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May 6, 2024

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The Honorable Christine M. Gravelle
United States Bankruptcy Judge for the District of New Jersey
402 East State Street
Trenton, NJ 08608
Courtroom #3

Re: *In re Thrasio Holdings, Inc.*, et al., Case No. 24-11840 (CMG) (Bankr. D.N.J.)

Dear Judge Gravelle:

I am writing on the behalf of the Official Committee of Unsecured Creditors of Thrasio Holdings, Inc., *et al.* (the "Committee") in connection with its investigation of potential claims and causes of action regarding the Debtors' prepetition affairs and the Debtors' plan confirmation timeline. In advance of the status conference scheduled for May 7, 2024, we wanted to provide you with an update on the status of the Committee's investigation.

Since being formed a little over seven weeks ago, the Committee has pursued expedited discovery on a number of fronts, including in connection with the potential claims that are being investigated in parallel by Anthony R. Horton and Stefan M. Selig, the Disinterested Directors of Thrasio Holdings, Inc. (the "Disinterested Directors"). While the Committee has diligently pursued document discovery from the Debtors and various key third parties, the productions made to the Committee remain incomplete, and none of the necessary depositions have yet been taken.

We are writing to provide an update on the Committee's discovery efforts thus far and what remains outstanding. Because the Committee's own efforts have been constrained by the limited scope of the Disinterested Directors' investigation,¹ we also write to express serious concerns about the Disinterested Directors' investigation (largely but not entirely due to the delay in the Debtors providing information), and the soundness of any conclusions that could be reached based on that review to date.

¹ The bulk of what has been provided by the Debtors to the Committee has been largely limited to a reproduction of the subset of the documents that the Disinterested Directors decided to review as part of their investigation that the Debtors self-identified as non-privileged. Thus, what the Disinterested Directors have done—and more importantly failed to do—not only has directly impacted what the Committee has been able to do in the time allowed but also exposed the lack of a thorough independent investigation to date.



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I. Potential Claims

The Committee has been thoroughly investigating the Debtors' pre-bankruptcy affairs, including various insider transactions. The Committee's investigations include, among other things, determining whether claims arise out of the following:

- The approximately \$142 million tender offer that benefitted insiders;
- The Debtors' lack of internal controls and accounting irregularities (including inaccuracies and misrepresentations in Thrasio's financial statements);
- Certain secondary sales of Thrasio equity, including by Thrasio's co-founders, officers, and directors, which total over \$300 million;
- Transactions with Upper90 Capital Management, LLC and affiliated entities ("Upper90"), pursuant to which the Debtors entered into a credit agreement with Upper90 in November 2018, and prepaid the amounts thereunder (including a \$26 million "make-whole" premium and accrued payment-in-kind interest), in the total amount of \$166.1 million in December 2020, during the time Upper90 had a seat on Thrasio's board;
- Compensation and bonus payments (including equity awards), and the retention bonuses granted to certain officers in August 2023 and February 2024;
- The circumstances surrounding the issuance of a \$290,500 note payable to an entity related to Carlos Cashman, one of the Debtors' co-founders, in May 2018;
- Transactions with Yardline Capital Corp. ("Yardline"), pursuant to which the Debtors provided loans and capital contributions to Yardline in the amount of at least \$28 million and forgave such amounts in exchange for equity;
- Intercompany claims;
- The circumstances surrounding Joshua Silberstein's departure and the resignation of certain other of the Debtors' Board members and management team members (including as recently announced on April 24, 2024);
- The Debtors' acquisition strategy;
- The circumstances surrounding excess inventory purchases and inventory mismanagement; and

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- The Debtors' intellectual property enforcement efforts and policies.

The Committee's investigation remains ongoing, but the Committee believes that there are valuable claims that arise from certain of the items noted above, including claims for breach of fiduciary duty and chapter 5 avoidance actions.

The Committee is also conducting an analysis of the attachment and perfection of the liens purportedly securing the Debtors' prepetition first lien debt obligations to determine the scope and extent of any of the Debtors' assets that are not subject to the liens of the prepetition lenders. These assets include the claims identified above, as well as any other claims subject to the Committee's investigation.

The Committee's position is that the value of any such unencumbered assets should inure to the benefit of unsecured creditors. And the potential claims represent unencumbered value that should be shared amongst general unsecured creditors. Instead, the current chapter 11 plan seeks to release these claims, or otherwise leave the pursuit of such claims to exclusively benefit the secured creditors in these chapter 11 cases.

II. The Committee's Document Discovery Efforts

Since shortly after it was first formed, the Committee has pursued relevant documents from a number of sources. The Committee has sought documents from: (1) the Debtors; (2) the Disinterested Directors; (3) the funds that controlled Thrasio from shortly after its founding until the Petition Date; (4) the Debtors' outside auditors including PricewaterhouseCoopers ("PwC"), which identified serious shortcomings in the company's internal controls and financial reporting; and (5) other third parties, including those who raised red flags with respect to the secondary stock sales by company officers and directors based on inaccurate financial information.

A. The Committee's Document Discovery Efforts from the Debtors

With respect to the Debtors, while documents have been produced on a rolling basis, the bulk of the Debtor-produced documents consist of the self-identified non-privileged portion of the emails and Slack messages that the Disinterested Directors received and reviewed. That critical part of the production to the Committee did not even get started until three weeks ago and remains incomplete.²

² Largely in connection with the DIP Objection, the Debtors have produced Kirkland & Ellis custodial emails. This has been recently supplemented to include additional Kirkland & Ellis emails and emails collected from AlixPartners and Centerview, which primarily focus on the months leading up to the Petition Date. In total, the Committee has received over 13,000 Kirkland, AlixPartners, and Centerview custodial emails, which span the period from mid-2023 until shortly after the Petition Date.

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Debtors only began producing Debtor custodian communications three weeks ago. And the first Slack messages for the Debtors, which include critical candid communications between company insiders, did not take place until *two weeks ago*. Further, the majority of the total number of communications have only been received by the Committee in the last two weeks.³

Date Committee Received Production from Debtors	Number of Debtor Emails and Slacks Received	Cumulative Debtor Emails and Slacks Received
April 12, 2024	7,522	7,522
April 16, 2024	9,712	17,234
April 17, 2024	4,028	21,262
April 22, 2024 ⁴	7,784	29,046
April 24, 2024	8,001	37,047
April 24, 2024	2,149	39,196
April 26, 2024	5,629	44,825
April 30, 2024	3,127	47,952
May 2, 2024	6,443	54,395
May 3, 2024	7,953	62,348

After applying their self-selected search terms against the hundreds of thousands of custodial Debtor emails and Slack messages that the Disinterested Directors received from the Debtors, this resulted in a universe of over 82,000 documents. Thus, there are clearly thousands of documents that the Disinterested Directors identified through their search terms that have not yet been provided to the Committee or identified on any privilege log as withheld from the Committee. In fact, the Committee has yet to receive **one in every four** documents that the Disinterested Directors identified through their search terms. And the Debtors have yet to produce the additional custodial emails that the Committee has requested.⁵

The Debtors have also produced various standalone non-communication documents, but even that production is far from complete. Just by way of example, the Debtors principally used Dropbox as a cloud repository for corporate documents. The Debtors have informed us that

³ The figures in the following table are as of 9:00 p.m. (ET) on May 6, 2024.

⁴ April 22, 2024 was the date on which critical Slack messages were first produced. And more than half of the communications produced to date were produced after this date.

⁵ In addition to the custodians identified by the Disinterested Directors, the Committee has requested the custodial emails and Slack messages of two additional high ranking corporate officers, both of whom also engaged in secondary stock sales at inflated prices.

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there are petabytes⁶ of Debtor data on Dropbox, but until only recently, no search has been made and it appears that none of the documents have yet been produced. Similarly, the Debtors used Google Drive as another cloud repository of documents. The Debtors have agreed to use search terms to identify and produce documents from Google Drive, but those have not yet been received, and the Debtors have so far refused to produce the documents behind Google Drive links in the produced emails despite clear authority that they should be produced.⁷

B. The Committee's Document Discovery Efforts from Third Parties

While the Disinterested Directors did not seek documents from *any* third parties, the Committee has pursued discovery from obviously relevant sources.⁸ These productions are also far from complete.

First, the Committee sought documents from the Disinterested Directors themselves. To date, the Disinterested Directors have produced a sum total of 628 documents, with the key documents being heavily redacted for claimed privilege.⁹

Second, in connection with investigation into the secondary sales and the other transactions described herein that may give rise to comparable claims for falsifying business records, gross mismanagement, and other claims for breach of fiduciary duties, the Committee sought documents from the third-party investors who held board seats or observer status on the Debtors' board in the pre-2022 period and continuing through the Petition Date. This includes Advent, Oaktree, Peak6, Silver Lake, Solamere, and Upper90. On April 9, 2024, subpoenas were served on each of these entities, each of which has individuals who would be the direct beneficiaries of releases under the Debtors' chapter 11 plan, despite having held board seats or having observer status in the critical 2020 through 2021 period during which there was clear

⁶ A petabyte (PB) is a unit of data storage that is a thousand times larger than a terabyte (TB) and one million times larger than a gigabyte (GB).

⁷ See *IQVIA Inc. v. Veeva Systems, Inc.*, No.: 2:17-CV-00177-CCC-MF, 2019 WL 3069203 (D.N.J. Jul. 11, 2019) (ordering the search for and production of "2,200 linked Google Drive documents referenced in emails"); *Pursuit Credit Special Opportunity Fund, L.P. v. Krunchcash, LLC*, No. 651070/2022, 2023 WL 6465017, at *6 (N.Y. Sup. Ct. Oct. 04, 2023) (recognizing the "unremarkable proposition that when an email references a specific document by hyperlink rather than by a physical attachment, the producing party may be obligated to provide the linked document to ensure that the email communication is produced in complete form").

⁸ Despite the Disinterested Directors' failure to seek any third-party documents, they have requested that the Committee share the third-party productions, which the Committee readily agreed to do.

⁹ In a letter dated April 28, 2024, the Committee formally contested the Disinterested Directors' assertion of privilege. The Disinterested Directors responded by letter dated April 29, 2024, reiterating their claim of privilege. The Committee reserves all rights in that regard. The Committee has yet to receive a complete log of all withheld documents from the Debtors or the Disinterested Directors.

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mismanagement and self-dealing, including secondary stock sales by some of these same outside board members.

Inexplicably, other than a single interview with Mr. Mussafer, an Advent-related director, who resigned in the days leading up to the Petition Date, the Disinterested Directors sought no interviews with anyone from these firms (including those who sat on the Debtors' board) and requested no documents from them either, notwithstanding that the documents are held by active directors whose documents would be within the company's control to demand.¹⁰

Subpoenaed Party	Documents Produced to Date	Promised Completion Date
Advent	4,309	Claimed to be complete as of May 3, 2024, but we are reviewing to confirm.
Oaktree	0	No commitment to produce by any date and has so far failed to provide reports on search terms used against select custodians;
Peak6	1,122	Could not provide an exact date, but they stated that their goal is to make at least one more production this week and another sometime during the week of May 13.
Silver Lake	775	No commitment to complete production by any set date and has failed to provide reports on search terms against select custodians. The production to date includes only nine emails.
Solamere	1,840	Stated that they do not expect to reach substantial completion until the week of May 13.
Upper90	32	Refuses to produce any documents other than board materials comprising approximately 100 documents in total. Specifically, refuses to search for documents across custodians using search terms being employed by other third parties, including refusing to use search terms related to shell entities through which Upper90 principals reportedly sold Thrasio stock.

¹⁰ See, e.g., *Schnatter v. Papa Johns Int'l, Inc.*, No. 2018-0542-AGB, 2019 WL 194634, at *16 (Del. Ch. Jan. 15, 2019) (abrogated on other grounds by *Tiger v. Boast Apparel, Inc.*, 214 A.3d 933 (Del. 2019)); *Amalgamated Bank v. Yahoo! Inc.*, 132 A.3d 752, 793 (Del. Ch. 2016) (abrogated on other grounds by *Tiger*, 214 A.3d 933).

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Third, the Committee sought documents from the Debtors' outside auditors. This includes PwC and Baker Tilley as the successor to the Debtors' prior auditors at Moody, Famiglietti & Andronico LLP. Both entities were served on April 9, 2024.

Again, while the Disinterested Directors met with counsel for PwC, there was no meeting with anyone who actually worked on the audit, and no documents were sought. No meetings or documents were sought from the company's prior auditors at Moody, Famiglietti & Andronico LLP. Thus, the Committee was forced to pursue discovery that should have been sought long before to address the financial elephant in the room.

Subpoenaed Party	Documents Produced to Date	Promised Completion Date
Baker Tilley	1,790	Claimed to be complete as of May 3, 2024, but we are reviewing to confirm.
PwC	0	Aiming to produce select workpapers this week.

Fourth, the Committee sought documents from various parties who had been identified as having evidence regarding alleged fraudulent sales of stock by company insiders, including officers and directors.

With respect to each of these parties, the Disinterested Directors had knowledge weeks ago about their serious claims but, inexplicably, there is no suggestion that any interviews were conducted with them or that any documents were sought from them. It was thus left to the Committee to pursue these documents.

Subpoenaed Party	Documents Produced to Date	Promised Completion Date
Corner Capital Management ¹¹	37	Promised to complete production this week.
Cornice Ventures ¹²	75	Awaiting confirmation of planned production completion.

¹¹ Corner Capital Management ("Corner") is an investment fund that purchased [REDACTED]

¹² Cornice Ventures ("Cornice") has asserted [REDACTED]

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Subpoenaed Party	Documents Produced to Date	Promised Completion Date
Aidan Kehoe ¹³	0	Awaiting confirmation of planned production completion.
RSE Ventures ¹⁴	0	Awaiting confirmation of planned production completion.
Swiftline ¹⁵	10	Awaiting confirmation of planned production completion.

III. The Committee's Deposition Efforts

Normally depositions follow complete document productions. That is because an efficient and productive deposition follows a review of documents and a formulation of questions in advance. Because of the compressed schedule and the delay in getting documents, the Committee is not yet in a position to take depositions. Nonetheless, in the time permitted, the Committee plans to take a number of depositions including the following.

Deponent	Relationship
Debtor 30(b)(6)	
Anthony Horton and/or Stefan Selig	Disinterested Directors
Carlos Cashman	Current Director, and former Co-CEO and Co-Founder, Sold Over a Hundred Million Dollars of Stock in the Secondary Market.
Daniel Boockvar	Former President
David Mussafer	Former Director, Advent Representative, Resigned in the days leading up to the Petition Date, Interviewed by the Disinterested Directors

¹³ Aidan Kehoe bought [REDACTED]

¹⁴ RSE Ventures bought [REDACTED]

¹⁵ Swiftline [REDACTED]. Swiftline is the current parent company of Yardline. Yardline was acquired by Thrasio in 2021. Yardline was later acquired by Swiftline in 2022. [REDACTED]

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Deponent	Relationship
Bill Wafford	Former CFO, Resigned in July 2021 After Three Months on Job, Interviewed by the Disinterested Directors
Jason Finger	Upper90 Board Representative (2021 to Present)
Stephen Evans	Silver Lake Board Representative (2021 to Present)

The Committee also sought to depose Joshua Silberstein, who was apparently forced out of the Company in the fall of 2021, but no one answered the door at his home when the process server sought to serve him, despite the presence of a car in the driveway.

While more time would make for more efficient and productive depositions, the Committee will proceed to take these depositions starting on May 9, 2024, and continuing through May 18, 2024.

IV. The Disinterested Directors' Review

It has become clear that the review conducted by the Disinterested Directors has only just begun in substance and cannot be relied on for the thoroughness of any conclusions under the rushed timeline imposed upon them.

The Disinterested Directors were brought on board in September 2023, but it was not until over two months later, on December 12, 2023, that they retained Katten Muchin Rosenman as their outside counsel to conduct their mandated review.

Ultimately, the Disinterested Directors' work could only progress to the extent that the Debtors cooperated. While the Disinterested Directors made the standard high-level document requests right before the holidays on December 19, 2023, the investigation proceeded slowly. And notably, the Disinterested Directors did not seek custodial emails from the Debtors until less than three weeks before the Petition Date, and that request was limited to a single custodian.¹⁶

Before the Petition Date, the Disinterested Directors appear to have had some initial discussions with outside counsel to the Debtors (*i.e.*, Cooley and Ropes & Gray), their financial advisors at AlixPartners, and Mr. Nee, the current SVP of Finance (who only joined the Company in March 2022). But the Disinterested Directors interviewed no one who was at the company in the pre-February 2022 period until quite recently and after the Committee began its own investigation.

¹⁶ On February 8, 2024, the Disinterested Directors requested "All e-mails received or sent by Josh Silberstein since April 28, 2018, including e-mails on which Josh Silberstein was copied." As discussed below, those were not provided to the Disinterested Directors until March 29, 2024, over a month and a half later.

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Initial Interview Date	Name
April 17, 2024	David Mussafer (Former Director – July 2020 to Feb. 14, 2024) (Resigned)
April 30, 2024	Stephanie Fox (COO)
April 30, 2024	Michael Fahey (General Counsel)
May 2, 2024	Bill Wafford (Former CFO) (Resigned in July 2021 After Three Months on Job)

Other than David Mussafer, the Disinterested Directors have interviewed none of the following individuals who were outside members of the Board prior to February 2022, which is the critical period identified by the Disinterested Directors in the Disclosure Statement.

Outside Director	Relationship	Dates of Service
Alex Urdea	Upper90	Nov. 2018 to Aug. 30, 2021 (Resigned)
Jason Finger	Upper90	2021 to Present
Todd Zipper	“Independent” (Claimed)	Nov. 2019 to Aug. 30, 2023 (Resigned)
Jay Coppoletta	Peak6	2020 to Present
Scott Hutchins	Solamere	2020 to Present
Tom Szkutak	Advent	2020 to Present
Stephen Evans	Silver Lake	2021 to Present
Brian Laibow or Sherman Lau	Oaktree (Board Observers)	2021 to Present

Further, the Disinterested Directors did not interview the former senior executives and inside directors of the Company. They did not interview Joshua Silberstein, the former Co-CEO and Board Director who was forced out of the company in October 2021.¹⁷ While Mr. Silberstein may have refused to speak to the Disinterested Directors, they certainly had access to the other co-founder and Co-CEO, Carlos Cashman, who remains on the Board. But they did not seek to interview him either. They also did not seek to interview the longtime president Daniel

¹⁷ Mr. Silberstein’s refusal to answer the door when the Committee’s process server sought to serve him with a deposition subpoena appears to suggest that he may have been reluctant to speak to the Disinterested Directors or anyone else about the case.

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Boockvar, who the Committee understands remained with the company on a consulting basis until May 1, 2024, and was thus fully available to the Disinterested Directors.

The Committee was also surprised to learn that it was not until over three months after the Disinterested Directors engaged counsel and *over a month after the Petition Date*, that the Disinterested Directors received any emails or other electronic communications for any of the following company witnesses.

Custodians	Total Document Count	Date Emails or Slacks First Received
Joshua Silberstein	139,676	March 29, 2024
Carlos Cashman	261,209	April 1, 2024
Joe Falcao	402,891	April 11, 2024
Danny Broockvar	265,470	April 11, 2024
Bill Wafford	1,030	April 22, 2024
Steve Nee	38,030	April 23, 2024
Stephanie Fox	449,364	April 25, 2024
Slack (for all custodians)	236,173	April 10, 2024 (Silberstein & Cashman) April 14, 2024 (Falcao & Boockvar) April 22, 2024 (Wafford) April 23, 2024 (Nee) April 25, 2024 (Fox)
Mounir Ouhadi	214,317	May 4, 2024

Faced with a mass of emails and only a month to complete their work and reach their critical conclusions, the Disinterested Directors have used search terms to narrow their email and Slack review. But the time constraints that the Debtors have placed on the Disinterested Directors' mission—and by extension the Committee's own investigation—is completely unreasonable.

Notably, having received only a small fraction of the emails and none of the critical Slack messages at the time of the April 10, 2024 conference with the Court, the Disinterested Directors clearly had not had time yet to review the documents that had been provided. Any preliminary considerations expressed during this hearing should carry little weight.

The Committee is particularly concerned that, with the exception of Mr. Mussafer, who was only recently interviewed, the Disinterested Directors have not interviewed any of the other outside directors and has not sought any documents from them or any other third parties.

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Moreover, in mid-April 2024, the Disinterested Directors apparently had a meeting with in-house counsel for PwC. During the course of their work at the company, PwC had uncovered serious internal controls and financial misstatements. Yet, the Disinterested Directors spoke to no one who worked on the audit and sought no documents from the auditors.

The failure of the Disinterested Directors to obtain emails and other electronic communications until long after the Petition Date has had a material impact on the Committee's own investigation. This is because the Debtors have largely taken the position that the production of Debtor emails and Slack messages to the Committee would be limited to the subset of emails and Slack messages that hit on the Disinterested Directors' search terms, on which the Committee had no input. This narrowed set of the emails and Slack messages would further be subject to a privilege review before anything could be turned over to the Committee, which has further impacted the timing and scope of what the Committee has received.

Typically, in similar scenarios, Disinterested Directors engaged for months prior to a bankruptcy filing would have made significant progress, if not completed their investigation well before the Petition Date. Here, the Disinterested Directors did not even get started in earnest looking at emails and other critical communications until just recently.

V. Extension of Confirmation Schedule

As a result of the ongoing investigation, and ongoing productions the Committee urges the Court to modestly extend the confirmation timeline as follows:

Event	Current Timeline	Proposed Timeline
Plan Supplement Filing Deadline	May 13, 2024	May 28, 2024
Voting Deadline	May 20, 2024	June 4, 2024
Plan Objection Deadline	May 20, 2024	June 4, 2024
Deadline to File Voting Report	May 21, 2024	June 5, 2024
Confirmation Brief and Confirmation Reply Deadline	May 21, 2024	June 5, 2024
Confirmation Hearing Date	May 22, 2024	June 6, 2024

This brief two-week extension of time will not only enable the Committee to inform creditors and the Court of the value of the claims but afford the parties the ability to reach a possible settlement that will either compensate the general unsecured creditors for the value of the claims with cash or equity in the reorganized Debtors or will establish a litigation trust that will pursue these claims for general unsecured creditors' benefit. Without a fuller understanding of the value of these claims and the size of the secured lenders' deficiency claim

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(and the corresponding impact on non-lender unsecured creditor recoveries), the Debtors and the Committee cannot engage in meaningful settlement negotiations.

Sincerely,

/s/ Lorenzo Marinuzzi

Lorenzo Marinuzzi
Partner