**Fill in this information to identify the case:**

Debtor Thrasio, LLC

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

Case number 24-11902

# Official Form 410
# Proof of Claim

04/22

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

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

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

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

## Part 1: Identify the Claim

1. **Who is the current creditor?**
   See summary page
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

| **Where should notices to the creditor be sent?** | **Where should payments to the creditor be sent?** (if different) |
|---|---|
| See summary page | |
| Contact phone 3122569439 | Contact phone _____ |
| Contact email jason.ben@tuckerellis.com | Contact email _____ |

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):
   _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing? _____



24119022404150000000000001

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

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See summary page . **Does this amount include interest or other charges?**

☐ No

☑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

Breach of Contract Claim

9. **Is all or part of the claim secured?**

☑ No

☐ Yes. The claim is secured by a lien on property.

**Nature or property:**

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

**Basis for perfection:** _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

**Value of property:** $_____

**Amount of the claim that is secured:** $_____

**Amount of the claim that is unsecured:** $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

**Amount necessary to cure any default as of the date of the petition:** $_____

**Annual Interest Rate** (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☑ No

☐ Yes. Identify the property: _____



24119022404150000000000001

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

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

☑ No

☐ Yes. *Check all that apply:*

| | Amount entitled to priority |
|---|---|
| ☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). | $_____ |
| ☐ Up to $3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). | $_____ |
| ☐ Wages, salaries, or commissions (up to $15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). | $_____ |
| ☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). | $_____ |
| ☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). | $_____ |
| ☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies. | $_____ |

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

13. **Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

## Part 3: Sign Below

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

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

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

*Check the appropriate box:*

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

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

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

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

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

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

Executed on date 04/15/2024
MM / DD / YYYY

/s/Jason J. Ben
Signature

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

Name: Jason J. Ben
First name | Middle name | Last name

Title: Counsel

Company: Tucker Ellis LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____ Email _____



# KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (866) 967-0496 | International 001-310-823-9000

**Debtor:**
24-11902 - Thrasio, LLC
**District:**
District of New Jersey, Trenton Division

**Creditor:**
Anthony DeCarlo, individually and as Sellers Representative of former equity holders of IdeaStream Consumer Products, LLC
Jason J. Ben
233 S. Wacker Drive
Suite 6950
Chicago, IL, 60606
United States
**Phone:**
3122569439
**Phone 2:**
**Fax:**
**Email:**
jason.ben@tuckerellis.com

**Has Supporting Documentation:**
Yes, supporting documentation successfully uploaded
**Related Document Statement:**

**Has Related Claim:**
No
**Related Claim Filed By:**

**Filing Party:**
Authorized agent

**Other Names Used with Debtor:**

**Amends Claim:**
No
**Acquired Claim:**
No

**Basis of Claim:**
Breach of Contract Claim

**Last 4 Digits:**
No

**Uniform Claim Identifier:**

**Total Amount of Claim:**
7,335,334.00 plus unliquidated amou

**Includes Interest or Charges:**
Yes

**Has Priority Claim:**
No

**Priority Under:**

**Has Secured Claim:**
No
**Amount of 503(b)(9):**
No
**Based on Lease:**
No
**Subject to Right of Setoff:**
No

**Nature of Secured Amount:**
**Value of Property:**
**Annual Interest Rate:**
**Arrearage Amount:**
**Basis for Perfection:**
**Amount Unsecured:**

**Submitted By:**
Jason J. Ben on 15-Apr-2024 11:10:00 p.m. Eastern Time
**Title:**
Counsel
**Company:**
Tucker Ellis LLP

VN: FD31078CC347E9C6EF6A48FD36CAC152

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

| | | |
|---|---|---|
| In re: | ) | |
| | ) | Case No. 24-11840 |
| Thrasio Holdings, Inc. et al | ) | |
| | ) | Chapter 11 |
| Debtors. | ) | |
| | ) | |

**ADDENDUM TO PROOF OF CLAIM OF ANTHONY DECARLO, INDIVIDUALLY AND AS SELLERS' REPRESENTATIVE ON BEHALF OF THE FORMER EQUITY HOLDERS OF IDEASTREAM CONSUMER PRODUCTS, LLC**

*In re Thrasio, LLC, 24-11902*
*In re Hippolyte Ltd., Case No. 24-12052*
*In re IdeaStream Consumer Products, LLC, No. 24-12068*

As provided by Rule 3002(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and section 501(a) of title 11 of the United States Code (the "Bankruptcy Code"), Anthony DeCarlo ("*Mr. DeCarlo*") individually and in his capacity as Seller's Representative (the "*Sellers' Representative*"), on behalf of the former equity holders (the "Sellers")[1] of IdeaStream Consumer Products, LLC ("*IdeaStream*"), files this attachment to its proof of claim (the "***Proof of Claim***") in the above-referenced case.

1. On February 28, 2024 (the "*Petition Date*"), Thrasio Holdings, Inc. ("*Thrasio*") and certain of its affiliates (collectively, the "*Debtors*"), including Hippolyte, Ltd, Ideastream Consumer Products, LLC, and Thrasio, LLC (collectively, the "*IdeaStream Debtors*"), each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey (the "*Bankruptcy Court*").

[1] Specifically, the Sellers are Peevi International Investment Limited, Anthony J. DeCarlo, Daniel Perella, Vincent Thomson, Michael Feuer, Robert Skoda, Anna Marie Minotti, SBR LLC, Amelia Sivak, Michael Trabert, Jeanne Coode.

2. On March 6, 2024, the Debtors submitted the *Debtors' Motion for Entry of an Order (I) Setting Bar Dates for Submitting Proofs of Claim, Including Requests for Payment Under Section 503(b)(9), (II) Establishing an Amended Schedules Bar Date and a Rejection Damages Bar Date, (III) Approving the Form, Manner, and Procedures for Filing Proofs of Claim, and (IV) Approving Notice Thereof* [Docket No. 106] (the "*Bar Date Motion*"). A hearing on the Bar Date Motion was held on April 3, 2024.

3. On April 4, 2024, the Bankruptcy Court for the District of New Jersey entered an order establishing May 6, 2024 at 5:00 p.m. prevailing Eastern Time as the last date to submit proofs of claims.

4. On or about September 10, 2021, IdeaStream, the Sellers, the Sellers' Representative (solely in such capacity), Hippolyte, as buyer, and Thrasio, as guarantor, entered in that certain membership interest purchase agreement (the "MIPA"),[2] whereby Hippolyte purchased and the equity holders sold all rights, title and interest in and to one hundred percent (100%) of the membership interests of IdeaStream (the "*Purchased Interests*").

5. As consideration for the purchase, the MIPA contemplated a purchase price as follows:

> **(e) Guaranteed payments.**
>
> i. Within five (5) days of the one (1) year anniversary of the Closing Date, Buyer shall pay to the Disbursing Agent, for further distribution to the Sellers, in accordance with the Seller Payment Schedule, an amount equal to $2,667,667 by wire transfer of readily available funds, subject to Section 10.06 ("Guaranteed Payment 1").
>
> ii. Within five (5) days of the two (2) year anniversary of the Closing Date, Buyer shall pay to the Disbursing Agent,

[2] Certain provisions of the MIPA are confidential and therefore the MIPA is not attached. However, the relevant Debtors are parties to the MIPA and have copies of the MIPA that supports this proof of claim.

> for further distribution to the Sellers, in accordance with the Seller Payment Schedule, an amount equal to $2,667,667 by wire transfer of readily available funds, subject to Section 10.06 ("Guaranteed Payment 2").
>
> iii. Within five (5) days of the three (3) year anniversary of the Closing Date, Buyer shall pay to the Disbursing Agent, for further distribution to the Sellers, in accordance with the Seller Payment Schedule, an amount equal to $2,667,667 by wire transfer of readily available funds, subject to Section 10.06 ("Guaranteed Payment 3," and with Guaranteed Payment 1 and Guaranteed Payment 2, the "Guaranteed Payments"). *See MIPA §§1.02and 1.03(e).*

6. In addition to the Plaintiffs' right to receive the Guaranteed Payments, the parties agreed that the Plaintiffs would have the right to receive increased consideration in the form of either a Revenue Performance Payment or a Sales Performance Payment, based on the following criteria:

> **Revenue Performance Payment.** (x) If, during any consecutive trailing twelve months period after the Closing Date that is within the first eighteen months following the Closing Date (the "Performance Period"), the gross revenue (or the equivalent thereof as set forth on the Company's income statement as of the time of determination) (the "Gross Revenue") of the Business during Performance Period exceeds the Baseline Revenue by at least 10%, then the Sellers shall be entitled to receive a performance payment in the amount of $1,500,000 (the "110% Revenue Payment"), or (y) if during Performance Period, the revenue of the Business during Performance Period exceeds the Baseline Revenue by at least 20%, then the Sellers shall be entitled to receive a performance payment in the amount of $2,000,000 (the "120% Revenue Payment", and together with the 110% Revenue Payment, each a "Revenue Performance Payment"); provided, for the avoidance of doubt and notwithstanding anything to the contrary herein, in no event shall the Sellers be entitled to receive both the 110% Revenue Payment and the 120% Revenue Payment.

> **Sales Performance Payment.** If, during the Performance Period, the Gross Revenue generated by the Company's sale of products of Buyer or Buyer's affiliates (which, for the avoidance of doubt, shall not include the sales of any products of the Business) exceeds $30,000,000, as measured in the post-Closing financial statements of the the Closing Inventory Value were remitted at or around the time of closing of the MIPA. 8 Company, then the Sellers shall be entitled to receive a performance payment in the amount of $1,500,000.00 (the "Sales Performance Payment" and together with the Revenue Performance Payment, each a "Performance Payment"). See MIPA §§ 1.03(f)(i) and (ii).

7. The Guaranteed Payments were to be paid within five days of the anniversary date of the MIPA for the first three years, which established September 15, 2022, September 15, 2023, and September 15, 2024 as the outside due dates for the three Guaranteed Payments. Hippolyte satisfied its obligation by making the first Guaranteed Payment on September 15, 2022. However, and as described in more detail in the complaint attached hereto as Exhibit A, on September 15, 2023, Hippolyte failed to remit Guaranteed Payment 2 despite repeated demands of the Plaintiffs to make such payment.

8. In addition, the Debtors filed a motion rejecting the MIPA in these bankruptcy cases, thereby breaching its obligations thereunder. As such, the IdeaStream Debtors are now also liable for Guaranteed Payment 3 as a matter of bankruptcy law. Moreover, the IdeaStream Debtors are liable for breach of its obligations with respect to the Performance Payments on account of the IdeaStream Debtors failure to act in good faith and to not take any actions in bad faith with the intention to reduce potential earn-out payments.

9. Accordingly, the Sellers' Representative asserts the claim in the amount of at least: (i) $5,335,334.00 on account of missed Guaranteed Payment 2 and Guaranteed Payment 3, and (2) $2,000,000.00 on account of missed Performance Payments.

**Miscellaneous Provisions; Reservation of Rights**

10. Sellers' Representative reserves, without limitation, all setoff, recoupment, netting, and similar rights under any applicable contract, statute, common law, or equitable principle. At present, the full amount of such rights is undetermined, and therefore Sellers' Representative does not state a value for such rights. Sellers' Representative reserves, without limitation, the right to amend or supplement the Proof of Claim to add such information in the future.

11. Sellers' Representative and the IdeaStream Debtors may also be parties to contracts or agreements not specifically described in this Proof of Claim. Sellers' Representative accordingly expressly reserves its rights to assert any and all claims under such contracts or agreements.

12. This Proof of Claim is being submitted without prejudice to Sellers' Representative's rights to assert that any portion of its claim constitutes an administrative-expense claim or that Sellers' Representative has claims not set forth in this Proof of Claim that may constitute an administrative-expense claim, including, without limitation, for breach of contract.

13. Sellers' Representative may also have additional prepetition or postpetition claims that are unliquidated as of the date of this Proof of Claim. Sellers' Representative expressly reserves the right to amend this Proof of Claim to include such claims as they are liquidated.

14. The filing of this Proof of Claim is not and shall not be deemed or construed as:

a. a waiver of Sellers' Representative's right to (i) file or otherwise assert a claim for rejection damages under section 502 of the Bankruptcy Code, (ii) file or otherwise assert further administrative expense claims under section

503 of the Bankruptcy Code, or (iii) file or otherwise assert a claim under section 365(b) of the Bankruptcy Code;

b. if applicable, a waiver of Sellers' Representative's right to file or otherwise assert a claim under section 502(h) of the Bankruptcy Code;

c. consent by Sellers' Representative to the jurisdiction of this court or any other court with respect to these proceedings, if any, commenced in any case against or otherwise involving Sellers' Representative;

d. a waiver or release of Sellers' Representative's right to a trial by jury in this court or any other court in any proceeding as to any and all matter so triable in this court, whether or not the same be designated legal or private rights or in any case, controversy, or proceeding related to this Proof of Claim or the above-referenced bankruptcy case, notwithstanding the designation or not of such matters as "core proceedings" pursuant to 28 U.S.C. § 157(b)(2), and whether such jury trial right is pursuant to statute or the United States Constitution;

e. a consent by Sellers' Representative to a jury trial in this Court or any other court in any proceeding as to any and all matters so triable herein in any case, controversy, or proceeding related hereto, pursuant to 28 U.S.C. § 157 or otherwise;

f. a waiver or release of Sellers' Representative's right to have any and all final orders in any and all non-core matters or proceedings entered only after *de novo* review by a United States District Court;

g. a waiver of Sellers' Representative's rights to move to withdraw the reference with respect to the subject matter of this Proof of Claim, any objection to this Proof of Claim, or other proceeding that may be commenced in this case against or otherwise involving Sellers' Representative; or

h. an election of remedies.

**IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE**

| | | |
|---|---|---|
| ANTHONY DECARLO, INDIVIDUALLY AND AS SELLERS' REPRESENTATIVE ON BEHALF OF ALL SELLERS, | ) | C.A. No. _____(CCLD) |
| Plaintiffs, | ) | |
| v. | ) | |
| HIPPOLYTE, LTD. AND THRASIO, LLC., | ) | |
| Defendants. | ) | |

## COMPLAINT

Plaintiff Anthony DeCarlo ("*Mr. DeCarlo*") individually and in his capacity as Sellers' Representative (the "*Sellers' Representative*"), on behalf of the former equity holders (the "*Sellers*," or the "*Plaintiffs*") of IdeaStream Consumer Products, LLC, as and for its Complaint against Defendants Hippolyte, Ltd. ("*Hippolyte*") and Thrasio, LLC ("*Thrasio*," and collectively with Hippolyte, the "*Defendants*"), alleges as follows:

## NATURE OF THE ACTION

1. This action arises out of the failure of the Defendants to fulfill their obligations to pay certain amounts due and outstanding under the MIPA (as defined below at ¶ 8) entered among the Plaintiffs and the Defendants wherein the Plaintiffs sold their membership interest in IdeaStream Consumer Products, LLC

("*IdeaStream*"). Thrasio, allegedly facing financial adversity,[1] is simply trying to circumvent or delay a significant payment obligation under the MIPA. As of the date of this filing, Thrasio has failed to make a required anniversary payment due to Plaintiffs under the MIPA, citing that it has not maximized its interest in IdeaStream. However, the Defendants' unfounded claim of not maximizing their acquired interest in IdeaStream does not absolve them of their unequivocal duties under the MIPA.

2. Thrasio, a behemoth in the Amazon aggregation realm since 2019, reportedly has boasted over 200 brand acquisitions[2] and 3.4B[3] in raised capital. Thrasio recently posted that they had achieved their two greatest days in company history.[4] Quoting Thrasio CEO Greg Greeley, on July 13, 2023, Thrasio stated that "we take pride in offering products that people genuinely love – and it's a bonus when we can leverage these mega-events to offer additional savings too. Even with

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[1] https://www.wsj.com/articles/amazon-aggregator-thrasio-engages-restructuring-advisers-ed1f0450. A pdf copy of this website screenshot is attached hereto as **Exhibit A**.

[2] https://techcrunch.com/2021/10/25/thrasio-the-amazon-aggregator-raises-1b-in-fresh-funding-at-a-valuation-of-up-to-10-billion/. A pdf copy of this website screenshot is attached hereto as **Exhibit B**.

[3] https://www.pymnts.com/news/ecommerce/2023/report-thrasio-considers-raising-capital-or-filing-for-bankruptcy/. A pdf copy of this website screenshot is attached hereto as **Exhibit C**.

[4] https://www.prnewswire.com/news-releases/thrasio-reports-biggest-days-in-company-history-during-amazons-prime-day-event-301876921.html A pdf copy of this website screenshot is attached hereto as **Exhibit D**.

the millions of dollars of savings that we passed along to customers, these were the two most profitable days in Thrasio history." *Id*. In addition, according to the Thrasio website, on October 9, 2023 they are actively hiring and have "25 open roles in all locations in all departments in all employment types." The July 13, 2023 press release also discusses the recent acquisition of Ranger Ready, a scent-free insect repellant. In recent social media posts many company employees along with senior leadership are seen attending expensive industry events. Moreover, as recently as October 12, 2023, Thrasio boasted that it experienced strong brand performance during prime Bid Deal days.[5] Yet the company has inexplicably chosen to flout the explicit terms of the MIPA by withholding the second-anniversary payment owed to the Plaintiffs. Despite Thrasio's continuous sales and marketing of IdeaStream products, they violate the MIPA, causing substantial damages to the Plaintiffs.

3. The Defendants' material breach of the MIPA, involving nonpayment, improper sales, and mismanagement of IdeaStream, has resulted in tangible harm to the Plaintiffs, including a missed second-anniversary payment, anticipated missed third-anniversary payment, other amounts specifically tied to earn out provisions in the MIPA and amounts to be determined at trial, along with interest, attorneys' fees, and costs.

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5 https://finance.yahoo.com/news/thrasio-kicks-off-q4-strong-153300772.html.
A pdf copy of this website screenshot is attached hereto as **Exhibit E**.

## PARTIES

4. Plaintiff Anthony DeCarlo is an individual residing in Florida.[6]

5. Defendant Hippolyte is a Delaware Corporation.

6. Defendant Thrasio is a Delaware Limited Liability Company.

## JURISDICTION AND VENUE

7. Jurisdiction is proper because the Defendants are entities organized under the laws of Delaware. Venue is proper pursuant to the parties' agreement in section 11.12 of the MIPA. This case is properly before the Complex Commercial Litigation Division because the amount in controversy exceeds $1 million.

## FACTS

8. On or about September 10, 2021, IdeaStream, the Sellers, the Sellers' Representative (solely in such capacity), Hippolyte, as buyer, and Thrasio, as guarantor, entered in that certain membership interest purchase agreement (the "*MIPA*"), whereby Hippolyte purchased and the equity holders sold all rights, title and interest in and to one hundred percent (100%) of the membership interests of IdeaStream (the "*Purchased Interests*").

9. At the time the MIPA was executed, IdeaStream's business largely involved the sale and distribution of certain products under multiple brand names on major retail platforms both digital and in-store such as Amazon, Staples, Family

[6] The Sellers that are being represented by the Sellers' Representative are listed on **Attachment 1** hereto.

Dollar, Walmart and Target (the "*IdeaStream Business*").

10. Thrasio is an e-commerce company that has grown rapidly by use of the "Amazon aggregation model," a model which consists of acquiring the brands of smaller direct to consumer businesses or the businesses themselves (as in the case of IdeaStream), and effectively combining these businesses with the goal of achieving scale. Hippolyte is a wholly-owned subsidiary of Thrasio formed for the purpose of facilitating this transaction, and Thrasio backstopped the obligations of Hippolyte in the form of executing the MIPA as a guarantor.

11. In this case, the Plaintiffs were contacted by several companies such as Thrasio and received multiple offers for the purchase of the IdeaStream Business, a fact that evidences the upward value of IdeaStream. IdeaStream's business generated significant revenue from brick-and-mortar sales in major retail stores such as Walmart and from online sales, particularly on major online retail Amazon. Because of IdeaStream's success, two aggregators (Thrasio and a competitor of Thrasio) submitted offers to acquire IdeaStream. After consideration of the Purchase Price in the MIPA and overall structure of Thrasio's offer, the Plaintiffs opted to forgo the competing offer in favor of Thrasio's offer. Thrasio was aware of the competing offer.

12. In exchange for acquiring the IdeaStream Business in connection with entering the MIPA, Defendant Hippolyte agreed to make the following post-closing

payments as part of the Purchase Price:[7]

> **(e) Guaranteed payments.**
>
> (i) Within five (5) days of the one (1) year anniversary of the Closing Date, Buyer shall pay to the Disbursing Agent, for further distribution to the Sellers, in accordance with the Seller Payment Schedule, an amount equal to $2,667,667 by wire transfer of readily available funds, subject to Section 10.06 ("*Guaranteed Payment 1*").
>
> (ii) Within five (5) days of the two (2) year anniversary of the Closing Date, Buyer shall pay to the Disbursing Agent, for further distribution to the Sellers, in accordance with the Seller Payment Schedule, an amount equal to $2,667,667 by wire transfer of readily available funds, subject to Section 10.06 ("*Guaranteed Payment 2*").
>
> (iii) Within five (5) days of the three (3) year anniversary of the Closing Date, Buyer shall pay to the Disbursing Agent, for further distribution to the Sellers, in accordance with the Seller Payment Schedule, an amount equal to $2,667,667 by wire transfer of readily available funds, subject to Section 10.06 ("*Guaranteed Payment 3*," and with Guaranteed Payment 1 and Guaranteed Payment 2, the "*Guaranteed Payments*").

*See MIPA §§1.02and 1.03(e).*[8]

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[7] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the MIPA.

[8] The Purchase Price was the amount equal to the Initial Cash Consideration, plus the Closing Inventory Value, plus the right to receive Guaranteed Payments, plus the right to receive either the Revenue Performance Payment or the Sales Performance Payment, if earned. The payments on account of the Initial Cash Consideration and

13. In addition to the Plaintiffs' right to receive the Guaranteed Payments, the parties agreed that the Plaintiffs would have the right to receive increased consideration in the form of either a Revenue Performance Payment or a Sales Performance Payment, based on the following criteria:

> **Revenue Performance Payment.** (x) If, during any consecutive trailing twelve months period after the Closing Date that is within the first eighteen months following the Closing Date (the "*Performance Period*"), the gross revenue (or the equivalent thereof as set forth on the Company's income statement as of the time of determination) (the "*Gross Revenue*") of the Business during Performance Period exceeds the Baseline Revenue by at least 10%, then the Sellers shall be entitled to receive a performance payment in the amount of $1,500,000 (the "*110% Revenue Payment*"), or (y) if during Performance Period, the revenue of the Business during Performance Period exceeds the Baseline Revenue by at least 20%, then the Sellers shall be entitled to receive a performance payment in the amount of $2,000,000 (the "*120% Revenue Payment*", and together with the 110% Revenue Payment, each a "*Revenue Performance Payment*"); provided, for the avoidance of doubt and notwithstanding anything to the contrary herein, in no event shall the Sellers be entitled to receive both the 110% Revenue Payment and the 120% Revenue Payment.
>
> **Sales Performance Payment**. If, during the Performance Period, the Gross Revenue generated by the Company's sale of products of Buyer or Buyer's affiliates (which, for the avoidance of doubt, shall not include the sales of any products of the Business) exceeds $30,000,000, as measured in the post-Closing financial statements of the

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the Closing Inventory Value were remitted at or around the time of closing of the MIPA.

> Company, then the Sellers shall be entitled to receive a performance payment in the amount of $1,500,000.00 (the "**Sales Performance Payment**" and together with the Revenue Performance Payment, each a "**Performance Payment**").

*See MIPA §§ 1.03(f)(i) and (ii).*

14. The Guaranteed Payments were to be paid within five days of the anniversary date of the MIPA for the first three years, which established September 15, 2022, September 15, 2023, and September 15, 2024 as the outside due dates for the three Guaranteed Payments. Hippolyte satisfied its obligation by making the first Guaranteed Payment on September 15, 2022. However, on September 15, 2023, Hippolyte failed to remit Guaranteed Payment 2 despite repeated demands of the Plaintiffs to make such payment.

15. Performance Payments due and owing were also to be paid within ninety (90) days following the end of the fiscal quarter during which such performance payment became due and payable. Because of the Defendants' mishandling of the IdeaStream Business no Performance Payment ever became due. *See MIPA § 1.03(h).*

16. Pursuant to the MIPA, the Defendants were obligated to act in good faith and not take any actions in bad faith with the intention to reduce these Performance Payments due under Section 1.03(f). *See MIPA § 8.06(a).* It was the agreement of the parties that all post-closing marketing, sales, design, distribution, quality

standards, legal, Intellectual Property and decisions relating to the IdeaStream Business were the sole obligation of the Defendants, which were governed by the good faith standard contained in section 8.06 of the MIPA.

17. Defendants did not honor their good faith obligations. Following the Effective Date of the MIPA, and during the course of the Performance Period, the Defendants failed to take actions in good faith as prescribed under the Agreement to properly market the IdeaStream Business and brands. As a result of mismanagement, the Defendants were unable to capitalize and maximize many aspects of the IdeaStream Business during the Performance Period. As evidenced by the attached e-mails, the Sellers' Representative, Mr. DeCarlo, and Mr. Perella raised these concerns on several occasions with the Defendants, but their concerns went largely unaddressed.[9]

18. Pre-closing, IdeaStream operated with an intense focus on profitability. IdeaStream annually reviewed its financials and tested major decisions through a profitability matrix/analysis. IdeaStream utilized centralized controls over spending and major decision-making. IdeaStream employed personnel that understood the importance of inventory turns, cash flow management, and profitability to the net income line. Thrasio acquired IdeaStream and failed to focus on the financial and

[9] *See* e-mail dated June 26, 2022 from Sellers' Representative to Betsy Parker attached hereto as **Exhibit F**.

business metrics that had made IdeaStream such an attractive target to Amazon aggregators.

19. Post-closing, the Sellers' Representative and Dan Perella were contracted to be retained with IdeaStream for a ninety (90) day transition period. However, as a result of their significant contributions, they were offered employment contracts and other compensation including a paid stay-on bonus. However, certain other measures were not taken by Thrasio to ensure that the IdeaStream business would reach its full potential. For example, several key personnel of IdeaStream left and another senior leader in the business was forced to leave the business (by Defendants) prior to close. These positions were never replaced. And for those key personnel that remained—the Sellers' Representative and Mr. Perella—they were severely distracted from IdeaStream's core business objectives and not supported in its growth from having to be heavily involved in the integration of a newly acquired business as well to be involved with anything that touched retail, among many other things.

20. At pre-closing 2021, the IdeaStream Business was experiencing one of the most successful Walmart back to school seasons. At present, according to personnel at Thrasio, the Walmart back to school season allegedly experienced a significant downturn two full years later. Ultimately, the IdeaStream Business suffered from the lack of financial and human resources support, lack of clarity regarding the

leadership responsibility for the legacy IdeaStream brands, and by the Sellers' Representative and Mr. Perella being constantly pulled into and consulted on Thrasio business issues that were unrelated to the core IdeaStream Business. As stated, these facts were repeatedly brought to the attention of Thrasio's leadership all the way to the date of resignation of the Sellers' Representative and Mr. Perella.[10] Both have since departed Thrasio and, upon information and belief, have not been replaced. As a result of the mismanagement listed above, the Defendants were unable to capitalize and maximize many aspects of the IdeaStream Business during the Performance Period resulting in no payments being made specifically tied to earn out provisions in the MIPA.

21. While the obligations under the MIPA were the direct obligations of Hippolyte, all payments and obligations due under the MIPA were guaranteed by Thrasio. Specifically, as guarantor, Thrasio "guarantee[d] to the Sellers, absolutely and unconditionally as a primary, original and direct obligor and not merely as surety, each and all of the obligations and liabilities of the Buyer, of whatever nature, whether now existing or hereafter incurred, whether matured or unmatured and whether absolute or contingent, under or in connection with this Agreement, including all such obligations or liabilities to pay the Initial Cash Consideration, the

[10] *See* e-mail dated October 11, 2022 from the Sellers' Representative to Betsy Parker attached hereto as **Exhibit G**.

Guaranteed Payments and the Performance Payments (if earned)." *See MIPA §11.17.*

22. By letter dated September 15, 2021 (the "*Notice of Default*"), the Plaintiffs notified the Defendants that, in light of the Defendants' failure to pay the Guaranteed Payment 2 on September 15, 2023, that the Defendants were in default under the MIPA and that if such default was not cured by September 20, 2023, then the Plaintiffs would commence litigation and seek recovery of prevailing party fees under Section 11.02,[11] among other remedies to which Sellers are entitled. A true and correct copy of the Notice of Default is attached hereto as **Exhibit H**.

23. As of the date of the filing of this Complaint, the Defendants have failed to comply with the requirements of, among others, Sections 1.03 and 8.06 of the MIPA.

24. On September 15, 2023, the Seller's Representative contacted Danny Boockvar, President of Thrasio, via a telephone call to address the Defendants' intention and timing in paying Guaranteed Payment 2. On that call, Mr. Boockvar expressly advised Mr. DeCarlo that the Defendants did not intend to make

[11] Section 11.02 of the MIPA provides that "[i]n the event that any Party institutes any legal suit, action, or proceeding, including arbitration, against the other Party arising out of or relating to this Agreement, the prevailing Party in the suit, action or proceeding shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs reasonably incurred by such party in conducting the suit, action, or proceeding, including reasonable attorneys' fees and expenses and court costs."

Guaranteed Payment 2 and did not cite any valid basis for doing so – only citing that because the Walmart 2023 Back to School season was off significantly, that he was being required to evaluate the IdeaStream Business and would get back to Mr. DeCarlo sometime in the coming weeks. Therefore, the decision to not pay Guaranteed Payment 2 was intentional, and this decision to forego paying Guaranteed Payment 2 leads to the natural conclusion that the Defendants have no intentions of paying Guaranteed Payment 3 when it comes due on September 15, 2024.

25. Finally, not only is there not any basis for asserting any claims thereunder, as a factual matter, the Defendants have not asserted any claims against Plaintiffs under Section 10.06 of the MIPA prior to the due date of Guaranteed Payment 2 or any date thereafter.

## FIRST CAUSE OF ACTION

### (Breach of Contract for failure to Pay Guaranteed Payment 2 Against Defendants)

26. The Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 25 above, as if fully set forth herein.

27. The MIPA is a valid and binding contract.

28. The Plaintiffs have fulfilled all of their obligations under the MIPA.

29. The Defendant Hippolyte, as buyer, and the Defendant Thrasio, as guarantor, under the MIPA have failed to pay the Guaranteed Payment 2.

30. The failure of the Defendants to pay Guaranteed Payment 2, as set forth above, and pursuant to the express terms of the MIPA, constitutes material breaches of the MIPA.

31. By virtue of the Defendants' breaches of its obligations pursuant to the MIPA for its failure to pay Guaranteed Payment 2, the Plaintiffs have sustained damages in a sum to be determined at trial, but believed to exceed $2,667,667.00, plus interest and reasonable attorney fees, expenses and court costs.

## SECOND CAUSE OF ACTION

**(Anticipatory Breach of Contract Against Defendants)**

32. The Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 31 above, as if fully set forth herein.

33. The Plaintiffs have fulfilled all of their obligations under the MIPA.

34. The Plaintiffs committed to, and was at all times ready, willing and able to, perform any obligations under the MIPA in exchange for the Defendants paying the Guaranteed Payments and the Performance Payments pursuant to the MIPA.

35. However, the Defendants have now withheld payment of Guaranteed Payment 2 and have explicitly taken the position that they will not pay the Guaranteed Payment 2 without providing any justification.

36. Therefore, the Defendants have positively and unequivocally repudiated their obligation to pay the balance of the guaranteed payments due under the MIPA

– Guaranteed Payment 2 and Guaranteed Payment 3.

37. The Defendants therefore anticipatorily breached the MIPA with respect to Guaranteed Payment 3 by refusing to honor the undisputed obligation to pay Guaranteed Payment 2 when it came due. As a direct result of the anticipatory breach of the MIPA, the Plaintiffs have been damaged in an amount to be determined at trial but believed no less than the sum of Guaranteed Payment 2 and Guaranteed Payment 3 totaling $5,335,334.00, plus interest, reasonable attorney fees, expenses and court costs.

## THIRD CAUSE OF ACTION

**(Breach of Contract)**

38. The Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 37 above, as if fully set forth herein.

39. The MIPA is a valid and enforceable contract.

40. The Plaintiffs have fulfilled all of their obligations under the MIPA.

41. Pursuant to Section 8.06 (a) of the MIPA, the Defendants were obligated to act in good faith and not take any actions in bad faith with the intention to reduce potential earn-out payments under Section 1.03(f). The Defendants therefore had a contractual duty to act in good faith toward the Plaintiffs to, among other things, make all possible good faith efforts to achieve revenue levels that would trigger the Performance Payments and honor its obligation to pay the Plaintiffs what it is owed

under the MIPA.

42. The Defendants have breached the MIPA by not acting in good faith and fair dealing by, among other things, not honoring its obligation to pay the Plaintiffs or make all possible good faith efforts to achieve sales levels that would trigger the Performance Payments.

43. The Defendants have acted in bad faith and intention to deprive the Plaintiffs of the benefit of the bargain of the MIPA by willfully failing to perform its obligations under the agreement to avoid paying the Plaintiffs the Performance Payments.

44. As a direct result of the breach of the MIPA, the Plaintiffs have been damaged in an amount to be determined at trial but believed to be no less than $2,000,000.00 that would have come due during the Performance Period, plus interest, reasonable attorney fees, expenses and court costs.

**WHEREFORE,** the Plaintiffs demand judgment against the Defendants for:

(a) An award of compensatory damages in the amount of $5,335,334.00 on account of missed Guaranteed Payment 2 and Guaranteed Payment 3, and other amounts to be determined at trial;

(b) An additional award of compensatory damages in the amount of $2,000,000.00 on account of missed Performance Payments, and other amounts to be determined at trial;

(c) An award of the Plaintiffs' costs and attorney's fees;

(d) An award of statutory pre-judgment and post-judgment interest on the value of Guaranteed Payment 2; and

(e) Any such other and further relief as the Court deems just and proper.

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*Of Counsel*:

By: */s/ Jesse L. Noa*


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*Attorneys for Plaintiffs*


Dated: October 18, 2023

# Attachment 1

## (Sellers)

| Name |
| --- |
| Peevi International Investment Limited |
| Anthony J. DeCarlo |
| Daniel Perella |
| Vincent Thomson |
| Michael Feuer |
| Robert Skoda |
| Anna Marie Minotti |
| SBR LLC |
| Amelia Sivak |
| Michael Trabert |
| Jeanne Coode |