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UNITED STATES DEPARTMENT OF JUSTICE
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

	:	Chapter 11
In re:	:	
	:	Case No. 24-11840 (CMG)
Thrasio Holdings, Inc., *et al.*,	:	Jointly Administered
	:	
Debtors.[1]	:	Hearing Date: April 18, 2024 at 10:00 a.m.
	:	

UNITED STATES TRUSTEE'S OBJECTION TO DEBTORS' MOTION FOR ENTRY OF AN ORDER 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

Andrew R. Vara, the United States Trustee for Regions Three and Nine ("U.S. Trustee"), through his undersigned counsel, files this objection ("Objection") to the Debtors' *Motion for Entry of an Order 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* ("Motion") (Dkt. 42), and respectfully states as follows:

[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.

JURISDICTION

1. Under (i) 28 U.S.C. § 1334, (ii) applicable order(s) of the United States District Court for the District of New Jersey issued pursuant to 28 U.S.C. § 157(a), and (iii) 28 U.S.C. § 157(b)(2), this Court has jurisdiction to hear and determine the Debtors' request for approval of the relief requested in the Motion and the matters raised in this Objection.

2. The U.S. Trustee is charged with overseeing the administration of Chapter 11 cases filed in this judicial district, pursuant to 28 U.S.C. § 586. This duty is part of the U.S. Trustee's overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the courts to guard against abuse and over-reaching to assure fairness in the process and adherence to the provisions of the Bankruptcy Code. *See In re United Artists Theatre Co.*, 315 F.3d 217, 225 (3d Cir. 2003) ("U.S. Trustees are officers of the Department of Justice who protect the public interest by aiding bankruptcy judges in monitoring certain aspects of bankruptcy proceedings."); *United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.),* 33 F.3d 294, 298 (3d Cir. 1994) ("It is precisely because the statute gives the U.S. Trustee duties to protect the public interest . . . that the Trustee has standing to attempt to prevent circumvention of that responsibility."); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 499 (6th Cir. 1990) ("As Congress has stated, the U.S. trustees are responsible for protecting the public interest and ensuring that the bankruptcy cases are conducted according to [the] law").

3. Pursuant to 28 U.S.C. § 586(a)(3)(B), the U.S. Trustee has the duty to monitor plans and disclosure statements filed in Chapter 11 cases and to comment on such plans and disclosure statements.

4. Under section 307 of title 11 of the United States Code (the "Bankruptcy Code" or "Code"), the U.S. Trustee has standing to be heard on the Debtors' request for approval of the relief in the Motion.

BACKGROUND

General Background

5. On February 28, 2024 ("Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"). *See* Lead Case No. 24-11840, at Dkt. 1.

6. As described in the Declaration of Josh Burke, Chief Financial Officer of Thrasio Holdings, Inc. (the "Burke Declaration"), which was filed on the Petition Date, "Thrasio acquires seller brands and their underlying business from founders or owners and consolidates these businesses into Thrasio's platform. After completing an acquisition, Thrasio works to generate cost-saving and revenue enhancing synergies with other businesses in its portfolio to facilitate growth. This provides sellers with an "exit" from the business and positions Thrasio to realize the full potential of these brands. Thrasio's current management team has deep experience in growing such brands—by using data science, logistical and marketing expertise, and a deep understanding of the e-commerce space, Thrasio allows a brand to expand its offerings. Thrasio also expertly navigates the Amazon selling process to position its brands to better reach and serve customers around the globe." *See* Dkt. 38 at ¶ 2.

7. On March 12, 2024, the U.S. Trustee filed a *Notice of Appointment of Official Committee of Unsecured Creditors* (the "UCC"). *See* Dkt. 163.

<u>Plan and Disclosure Statement</u>

8. At the outset of the case, the Debtors filed a *Joint Plan of Reorganization of Thrasio Holdings, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "Plan"), and corresponding *Disclosure Statement* (the "Disclosure Statement"). *See* Dkts. 40 and 41. The Plan and Disclosure Statement are replete with blanks and incomplete information including the projected allowed amount of general unsecured claims and the estimated recovery to general unsecured creditors. In addition, the Disclosure Statement does not provide sufficient information for a creditor to decide whether to opt out of the third-party release. *See* Dkt. 41.

9. Also, at the outset of the case, the Debtors' filed the Motion seeking entry of an order approving the adequacy of the Disclosure Statement, the solicitation and voting procedures and the forms of ballots and notices in connection therewith. *See* Dkt. 42.

<u>ARGUMENT</u>

I. The Plan and Disclosure Statement Do Not Convey Sufficient Information.

10. Section 1125 of the Bankruptcy Code provides that a disclosure statement must contain "adequate information" describing a confirmable plan. 11 U.S.C. § 1125; *see also In re Quigley Co*., 377 B.R. 110, 115 (Bankr. S.D.N.Y. 2007). The Bankruptcy Code defines "adequate information" as:

> 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, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical reasonable investor of the relevant class to make an informed judgment about the plan . . . .

11 U.S.C. § 1125(a)(1) (emphasis added); *see also Momentum Mfg. Corp. v. Employee Creditors Comm. (In re Momentum Mfg. Corp.)*, 25 F.3d 1132, 1136 (2d Cir. 1994); *Kunica v. St. Jean Fin., Inc*., 233 B.R. 46, 54 (S.D.N.Y. 1999).

11. The disclosure statement requirement of section 1125 of the Bankruptcy Code is "crucial to the effective functioning of the federal bankruptcy system [;] . . . the importance of full and honest disclosure cannot be overstated." *Ryan Operations G.P. v. Santiam-Midwest Lumber Co*., 81 F.3d 355, 362 (3d Cir. 1996) (citing *Oneida Motor Freight, Inc. v. United Jersey Bank (In re Oneida Motor Freight, Inc*.), 848 F.2d 414 (3d Cir. 1988)).

12. The "adequate information" requirement is designed to help creditors in their negotiations with debtors over the plan. *See Century Glove, Inc. v. First Am. Bank*, 860 F.2d 94 (3d Cir. 1988). Section 1129(a)(2) conditions confirmation upon compliance with applicable Code provisions. The disclosure requirement of section 1125 is one of those provisions. *See* 11 U.S.C. 1129(a)(2); *In re PWS Holding Corp.*, 228 F.3d 224, 248 (3d Cir. 2000).

13. To be approved, a disclosure statement must include sufficient information to apprise creditors of the risks and financial consequences of the proposed plan. *See In re McLean Indus*., 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987) ("substantial financial information with respect to the ramifications of any proposed plan will have to be provided to, and digested by, the creditors and other parties in interest in order to arrive at an informed decision concerning the acceptance or rejection of a proposed plan"); *In re Duratech Indus*., 241 B.R. 291, 298 (Bankr. E.D.N.Y.), *aff'd*, 241 B.R. 283 (E.D.N.Y. 1999) (the purpose of the disclosure statement is to give creditors enough information so that they can make an informed choice of whether to approve or reject the debtor's plan).

14. Section 1125 of the Bankruptcy Code is geared towards more disclosure rather than less. *See In re Crowthers McCall Pattern, Inc*., 120 B.R. 279, 300 (Bankr. S.D.N.Y. 1990). The "adequate information" requirement merely establishes a floor, and not a ceiling for disclosure to voting creditors. *In re Adelphia Commc'ns Corp*., 352 B.R. 592, 596 (Bankr. S.D.N.Y. 2006) (citing *Century Glove, Inc. v. First Am. Bank of New York*, 860 F.2d 94, at 100 (3d Cir. 1988).

15. "Adequate information" under section 1125 is "determined by the facts and circumstances of each case." *See Oneida*, 848 F.2d at 417 (citing H.R. Rep. No. 595, 97th Cong., 2d Sess. 266 (1977)).

16. Here, it appears that the Disclosure Statement does not include any information to general unsecured creditors concerning the projected allowed amount of claims and the estimated recovery to general unsecured creditors. In addition, general unsecured creditors are being asked to grant third party releases or elect to opt-out of the third-party releases without sufficient information concerning what general unsecured creditors would be releasing through the third-party release.

17. The U.S. Trustee understands that the Debtors intend to address these issues by filing an amended or supplemental disclosure statement. However, the Debtors have not done so prior to the objection deadline. To the extent that such a pleading is filed, the U.S. Trustee reserves his rights to raise any objections to any filed amended or supplemented disclosure statement.

18. The U.S. Trustee also notes that certain information in the Disclosure Statement appears to be wrong and misleading on issues that impact creditors. Section III.O. contains the following in capitalized, bolded lettering:

> **ALL HOLDERS OF CLAIMS THAT (I) VOTE TO REJECT THE PLAN AND WHO AFFIRMATIVELY OPT OUT OF THE RELEASES PROVIDED BY THE PLAN; OR (II) ABSTAIN FROM VOTING ON THE PLAN AND AFFIRMATIVELY OPT OUT OF THE RELEASES PROVIDED IN THE PLAN WILL BE DEEMED TO HAVE EXPRESSLY, UNCONDITIONALLY, GENERALLY, INDIVIDUALLY, AND COLLECTIVELY RELEASED AND DISCHARGED ALL CLAIMS AND CAUSES OF ACTION AGAINST THE RELEASED PARTIES, INCLUDING THE DEBTORS OR THE REORGANIZED DEBTORS.**

The very nature of an "opt out" provision is to allow a creditor to elect not to release or discharge any claims against the Released Parties. It is not clear what the Debtors are trying to convey in this provision, but creditors certainly should not be told that opting out of a release will have the effect of releasing and discharging all claims.

II. Approval of Solicitation Procedures Must Be Limited at this Time.

19. The Motion, and its accompanying Proposed Order, seek approval of certain Solicitation Procedures. Additionally, the Debtors seek approval of various documents, including two Ballots, a Notice of Non-Voting Status to Holders of Unimpaired Claims Conclusively Presumed to Accept the Plan, a Notice of Non-Voting Status to Holders of Impaired Claims and Interest Deem to Reject the Plan, a Notice of Non-Voting Status With Respect to Disputed Claims, a Cover Letter, a Notice of Hearing to Consider Confirmation of the Chapter 11Plan Filed by the Debtors and Related Voting and Objection Deadline, a Notice of Filing of Plan Supplement, a Notice to Contract Parties to Potentially Assumed Executory Contracts, and Notice Regarding Executory Contracts and Unexpired Leases to be Rejected Pursuant to the Plan. The U.S. Trustee has provided comments and requested certain revisions to these documents, which he believes will be incorporated into revised documents and included in the Solicitation Package sent to creditors.

20. In addition, approval of the Solicitation Procedures, as well as approval at this juncture of any document(s) attendant to the Solicitation Procedures (such as the documents included in the Solicitation Package, and the Non-Voting Status Notices) must be limited to approval for solicitation purposes only.

III. Approval of the Terms of the Plan Including Any and All Settlement, Release, Injunction, Exculpation, and Related Provisions Must Be Preserved For Confirmation.

21. The Plan documents taken together propose approval at the Confirmation Hearing of certain releases contained in the Plan, and the Debtors propose to establish a party's consent to such releases through a voting process. This approach toward accomplishing approval of such releases is objectionable. *See In re Emerge Energy Services LP*, 2019 WL 7634308, Case No. 19-11563 (Bankr. D. Del. Dec. 5, 2019).

22. Accordingly, the U.S. Trustee respectfully seeks clarification, at this juncture, that approval of any and all of the terms of the Debtors' proposed Plan (including but not limited to any and all settlement, release, injunction, exculpation, and related provisions) is expressly reserved for Confirmation.

IV. Statutory Fees Pursuant to 28 U.S.C. § 1930(a)(6) Must be Paid By Each Debtor Until a Case is Converted, Dismissed, or Closed, Whichever Occurs First.

23. Pursuant to the Disclosure Statement and the Plan, "[a]ll fees due and payable pursuant to 28 U.S.C. § 1930(a)(6) plus any interest due and payable under 31 U.S.C. § 3717 (together, the "Quarterly Fees") before the Effective Date shall be paid by the applicable Reorganized Debtor (or the Disbursing Agent on behalf of each applicable Reorganized Debtor) for each quarter (including any fraction thereof) until such Reorganized Debtor's Chapter 11 Case is converted, dismissed, or closed, whichever occurs first." *See* Dkt. 40 at Art. IIF and Dkt. 41 at Section IIIE6.

24. The language proposed by the Debtors only requires Quarterly Fees to be paid that were due and owing prior to the Effective Date. This provision is contrary to the language set forth in 28 U.S.C. § 1930(a)(6), which requires payments of Quarterly Fees to be made until a case is converted, dismissed, or closed, whichever occurs first. As such, Quarterly Fees due prior to the Effective Date and after the Effective Date are required to be paid pursuant to 28 U.S.C. § 1930(a)(6) until a case is converted, dismissed, or closed, whichever occurs earlier.

25. As such, Art. IIF of the Plan and Section IIIE6 of the Disclosure Statement should be revised as follows: "All fees due and payable pursuant to section 1930 of Title 28 of the U.S. Code ("Quarterly Fees") prior to the Effective Date shall be paid by the Debtors on the Effective Date. After the Effective Date, the Debtors, the Reorganized Debtors, and any entity making disbursements on behalf of any Debtor or any Reorganized Debtor, or making disbursements on account of an obligation of any Debtor or any Reorganized Debtor (each a "Disbursing Entity"), shall be jointly and severally liable to pay Quarterly Fees when due and payable. The Debtors shall file with the Bankruptcy Court all monthly operating reports due prior to the Effective Date when they become due, using UST Form 11-MOR. After the Effective Date, the Reorganized Debtors and any entity making disbursements on behalf of any Debtor or any Reorganized Debtor, or making disbursements on account of an obligation of any Debtor or any Reorganized Debtor, shall file with the Bankruptcy Court separate UST Form 11-PCR reports when they become due. Each and every one of the Debtors, the Reorganized Debtors, and Disbursing Entities shall remain obligated to pay Quarterly Fees to the Office of the U.S. Trustee until the earliest of that particular Debtor's case being closed, dismissed, or converted to a case under Chapter 7 of the Bankruptcy Code. The U.S. Trustee shall not be required to file any

Administrative Claim in the case and shall not be treated as providing any release under the Plan."

RESERVATION OF RIGHTS

26. The U.S. Trustee reserves any and all rights, remedies, and obligations to, among other things, complement, supplement, augment, alter or modify this objection, assert any further objection, file an appropriate motion, or conduct any and all discovery as may be deemed necessary or as may be required and to assert such other grounds as may become apparent upon further factual discovery. The U.S. Trustee also reserves all such rights with respect to any and all plan confirmation issues.

WHEREFORE, the U.S. Trustee respectfully requests that the Court deny the Motion and relief sought and grant such other relief as the Court deems appropriate and just.

Respectfully Submitted,

ANDREW R. VARA,
UNITED STATES TRUSTEE
REGIONS 3 & 9

By: */s/ Jeffrey M. Sponder*
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Trial Attorney

By: */s/ Lauren Bielskie*
Lauren Bielskie
Trial Attorney

Dated: April 11, 2024