). *See also* n.4 *infra* (defining Purchaser, MergerSub, and Company).

Because the merger has closed without Defendants meeting the relevant conditions of Article 6, Sections 6.1 and 6.2 "on or before the Closing Date," there is a strong likelihood that a trier of fact will find that Defendants UPL, Utility Pipeline Holding Company, and UPL Merger Sub waived those conditions. Moreover, there is a strong likelihood that a trier of fact will find that, because the conditions were waived, Defendant UPL Investors lacks any authority under Article 10 of the Merger Agreement to enforce Article 2' s restrictive covenants on Plaintiffs *after the merger has closed*. *See* ECF No. 41 at PageID #: 644-45. Consequently, a trier of fact will likely find that there is no basis for Defendants to enforce post-closing conditions on Plaintiffs.

Accordingly, the Court finds that Plaintiffs have shown a strong likelihood on the success of the merits of their claims.

B. Irreparable Injury

Plaintiffs identify the loss, potential continued loss, and the stagnant and uncertain state

of investment, employment, and consulting opportunities in the oil and gas industry as the irreparable injury that will be suffered absent a grant of injunctive relief. ECF No. 36 at PageID #: 517. Specifically, Plaintiffs contend that Defendants' refusal to pay Plaintiffs' share of the Merger Consideration has resulted in the aforementioned lost opportunities, seriously hampered Plaintiff David J. Eigel's attempts to re-engage in the industry, and will cause greater disadvantage and harm the longer this matter continues. *Id.* Moreover, Plaintiffs aver that Plaintiff David J. Eigel planned to use the withheld Merger Consideration funds to: invest in or purchase entities in the oil and gas industry; prevent the loss of business opportunities; and, to sustain Plaintiff David J. Eigel's ability to earn a living. ECF No. 46 at PageID #: 749, 754.

As evidence of the type of lost investment opportunities Plaintiffs have experienced to date, Plaintiffs proffer the sworn affidavit of Plaintiff David J. Eigel (ECF No. 46-1) and an attached email communication between Plaintiff David J. Eigel and a prospective purchasee company (*see* Exhibit A, ECF No. 46-1 at PageID #: 761-62). The sworn affidavit states:

> On May 19, 2017, I received an email communication from [a company I offered to purchase in Pennsylvania] which provided in part that my purchase funding could not be demonstrated to the Sellers satisfaction. This was because I had not received the Merger Consideration I expected from UPL in the completed Merger transaction.

Id. at PageID #: 759, ¶ 5. The email attached as Exhibit A states: "I believe your purchase funding to be a future problem. If purchase funding [were] settled in place and pending, that might be a incentive for being bound[.]" *Id.* at PageID #: 762. Plaintiffs also aver that Defendant UPL's failure to make tax distributions to Plaintiffs after May 2016 has forced Plaintiff David J. Eigel to use other sources of income to pay personal taxes and to loan Plaintiff

Camelback, Ltd. funds to pay for ownership in UPL. ECF No. 36 at PageID #: 518. Last, Plaintiffs assert that they are "seeking to remedy the deprivation of their property, not collect damages" or seek a preliminary award of damages. ECF No. 46 at PageID #: 753.

Relying on the Sixth Circuit's rulings in *Performance Unlimited v. Questar Publishers*, 52 F.3d 1373, 1380-82 (6th Cir. 1995), and *Warren v. City of Athens*, 411 F.3d 697, 711-12 (6th Cir. 2005), Defendants contend that Plaintiffs have not shown irreparable harm because: (1) the harm alleged does not amount to the type of irreparable harm that will make arbitration a hollow formality; (2) Plaintiff David J. Eigel does not allege that any uncertainty in investment, employment, and consulting opportunities will result in the loss of his entire enterprise; (3) Plaintiff David J. Eigel does not explain how the payment of damages would resolve the alleged uncertainty; and (4) there is no evidence that a company is about to go out of business if not paid or that there will be lost profits. ECF No. 43 at PageID #: 724-25. In addition, Defendants purport to reveal to the Court that Plaintiffs' "true motive" is to argue the merits of the case and avoid arbitration because Plaintiff David J. Eigel "made no attempt to quantify the money he would need until the time an arbitrator is selected to take over the matter." *Id.* at PageID #: 725.

While Defendants maintain that Plaintiffs have not shown irreparable harm under *Performance Unlimited*, the Court finds the argument unavailing taking into account the irreparable harm that Plaintiffs assert and the evidence before the Court. The Court also finds the argument inapposite as to individual Plaintiffs whom are not business entities. The crux of the irreparable harm asserted by Plaintiffs does not lie in Plaintiffs' existence as a business entity nor do Plaintiffs argue that the irreparable injury will result in the loss of their enterprise. *See* ECF

No. 46 at PageID #: 754 ("[P]laintiffs are not claiming they need a preliminary award of damages to keep from going out of business.").

As mentioned above, Plaintiffs have demonstrated a strong likelihood of success on the merits on the declaratory relief claims pertaining to payment of Merger Consideration. The loss, potential continued loss, and stagnant and uncertain state of investment, employment, and consulting opportunities associated with those claims could result in damage to Plaintiffs' ability to purchase entities in the oil and gas industry and Plaintiff David J. Eigel's ability to earn a living if an injunction does not issue. *See* *S. Glazer's Distribs. of Oh., LLC v. Great Lakes Brewing Co.*, 860 F.3d 844, 852 (6th Cir. 2017) ("An injury is irreparable if it is not 'fully compensable by monetary damages,' . . . that is, 'the nature of the plaintiff's loss would make damages difficult to calculate[.]'") (quoting *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012), *Basicomputer Corp. v. Scott*, 973 F.2d 507, 511 (6th Cir. 1992)).

Accordingly, this factor weighs in favor of granting the motion.

C. Substantial Harm to Others

Plaintiffs argue that no harm will come to Defendants if they were to be ordered to pay Plaintiffs their portion of the Merger Consideration without imposing post-closing conditions. ECF No. 36 at PageID #: 518. As support for this assertion, Plaintiffs aver that, as of April 2017, Defendants have already paid all other Company Members their portions of the Merger Consideration. *Id.* ; *see also* ECF No. 46 at PageID #: 755. Plaintiffs also contend that Plaintiff David J. Eigel "has not been interfering with any of Defendants' customer relationships" and is "merely looking for a job which he has a right to do." ECF No. 46 at PageID #: 755. Moreover,

Plaintiffs aver that Plaintiff David J. Eigel "has not been bound by any restriction on his ability to compete with [Defendant] UPL since April 2015"—the period of time between the expiration of restrictive covenants under the 2010 Lawsuit (*see infra*) and before the merger of Defendants' limited liability companies. *Id.* Therefore, Plaintiffs contend that Defendants' present claim of harm to Defendant UPL's customer goodwill is unfounded. *Id.*

Defendants disagree, and contend that Defendants will be harmed if a preliminary injunction is granted because they will suffer the "irreparable harm" of loss of customer goodwill. ECF No. 43 at PageID #: 726-27. In support of this contention, Defendants seize on Plaintiffs' concession that the investment opportunities Plaintiff David J. Eigel has pursued in the oil and gas business "could be construed as competitive." *See* ECF No. 36 at PageID #: 510. Defendants argue that this is evidence of Plaintiffs intent to interfere with Defendants' existing customer relations and that this interference "with Defendants' existing customer relations presents real and present harms that would persist and increase if [Plaintiff David J. Eigel] is awarded disbursement funds without signing the Letter of Transmittal and Restrictive Covenant Agreement." ECF No. 43 at PageID #: 727. Defendants also aver that they will suffer harm in the form of "disrupt[ed] post-closing matters by freeing [Plaintiff David J. Eigel] from the appointment of [Defendant] UPL Investors as the stockholder representative." *Id.* at PageID #: 723.

Defendants rely on *Basicomputer Corp. v. Scott*, 973 F.2d 507 (6th Cir. 1992), to support much of these assertions. But, Defendants' reliance is misplaced. *Basiccomputer* stands for the proposition that loss of customer goodwill "often amounts to *irreparable injury* because the

damages flowing from such losses are difficult to compute." *Basicomputer*, 973 F.2d at 512 (emphasis added). The Court has already considered the irreparable injury to Plaintiffs and ruled that this factor weighs in favor of preliminary injunctive relief. While Defendants argument appears to assert that a finding of irreparable injury to Defendants should import a finding of harm to Defendants, the Court finds the argument unavailing and speculative at best.

The parties have stipulated that a 2010 Lawsuit claiming that Plaintiff David J. Eigel had breached restrictive covenants owed to UPL following his termination was resolved by a Settlement Agreement and Mutual Release. *See* Joint Stipulated Facts, ECF No. 44 ¶¶ 17-18. Under the terms of the Settlement Agreement, Eigel agreed not to compete with UPL for three years and not to solicit UPL's customers for five years. ECF No. 36 at PageID #: 517. Plaintiff David J. Eigel has operated free of restrictions to pursue investment and other competitive opportunities with Defendants' customers since April 2015. ECF No. 46 at PageID #: 755. Moreover, Defendants do not dispute Plaintiffs' assertion that Defendant UPL Investors has paid Plaintiffs some portion of the Merger Consideration but withheld the remainder. ECF No. 36 at PageID #: 513; *see also id.* at PageID #: 518 ("Investors is holding Plaintiffs' portion - likely not in any type of interest-bearing account - and refuses to pay it unless Plaintiffs agree to unlawful post-closing conditions.").[6] Additionally, Defendants' attempts to purport the alleged intent of Plaintiff David J. Eigel's lacks evidentiary support in the record and is speculative at best (even in light of Plaintiffs' concession regarding how these opportunities may be construed).

[6] The Court notes that this assertion was also made during oral argument and was not refuted by Defendants.

Accordingly, this factor also weighs in favor of granting the motion.

D. Public Interest Served By Injunction

Plaintiffs argue, among other things, that the public interest is furthered by issuance of the injunction because it would promote "Ohio['s]. . . clear policy of protecting the rights of minority members and shareholders from oppression by the majority." ECF No. 36 at PageID #: 15-16. While Defendants argue the policy interests favoring arbitration, these arguments are premature. *See* ECF No. 43 at PageID #: 727-28. The Court is yet to decide whether Defendants' motions to stay this matter pending arbitration will be granted (*i.e.*, whether this action in toto should go before an arbitrator pursuant to the Operating Agreement).

At this juncture in the proceedings, the parties have established that Plaintiffs are (or were) minority members and shareholders of Defendant UPL. *See* Joint Stipulation of Facts, ECF No. 44 ¶¶ 1-5. On April 28, 2017, Defendants executed a reverse triangular merger the terms of which are memorialized in the Merger Agreement. Defendants have since withheld and refused to pay Plaintiffs' share of the Merger Consideration. The injunction would stop Defendants from withholding and refusing to pay Plaintiffs there respective shares at least until a trier of fact may render a final decision on Plaintiffs' claims as to the lawfulness of this practice. Until such time, the public interest is served by a grant preliminary injunctive relief to protect Defendants' minority shareholders interests. *See* *Mobil Corp. v. Marathon Oil Co.*, No. C-2-81-1402, 1981 WL 1713, at *19 (S.D. Ohio Dec. 7, 1981), *aff'd*, 669 F.2d 366, 370 (6th Cir. 1981). ("There is a clear and overriding public interest in having influential business enterprises comply with legislation and legal principles designed to protect investors in the marketplace.").

Accordingly, this last factor also weighs in favor of granting the motion.

E. Summary

In balancing the four factors, the Court concludes that all four factors weigh in favor of granting Plaintiff's motion for preliminary injunction.

IV.

For the reasons stated above, Plaintiffs' motion for preliminary injunction (ECF No. 36) is granted. Accordingly, Defendants Utility Pipeline, Ltd., UPL Investors, LLC, Utility Pipeline Holding Co., LLC, and UPL Merger Sub, LLC are hereby enjoined from the following:

(1) Withholding Plaintiffs' *pro rata* portions of the Merger Consideration; and

(2) Refusing to pay Plaintiffs the *pro rata* portions of the Merger Consideration.

This is a case in which Plaintiffs seek payment of their *pro rata* share of the Merger Consideration— a sum that is not in dispute. The issue in dispute remains whether the release of these funds has conditions precedent (*i.e.*, Plaintiffs' obligation to sign documents agreeing not to compete, etc.). That issue will be resolved separately. Accordingly, Plaintiffs are required to post a bond of One Dollar ($1.00).

IT IS SO ORDERED.

July 28, 2017
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge