

KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
Anup Sathy, P.C. (admitted *pro hac vice*)
300 North LaSalle Street
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
anup.sathy@kirkland.com

-and-

Matthew C. Fagen, P.C. (admitted *pro hac vice*)
Francis Petrie (admitted *pro hac vice*)
Evan Swager (admitted *pro hac vice*)
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
matthew.fagen@kirkland.com
francis.petrie@kirkland.com
evan.swager@kirkland.com

Proposed Co-Counsel to the Debtors and Debtors in Possession

COLE SCHOTZ P.C.
Michael D. Sirota, Esq.
Warren A. Usatine, Esq.
Felice R. Yudkin, Esq.
Jacob S. Frumkin, Esq.
Court Plaza North, 25 Main Street
Hackensack, New Jersey 07601
Telephone: (201) 489-3000
msirota@coleschotz.com
wusatine@coleschotz.com
fyudkin@coleschotz.com
jfrumkin@coleschotz.com

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)

(Jointly Administered)

**DEBTORS' OMNIBUS REPLY TO
OBJECTIONS TO THE DISCLOSURE STATEMENT MOTION**

TO: THE HONORABLE CHRISTINE M. GRAVELLE UNITED STATES
BANKRUPTCY COURT FOR THE DISTRICT OF NEW JERSEY:

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' 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 submit this omnibus reply (this “Reply”)² to the objections³ 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* [Docket No. 42] (the “Motion”). In further support of approval of the Motion, the Debtors respectfully state as follows:

Preliminary Statement

1. At the hearing on April 10, 2024, the Debtors previewed that they would file an amended version of the Disclosure Statement that included supplemental disclosure, clarifying language, or disclaimers related to, among other things, the questions raised by the Committee and the Court, including, most pertinently, those related to the estimated recovery range for general unsecured creditors, the scope of the Independent Investigation, and the effect of granting the releases in the proposed Plan, either through estate releases of any potential estate Causes of

² Capitalized terms used but not defined herein have the meaning given to them in the Motion, the *Amended Disclosure Statement for the Joint Plan of Reorganization of Thrasio Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (filed contemporaneously herewith) (as amended, modified, or supplemented from time to time, the “Amended Disclosure Statement”), or the *Joint Plan of Reorganization of Thrasio Holdings, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 40] (including all exhibits and other supplements thereto, and as modified, amended, or supplemented, the “Plan”), as applicable.

³ The following objections were received: (a) *ESR, LLC’s Objection to Disclosure Statement for the Joint Plan of Reorganization of Thrasio Holdings, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 269] (the “ESR Objection”); (b) *Joinder of the Bristols 6 Parties in ESR, LLC’s Objection to Disclosure Statement For the Joint Plan of Reorganization of Thrasio Holdings, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 271]; (c) *Joinder of the PIC20 Group in ESR, LLC’s Objection to Disclosure Statement for the Joint Plan of Reorganization of Thrasio Holdings, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 350] (the “PIC20 Joinder”); (d) *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* [Docket No. 353] (the “U.S. Trustee’s Objection”); (e) *Preliminary Objection of the Official Committee of Unsecured Creditors to Debtors’ Disclosure Statement for the Joint Plan of Reorganization of Thrasio Holdings, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 354] (the “Committee Objection”); and (f) *Objection of the Bristols 6 Parties to the Disclosure Statement for the Joint Plan of Reorganization of Thrasio Holdings, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 355] (the “Bristol Objection,” and collectively, the “Objections,” and the filing parties, the “Objecting Parties”).

Action, which are subject to the Independent Investigation and Court approval, or through the mutual Third-Party Release (as defined herein) in the event a creditor declines to “opt out.” The Amended Disclosure Statement filed by the Debtors on April 15, 2024, contains several pages of new disclosure that address these points, including:

- Disclosure regarding the approximate recovery range for the holders of General Unsecured Claims, and the composition of such claims pool in Article III.D;
- Disclosure regarding the Debtors’ lease and inventory optimization efforts in Article VI.C;
- Disclosure and information regarding the events of these Chapter 11 Cases in Article V;
- Disclosure regarding the scope of claims that would be released upon Confirmation of the Plan in Article VI.I; and
- Information regarding the Debtors’ efforts to settle with the Committee, and maximize the recoveries available to general unsecured creditors, prior to the Disclosure Statement Hearing in Article VI.J.

2. Aside from the issues previously raised in Court, the Debtors also received several objections to the Disclosure Statement at the objection deadline stating that, for various reasons, the Disclosure Statement did not contain adequate information. The Debtors’ efforts to address those objections and responses to those objections are articulated below:

Objection	Summary	Response
ESR Obj. ¶¶ 33–34.	The disclosure statement does not contain enough information to determine if the Plan unfairly discriminates against the general unsecured claims.	The Debtors filed the Amended Disclosure Statement providing additional information about the approximate recovery for the general unsecured claims. <i>See</i> Amended Disclosure Statement, Art. III.D. Any objections to the classification of claims and interests in the Plan are properly raised at Confirmation.
ESR Obj. ¶ 35.	The lack of schedules of statements of financial affairs results in holders of claims having inadequate information.	The Debtors filed the schedules and statement of financial affairs on April 1, 2024 [Docket No. 280].

Objection	Summary	Response
U.S. Trustee Obj. ¶ 16.	The Disclosure Statement does not provide sufficient information about the recovery for general unsecured claims.	The Amended Disclosure Statement provides additional information about the approximate recovery for General Unsecured Claims. <i>See</i> Amended Disclosure Statement, Art. III.D.
U.S. Trustee Obj. ¶ 16.	The third-party release is without adequate information.	The Amended Disclosure Statement provides additional information about the parties and scope of claims that would be released upon approval of the Plan. <i>See</i> Amended Disclosure Statement, Art. III.Q.
U.S. Trustee Obj. ¶ 19.	Approval of Solicitation Packages should be limited to approval for solicitation purposes only.	The Debtors incorporated the comments of the U.S. Trustee into the Solicitation Packages to resolve this objection.
Bristol Obj. ¶ 11.	The Disclosure Statement lacks adequate information about the Debtors’ debt and value allocation.	The Amended Disclosure Statement provides ample information about the Debtors’ corporate structure, prepetition business and events leading up to the chapter 11 filing. <i>See</i> Amended Disclosure Statement, Art. IV.C. “Adequate information” has been interpreted as information that is “reasonably practicable” to permit an “informed judgment” by creditors voting on a plan. <i>In re Congoleum Corp.</i> , 636 B.R. at 383.
Bristol Obj. ¶ 12.	The Disclosure Statement lacks adequate information about the avoidance of fraudulent transfers.	The Amended Disclosure Statement provides adequate information about treatment of Avoidance Actions, including fraudulent transfers. <i>See</i> Amended Disclosure Statement Art. VII.O.
Bristol Obj. ¶ 14.	The Disclosure Statement lacks adequate information about the Debtors’ financial statements.	This objection is part the Bristol Objection regarding substantive consolidation in these Chapter 11 Cases. As described in Section II(A) of this Reply, objections relating to substantiative consolidation are confirmation issues and will be addressed at the time of plan confirmation.

3. As a result of these additional disclosures, the Debtors understand that each of the ESR Objection, the Bristol Objection, and the PIC20 Joinder will be consensually continued to the confirmation stage. Similarly, the Debtors have attempted to resolve the Committee Objection as related to disclosure, and the Debtors have requested that the Committee provide inserts or language to fully resolve the Committee Objection. To the extent such language is provided, the Debtors will file a further supplemented disclosure statement in advance of the hearing to the

extent that any issues with disclosure remain at that stage. However, the Debtors also proactively supplemented the Disclosure Statement to address the Committee Objection as described below:

Objection	Summary	Response
Committee Obj. ¶ 19.	The Disclosure Statement does not provide adequate information on the potential claims and causes of action being released.	The Amended Disclosure Statement provides additional information about the scope and type of claims that would be released upon approval of the Plan. <i>See</i> Amended Disclosure Statement, Art. VI.I.
Committee Obj. ¶ 24.	The Disclosure Statement lacks adequate information concerning the Debtors' prepetition affairs.	<p>The Amended Disclosure Statement provides significant information about the Debtors' corporate structure, prepetition corporate and business structure and the events leading up to the chapter 11 filing. In particular, the Amended Disclosure Statement specifically articulates the business decisions and mistakes that led to the Debtors' deteriorating financial condition as well as the efforts undertaken to attempt to avoid the need for a restructuring. <i>See</i> Amended Disclosure Statement, Art. V.</p> <p>Additionally, the Debtors provided a disclaimer, in bold typeface, articulating the Committee's concerns regarding the lack of disclosure on the Debtors' prepetition activities. <i>See</i> Amended Disclosure Statement, Art. V.</p>
Committee Obj. ¶ 26.	The Disclosure Statement lacks adequate information supporting the proposed de minimis treatment of unsecured creditors.	The Debtors filed the Amended Disclosure Statement providing additional information about the approximate recovery for the General Unsecured Claims. <i>See</i> Amended Disclosure Statement, Art. III.D.
Committee Obj. ¶ 28–29.	The Disclosure Statement lacks adequate information about the assumptions underlying the valuation analysis.	The Valuation Analysis provides a summary of the methodology used to obtain the Debtors' valuation and is commensurate with the type and form of valuation analysis used in comparable chapter 11 cases. <i>See</i> Amended Disclosure Statement, Ex. E.
Committee Obj. ¶ 36.	Solicitation is premature as the current case timeline makes providing the requisite "adequate information" to creditors in timely fashion unlikely.	For the reasons set forth herein, the Amended Disclosure Statement contains "Adequate Information" as required under the Bankruptcy Code.
Committee Obj. ¶ 31	The Disclosure Statement lacks adequate information about the nature and value of the encumbered assets. <i>See</i> Committee Obj. ¶ 31.	The Amended Disclosure Statement contains an update on the status and preliminary conclusions of the Independent Investigation. The Debtors do not believe that there are any other material unencumbered assets held by Debtors.

Committee Obj. ¶ 38.	The Committee intends to provide the Debtors with comments on various matters in the Disclosure Statement and a Committee Letter for solicitation materials.	The Debtors are willing to include a letter from the Committee in the Solicitation Packages if the Committee timely shares such a proposed letter.
-------------------------	--	--

4. The remaining Objections address issues that should be considered at Confirmation. Accordingly, all Objections should be overruled.

Reply

I. The Amended Disclosure Statement Contains Adequate Information Under Section 1125 of the Bankruptcy Code.

5. Pursuant to section 1125 of the Bankruptcy Code, a disclosure statement must provide holders of claims and interests entitled to vote with “adequate information” regarding the plan. Section 1125(a)(1) of the Bankruptcy Code states, in relevant part:

“[A]dequate information” means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, 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 investor of the relevant class to make an informed judgment about the plan.

11 U.S.C. § 1125(a)(1).

6. “Adequate information” has been interpreted as information that is “reasonably practicable” to permit an “informed judgment” by creditors voting on a plan. *In re Congoleum Corp.*, 636 B.R. 362, 383 (Bankr. D.N.J. 2022). The adequacy of information in a disclosure statement is determined on a case-by-case basis. *In re Lower Bucks Hosp.*, 488 B.R. 303, 317 (E.D. Pa. 2013), *aff’d*, 571 F. App’x 139 (3d Cir. 2014) (holding that what constitutes “adequate information” is “determined on a case-by-case basis, with the ultimate determination within the discretion of the bankruptcy court”); *see also In re Oneida Motor Freight, Inc.*, 848 F.2d 414, 417

(3d Cir. 1988) (“From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case.”).

7. As demonstrated in the table below and consistent with Third Circuit precedent, the Amended Disclosure Statement contains the categories of information necessary for voting creditors to make an informed judgment to accept or reject the Plan.

Category	Description	Location in Disclosure Statement
Treatment of Claims and Interests	A description and summary of the treatment of all Claims and Interests under the Plan.	<u>Article III.D</u>
Debtors’ Corporate History, Structure, and Business Overview	An overview of the Debtors’ corporate history, business operations, organizational structure, and capital structure.	<u>Article IV</u>
Description of Events Leading to these Chapter 11 Cases	An overview of the events leading to the Debtors’ filing of these chapter 11 cases, including the making and recalling of the 3AC Loan.	<u>Article V</u>
The Releases Contemplated under the Plan	A description of the release provisions sought pursuant to the Plan.	<u>Article III.O</u>
The Plan	A description of the Debtors’ Plan and the filed Plan.	<u>Article III; Exhibit A</u>
Liquidation Analysis	An analysis of the liquidation value of the Debtors.	<u>Exhibit F</u>
Risk Factors	Certain risks associated with the Debtors’ business, as well as certain risks associated with forward-looking statements and an overall disclaimer as to the information set forth in the Amended Disclosure Statement.	<u>Article IX</u>
Solicitation and Voting Procedures	A description of the procedures for soliciting votes to accept or reject the Plan and voting on the Plan.	<u>Article X</u>
Confirmation of the Plan	Confirmation procedures and statutory requirements for confirmation and consummation of the Plan.	<u>Article XI</u>
Certain United States Federal Income Tax Consequences of the Plan	A description of certain U.S. federal income tax law consequences of the Plan.	<u>Article XIII</u>
Recommendation	A recommendation by the Debtors that Holders of Claims in the Voting Classes should vote to accept the Plan.	<u>Article XIV</u>

8. Within these categories, the Amended Disclosure Statement contains adequate information to allow creditors to make an informed judgment as to whether to vote to accept or

reject the Plan. The Amended Disclosure Statement describes, among other things, the nature and anticipated amounts of all creditors' recoveries under the Plan, the history and background of these chapter 11 cases, the Debtors' and Committee's ongoing investigations, the scope and reasonableness of the third-party release contained in Article VIII.O of the Plan (the "Third-Party Release"), and the risk factors to be considered when voting on the Plan.

9. The Debtors also fully describe the releases contained in the Plan, as well as those giving and receiving the Third-Party Release in the Amended Disclosure Statement. Article III.Q of the Amended Disclosure Statement describes in detail the acts that the Releasing Parties may be enjoined from pursuing, including bolded language related to the Debtor Release, Third-Party Release, Exculpation, and Injunction. Further, the relevant language in Article VIII of the Plan is in bold font, making it conspicuous to anyone who reads it.

10. Accordingly, the Amended Disclosure Statement provides creditors with "adequate information," as defined in section 1125(a)(1) of the Bankruptcy Code, to allow creditors to make an informed judgment as to whether to vote to accept or reject the Plan and complies with Bankruptcy Rule 3016(c) by conspicuously describing the conduct and parties that may be enjoined by the Plan.

II. The Remaining Objections Should be Overruled.

A. The Plan is Not Patently Unconfirmable.

11. Courts agree that a disclosure statement that adequately describes the chapter 11 plan at issue should be approved absent the exceedingly rare circumstance of a disclosure statement that "describes a plan of reorganization which is so fatally flawed that confirmation is impossible" (*i.e.*, the plan is patently unconfirmable). *In re Cardinal Congregate I*, 121 B.R. 760, 764 (Bankr. S.D. Ohio 1990); *see also In re Unichem Corp.*, 72 B.R. 95, 98 (Bankr. N.D. Ill. 1987) (holding courts should disapprove of the adequacy of a disclosure statement on confirmability grounds only

“where it is readily apparent that the plan accompanying the disclosure statement could never be legally confirmed”). “A plan is patently unconfirmable where (1) confirmation defects [cannot] be overcome by creditor voting results and (2) those defects concern matters upon which all material facts are not in dispute or have been fully developed at the disclosure statement hearing.” *In re Am. Cap. Equip., LLC*, 688 F.3d 145, 154-55 (3d Cir. 2012). Neither of these are the case here.

12. The Objections raise issues regarding (i) substantive consolidation, (ii) classification of claims and interests, (iii) approval of the releases contained in the Plan and Disclosure Statement, and (iv) payment of statutory fees. None of these issues would render the Plan “patently unconfirmable,” and each issue will be addressed properly in connection with Confirmation.

B. The Plan Does Not Substantively Consolidate Claims. Any Objections Asserting Substantive Consolidation of Claims Are Properly Considered at Confirmation.

13. Certain of the Objecting Parties argue that the Plan wrongly groups General Unsecured Claims into one class, substantively consolidating the Chapter 11 Cases without a proper order by the Bankruptcy Court. ESR Obj. ¶ 21; Bristol Obj. ¶ 15; U.S. Trustee Obj. ¶ 16. While the Debtors are not substantively consolidating these Chapter 11 Cases, courts in this circuit have found that objections based on a theory of substantive consolidation are premature at the disclosure statement stage. *See In re Stone & Webster, Inc.*, 286 B.R. 532 (Bankr. D. Del. 2002) (“the appropriate time to address substantive consolidation is at plan confirmation”). As a result, these objections are not to be considered with respect to adequacy of the Amended Disclosure Statement and the Objecting Parties’ rights to properly raise this objection in the context of Plan confirmation are preserved.

C. Objections to the Plan’s Classification of Claims and Interests Are Properly Considered at Confirmation.

14. The Objecting Parties challenge the adequacy of the Disclosure Statement due to the classification of certain claims as substantially similar under section 1129 of the Bankruptcy Code. ESR Obj. ¶ 29; Bristol Obj. ¶ 15. The Debtors agree that the Plan must comply with the confirmation requirements set forth in section 1129 (as well as other applicable provisions) of the Bankruptcy Code and are prepared to demonstrate as much at the Confirmation Hearing. Courts emphasize that objections related to compliance with section 1129 of the Bankruptcy Code do not rise to the level of making a plan “patently unconfirmable.” *See, e.g., Cardinal Congregate I*, 121 B.R., at 763–64 (overruling objections related to treatment of claims and feasibility); *In re Monroe Well Serv., Inc.*, 80 B.R. 324, 333 (Bankr. E.D. Pa. 1987) (holding that objections bearing on confirmability must be limited to defects that could not be overcome by creditor voting results and must also concern matters upon which all material facts are not in dispute or have been fully developed). Thus, this issue is not properly raised in an objection to the Amended Disclosure Statement. The rights of the Objecting Parties to properly raise this objection in the context of Plan confirmation are preserved.

D. Objection to the Release, Exculpation, and Injunction Provisions Contained in the Plan and Amended Disclosure Statement are Properly Considered at Confirmation.

15. The U.S. Trustee argues against approval of the releases contained in the Plan. U.S. Trustee Obj. ¶¶ 20, 22. The U.S. Trustee’s objection to the releases should be raised in connection with Confirmation of the Plan. *See In re Drexel Burnham Lambert Grp., Inc.*, No. 90-B-10421, 1992 WL 62758, at *1 (Bankr. S.D.N.Y. Mar. 5, 1992) (stating that objections to a plan of reorganization’s releases and injunction provisions were in the nature of confirmation objections and therefore improperly raised as objections to the disclosure statement); *Nielsen v.*

Specialty Equip. Cos., Inc., No. 92-C-20142, 1992 WL 279262, at *3 (N.D. Ill. Sept. 25, 1992) (noting that the bankruptcy court below held that “the validity of releases [is] a plan confirmation issue” and overruled objections to the disclosure statement regarding the appropriateness of third-party releases).

16. The Debtors fully describe the release, as well as those giving and receiving the Third-Party Release, in the Amended Disclosure Statement. The rights of the Objecting Parties to properly raise this objection in the context of plan confirmation are preserved.

Conclusion

17. For the reasons set forth herein, the Debtors respectfully request that the Court (a) approve the Amended Disclosure Statement as satisfying the requirements of section 1125 of the Bankruptcy Code; (b) overrule the Objections; (c) enter the Disclosure Statement Order; and (d) grant such other relief as the Court deems appropriate under the circumstances.

Dated: April 15, 2024

/s/ Michael D. Sirota

COLE SCHOTZ P.C.

Michael D. Sirota, Esq.
Warren A. Usatine, Esq.
Felice R. Yudkin, Esq.
Jacob S. Frumkin, Esq.
Court Plaza North, 25 Main Street
Hackensack, New Jersey 07601
Telephone: (201) 489-3000
Email: msirota@coleschotz.com
wusatine@coleschotz.com
fyudkin@coleschotz.com
jfrumkin@coleschotz.com

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

Anup Sathy, P.C. (admitted *pro hac vice*)
300 North LaSalle Street
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
anup.sathy@kirkland.com

-and-

Matthew C. Fagen, P.C. (admitted *pro hac vice*)
Francis Petrie (admitted *pro hac vice*)
Evan Swager (admitted *pro hac vice*)
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
matthew.fagen@kirkland.com
francis.petrie@kirkland.com
evan.swager@kirkland.com

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