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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

|   |  |
|---|--|
| <p>In re:</p> <p>THRASIO HOLDINGS, INC., <i>et al.</i>,</p> <p style="text-align: center;">Debtors.<sup>1</sup></p> | <p>Chapter 11</p> <p>Case No. 24-11840 (CMG)</p> <p>(Jointly Administered)</p> <p><b>Hearing Date: April 18, 2024 at 10:00 a.m. (ET)</b><br/><b>Obj. Deadline April 11, 2024 at 4:00 p.m. (ET)</b></p> |
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**PRELIMINARY OBJECTION OF THE OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS TO DEBTORS’ DISCLOSURE STATEMENT  
FOR THE JOINT PLAN OF REORGANIZATION OF THRASIO HOLDINGS, INC.  
AND ITS DEBTOR AFFILIATES PURSUANT TO  
CHAPTER 11 OF THE BANKRUPTCY CODE**

The Official Committee of Unsecured Creditors (the “Committee”) appointed in the above-captioned chapter 11 cases of Thrasio Holdings, Inc. and its affiliated debtors and debtors-in-possession (collectively, the “Debtors”), by and through their undersigned counsel, submits this preliminary objection (the “Objection”) to the *Debtors’ Motion For Entry of an Order*

<sup>1</sup> 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.



*Approving (I) the Adequacy of the Disclosure Statement, (II) the Solicitation and Voting Procedures, (III) the Forms of Ballots and Notices in Connection Therewith, and (IV) Certain Dates with Respect Thereto* [Docket No. 42] (the “Motion”).<sup>2</sup> In support of this Objection, the Committee respectfully states as follows:

**PRELIMINARY STATEMENT**<sup>3</sup>

1. The Debtors have made clear that they intend to move these cases forward quickly, with or without the Committee’s support and notwithstanding the fact that the Committee has not yet received information sufficient to finalize its views on the numerous deficiencies that appear in the Debtors’ proposed Disclosure Statement. However, based on the information provided to the Committee to date, no reader of the proposed Disclosure Statement will have adequate information necessary to reach an informed decision on the Plan or the broad releases contemplated therein.

2. The Disclosure Statement cannot be approved because it does not contain adequate information (a) regarding the scope and justification of the releases contemplated by the Plan; (b) describing the events leading to these chapter 11 cases; (c) justifying the *de minimis* consideration being offered to unsecured creditors; (d) supporting the valuation being offered in the valuation analysis; and (e) explaining the value of any unencumbered assets.

3. The issues raised by the Committee in this Objection are to the Disclosure Statement currently on file, based on the information presently available to the Committee. The Committee intends to supplement its objection to the Disclosure Statement following any

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<sup>2</sup> Capitalized terms used in this Objection but not otherwise defined shall have the meanings ascribed to them in the Motion or the proposed *Joint Plan of Reorganization of Thrasio Holdings, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 40] (the “Plan”), as applicable.

<sup>3</sup> Capitalized terms used in the Preliminary Statement but not otherwise defined shall have the meanings ascribed to such terms in the rest of this Objection.

modifications made to it by the Debtors and based on the Committee's review of any additional information received. Regardless, the proposed Disclosure Statement lacks adequate information and the Motion should be denied.

### **FACTUAL BACKGROUND**

#### **A. General Background**

4. On February 28, 2024 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with this Court. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On March 12, 2024, the Office of the United States Trustee appointed the Committee pursuant to section 1102 of the Bankruptcy Code. *See Notice of Appointment of Official Committee of Unsecured Creditors* [Docket No. 163].<sup>4</sup> No trustee or examiner has been appointed in these chapter 11 cases.

#### **B. The Chapter 11 Plan and Disclosure Statement**

6. On February 27, 2024, the Debtors, holders of approximately 81% of their first lien debt, and certain holders of outstanding Series D Preferred Stock Interests and Series C Preferred Stock Interests executed the Restructuring Support Agreement (the "RSA").

7. On the Petition Date, the Debtors filed (a) the *Joint Plan of Reorganization of Thrasio Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 40] (the "Plan"); (b) the *Disclosure Statement for the Joint Plan of Reorganization of Thrasio Holdings, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*

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<sup>4</sup> The Committee consists of the following seven members: (1) Anthony J. DeCarlo, individually; (2) Cecilio Musical Instruments, Inc.; (3) GXO Logistics Supply Chain, Inc.; (4) Mellow Militia, LLC; (5) The California Beach Co.; (6) Word Ape, LLC f/k/a ChomChom; and (7) YH Goods.

[Docket No. 41] (the “Disclosure Statement”); and (c) the Motion. Through the Plan, the Debtors seek to confirm and implement the terms of the RSA. In the Disclosure Statement, the Debtors state that the transactions contemplated by the restructuring support agreement and implemented by the Plan “will eliminate approximately \$490 million of the Company’s existing \$850 million in debt.” *See* Disclosure Statement at Article V.E. The Plan provides that the secured debt claims receive their *pro rata* share of 100% of new common stock, subject to dilution by the DIP and other items. *See* Plan at Article III.C. General unsecured creditors will receive their proportionate share of a “GUC recovery pool” consisting of only \$250,000 in cash. *See id.*

8. The Plan contains broad Debtor and third-party releases for the benefit of Debtors’ current and former directors and officers, lenders, consenting creditor parties and others (collectively, including “Released Party” as defined in the Plan, the “Released Parties”). *See* Plan, Art. VIII.E; Art. VIII.F.

9. The Plan includes broad exculpation provisions against Causes of Action relating to the Chapter 11 cases. The Plan also enjoins all Entities from pursuing Claims or Interests against the Debtors, the Reorganized Debtors, the Released Parties, and the Exculpated Parties. *See* Plan, Art. VIII, G. Pursuant to the Plan, the exculpation provision extends to the Exculpated Parties’ prepetition conduct. *Id.*

10. The RSA contemplates the following confirmation timeline:

| Event                         | Date  |
|-------------------------------|---|
| Voting Record Date            | April 1, 2024   |
| Solicitation Mailing Deadline | Three (3) business days following entry of the Disclosure Statement Order (or as soon as reasonably practicable thereafter) |
| Publication Deadline          | Three (3) business days following entry of the Disclosure Statement Order (or as soon as reasonably practicable thereafter) |

| Event  | Date   |
|--|--|
| Plan Supplement Filing Deadline                    | The date that is no later than seven (7) days prior to the Voting Deadline |
| Voting Deadline                                    | May 7, 2024  |
| Plan Objection Deadline                            | May 7, 2024  |
| Deadline to File Voting Report                     | May 9, 2024  |
| Confirmation Brief and Confirmation Reply Deadline | May 9, 2024  |
| Confirmation Hearing Date                          | May 13, 2024   |

11. On March 27, 2024, the Debtors filed the *Notice of Filing Valuation Analysis, Financial Projections, and Liquidation Analysis as Exhibits to the Disclosure Statement* [Docket No. 255].

12. Shortly following its formation, the Committee requested a 30-day extension of all confirmation deadlines. The Debtors refused, and instead agreed to a short adjournment of the hearing to approve the Motion from April 5, 2024, to April 18, 2024. *See Notice of Adjourned Hearing on the Disclosure Statement Motion* [Docket No. 287].

13. Following the Debtors’ refusal to grant the Committee’s request for a further adjournment to afford the Committee time to conduct its investigation and enable the Debtors to revise the Disclosure Statement to contain adequate information to evaluate the proposed Plan, on April 9, 2024, the Committee filed the *Emergency Motion of the Official Committee of Unsecured Creditors to Adjourn the Debtors’ Hearing to Approve the Disclosure Statement* [Docket No. 330] (the “Committee’s Motion to Adjourn”). The Court held an emergency hearing on the Committee’s Motion to Adjourn on April 10, 2023. On the record of the hearing, the Court noted that since the Debtors intend to file supplemental disclosures to the Disclosure Statement sometime before the Disclosure Statement hearing, the Committee’s and other parties’ rights to further object

and/or supplement their objections through the date of the Disclosure Statement hearing are fully reserved in all respects.

**C. The Committee's Discovery Requests**

14. As set forth in greater detail in the Committee's Motion to Adjourn, the Committee engaged in a targeted discovery effort to understand the underlying facts. To date, the Debtors' production of documents to the Committee has been slow and meager at best. In sum, the Debtors have produced almost no material that bears on the Committee's investigation. The Committee has been met with a trickle of information rather than the free flow that would be expected under the Debtors' proposed timeline. Yet, both counsel for the Debtors and counsel for the Disinterested Directors have been at this for many months prior to the Petition Date. One would expect that they would have long ago collected the material that the Committee needs and would have turned it over promptly once the Committee's counsel was in place. That has not been the case.

15. The Committee reached out to and met with the Debtors' counsel and the Company's management suggesting that they adjourn the near-term deadlines and engage in a constructive dialogue with the Committee. The suggestion was flatly rejected.

**OBJECTION**

**I. The Disclosure Statement Cannot Be Approved Because It Does Not Contain Adequate Information as Required by Section 1125 of the Bankruptcy Code.**

16. The Disclosure Statement does not contain adequate information to allow unsecured creditors to make an informed decision regarding whether to accept or reject the Plan. The Disclosure Statement should be amended to address the objections and issues raised below, failing which the Court should not authorize its dissemination.

17. Section 1125(b) of the Bankruptcy Code requires that a disclosure statement contain "adequate information" regarding a proposed plan for holders of impaired claims and

interests entitled to vote on such plan. 11 U.S.C. § 1125(b). “Adequate information” means “information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records . . . that would enable . . . a hypothetical investor of the relevant class to make an informed judgment about the plan.” 11 U.S.C. § 1125(a)(1).

18. The Third Circuit has emphasized the importance of adequate disclosure, stating that, given the reliance creditors and bankruptcy courts place on disclosure statements, “we cannot overemphasize the debtor’s obligation to provide sufficient data to satisfy the Code standard of adequate information.” *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988). Whether a disclosure statement contains “adequate information” should be assessed from the perspective of the claims or interest holders with the ability to vote. *See In re Phx. Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (citing *In re Monroe Well Serv., Inc.*, 80 B.R. 324, 330 (Bankr. E.D. Pa. 1987)). In addition, a disclosure statement must contain, at a minimum, adequate information concerning “all those factors presently known to the plan proponent that bear upon the success or failure of the proposals contained in the plan.” *In re Beltrami Enters., Inc.*, 191 B.R. 303, 304 (Bankr. M.D. Pa. 1995). The determination of what is “adequate information” is guided by consideration of judicially developed and accepted factors, including, but not limited to:

- a. A complete description of the available assets and their value;
- b. The anticipated future of the debtor;
- c. A liquidation analysis setting forth the estimated return that creditors would receive under chapter 7;
- d. The accounting and valuation methods used to produce the financial information in the disclosure statement;
- e. Any financial information, valuations or pro forma projections that would be relevant to creditors’ determinations of whether to accept or reject the plan; and

- f. The existence, likelihood, and possible success of non-bankruptcy litigation.

*See In re Metrocraft Publ'g Servs., Inc.*, 39 B.R. 567, 568 (Bankr. N. D. Ga. 1984) (collecting cases). Whether a disclosure statement provides “adequate information will be determined by the facts and circumstances of each case.” *Oneida Motor Freight, Inc.*, 848 F.2d at 417. “In short, a proper disclosure statement must clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution.” *See In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991). In other words, the Debtors must provide some indication of recovery to their impaired classes of creditors. The Disclosure Statement fails on all counts. In its current form, the Disclosure Statement is both facially and substantively deficient with respect to critical Plan-related issues, and thus, fails to satisfy the basic disclosure requirements of Bankruptcy Code section 1125(a).

**A. The Disclosure Statement Does Not Provide Adequate Information on the Potential Claims and Causes of Action Being Released.**

19. The Plan contains an extremely broad release by the Debtors of potentially valuable estate claims, but the Disclosure Statement fails to contain any information for a creditor to determine what potential claims and causes of action are being released by the estates, the basis for the releases, any investigation findings, the value of the claims being released and exculpated, the potential impact on the outcome of these cases and creditor recoveries if the underlying claims are pursued successfully, or the availability of insurance coverage for such claims. Indeed, the Disclosure Statement merely attempts to justify the releases through general, nonspecific, and generic language. *See* Disclosure Statement at Article III.O. No support for these conclusory statements is found anywhere in the Disclosure Statement.

20. While the Disclosure Statement mentions an “Independent Investigation” by “Disinterested Directors” with respect to potential claims or causes of action of the Debtors against



any Related Party (*i.e.*, “the Company or any of its equity holders, affiliates, subsidiaries, directors, managers, officers, or other stakeholders,” *see* Disclosure Statement, Article VI.G.), there is no description of any progress or findings made to date with respect to such investigation. Instead, the Disclosure Statement still contains blanks even with respect to the number of documents that the Disinterested Directors may have reviewed in connection with their investigation despite being at it for months prior to the Petition Date. The Committee has not received sufficient responses to its discovery requests to the Disinterested Directors that would help the Committee and its advisors fill in these blanks. This missing critical information makes it impossible for unsecured creditors to assess whether greater recoveries could be available to them if the claims are pursued and the Debtors’ proposed releases are denied.

21. Moreover, the Committee is currently investigating various potential litigation claims involving parties that are proposed to be released under the Plan (including the current and former directors, managers, officers, agents, and other employees of the Debtors). The Committee’s investigation into these potential claims and causes of action is ongoing. And, it is not known at this time what the Disinterested Directors’ investigation covers.<sup>5</sup> Thus, it is simply impossible to determine at this juncture whether the releases are proper.

22. Additionally, the Committee has until May 11, 2024, to file a motion seeking standing to pursue a Challenge against the secured lenders’ purported claims, liens, and security

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<sup>5</sup> While the Disclosure Statement notes that the Plan releases and exculpation provisions remain subject to Independent Investigation by the Disinterested Directors, no information as to progress of the investigation or any findings, preliminary or otherwise, are provided to creditors. The Committee has yet to receive any meaningful information or updates regarding the substance of this Independent Investigation. Creditors cannot meaningfully ascertain whether the releases are appropriate and reasonable, or the impact of the proposed releases, when such releases remain subject to such an important qualification. The Debtors have also failed to identify which indemnification obligations they intend to assume/reinstate and which they intend to reject, and why. This, too, remains subject to the outcome of the independent investigation. *See* Disclosure Statement, Art. VIII.E.

interests. The Committee's lien investigation is ongoing, and the Disclosure Statement should also be revised to reflect the pendency of the Committee's Challenge rights and investigation.

23. Put simply, there are no facts present here to justify the proposed releases in favor of the Released Parties, and the Disclosure Statement fails to articulate any justifications in support of same. Thus, the Disclosure Statement provides insufficient information for creditors to vote on whether to approve a plan containing the releases.

**B. The Disclosure Statement Lacks Adequate Information Concerning the Debtors' Prepetition Affairs.**

24. The Disclosure Statement does not explain how the Debtors went from a \$5 billion valuation to being worth only \$500 million in a matter of two years, or how the Debtors raised over \$3 billion in new money in the past few years but still only filed for chapter 11 protection with only approximately \$30 million of cash on hand. The Debtors need to provide parties in interest with an explanation regarding the Debtors' valuation, including the valuation of various brands at acquisition and why there were subsequent decreases in such valuations.

25. The Disclosure Statement also lacks any description of various material prepetition transactions, including (a) preferred equity investments from 2019 to 2021; (b) the Debtors' 2020 financing efforts/capital raise; (c) any sales or other transfers of equity interests involving insiders of the Debtors; (d) any tender offers from the Debtors to purchase stock from certain holders of common equity, preferred equity, and warrants; and (e) the circumstances surrounding the resignation of certain of the Debtors' Board members and directors and officers.

**C. The Disclosure Statement Lacks Adequate Information Supporting the Proposed *De Minimis* Treatment of Unsecured Creditors.**

26. The Disclosure Statement provides no indication of why the Debtors chose to make general unsecured creditors a voting class by giving them a *de minimis* recovery. The Disinterested Directors' investigation and the Committee's investigation both remain ongoing, and it is unclear

at this time, particularly given the Debtors' and the Disinterested Directors' lack of responsiveness to the Committee's discovery requests, whether the GUC Recovery Pool could potentially be significantly augmented. Where, as here, holders of General Unsecured Claims are contemplated to receive recoveries from a (miniscule) fixed pot, it is paramount to such claimants that they understand how their fixed recovery stands up to other potential forms of recovery in order to make an informed decision on voting to support or reject the Plan. Because none of the requisite, adequate information is present in the Disclosure Statement, making a properly informed decision is simply impossible at this time.

27. The Disclosure Statement does not contain a complete estimate of the Debtors' liabilities, including for the amount of claims in the various classes of claims, or complete assets available for distribution to satisfy claims. Given the Debtors' complicated web of intercompany transactions, the Disclosure Statement should (but does not) provide an entity-by-entity description of assets and liabilities or attempt to justify the substantive consolidation proposed by the Plan. Importantly, the estimated amount of general unsecured claims, for example, is currently an empty basket in the Disclosure Statement, and at an estimated amount of \$61 million in the Debtors' liquidation analysis. The Committee believes this number is grossly understated and in fact, at the April 10 hearing, the Debtors' counsel provided another estimate of the general unsecured claims pool in the range of \$78-80 million. This estimate does not include the secured lenders' prepetition deficiency claim, which is improperly lumped together with other general unsecured claims with no justification. Unsecured creditors, therefore, do not know how the proposed numerator (the recovery pool of \$250,000) stacks up against the proposed and currently unknown denominator (the estimated amount of GUCs) that would determine their potential recoveries under the proposed Plan. As a result, unsecured creditors have no idea what the unsecured creditor pool is

and whether the Debtors' proposed treatment satisfies the Bankruptcy Code's requirements for plan confirmation.

**D. The Disclosure Statement Lacks Adequate Information About the Assumptions Underlying the Valuation Analysis.**

28. Full disclosure of the Debtors' assets and their value is fundamental to evaluation of a proposed plan. *See, e.g., Krystal Cadillac-Oldsmobile GMC Truck, Inc.*, 337 F.3d 314, 321-22 (3d Cir. 2003). Here, the Debtors have provided minimal information about a few assets, and no information whatsoever about many others.

29. The Disclosure Statement contains a valuation analysis that provides a wide estimate of value in the range of "approximately \$470 million to \$650 million with an estimated midpoint of \$560." The valuation does not provide any additional or supporting information, and the Committee has still not received the Debtors' underlying support for the discounted cash flow valuation, support for comparable companies and precedent transactions, historical valuation information, and any information concerning the impact of the Debtors' tax attributes on go-forward valuation.

30. Given the lack of underlying data and the lack of information available to the Committee to date, reliability of the Debtors' purported valuation is impossible to test at this stage. The Committee was not at the negotiating table when the valuation was put in place. The Committee suspects that many of the assumptions underlying the valuation analysis could be skewed in a manner to arrive at an artificially low valuation. To contain adequate information, the Disclosure Statement should include the Committee's views regarding these assumptions.

**E. The Disclosure Statement Lacks Adequate Information About the Value of Unencumbered Assets.**

31. The Disclosure Statement provides inadequate information regarding the nature and value of the Debtors' unencumbered assets. As part of its ongoing review and investigation

of the Debtors' assets and liabilities, the Committee is investigating the prepetition liens and claims of the secured creditors and believes material unencumbered assets exist. The value of any unencumbered assets should inure to the benefit of general unsecured creditors, thus improving the value of the proposed GUC Recovery Pool. The Disclosure Statement does not disclose the existence or value of these assets that may be available for unsecured creditors.

32. The Disclosure Statement also has no discussion about the value of any assets that could potentially be rendered unencumbered as a result of the Committee's lien challenge investigation following prosecution of such claims. To contain adequate information, the Disclosure Statement must include a discussion on the value of unencumbered assets and the impact on recoveries under the Plan.

33. At a minimum, the Debtors should disclose (a) what analysis, if any, they conducted with respect to unencumbered assets and the liens and secured claims of their secured lenders; (b) the nature and value of unencumbered assets; and (c) how the proposed treatment and distribution of such assets under the Plan is in the best interests of the Debtors' estates.

34. In addition to the lack of information in the Disclosure Statement concerning unencumbered assets, the Liquidation Analysis improperly assumes that all of the Debtors' assets are encumbered by their secured lenders. The Liquidation Analysis does not include recoveries from the pursuit of any potential avoidance and other estate causes of action, notwithstanding the fact that the Committee's investigation (and that of the Disinterested Directors) remains ongoing. *See* Liquidation Analysis, ¶ 10.

35. This missing information is crucial for holders of General Unsecured Claims to determine whether the Plan meets the requirements for confirmation under the provisions of the

Bankruptcy Code, including feasibility, the best interest of creditors test, and the absolute priority rule.

**F. Solicitation is Premature as the Current Case Timeline Makes Providing the Requisite “Adequate Information” to Creditors in a Timely Fashion Unlikely.**

36. The Disclosure Statement requires numerous key pieces of information to meet the “adequate information” requirements. The current case timeline makes it highly unlikely, if not impossible, for the Debtors to provide the necessary adequate information to the Disclosure Statement before solicitation. Given the lack of clarity, let alone resolution, regarding myriad critical case issues (*e.g.*, unsecured claim pool and recoveries, Disinterested Director investigation findings, the Committee’s investigation findings, and the status of alternative restructuring proposals), it makes it nearly impossible for the Debtors to be able to revise the Disclosure Statement within the current case timeline. Only the Disclosure Statement itself can provide the necessary adequate information pursuant to section 1125 of the Bankruptcy Code, and the Debtors cannot rely on the promise of additional filings tomorrow to get approval of the Disclosure Motion today.

37. In sum, the Disclosure Statement cannot be approved because it fails to provide adequate information under section 1125 of the Bankruptcy Code because it omits critical information.

**II. The Committee Intends to Provide the Debtors with Comments on Various Matters in the Disclosure Statement and a Committee Letter for the Solicitation Materials.**

38. The Committee’s investigation of material issues affecting the Plan is ongoing. In addition, discovery requested from the Debtors and the Disinterested Directors is not complete. In advance of the April 18<sup>th</sup> hearing, the Committee intends to provide the Debtors with inserts and revisions to the Disclosure Statement detailing the Committee’s position and matters related to its ongoing investigation. To the extent that the Court approves the Disclosure Statement, the

Committee believes (and the Debtors have agreed) that holders of General Unsecured Claims should be made aware of the Committee's views of the Plan. The Committee also intends to present the Debtors with a letter to be included with the Debtors' solicitation package that would contain the Committee's recommendation to holders of General Unsecured Claims regarding the Plan vote and releases.

### **RESERVATION OF RIGHTS**

39. The Committee has also identified a number of substantive objections to the Plan that it intends to raise at the Confirmation hearing. This Objection is submitted without prejudice to, and with a full reservation of, the Committee's rights to object to confirmation of the Plan or any other plan of reorganization proposed in these Chapter 11 Cases on any and all grounds. In addition, the Committee reserves all rights to raise additional objections and supplement this Objection.

### **CONCLUSION**

**WHEREFORE**, the Committee requests that the Court deny the Motion seeking approval of the Disclosure Statement and grant such other relief that the Court finds just and proper.

Dated: April 11, 2024

**KELLEY DRYE & WARREN LLP**

/s/ James S. Carr

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