

Fill in this information to identify the case:

Debtor QLess, Inc.

United States Bankruptcy Court for the: _____ District of Delaware
(State)

Case number 24-11395

**Official Form 410
Proof of Claim**

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

<p>1. Who is the current creditor?</p>	<p><u>Scopia Holdings LLC</u> Name of the current creditor (the person or entity to be paid for this claim)</p> <p>Other names the creditor used with the debtor _____</p>	
<p>2. Has this claim been acquired from someone else?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. From whom? _____</p>	
<p>3. Where should notices and payments to the creditor be sent?</p> <p>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</p>	<p>Where should notices to the creditor be sent?</p> <p><u>Scopia Holdings LLC</u> <u>Aaron Morse</u> <u>152 West 57th Street, 33rd Floor</u> <u>New York, NY 10019, USA</u></p> <p>Contact phone <u>212-373-0303</u></p> <p>Contact email <u>amorse@scopia.com</u></p> <p>Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____</p>	<p>Where should payments to the creditor be sent? (if different)</p> <p>Contact phone _____</p> <p>Contact email _____</p>
<p>4. Does this claim amend one already filed?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY</p>	
<p>5. Do you know if anyone else has filed a proof of claim for this claim?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Who made the earlier filing? _____</p>	



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _

7. How much is the claim? \$ 30,352.64. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Legal services performed - per indemnity agreement

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

No

Yes. Check all that apply:

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Amount entitled to priority

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08/16/2024
MM / DD / YYYY

/s/Aaron Morse
Signature

Print the name of the person who is completing and signing this claim:

Name Aaron Morse
First name Middle name Last name

Title Authorized Person

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____ Email _____



Verita (KCC) ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (866) 967-0493 | International (310) 751-2693

Debtor: 24-11395 - QLess, Inc. District: District of Delaware		
Creditor: Scopia Holdings LLC Aaron Morse 152 West 57th Street, 33rd Floor New York, NY, 10019 USA Phone: 212-373-0303 Phone 2: Fax: Email: amorse@scopia.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Creditor	
Other Names Used with Debtor:	Amends Claim: No Acquired Claim: No	
Basis of Claim: Legal services performed - per indemnity agreement	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: 30,352.64	Includes Interest or Charges: No	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No Based on Lease: No Subject to Right of Setoff: No	Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	
Submitted By: Aaron Morse on 16-Aug-2024 11:51:01 a.m. Eastern Time Title: Authorized Person Company:		

Fill in this information to identify the case:

Debtor 1 QLESS, INC.

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: District of Delaware

Case number 24-11395 (BLS)

Official Form 410 Proof of Claim

04/22

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Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>SCOPIA HOLDINGS LLC</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
	<u>Scopia Holdings LLC, Attn: Aaron Morse</u> Name <u>152 West 57th Street, 33rd Floor</u> Number Street <u>New York NY 10019</u> City State ZIP Code Contact phone <u>212-370-0303</u> Contact email <u>amorse@scopia.com</u>	_____ Name _____ Number Street _____ City State ZIP Code Contact phone _____ Contact email _____
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): -----	
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____	Filed on _____ MM / DD / YYYY
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 30,352.64. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Legal services performed - per indemnity agreement

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature of property:
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check one:

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Amount entitled to priority

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08/16/2024
MM / DD / YYYY



Signature

Print the name of the person who is completing and signing this claim:

Name Aaron Morse
First name Middle name Last name

Title Authorized Person

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 152 West 57th Street, 33rd Floor
Number Street
New York NY 10019
City State ZIP Code

Contact phone 212-373-0303 Email amorse@scopia.com

Supporting Documents to Proof of Claim - Case No. 24-11395

Creditor: Scopia Holdings LLC

1. Redacted legal bills of Wilks Law LLC
2. Redacted copy of Indemnification Agreement dated October 20, 2021

Scopia Holdings, LLC
 Scopia Holdings, LLC
 c/o Aaron Morse
 154 West 57th Street, 33rd Floor,
 New York, NY 10019

Statement Date: May 31, 2024
 Statement No. 9890
 Account No. 1581.0001
 Page: 1

RE: AB Inventio LLC et al., v. Palisades Growth Capital II, L.P., et al.,
 C.A. No. 2023-1279-JTL

Previous Balance \$20,649.61

Fees

			<u>Hours</u>	
05/13/2024	SBC	[REDACTED]	2.00	
05/14/2024	SBC	[REDACTED]	2.50	
05/16/2024	SBC	[REDACTED]	1.80	
05/21/2024	SBC	[REDACTED]	2.00	
05/28/2024	SBC	[REDACTED]	2.00	
05/30/2024	SBC	[REDACTED];	3.80	
05/31/2024	NEC	[REDACTED]	0.20	
	NEC	[REDACTED]	0.20	
		For Current Services Rendered	14.50	9,597.50

Recapitulation

<u>Timekeeper</u>		<u>Hours</u>	<u>Rate</u>	<u>Total</u>
[REDACTED]		14.10	\$675.00	\$9,517.50
[REDACTED]		0.40	200.00	80.00

AB Inventio LLC et al., v. Palisades Growth Capital II, L.P., et al.,
C.A. No. 2023-1279-JTL

Advances

05/08/2024	[REDACTED]	14.44
05/13/2024	[REDACTED]	78.70
05/28/2024	[REDACTED]	12.39
	Total Advances	<u>105.53</u>
	Total Current Work	9,703.03
	Balance Due	<u>\$30,352.64</u>

Aged Due Amounts

<u>Stmt Date</u>	<u>Stmt #</u>	<u>Billed</u>	<u>Due</u>
03/31/2024	9717	12,222.50	12,222.50
04/30/2024	9820	8,427.11	8,427.11
			<u>20,649.61</u>

Wire Instructions
M & T Bank
Wilmington, DE 19890
Swift Code# MANTUS33
ABA # 022 000 046
For Credit to Wilks Law, LLC
Account #2987-3011

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (the “**Agreement**”) is made and entered into as of October 20, 2021 between Vandelay Acquisition Corp., a Delaware corporation (the “**Company**”), and Scopia Holdings LLC, [REDACTED] and [REDACTED] LLC (each, an “**Indemnitee**”).

WITNESSETH THAT:

WHEREAS, the Company has entered into, or intends to enter into, an Agreement and Plan of Merger (the “**Merger Agreement**”) with QLess, Inc. (the “**Merger**”); and

WHEREAS, the Indemnitees have engaged in discussions with the Company and QLess, Inc. relating to their prospective investment in the Company, which investment was necessary to fund the payment of the Merger Consideration (as defined in the Merger Agreement); and

WHEREAS, concurrently with the execution of this Agreement, certain of the Indemnitees are entering into Series A Preferred and Common Stock Subscription Agreement with the Company and it is a condition to their entering into said Subscription Agreement that the Company enter into this Agreement; and

NOW, THEREFORE, the parties hereto agree as follows:

1. Indemnity of Indemnitee. The Company hereby agrees to hold harmless and indemnify each Indemnitee to the fullest extent permitted by law, if an Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding (as hereinafter defined). Indemnitee shall be indemnified against all Expenses (as hereinafter defined), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by it, or on its behalf, in connection with such Proceeding or any claim, issue or matter therein. The terms of this Agreement shall survive the Merger and references herein to the “Company” shall be deemed to refer to the surviving company following the Merger. The only limitation that shall exist upon the Company’s obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to Indemnitee that is finally determined to be unlawful.

2. Contribution.

(a) Whether or not the indemnification provided herein is available, in respect of any threatened, pending or completed Proceeding in which the Company is jointly liable with an Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall pay, in the first instance, the entire amount of any judgment or settlement of such Proceeding without requiring Indemnitee to contribute to such payment and the Company hereby waives and relinquishes any right of contribution it may have against any Indemnitee. The Company shall not enter into any settlement of any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding) unless such settlement provides for a full and final release of all claims asserted against the Indemnitees.

(b) Without diminishing or impairing the obligations of the Company set forth in the preceding subparagraph, if, for any reason, an Indemnitee shall elect or be required to pay

all or any portion of any judgment or settlement in any threatened, pending or completed Proceeding in which the Company is jointly liable with such Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall contribute to the amount of Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnitee in proportion to the relative benefits received by the Company and all shareholders, affiliates, officers, directors or employees of the Company, other than the Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction or events from which such Proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of an Indemnity, the Company and all other shareholders, affiliates, officers, directors or employees of the Company other than the relevant Indemnitee who are jointly liable with such Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and the relevant Indemnitee, on the other hand, in connection with the transaction or events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other equitable considerations which applicable law may require to be considered. The relative fault of the Company and all shareholders, affiliates, officers, directors or employees of the Company, other than an Indemnitee, who are jointly liable with an Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and an Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(c) The Company hereby agrees to fully indemnify and hold the Indemnitees harmless from any claims of contribution which may be brought by any shareholders, affiliates, officers, directors, or employees of the Company, other than an Indemnitee, who may be jointly liable with such Indemnitee.

(d) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding and/or (ii) the relative fault of the Company (and its other shareholders, affiliates, directors, officers, employees and agents) and the relevant Indemnitee in connection with such event(s) and/or transaction(s).

3. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the extent that any Indemnitee or any officer, member or affiliate of an Indemnitee is a witness, or is made (or asked) to respond to discovery requests, in any Proceeding to which Indemnitee is not a party, such Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by it or on its behalf in connection therewith.

4. Advancement of Expenses. Notwithstanding any other provision of this Agreement, the Company shall advance all Expenses incurred by or on behalf of an Indemnitee in connection with any Proceeding within thirty (30) days after the receipt by the Company of a statement or statements from an Indemnitee requesting such advance or advances from time to

time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by a written undertaking by or on behalf of such Indemnitee to repay any Expenses advanced if it shall ultimately be determined that such Indemnitee is not entitled to be indemnified against such Expenses. Any advances and undertakings to repay pursuant to this Section 4 shall be unsecured and interest free.

5. Remedies of Indemnitee.

(a) In the event that an advancement of Expenses or payment of indemnification is not timely made in accordance with this Agreement, each Indemnitee shall be entitled to an adjudication in an appropriate court of the State of Delaware, or in any other court of competent jurisdiction, of such Indemnitee's entitlement to such indemnification. The Company shall not oppose Indemnitee's right to seek any such adjudication.

(b) In the event that an Indemnitee seeks a judicial adjudication of its rights under, or to recover damages for breach of, this Agreement, the Company shall pay on such Indemnitee's behalf, in advance, any and all Expenses actually and reasonably incurred by such Indemnitee in such judicial adjudication, regardless of whether such Indemnitee ultimately is determined to be entitled to such indemnification, advancement of expenses or insurance recovery.

(c) The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 5 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement.

(d) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

6. Non-Exclusivity; Survival of Rights; Insurance; Primacy of Indemnification; Subrogation.

(a) The rights of indemnification as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law or otherwise. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) The Company hereby acknowledges that an Indemnitee may have rights to indemnification, advancement of expenses and/or insurance provided by any party or parties other than the Company (collectively, the "Fund Indemnitors"). The Company hereby agrees (i) that it is the indemnitor of first resort (*i.e.*, its obligations to Indemnitee are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of expenses incurred by an Indemnitee and shall be liable for the full

amount of all Expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted, without regard to any rights Indemnitee may have against the Fund Indemnitors, and (iii) that it irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Fund Indemnitors on behalf of an Indemnitee with respect to any claim for which an Indemnitee has sought indemnification from the Company shall affect the foregoing and the Fund Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of an Indemnitee against the Company. The Company and Indemnitees agree that the Fund Indemnitors are express third party beneficiaries of this Agreement.

(c) Except as provided in paragraph (b) above, in the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of an Indemnitee (other than against the Fund Indemnitors), who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(d) Except as provided in paragraph (b) above, the Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

7. Exception to Right of Indemnification. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against an Indemnitee:

(a) for which payment has actually been made to or on behalf of such Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision, provided, that the foregoing shall not affect the rights of an Indemnitee or the Fund Indemnitors set forth in Section 6(b) above; or

(b) in connection with any Proceeding (or any part of any Proceeding) initiated by an Indemnitee against the Company, other than to enforce the terms of this Agreement.

8. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumes the obligations imposed on it hereby in order to induce certain of the Indemnitees to acquire securities of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(c) The Company shall not seek from a court, or agree to, a "bar order" which would have the effect of prohibiting or limiting an Indemnitee's rights to receive advancement of expenses under this Agreement.

9. Definitions. For purposes of this Agreement:

(a) **"Expenses"** shall include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and any federal, state, local or foreign taxes imposed on the Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, ERISA excise taxes and penalties, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating, or being or preparing to be a witness in a Proceeding, or responding to, or objecting to, a request to provide discovery in any Proceeding. Expenses also shall include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent, and (ii) Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of an Indemnitee's rights under this Agreement.

(b) **"Proceeding"** includes any threatened, pending or completed action, suit, claim, counterclaim, cross claim, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, including any appeal therefrom, in which an Indemnitee was, is or will be involved as a party or otherwise, by reason of any action taken or of any inaction relating to the Merger, including, without limitation, any negotiations, discussions or offers made in connection therewith, and or any allegation of inappropriate control or influence over the Company or its Board members, officers, equity holders or debt holders with respect to the Merger.

10. Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision. Further, the invalidity or unenforceability of any provision hereof as to an Indemnitee shall in no way affect the validity or enforceability of any provision hereof as to any other Indemnitee. Without limiting the generality of the foregoing, this Agreement is intended to confer upon Indemnitees indemnification rights to the fullest extent permitted by applicable laws. In the event any provision hereof conflicts with any applicable law, such provision shall be deemed modified, consistent with the aforementioned intent, to the extent necessary to resolve such conflict.

11. Modification and Waiver. No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in writing by all of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

12. Notice By Indemnitee. Each Indemnitee agrees promptly to notify the Company in writing upon being served with or otherwise receiving any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which

may be subject to indemnification covered hereunder. The failure to so notify the Company shall not relieve the Company of any obligation which it may have to such Indemnitee under this Agreement or otherwise unless and only to the extent that such failure or delay materially prejudices the Company.

13. Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent:

(a) To an Indemnitee at the address set forth below such Indemnitee’s signature hereto.

(b) To the Company at:

Attention:_____

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

14. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same the same instrument. Counterparts may be delivered via electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

15. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

16. Governing Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. The Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the “**Delaware Court**”), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to

make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Indemnification Agreement on and as of the day and year first above written.

COMPANY

SCOPIA HOLDINGS LLC

DocuSigned by:
Paul D'Addario
By: _____
Name: Paul D'Addario
Title: President

By: _____
Name:
Title:

Address:



By: _____
Name:
Title:

By: _____
Name:
Title:

Address:

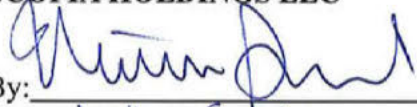
Address:

IN WITNESS WHEREOF, the parties hereto have executed this Indemnification Agreement on and as of the day and year first above written.

COMPANY

SCOPIA HOLDINGS LLC

By: _____
Name:
Title:

By: 
Name: Matthew S. Rubin
Title: Class A Member

Address: c/o Scopia 152 W. 57th St. NYC 10019





By: _____
Name:
Title:


Name: 
Title: 

Address:

Address: 

IN WITNESS WHEREOF, the parties hereto have executed this Indemnification Agreement on and as of the day and year first above written.

COMPANY

SCOPIA HOLDINGS LLC

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Address: _____

By: _____
Name: _____
Title: _____

Address: _____

Address: _____
