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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:	Chapter 11
THRASIO HOLDINGS, INC., *et al.*,	Case No. 24-11840 (CMG)
Debtors.[1]	(Jointly Administered)

DEBTORS' STATEMENT IN ADVANCE OF MAY 7, 2024 STATUS CONFERENCE

TO: THE HONORABLE JUDGE CHRISTINE M. GRAVELLE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW JERSEY:

[1] The last four digits of Debtor Thrasio Holdings, Inc.'s tax identification number are 8327. A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' claims and noticing agent at https://www.kccllc.net/Thrasio. The Debtors' service address for purposes of these chapter 11 cases is 85 West Street, 3rd Floor, Walpole, MA, 02081.

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The Debtors file this statement (this "Statement")[2] in advance of the May 7, 2024 status conference (the "Status Conference") scheduled by the Court to provide an update on the status of the ongoing discovery process surrounding the Committee's and the Disinterested Directors' investigation. In light of the substantial and disproportional discovery burden the Committee has placed—and appears willing to continue to place—on the estates, the Debtors ask the Court to impose limits on the Committee's ongoing discovery efforts, particularly with respect to requested depositions.

Statement

1. The Debtors understand the need for the Committee to conduct diligence and reach its own conclusions as to whether viable and valuable causes of action exist as part of the estates. The Debtors also understand the importance of being cooperative and constructive with the Committee, especially in the hopes of reaching consensus on a plan of reorganization. To further this goal, the Debtors have produced 80,866 of documents to the Committee consisting of 779,979 pages, and have given the Committee and its members over three hours of open question and answer sessions with the Company's management team to date. However, the Committee's unrelenting and expansive discovery and diligence requests, coupled with the Committee's apparent intention to conduct 14 depositions thus far (with at least two additional deposition requests likely to come) over the next two weeks, all while refusing to engage in settlement discussions until discovery is complete, if at all, is putting a financial and operational burden on the Debtors that does not serve the interests of the Debtors' estates. The demands of the Committee

[2] A description of the Debtors and their businesses, and the facts and circumstances supporting this Reply and the Debtors' chapter 11 cases, are set forth in greater detail in the *Declaration of Josh Burke, Chief Financial Officer of Thrasio Holdings, Inc., in Support of First Day Motions* (the "First Day Declaration") [Docket No. 38]. Capitalized terms used but not otherwise defined in this Reply shall have the meanings ascribed to them in the First Day Declaration, the Motion, or the Objection, as applicable.

have been the primary driver of an approximately 60% increase in estimated professional fees versus the Debtors' original estimates for these cases contained in the DIP Budget. Currently, the estimate for professional fees in April alone has expanded to $13 million, largely caused by the efforts needed to respond to Committee's discovery requests and paying the Committee's professional fees. The Committee's strategy only serves to damage the post-emergence business of the Debtors by reducing the liquidity the Debtors will have on hand to operate while distracting the Board and management team from their daily responsibilities and putting go-forward infrastructure in place for the reorganized business. Put simply, the Committee has lost the plot.

2. The Committee's shotgun approach to discovery has placed an enormous burden on the estates in terms of time, attention, and fees. Prior to the Disclosure Statement Hearing on April 18, 2024, the Debtors informally requested that the Committee limit the scope of its discovery requests and suggested that the Committee's discovery approach, especially with respect to purported confirmation issues, was overbroad. Since then, the Committee has sent even more discovery requests that, by the Debtors' estimation, would require the review of hundreds of thousands of additional documents.

3. As the Court is aware, on April 11, 2024, the Debtors made a settlement offer to the Committee that would substantially increase the consideration available to general unsecured creditors under the Plan. The Committee declined to even engage with the proposal. Moreover, the Committee has yet to provide any counter or framework that would allow for settlement discussions, claiming that it still lacks sufficient information to craft a counter and needs additional time to formulate a proposal. Although the Debtors remain ready and willing to meaningfully engage in settlement discussions with the Committee, the notion that the Committee lacks sufficient information to craft a counter is simply baffling in light of the volume of information

and direct time with the Company's management team that has been provided to date. The Debtors have provided several hours-long meetings with the management team, recounting the Company's history and describing the go-forward business plan. And beyond that, the 80,866 documents the Debtors have produced to the Committee consist of tens of thousands of emails from company custodians identified by Katten Muchin Rosenman LLP ("Katten") for purposes of the investigation being performed by the Debtors' Disinterested Directors, thousands of documents reviewed from additional company custodians not identified by Katten, responsive communications identified for twenty custodians from Debtors' counsel at Kirkland & Ellis, thousands of documents produced from custodians at the company's advisors at Centerview Partners and AlixPartners, and thousands of specific documents collected by the company in response to specific requests by the Committee (touching on matters such as board materials, financing-related documents, secondary sales, and other categories). The scope of production is even in excess of independent investigations conducted in recent multi-billion dollar, complex chapter 11 cases, the sufficiency of which has been affirmed by the confirmation of chapter 11 plans that relied on the findings of the investigations. *See In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. 2022) (total production of 93,000 documents, including duplicates); *In re Envision Healthcare Corp.*, No. 23-90342 (CML) (Bankr. S.D. Tex. 2023) (total production of 82,000 documents). Any allegation that the Committee has not had sufficient time is also meritless, as they have been engaged for months at this point, and yet their discovery requests remain directionless and sprawling. The document requests seem to only be concerned with maximizing the sheer volume of documents available rather than focused on anything in particular. The Debtors' attempts to strategically limit the review to target responsive documents are met with refusal.

4. The Committee's commitment to burdensome and disproportional discovery is obstructing the Debtors' ability to prosecute these cases, and forces the Debtors to seek the Court's assistance in limiting the discovery and depositions being propounded by the Committee. The watchword of discovery under the Federal Rules of Civil Procedure is proportionality. Fed. R. Civ. P. 26(b)(1) (as applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014, noting that scope if discovery includes "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case"). Here, the Committee has at numerous points, both in Court and with the Debtors, referred to their theory that the Debtors have "lost $3 billion," and that their ongoing discovery is necessary to investigate that loss. This reference to $3 billion is a red herring. That $3 billion number is an aggregate of rounds of investment by lenders and investors that put money into the Debtors over the course of several years (and are now the parties expending additional resources responding to subpoenas from the Committee and funding the Debtors' ongoing discovery). And the diligence produced by this point has shown where that money went—to fund the expenses of an early-stage growth company, with significant amounts used to satisfy the upfront purchase price, as well as earn-out and deferred obligations, when acquisitions closed to individual sellers, including those that are now represented by the Committee. Here, the Committee represents a constituency of, by the Debtors' estimate, approximately $70 million in general unsecured claims.[3] While the general unsecured claims pool is not insignificant, the Committee's mandate is determining an appropriate settlement amount for an out-of-the-money $70 million constituency—a far cry from investigating and litigating a $3 billion case.

[3] This figure does not account for the deficiency claims held by the First Lien Lenders, which are also properly classified as General Unsecured Claims.

5. The Debtors have facilitated the provision of information to the Committee based on reasonable and proportional diligence requests related to issues that are conceivably in dispute at confirmation, and will continue to do so. But the Debtors also recognize their obligation to maximize the value of their estates for all constituencies, and agreeing to respond to all demands of the Committee, regardless of the burden imposed on the Debtors and the estates, would not be consistent with that obligation. To be clear, the Debtors believe the Committee already possesses more than sufficient documents to be able to make its own determination about the existence and extent of any valuable causes of action held by the estates,[4] or to raise challenges to confirmation of the Plan on the basis of the best interest test or valuation.

6. Despite this, the Committee appears intent on pressing the Debtors to produce documents beyond what is reasonably necessary for them to litigate any challenges to confirmation. Several recent examples demonstrate this pattern. ***First***, despite the Debtors having already reviewed tens of thousands of emails from company custodians—which custodians include two former CEOs, the current COO, the former President, two former CFOs, and the current treasurer—that were collected as part of the Disinterested Directors' investigation, the Committee continues to demand that the Debtors to run additional search terms and add additional company custodians that would result in the review of tens of thousands of additional documents. ***Second***, the Debtors have certain files maintained in a DropBox system that cannot be readily searched given the set up and amount of data on the system. Given the difficulty of searching the entire database, the Debtors provided the Committee with a folder index for DropBox folders to which certain custodians have access. The Debtors then invited the Committee to identify folders with a

[4] The Debtors are producing to the Committee every document provided to Katten as part of the the Disinterested Directors' investigation, save for those documents protected by the attorney-client privilege or the work product doctrine.

reasonable number of documents in them for the Debtors to review and produce. The Committee responded by identifying folders containing in excess of ***one million*** documents. After the Debtors pushed back, the Committee reduced its ask, but still identified nearly 200,000 additional documents they wanted the Debtors to review. Both of these new, massive productions are in addition to the ongoing requests the Debtors receive and respond to from the Committee regarding prior productions. Other than these two recent instances, the Debtors have, thus far, fully cooperated and produced all documents requested by the Committee (although the Debtors have been unable to locate certain requested documents).

7. The Committee has also served at least a dozen subpoenas for documents on other parties. With respect to certain investors who also have directors that serve on the Debtors' board, the Debtors have coordinated with those entities to allow production to the Committee while protecting any applicable privilege held by the Debtors.

8. As the Debtors and third parties move towards the completion of the substantial production of documents and into depositions, the Committee has shown no signs of slowing this scorched earth approach. To date, the Committee has already identified **fourteen** witnesses for potential depositions. That number is likely to grow, as it does ***not*** include a witness from AlixPartners or Centerview, both of whom the Debtors will be calling affirmatively at the confirmation hearing to support the liquidation analysis and valuation respectively. Taking in excess of ten depositions typically requires leave of the court. *See* Fed. R. Civ. P. 30. Based on the Debtors' review of similarly sized chapter 11 cases, it would be unusual to take more than six depositions—and even compared to significantly larger or more litigious chapter 11 cases, 14 depositions is far beyond the scope of what is normal.

9. The titles of these deponents alone demonstrate the amount of duplication likely to occur through these depositions. The individuals identified for deposition thus far are: Carlos Cashman (founder, former CEO, and current director), Stephanie Fox (current COO), Daniel Boockvar (former President of Thrasio), Greg Greeley (current CEO), Josh Burke (current CFO), Steve Nee (current Senior Vice President of Finance), Bill Wafford (former CFO), Jefferson Case (current director), Jason Finger (current director), David Mussafer (former director), Tom Szkutak (current director), Stephen Evans (current director), Anthony Horton (current Disinterested Director), and Stefan Selig (current Disinterested Director). There is no reason that the Committee would need to depose ***each*** of the current CEO, CFO, COO, and SVP of Finance (not to mention the former President and CFO) to make its case at confirmation. Likewise, even accepting that different directors were appointed by different investors, the idea that the Committee needs to depose ***seven*** current directors and one former director is absurd. This list of deponents reflects the same shotgun approach to discovery the Committee has taken throughout this case—asking for anything and everything possibly relevant while giving no thought to the massive expenditure and loss of value that comes as a result.

10. The Debtors question the point and intentions behind the Committee's strategy. Professional fees have ballooned, a consequence that puts any increased recovery for the General Unsecured Creditors class and the cash position of the go-forward business at risk. Each week of these cases generates roughly $3 million of professional fee spend, even though the proposed Plan is confirmable and has the full support of the Debtors' secured creditors. Settlement engagement has been nonexistent. In order to protect the estates from this unnecessary burden and to protect the Debtors from these not proportional discovery requests, the Debtors asks that the Court limit the Committee to taking no more than five depositions, in total, in connection with any objection

to confirmation absent prior order of the Court, and curtailing further requests for significant document productions. The Debtors respect the Committee's role in these chapter 11 cases, but will not blindly acquiesce to harming their post-emergence business by using the liquidity earmarked for business operations to produce hundreds of thousands of documents to, and sit for over 60 hours of depositions for, the Committee. To the extend these requests require a protective order, the Debtors will be prepared to file one expeditiously after the Status Conference to protect the estates.

[*Remainder of page intentionally left blank*.]

Dated: May 6, 2024

/s/ *Michael D. Sirota*

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