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

In re:

THRASIO HOLDINGS, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11840 (CMG)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF
AN ORDER ESTABLISHING A RECORD DATE
FOR POTENTIAL NOTICE AND SELL-DOWN PROCEDURES FOR
TRADING IN CERTAIN CLAIMS AGAINST THE DEBTORS' ESTATES**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

¹ The last four digits of Debtor Thrasio Holdings, Inc.'s tax identification number are 8327. A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' proposed 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.



The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state the following in support of this motion (this “Motion”):²

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Record Date Order”), establishing the date the Court enters the Record Date Order as the effective date (the “Record Date”) for certain potential notice and sell down procedures for trading in certain claims against the Debtors’ estates in order to preserve the Debtors’ ability to formulate a plan of reorganization that maximizes the use of their Tax Attributes (as defined herein).³

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of New Jersey (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11*, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). The Debtors confirm their consent to the Court entering a final order in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

² A description of the Debtors and their businesses, and the facts and circumstances supporting this Motion and the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of Josh Burke, Chief Financial Officer of Thrasio Holdings, Inc., in Support of First Day Motions* (the “First Day Declaration”), filed contemporaneously with the Debtors’ voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), on February 28, 2024 (the “Petition Date”). Capitalized terms used but not otherwise defined in this Motion shall have the meanings ascribed to them in the First Day Declaration.

³ Contemporaneously with this Motion, the Debtors filed the *Debtors’ Motion for Entry of Interim and Final Orders Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and Preferred Stock* seeking to establish notification and hearing procedures regarding the transfers of and declarations of worthlessness with respect to Beneficial Ownership (as defined therein) of the Debtors’ equity securities to preserve the use of their Tax Attributes.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 362 and 541 of the Bankruptcy Code and rules 9013-1 and 9013-5 of the Local Rules of the United States Bankruptcy Court for the District of New Jersey (the “Local Rules”).

Background

5. On the Petition Date, the Debtors filed a motion requesting joint administration of these chapter 11 cases pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). The Debtors are operating their business and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

The Tax Attributes

6. Companies generate various Tax Attributes (as defined herein) through the course of their operations. Generally, a company generates net operating losses (“NOLs”) if the operating expenses it has incurred exceed the revenues it has earned during a single tax year. A company may apply or “carry forward”⁴ NOLs to reduce future tax payments (subject to certain conditions discussed below). NOLs arising in taxable years beginning before January 1, 2018, may be used to offset up to 100 percent of taxable income and NOLs arising in taxable years beginning after December 31, 2017, may be used to offset up to 80 percent of taxable income. *See* Internal Revenue Code of 1986, as amended (the “IRC”), § 172. Generally, a company’s deduction for net business interest expense is limited to 30 percent of its adjusted taxable income plus certain other

⁴ Under certain circumstances, certain NOLs generated may be “carried back” to offset taxable income in prior years. Generally, the specific rules regarding carrybacks and carryforwards depend on when a particular NOL was generated.

amounts. Any business interest expense disallowed is carried forward and treated as business interest expense in the following tax year (“163(j) Carryforwards”). *See* IRC § 163. Other Tax Attributes have other sources. While NOLs and 163(j) Carryforwards are the most ubiquitous tax attributes, companies can also generate a variety of other tax attributes, including general business credits, research and development credit carryforwards, unused minimum tax credits, foreign tax credits, business tax credits, and capital loss carryforwards, as the case may be.

7. The Debtors had, as of December 31, 2023, approximately \$1.1 billion of federal NOLs, approximately \$187.8 million of 163(j) Carryforwards, and approximately \$15.9 million of capital loss carryforwards. The Debtors expect to generate substantial additional tax attributes in the current tax year, including during the pendency of these chapter 11 cases (together with the aforementioned NOLs, 163(j) Carryforwards, and certain other tax attributes, collectively, the “Tax Attributes”). The Tax Attributes are potentially of significant value to the Debtors and their estates because the Tax Attributes may offset U.S. federal taxable income or U.S. federal tax liability in future years, including any taxable income generated by transactions consummated during these chapter 11 cases (including with respect to any taxable disposition of some or all of the Debtors’ assets). Accordingly, the value of the Tax Attributes will inure to the benefit of all of the Debtors’ stakeholders.

8. The Debtors’ ability to use their Tax Attributes may, however, be lost (or severely limited) if they experience an “ownership change” for tax purposes and are unable to take advantage of certain favorable rules that apply to ownership changes that occur pursuant to a bankruptcy plan of reorganization (as described more fully below). The Debtors expect such favorable rules will provide substantial value to the Debtors’ estates through the preservation of the Tax Attributes. Accordingly, to protect their ability to use the Tax Attributes (and, specifically,

to rely on the favorable rule described below), the Debtors may ultimately need to seek an order (a “Sell-Down Order”) requiring any person or entities (as defined in section 101(15) of the Bankruptcy Code) that have acquired debt claims against the Debtors during these chapter 11 cases in such an amount that the holders of such claims would be entitled to receive more than 4.5 percent of the equity of the reorganized Debtors (collectively, the “Substantial Claimholders”), to sell-down their claims below this threshold amount.

9. At this stage, it is too early to determine whether it is (or will be) necessary for the Debtors to obtain a Sell-Down Order, so this Motion does not seek entry of a Sell-Down Order. Instead, this Motion merely seeks to establish the Record Date through entry of the proposed Record Date Order. The Record Date Order will provide notice of the Record Date to persons or entities that trade claims against the Debtors that their claims ultimately may be subject to sell-down. This notice will communicate: (a) that, subject to further Court order (*i.e.*, a Sell-Down Order), such creditor’s claims may ultimately be subject to sell-down; and (b) the date after which purchased claims could be subject to sell-down (*i.e.*, on or after the Record Date). Thus, the **only** purpose of the Record Date Order is to set and provide notice of the Record Date, which will serve as a placeholder should the Debtors later determine that a Sell-Down Order is necessary to preserve the Tax Attributes. To the extent the Debtors later determine that a Sell-Down Order is necessary, the Debtors will file a separate motion requesting entry of a Sell-Down Order applicable to claims traded **after** the Record Date.

I. Limitations on Use of the Tax Attributes.

10. Sections 382 and 383 of the IRC limit the amount of federal taxable income and federal tax liability, respectively, that can be offset by a corporation’s tax attributes in taxable years (or portions thereof) following an “ownership change.” Generally, an “ownership change” occurs if the percentage (by value) of the stock of a corporation owned by one or more 5-percent

shareholders has increased by more than 50 percentage points over the lowest percentage of stock owned by such shareholders at any time during the three (3) year testing period ending on the date of the ownership change. *See* IRC § 382.

11. Although sections 382 and 383 of the IRC impose annual limitations on a taxpayer's use of its Tax Attributes, a special provision of section 382 also provides significant relief to a debtor if an ownership change occurs in the context of a confirmed chapter 11 plan and certain requirements are satisfied. Under section 382(l)(5) of the IRC, a debtor corporation is not subject to the general limitation imposed by sections 382 and 383 of the IRC with respect to an ownership change if, as a result of the transactions contemplated by a chapter 11 plan, historic stockholders and/or the corporation's "qualified creditors" own at least 50 percent of the total value and voting power of the reorganized debtor's stock (the "Section 382(l)(5) Exception"). *See* IRC § 382(l)(5)(A).⁵

12. To qualify for the Section 382(l)(5) Exception, "qualified creditors" (together with historic stockholders) must hold at least 50 percent of the reorganized debtor's stock immediately after emergence from chapter 11. A key aspect of the "qualified creditor" analysis is the length of time that creditors have held their claims, together with a favorable presumption regarding that holding period that applies to creditors who receive less than 5 percent of the stock of a reorganized company. The Record Date Order is designed to ensure that the Debtors are able to preserve their ability to request a Sell-Down Order if doing so is necessary and sufficient to satisfy this "qualified creditor" rule to preserve the Tax Attributes.

⁵ A "qualified creditor" is generally one who (a) has held its claim continuously since at least 18 months prior to the Petition Date or (b) has held a claim incurred in the ordinary course of the debtor's business since the claim was incurred. *See* IRC § 382(l)(5)(E); Treas. Reg. § 1.382-9(d). For these purposes Treas. Reg. § 1.382-9(d)(3) permits taxpayers to treat any claim holder as *always* having held such claim if such claim holder owns less than 5 percent of the corporation's stock immediately following the ownership change.

13. If an ownership change occurred in the context of a confirmed chapter 11 plan and the Debtors were unable to take advantage of the Section 382(l)(5) Exception, sections 382 and 383 of the IRC are expected to significantly limit the amount of taxable income and tax liabilities, respectively, that the Debtors could offset by their “pre-change losses” and “excess credits” in taxable years (or a portion thereof). *See* IRC § 382(b). The Debtors’ “pre-change losses” and “excess credits” would include the NOLs and the 163(j) Carryforwards.

Notice and Summary of Potential Sell-Down Procedures

14. The Debtors anticipate that they may need to seek entry of a Sell-Down Order that will enable them to (a) determine whether the Debtors will qualify for the Section 382(l)(5) Exception and, if necessary, (b) require certain Substantial Claimholders to “sell-down” claims to the extent necessary to allow the Debtors to qualify for the Section 382(l)(5) Exception (the “Sell-Down Procedures”). The Record Date Order is designed to ensure that the Debtors preserve their ability to request this relief to the extent the Debtors determine that the Sell-Down Procedures are necessary to preserve the Tax Attributes.

15. Any potential Sell-Down Procedures would require a person or entity holding an amount of claims entitling that holder to receive more than 4.5 percent of the equity of the reorganized Debtors (the “Threshold Amount”) to provide the Debtors with certain limited information such as the size of those holdings and the date those holdings were acquired. The amount of claims held by a claimholder as of the Record Date would constitute the “Protected Amount.” Claimholders would never be required to sell down their claims below the Threshold Amount or the Protected Amount, whichever is greater. In other words, the Sell-Down Order (if sought by the Debtors and entered by the Court) would apply only to entities that acquire claims in excess of the Threshold Amount *after* entry of the proposed Record Date Order and with

full notice of the possibility that the claims they acquire could be subject to sell-down *if* the Debtors later determine that the Sell-Down Procedures are necessary.

16. If the Sell-Down Procedures prove to be necessary, the Debtors would seek to require claimholders with claims greater than the Threshold Amount to provide updated holdings information shortly after the date on which the Court approves a motion to this effect. Based on the updated holdings information, the Debtors would then determine whether it would be necessary to require claimholders holding claims in excess of the Threshold Amount and their respective Protected Amounts to sell down a portion of their holdings to preserve the Tax Attributes. The Debtors would only require a sell-down if it were deemed necessary for the Debtors to qualify for the Section 382(l)(5) Exception, and in no event would the Debtors seek to require a claimholder to sell-down claims below its Protected Amount. In the event that the Debtors seek entry of a Sell-Down Order, the Debtors would seek to provide adequate notice and opportunity for claimholders to sell down their claims without triggering an unreasonable adverse impact on the value of such claims.

17. The Debtors will provide notice of the entry of the proposed Record Date Order to each of the Debtors' creditors, substantially in the form attached to the Record Date Order as Exhibit 1 (the "Record Date Order Notice") and will supplement such notice to the extent new creditors make themselves known to the Debtors by requesting service pursuant to Bankruptcy Rule 2002 or filing a proof of claim. The Record Date Order Notice will be provided to each of the Debtors' creditors within five (5) calendar days after entry of the Record Date Order or as soon as reasonably practicable thereafter. In addition, the Debtors will publish the Record Date Order Notice in the national editions of *The New York Times* and the *Wall Street Journal* and to the Debtors' case website established by the Debtors' proposed claims and noticing agent, Kurtzman

Carson Consultants LLC. Thus, entry of the proposed Record Date Order at the early stages of these chapter 11 cases will provide all interested parties notice prior to any party having the opportunity to trade in claims against the Debtors, which after entry of the Record Date Order may ultimately be subject to the Sell-Down Procedures.

The Procedures Are Narrowly Tailored

18. Approval of the proposed Record Date Order does not constitute approval of any Sell-Down Procedures or even endorse the notion of Sell-Down Procedures. Moreover, the Record Date Order will not impose a burden on any party since the Record Date Order alone—without a Sell-Down Order—will not affect the rights of any party. As stated above, the Record Date Order merely establishes the Record Date as the effective date for any Sell-Down Procedures established in the future and provides notice to claimholders and claims traders that if the Debtors eventually request and the Court ultimately approves the Sell-Down Procedures, the Protected Amounts will be measured as of the Record Date and the claimholders may be subject to a required sell-down of any claims purchased after the Record Date.

19. Courts routinely grant relief similar to the relief requested herein in comparable chapter 11 cases. *See, e.g., In re Invitae Corp.*, No. 24-11362 (MBK) (Bankr. D.N.J. Feb. 16, 2024) (establishing a record date for notice and sell-down procedures); *In re Rite Aid Corp.*, No. 23-18993 (MBK) (Bankr. D.N.J. Oct. 18, 2023) (same); *In re Extraction Oil & Gas, Inc.*, No. 20-11548 (CSS) (Bankr. D. Del. June 16, 2020) (same); *In re Quorum Health Corp.*, No. 20-10766 (KBO) (Bankr. D. Del. May 1, 2020) (same); *In re Forever 21, Inc.*, No. 19-12122 (MFW) (Bankr. D. Del. Oct. 24, 2019) (same).⁶ For the avoidance of doubt, granting the relief

⁶ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

requested in the Motion would in no way be deemed a determination of any kind that entry of a Sell-Down Order is necessary or warranted in these chapter 11 cases and the Court's review of any request for entry of a Sell-Down Order would stand on its own merits notwithstanding the Court's entry of the relief requested herein.

Basis for Relief

I. The Tax Attributes Are Property of the Debtors' Estates.

20. Section 541 of the Bankruptcy Code provides that property of the estate comprises, among other things, "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541. The Tax Attributes are property of the Debtors' estates. *See, e.g., Official Comm. of Unsecured Creditors v. PSS Steamship Co. (In re Prudential Lines, Inc.)*, 928 F.2d 565, 573 (2d Cir. 1991) ("We hold that the right to a carryforward attributable to its . . . NOL was property of [the debtor's] bankruptcy estate."), *cert. denied*, 502 U.S. 821 (1991); *In re Delta Air Lines, Inc.*, No. 05-17923 (PCB) (Bankr. S.D.N.Y. Sept. 16, 2005) (finding that NOLs are property of the debtors' estates); *Official Comm. of Unsecured Creditors v. Forman (In re Forman Enters., Inc.)*, 273 B.R. 408, 416 (Bankr. W.D. Pa. 2002) (same); *Nisselson v. Drew Indust., Inc. (In re White Metal Rolling & Stamping Corp.)*, 222 B.R. 417, 424 (Bankr. S.D.N.Y. 1998) (same). Section 362(a)(3) of the Bankruptcy Code, moreover, stays "any act [of an entity] to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). Because the Tax Attributes are property of the Debtors' estates, the Debtors have a duty to take steps to preserve them, and this Court has the authority under section 362 of the Bankruptcy Code to enforce the automatic stay by taking steps to restrict the transfer of claims that could jeopardize the existence of these valuable assets. Granting the relief requested herein will preserve the Debtors' flexibility in implementing a value maximizing plan that makes full and efficient use of the Tax Attributes.

Moreover, because the Debtors seek to establish the Record Date at the outset of these cases, the Debtors are providing maximal notice to all current and potential claimholders that a Sell-Down Order may be necessary to preserve the Tax Attributes for the benefit of the Debtors' estates.

II. The Requested Relief Is Necessary to Avoid Immediate and Irreparable Harm to the Debtors.

21. Entry of the Record Date Order will not affect the rights of any party in interest; instead, it will set and preserve the Record Date should Sell-Down Procedures eventually become necessary to avoid the imposition of an irrevocable limitation on the Debtors' utilization of the Tax Attributes. Whether or not the Debtors request—and the Court ultimately implements—the Sell-Down Procedures, entry of the Record Date Order protects the Debtors' option to choose to preserve the Tax Attributes without prejudicing any party in interest. To preserve their ability to request and implement the Sell-Down Procedures, the Debtors seek to notify claims traders prospectively that claims acquired after the Record Date may be subject to sell-down. Entry of the Record Date Order will preserve the Debtors' flexibility to seek to implement the Sell-Down Procedures if they determine that proposing a plan of reorganization that would take advantage of the Section 382(l)(5) Exception is in the best interest of their estates. Without the Record Date Order fixing the Record Date on or about the commencement of these chapter 11 cases, it is unlikely that the Debtors would ever be able to implement the Sell-Down Procedures and thereby avoid limitations on, and possibly the loss of, the Tax Attributes.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

22. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Waiver of Memorandum of Law

23. The Debtors respectfully request that the Court waive the requirement to file a separate memorandum of law pursuant to Local Rule 9013-1(a)(3) because the legal basis upon which the Debtors rely is set forth herein and the Motion does not raise any novel issues of law.

Reservation of Rights

24. Nothing contained in this Motion or any order granting the relief requested in this Motion, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with any such order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, priority of, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

No Prior Request

25. No prior request for the relief sought in this Motion has been made to this or any other court.

Notice

26. The Debtors will provide notice of this Motion to the following parties and/or their respective counsel, as applicable: (a) the Office of the United States Trustee for the District of New Jersey; (b) the Debtors' 30 largest unsecured creditors (on a consolidated basis); (c) Gibson, Dunn & Crutcher LLP, as counsel to the Ad Hoc Group; (d) counsel to the Administrative Agent under the Revolving Credit Facility; (e) the United States Attorney's Office for the District of New Jersey; (f) the Internal Revenue Service; (g) the attorneys general in the states where the Debtors conduct their business operations; (h) the U.S. Securities and Exchange Commission; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtors respectfully request that the Court enter the Record Date Order, substantially in the form attached hereto as **Exhibit A**, and granting such other relief as is just and proper.

Dated: February 28, 2024

/s/ Michael D. Sirota

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*Proposed Co-Counsel to the Debtors and
Debtors in Possession*

Exhibit A

Proposed Record Date Order

Caption in Compliance with D.N.J. LBR 9004-1(b)

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
In re: THRASIO HOLDINGS, INC., <i>et al.</i> , Debtors. ¹	Chapter 11 Case No. 24-11840 (CMG) (Joint Administration Requested)

**ORDER ESTABLISHING A RECORD DATE
FOR POTENTIAL NOTICE AND SELL-DOWN PROCEDURES FOR
TRADING IN CERTAIN CLAIMS AGAINST THE DEBTORS' ESTATES**

The relief set forth on the following pages, numbered three (3) through six (6), is
ORDERED.

¹ The last four digits of Debtor Thrasio Holdings, Inc.'s tax identification number are 8327. A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' proposed 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.

Caption in Compliance with D.N.J. LBR 9004-1(b)

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Proposed Co-Counsel to the Debtors and Debtors in Possession

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Debtors: THRASIO HOLDINGS, INC., *et al.*

Case No. 24-11840 (CMG)

Caption of Order: ORDER ESTABLISHING A RECORD DATE FOR POTENTIAL NOTICE AND SELL-DOWN PROCEDURES FOR TRADING IN CERTAIN CLAIMS AGAINST THE DEBTORS' ESTATES

Upon the *Debtors' Motion for Entry of an Order Establishing a Record Date for Potential Notice and Sell-Down Procedures for Trading in Certain Claims Against the Debtors' Estates* (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Record Date Order"), establishing an effective date for potential notification and sell-down procedures for trading in certain claims against the Debtors' estates, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor **IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

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Debtors: THRASIO HOLDINGS, INC., *et al.*

Case No. 24-11840 (CMG)

Caption of Order: ORDER ESTABLISHING A RECORD DATE FOR POTENTIAL NOTICE AND SELL-DOWN PROCEDURES FOR TRADING IN CERTAIN CLAIMS AGAINST THE DEBTORS' ESTATES

2. Within five (5) calendar days of the entry of this Record Date Order, the Debtors shall provide notice, substantially in the form attached hereto as **Exhibit 1** (the "Record Date Notice"), to each of the Debtors' known creditors of the terms of this Record Date Order. The Debtors shall also publish the Record Date Notice in the national editions of *The New York Times* and the *Wall Street Journal* and to the website established by the Debtors' proposed claims and noticing agent for these chapter 11 cases (<https://www.kcellc.net/Thrasio>), such notice being reasonably calculated to provide notice to all creditors that may be affected by this Record Date Order, whether known or unknown, and no further notice of this Record Date Order being necessary.

3. The Record Date Notice is deemed adequate and sufficient so that, claimholders that acquire claims after the entry of this Record Date Order in an amount that would entitle them to receive more than 4.5 percent of the stock of the reorganized Debtors, may be subject to a required Sell-Down Order of any Claims purchased after the Record Date to the extent authorized by the Court after appropriate opportunity for notice and a hearing.

4. Nothing herein shall preclude any person or entity from requesting relief from this Record Date Order from this Court, subject to the Debtors' rights to oppose such relief.

5. The relief granted in this Record Date Order is intended solely to permit the Debtors to protect, preserve, and maximize the value of their Tax Attributes; accordingly, nothing in this Record Date Order or in the Motion shall be deemed to prejudice, impair or otherwise alter or affect the rights of any holders of interests in, or Claims against, the Debtors, including in

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Debtors: THRASIO HOLDINGS, INC., *et al.*

Case No. 24-11840 (CMG)

Caption of Order: ORDER ESTABLISHING A RECORD DATE FOR POTENTIAL NOTICE AND SELL-DOWN PROCEDURES FOR TRADING IN CERTAIN CLAIMS AGAINST THE DEBTORS' ESTATES

connection with the treatment of any such interests or Claims under the Debtors' chapter 11 plan of any applicable bankruptcy court order.

6. The entry of this Record Date Order shall in no way prejudice the rights of any party to oppose a Sell-Down Order, on any grounds, and all parties' rights are expressly preserved hereby.

7. Entry of this Record Date Order is not a determination that a Sell-Down Order is necessary or warranted in this case and the Court's review of any request for the entry of a Sell-Down Order shall be subject to notice and a hearing.

8. Nothing contained in the Motion or this Record Date Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Record Date Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, priority of, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Record Date Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes

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Debtors: THRASIO HOLDINGS, INC., *et al.*

Case No. 24-11840 (CMG)

Caption of Order: ORDER ESTABLISHING A RECORD DATE FOR POTENTIAL NOTICE AND SELL-DOWN PROCEDURES FOR TRADING IN CERTAIN CLAIMS AGAINST THE DEBTORS' ESTATES

of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

9. To the extent that this Record Date Order is inconsistent with any prior order or pleading with respect to the Motion in these chapter 11 cases, the terms of this Record Date Order shall govern.

10. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Record Date Order in accordance with the Motion.

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Record Date Order are immediately effective and enforceable upon its entry.

13. The requirement set forth in Local Rule 9013-1(a)(3) that any motion be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

14. Any party may move for modification of this Record Date Order in accordance with Local Rule 9013-5(e).

15. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Record Date Order.

Exhibit 1

Proposed Record Date Order Notice

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Proposed Co-Counsel to the Debtors and Debtors in Possession

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

In re:

THRASIO HOLDINGS, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11840 (CMG)

(Joint Administration Requested)

**NOTICE OF ENTRY OF AN ORDER
ESTABLISHING A RECORD DATE FOR POTENTIAL
NOTICE AND SELL-DOWN PROCEDURES FOR TRADING
IN CERTAIN CLAIMS AGAINST THE DEBTORS' ESTATES**

¹ The last four digits of Debtor Thrasio Holdings, Inc.'s tax identification number are 8327. A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' proposed 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.

TO: ALL ENTITIES (AS DEFINED BY SECTION 101(15) OF THE BANKRUPTCY CODE) THAT HOLD CLAIMS AGAINST THE DEBTORS:

PLEASE TAKE NOTICE that on February 28, 2024 (the “Petition Date”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed a petition with the United States Bankruptcy Court for the District of New Jersey (the “Court”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Subject to certain exceptions, section 362 of the Bankruptcy Code operates as a stay of any act to obtain possession of property of or from the Debtors’ estates or to exercise control over property of or from the Debtors’ estates.

PLEASE TAKE FURTHER NOTICE that on the Petition Date, the Debtors filed the *Debtors’ Motion for Entry of an Order Establishing a Record Date for Potential Notice and Sell-Down Procedures for Trading in Certain Claims Against the Debtors’ Estates* [Docket No. [●]] (the “Motion”).²

PLEASE TAKE FURTHER NOTICE that on March [●], 2024, the Court entered the *Order Establishing a Record Date for Potential Notice and Sell-Down Procedures for Trading in Certain Claims Against the Debtors’ Estates* [Docket No. [●]] (the “Record Date Order”), establishing an effective date for potential notice and the Sell-Down Procedures for trading in certain claims against the Debtors’ estates. The “Record Date” is the date that the Record Date Order was entered (*i.e.*, March [●], 2024).

PLEASE TAKE FURTHER NOTICE that pursuant to the Record Date Order, claimholders and potential purchasers of claims against the Debtors are hereby notified that claimholders that acquire claims after the Record Date in an amount that would entitle them to

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion or Record Date Order (as defined herein), as applicable.

receive more than 4.5 percent of the stock of the reorganized Debtors under the Debtors' plan of reorganization may be subject to a required sell-down of any claims purchased after the Record Date.

PLEASE TAKE FURTHER NOTICE that all persons or entities that acquired debt claims against the Debtors after the Record Date and currently hold or come to hold such claims in such an amount that the persons or entities holding such claims would be entitled to receive more than 4.5 percent of the equity of the reorganized Debtors under the Debtors' plan of reorganization shall be required to identify themselves to the Debtors after the Court's approval of a corresponding motion.

PLEASE TAKE FURTHER NOTICE that upon the request of any person or entity, the Debtors' proposed claims and noticing agent, Kurtzman Carson Consultants LLC, will provide a copy of the Record Date Order in a reasonable amount of time. In addition, complete copies of the Motion and Record Date Order (including the exhibits attached thereto), are available via PACER on the Court's website at <https://www.njb.uscourts.gov> for a fee, or free of charge by accessing the Debtors' restructuring website at <https://www.kccllc.net/Thrasio>.

PLEASE TAKE FURTHER NOTICE that the entry of the Record Date Order shall in no way prejudice the rights of any party to oppose the entry of a Sell-Down Order, on any grounds, and that all parties' rights are expressly preserved hereby.

PLEASE TAKE FURTHER NOTICE that the requirements set forth in this notice are in addition to the requirements of applicable law and do not excuse compliance therewith.

[Remainder of page intentionally left blank.]

Dated: [●], 2024

/s/ DRAFT

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