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

In re:  
  
THRASIO HOLDINGS, INC., *et al.*,<sup>1</sup>  
  
Debtors.

Chapter 11  
Case No. 24-11840 (CMG)  
(Jointly Administered)  
Ref. Dkt. Nos. 4, 6, 7, 9, 10, 12, 13, 15, 18, 39, 107  
Hearing Date: April 3, 2024 at 2:00 p.m. (ET)  
Obj. Deadline (as extended for the Committee):  
April 3, 2024 at 2:00 p.m. (ET)

**STATEMENT OF THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS REGARDING THE DEBTORS’  
DIP FINANCING AND OTHER FIRST- AND SECOND-DAY MOTIONS**

<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.



The Official Committee of Unsecured Creditors (the “Committee”) of Thrasio Holdings, Inc., *et al.* (collectively, the “Debtors”) submits this statement (the “Statement”) in response to the Debtors’ motions seeking approval of debtor-in-possession financing [Docket No. 39] (the “DIP Motion”) <sup>2</sup> and certain other first- and second-day relief [Docket Nos. 4, 6, 7, 9, 10, 12, 13, 15, 18, 107]. In support of this Statement, the Committee respectfully represents as follows:

### **STATEMENT OF THE COMMITTEE**

1. The Committee is pleased to report that it has reached an agreement in principle with the Debtors and the DIP Lenders to resolve the Committee’s informal objections to certain of the Debtors’ first- and second-day motions, including the motion for approval of the Debtors’ proposed debtor-in-possession financing (the “DIP Facility”).

2. The Committee files this Statement to advise the Court that, contrary to the carefully crafted first-day presentation made by the Debtors to this Court, the real story of Thrasio appears to be one of Silicon Valley hubris and gross mismanagement. In their presentation, the Debtors failed to mention the mounting evidence that Thrasio’s leadership—obsessed with reaching “unicorn status”—oversaw the destruction of more than \$3.1 billion of equity and debt capital through willful negligence and potential breaches of their fiduciary duties.<sup>3</sup> The Debtors also omitted the fact that Thrasio’s “roll up” strategy was premised on acquiring businesses from

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Secured Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, and (VI) Scheduling a Final Hearing* [Docket No. 81] (the “Interim DIP Order”) or, if not defined therein, the DIP Motion. Reference is also made to the proposed form of *Final Order (I) Authorizing the Debtors to Obtain Postpetition Secured Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, and (V) Modifying the Automatic Stay*, provided to the Committee’s advisors on April 1, 2024 (the “Final DIP Order”).

<sup>3</sup> Joshua Silberstein, one of the co-founders, continues to boast about Thrasio achieving “unicorn status” in 25 months. See <https://www.pelicanement.com/team/joshua-silberstein/> (last visited April 2, 2024).

small “mom-and-pop” entrepreneurs using earn-outs to delay payment. Those small business owners trusted Thrasio with their life’s work but now face the rejection and discharge of the Debtors’ remaining obligations under their asset purchase agreements.<sup>4</sup> Perhaps the best hope of recovery for these people, and for unsecured creditors generally, is to hold Thrasio’s management accountable.

3. Given the scale and speed of Thrasio’s collapse, the Committee expects to identify valuable estate claims, all of which are unencumbered by prepetition debt. For its part, Thrasio would like to sweep its epic collapse under the rug, blaming its demise on an unforeseen “return . . . to brick-and-mortar shopping.”<sup>5</sup> But this Court has every reason to be skeptical. In 2018, when Thrasio was founded, aggregate e-commerce sales in the United States were estimated at \$513.6 billion.<sup>6</sup> As anyone with an Amazon account knows, the half-decade that followed was a period of extraordinary e-commerce growth. E-commerce sales in the United States passed the \$1 trillion mark in 2022 and were estimated last year at \$1.12 trillion, an increase of over 100% in the five years since Thrasio was founded.<sup>7</sup> Thrasio’s unsecured creditors are entitled to know “why” and “how” Thrasio’s management team lost billions of dollars during a period when the e-commerce sector was so favorable.

4. Although its investigation has just begun, the Committee has reason to believe that Thrasio inexplicably failed to monitor or take obvious steps to protect against widespread patent

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<sup>4</sup> The Committee notes that while the Debtors filed a disclosure statement and chapter 11 plan on the Petition Date, the Debtors waited until after the first-day hearing, on March 6, 2024, to file their motion seeking to reject their obligations to small business owners pursuant to over 135 asset purchase agreements. *See* Docket Nos. 40, 41, and 107.

<sup>5</sup> Mar. 1, 2024 Hearing Tr. at 12:1-3.

<sup>6</sup> *See* Press Release, U.S. Dept. of Commerce, Quarterly Retail E-Commerce Sales 4th Quarter 2018 (Mar. 13, 2019), <https://www2.census.gov/retail/releases/historical/ecomm/18q4.pdf> (last visited April 2, 2024).

<sup>7</sup> *See* Press Release, U.S. Dept. of Commerce, Quarterly Retail E-Commerce Sales 4th Quarter 2023 (Feb. 20, 2024), [https://www.census.gov/retail/mrts/www/data/pdf/ec\\_current.pdf](https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf) (last visited April 2, 2024).

and other intellectual property infringement. The Committee has also identified evidence that Thrasio's management destroyed enterprise value by insisting on selling solely through Amazon to the exclusion of other highly profitable online marketplaces.<sup>8</sup> In addition, the Debtors have admitted that its management purchased more than \$500 million of inventory they were unable to sell and, just last week, filed a notice of intent to abandon inventory with a book value of more than \$90 million, with the abandonment process anticipated to cost the estates nearly \$10 million.<sup>9</sup> The Committee expects to uncover more examples of gross negligence and mismanagement as its investigation unfolds, which may lead to other estate claims.

5. As originally proposed, the DIP Facility would have expropriated all unencumbered value, including all estate claims—at this early stage in the case—for the exclusive benefit of the prepetition lenders. But for revisions to the Final DIP Order agreed between the Committee, the Debtors, and the DIP Lenders, discussed in further detail below, the DIP Facility would have forced the Debtors to repay up to \$360 million of secured post-petition debt (including \$270 million of rolled-up prepetition debt) from the value of unencumbered assets first, until such assets were exhausted, before a single dollar of prepetition collateral was used. This central feature of the DIP Facility was manifestly unfair and violated the fundamental principle that secured lenders should be responsible for the costs of liquidating their own collateral.

6. However, at the Committee's insistence, the Debtors and the DIP Lenders have agreed to modify this and certain other problematic provisions of the Final DIP Order to satisfy the Committee's concerns with the DIP Facility. The Committee also negotiated meaningful protections for unsecured creditors in the Debtors' other first- and second-day orders. The

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<sup>8</sup> The Committee is continuing to investigate why alternatives were not pursued.

<sup>9</sup> See Mar. 1, 2024 Hearing Tr. at 12:12-22; see also Docket No. 248 at 4.

Committee acknowledges and is appreciative of the willingness of the Debtors and the DIP Lenders to resolve the Committee's concerns consensually. Effective oversight from an independent fiduciary acting on behalf of unsecured creditors is critical to the integrity of the chapter 11 system.

### **MODIFICATIONS TO FINAL DIP ORDER**

7. The Debtors and the DIP Lenders have agreed to certain modifications to the Final DIP Order, at the Committee's request, that meaningfully improve the terms of the DIP Facility for general unsecured creditors, including the following:<sup>10</sup>

- Application of Proceeds/Marshaling: The Final DIP Order has been modified to provide that the Debtors, the DIP Lenders, and the Prepetition First Lien Secured Parties shall use commercially reasonable efforts to repay the DIP Obligations and Adequate Protection Obligations first from the proceeds of DIP Collateral other than Previously Unencumbered Property before repaying those obligations from the proceeds of Previously Unencumbered Property.
- Adequate Protection Claims: The Final DIP Order has been modified to make clear that the rights of all parties to assert or object to a diminution in value claim are expressly reserved.
- Challenge Period: The Final DIP Order has been modified to provide that the timely filing by the Committee of a motion for standing to prosecute a Challenge (as defined in the Final DIP Order) with an attached complaint shall serve to automatically toll the Challenge Period Termination Date (with respect to the claims identified in such complaint) until two (2) business days after Court has ruled on such a motion.
- Releases and Roll-Up Loans Subject to Challenge: The Final DIP Order has been modified to provide that (a) the Committee's ability to challenge any of the releases in the Interim DIP Order and the Final DIP Order are expressly subject to a Challenge, and (b) the rights of parties in interest to seek to unwind the Roll-Up Loans or recover any amounts incurred or paid by the Debtors on account of such Roll-Up Loans, in each case, in connection with a Challenge, are fully preserved.

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<sup>10</sup> The Committee is continuing to review the DIP Documents (as defined in the Final DIP Order) with the respective advisors for the Debtors and the DIP Lenders and reserves the right to raise any issues or objections to the extent not resolved among the parties.

- Right to Credit Bid Subject to Challenge: The Final DIP Order has been modified to provide that the prepetition lenders' right to credit bid their prepetition debt is expressly subject to a Challenge. To the extent that any party-in-interest identifies flaws in the prepetition lenders' collateral package, the corresponding debt is not be permitted to be credit bid and must be paid in cash.
- Limitations on Use of DIP Facility Proceeds: The Final DIP Order has been modified to ensure that the limitations on use of proceeds contained therein will not prejudice the ability of the Committee to conduct a reasonable investigation of estate claims in connection with a Challenge.
- Reporting: The Final DIP Order has been modified to provide that the Committee's advisors will receive notice, reporting, and access to management that is comparable to what will be provided to the DIP Lenders.

8. Taken together, the Committee believes that the compromises embodied in the revisions to the Final DIP Order strike an acceptable balance between accommodating the DIP Lenders' requirements with respect to the DIP Facility and preserving potential sources of value for the benefit of unsecured creditors. Accordingly, the Committee does not oppose entry of the Final DIP Order as amended.

#### **MODIFICATIONS TO OTHER FIRST- AND SECOND-DAY ORDERS**

9. The Debtors have agreed to make important modifications to certain other first- and second-day orders, including the additional of consultation rights, reporting and, in certain instances, advanced notice of payments made pursuant to those orders.<sup>11</sup> The Committee believes that these modifications provide the Committee with visibility into the Debtors' operations and meaningful oversight during these cases. Moreover, the Committee has also fully preserved the rights of small business owners who sold to Thrasio to assert claims arising from the proposed

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<sup>11</sup> Notwithstanding this progress, discussions and diligence remain ongoing concerning the Debtors' cash management practices and the terms of the order authorizing the Debtors to continue those practices in chapter 11. The Committee is optimistic that it will be able to resolve its concerns on a consensual basis.

rejection of their asset purchase agreements. Accordingly, the Committee does not oppose entry of those first- and second-day orders, as amended.

**RESERVATION OF RIGHTS**

10. The Committee reserves its rights to raise additional issues and concerns at any hearing on the Debtors' first- and second-day motions and approval of the DIP Facility. The Committee expressly reserves all rights, claims, defenses, and remedies, including, without limitation, to supplement and amend this Statement, to raise any objections to the DIP Motion, the DIP Documents, the Final DIP Order, any other first- or second-day order, and any proposed chapter 11 plan (including any fees charged to convert the DIP Facility into an "exit" facility) and to introduce evidence prior to or at any hearing regarding the foregoing in the event the Committee's objections are not resolved prior to such hearing.

Dated: April 2, 2024

Respectfully submitted,

By: /s/ James S. Carr

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