

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
MEDLY HEALTH INC., <i>et al.</i> , ¹)	Case No. 22-11257 (___)
Debtors.)	(Joint Administration Requested)
)	
)	

**DECLARATION OF RICHARD WILLIS IN SUPPORT OF THE
DEBTORS’ CHAPTER 11 PETITIONS AND FIRST DAY RELIEF**

I, Richard Willis, hereby declare under penalty of perjury that the following is true to the best of my knowledge, information, and belief:

1. I am the Chief Executive Officer (“CEO”) of the above-captioned debtors and debtors in possession (the “Debtors”). I became the Debtors’ Chief Financial Officer on April 1, 2022, and assumed the CEO position in late August 2022. I was previously the CEO of the pharmacy chain Pharmaca Integrative Pharmacy (“Pharmaca”), which, as described below, was acquired by the Debtors in 2021. In such capacities, I am familiar with the Debtors’ businesses, financial affairs, and day-to-day operations.

2. On the date hereof (the “Petition Date”), the Debtors each commenced a case (together, the “Chapter 11 Cases”) by filing a petition for relief under chapter 11 of title 11 of the United States Code, §§ 101 *et seq.* (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware (the “Court”).

¹ The Debtors, along with the last four (4) digits of each Debtor’s federal tax identification number are: Medly Health Inc. (3391); Care Well Pharmacy, Inc. (9048); Grubbs Care Pharmacy NW Inc. (0490); Marg Pharmacy, Inc. (5838); Medly Atlanta Inc. (7312); Medly Baltimore Inc. (2354); Medly Bedford Ave Pharmacy Inc. (3690); Medly Bristol Inc. (4556); Medly Bronx Inc. (4741); Medly Chicago Inc. (5231); Medly Dallas Inc. (7581); Medly DC Inc. (9403); Medly Enterprise LLC (8898); Medly Grand Central Inc. (1741); Medly Houston Inc. (7443); Medly Jersey City Inc. (5677); Medly Mail Service Pharmacy LLC (9203); Medly Miami Inc. (8101); Medly Orlando Inc. (7581); Medly Pharmacy Inc. (4606); Medly Pharmacy PA Inc. (8494); Medly Pittsburgh Inc. (8381); Medly Queens Inc. (9623); Medly Raleigh Inc. (5140); Medly San Antonio Inc. (9973); Medly Stamford Inc. (4966); Medly Tampa Inc. (5128); Medly UCHC Pharmacy Inc. (6672); Medly Utah Inc. (4648); Pharmaca Integrative Pharmacy, Inc. (0334); Tango340B LLC (4781); and West Campbell Pharmacy Inc. (2931). The Debtors’ business address is 7088 Winchester Circle, Suite 100, Boulder CO 80301.

3. I submit this Declaration to provide an overview of the Debtors' business and the Chapter 11 Cases and support for the Debtors' "first day" applications and motions (collectively, the "First Day Pleadings"). I am over the age of 18, competent to testify, and authorized to submit this Declaration on behalf of the Debtors.

4. Except as otherwise noted, I have personal knowledge of the matters set forth herein. All facts set forth in the Declaration are based on my personal knowledge, my discussions with other members of the Debtors' senior management, my review of relevant documents, and/or my opinion based on my experience and knowledge of the Debtors' operations and financial condition. In making the Declaration, I have relied in part on information and materials that the Debtors' personnel and advisors have gathered, prepared, verified, and provided to me, in each case under my ultimate supervision, at my direction, and/or for my benefit in preparing the Declaration. If I were called to testify as a witness in this matter, I could and would testify competently to the facts set forth herein.

Preliminary Statement

5. After suffering a severe liquidity crisis this summer and fall, precipitated by a loss of anticipated financing and the discovery of certain accounting irregularities, the Debtors, under new management, have commenced these Chapter 11 Cases to preserve and maximize value for all stakeholders through one or more asset sales.

6. The Debtors' operations fall along two business lines. The first - the "Medly" pharmacies - are geared towards specialized prescriptions and digital operations. The Debtors' second business line - the "Pharmaca" pharmacies (which the Debtors acquired in 2021) - also cater to individuals interested in whole-being health and wellness, with an emphasis on vitamins and supplements along with a variety of other products geared to helping the customer live a healthy lifestyle.

7. The Debtors intend to seek approval of the sale of the four remaining Medly pharmacies' prescription lists to ensure patients are able to transfer their prescriptions prior to the closing of those stores. Second, the Debtors will seek approval of bid procedures for the sale of

the Pharmaca business line, which includes twenty-two stores, as a going concern. The Debtors have identified a buyer to act as a stalking horse in such sale. The Debtors believe pursuing both sales in these Chapter 11 Cases is the best path forward and is in the best interests of their estates and creditors.

8. The Debtors have obtained debtor in possession financing from one of their prepetition secured lenders sufficient to fund the administrative expenses associated with the Chapter 11 Cases. Absent such funding, the Debtors would be forced to immediately cease operations and likely file petitions under chapter 7 of the Bankruptcy Code.

9. To familiarize the Court with the Debtors and the relief the Debtors seek on the first day of these Chapter 11 Cases, this Declaration is organized in three sections. The first section provides background information with respect to the Debtors' businesses and corporate history, as well as their prepetition capital structure. The second section describes the circumstances surrounding the commencement of these Chapter 11 Cases. The last section sets forth the relevant facts in support of each of the First Day Pleadings.

General Background

I. The Debtors' Businesses

10. The Debtors operate four full service digital pharmacies, twenty-one brick-and-mortar, full-service specialty pharmacies serving twenty markets across nine states and one health and wellness store in Seattle, Washington. The Debtors also operate an e-commerce business through the "Pharmaca.com" website.

11. The Debtors offer orchestrated consumer services such as delivery, prior authorization coordination, copay management, refill management and much more. The Debtors' strategic pillars include prescription medications, health and wellness and order fulfillment, including, where available, same day delivery. The Debtors hire expert practitioners and experienced pharmacists who deliver a superior customer experience. As a result, the Debtors are a trusted partner of consumers and doctors.

12. Digital pharmacies can eliminate a patient’s need to ever step foot in an actual brick and mortar pharmacy. The entire process can be done on-line: issuance of the prescription, obtaining insurance approval if needed, filling (and refilling) the prescription, monitoring refills, and ultimately, scheduling the delivery of the prescription to the patient’s home. Depending on the customer’s location, prescriptions could be issued, filled and delivered in the same day. The Debtors utilize encrypted internal systems to track orders, drug storage and delivery in real time.

Medly Creates Better Outcomes for Patients



CLINICALLY BETTER

- Prior Authorization Support
- In-Person/App Counseling
- Drug Fact Info with Medication
- Drug Safety/Allergy Info



COST EFFECTIVE

- Financial Assistance Programs
- Manufacturer Coupons
- Government Programs
- Free Delivery



CONVENIENT

- Delivery Scheduling
- Easy Onboarding
- Checkout, Medication History
- Dosage and Usage Detail
- Refill Reminders/Scheduling

13. The Debtors provide a key service that many other pharmacies do not or cannot. The Debtors will work directly with the customer’s insurance company to determine insurance coverage for the prescribed medication and work to ensure the customer receives the lowest price. Whether the prescription is covered by insurance or not, the Debtors will work to find and apply coupons to further reduce the ultimate price of the drug or offer a discounted cash price.

14. In addition, the Pharmaca stores cater to health conscious consumers seeking natural remedies and supplements to promote good health. This holistic approach offers a variety of tools for healthy living, including the highest-quality vitamins, hard-to-find herbal and homeopathic formulas, and organic and natural skin care and cosmetics designed to leave skin

feeling as good as it looks. The Debtors select the products offered based on the expertise of the many health care professionals and certified or degreed practitioners that work in their stores, so customers can trust that the products on the shelf are the highest quality. The Debtors have a staff of licensed health care professionals at each store—including pharmacists, naturopaths, herbalists, nutritionists and estheticians to help customers find the perfect solution for any health concern.

15. The Debtors' core values extend beyond the store. Their stores carry sustainably made products from companies that share the Debtors' belief that customers deserve the highest quality and sustainable products that are natural, safe and effective. They offer vitamins and supplements made with organic ingredients, cosmetics that are vegan and cruelty-free, reusable food and drink containers that keep waste out of landfills and oceans, and skin care wrapped in recycled and recyclable packaging. Moreover, the stores use sustainable materials in the construction of their stores, including recycled carpet tiles, bamboo flooring, energy-efficient lighting and low-VOC paint. They also proudly carry products from companies that have signed the Campaign for Safe Cosmetics.

A. History

16. The "Medly" Debtors were initially founded by two second-generation pharmacy owners with the goal to democratize access to the pharmacy across the country and solve customers' most common complaints about the pharmacy experience. The Debtors' initial goal was to become the premier full-service digital pharmacy offering, among other things, free same-day prescription delivery and a customer experience conducted entirely on-line.

17. The Debtors opened their first Medly pharmacy in Brooklyn, New York in 2017. A second location in New Jersey followed in 2018, followed by a third in Pennsylvania in 2019. The Debtors continued to expand over the next several years. By the summer of 2022, the Debtors had opened and were operating twenty-three Medly pharmacies, primarily, but not exclusively, on the East Coast. The Medly stores focused predominately on high price specialized prescriptions and aggressively marketed their digital, all-inclusive platform to customers and medical professionals.

18. In addition to opening new Medly pharmacies, the Debtors sought to grow through acquisition. In August 2021, the Debtors acquired Pharmaca (founded in 2000) and its twenty-eight stores. Pharmaca's focus historically extended beyond simply disbursing prescription medicines. It embraces a "whole-health" philosophy: along with prescription drugs to treat ailments, Pharmaca provides natural products related to health and wellness, including vitamins and supplements, herbal treatments, homeopathics, and sports nutrition goods. Roughly half of the Pharmaca business line relates to health and wellness lifestyle products and services.

19. The Debtors' growth and expansion was financed through a series of loan agreements and the issuance of preferred stock, which are discussed in more detail below. As a result of the Pharmaca acquisition and the opening of new Medly pharmacies, in the summer of 2022, the Debtors operated a peak of fifty-one stores and employed over 2,000 employees.

20. Unfortunately, the Debtors' digital pharmacy business model never proved to be profitable. The Debtors attempted to bring their Medly digital pharmacy model to the Pharmaca stores. This caused the Pharmaca stores to suffer a loss of their core customers: wealthy, middle-aged consumers interested in health and wellness, fitness and products and serviced geared towards the same. As discussed more fully below, due to the on-going operating losses and corporate accounting issues discovered in August 2022, during the late summer and fall of 2022 the Debtors closed a number of stores, shuttered their call center in Utah, and terminated the employment of hundreds of employees.

B. Operations

21. As of the Petition Date, the Debtors operate twenty-five pharmacies in California, Washington, Illinois, New Mexico, Oregon, Colorado, New York, Pennsylvania, New Jersey plus Washington, D.C and one health and wellness store in Seattle, Washington. The Debtors also operate an e-commerce business through "Pharmaca.com".

22. The Debtors operate a warehouse (the "Warehouse") located in Boulder, Colorado, where the Debtors' corporate headquarters are also located. The Warehouse serves as the Debtors' sole fulfillment center to deliver goods to their stores and ship directly to their on-line customers.

Merchandise from the Debtors' vendors and suppliers is delivered to the Warehouse, tracked and then delivered to stores or, in certain instances, directly to the customer.

23. The Debtors do not own any real property. All of their pharmacies and the Warehouse are subject to unexpired nonresidential real property leases.

C. Financial Performance

24. As noted herein, the Debtors have consistently suffered operating losses. During the period from January 1, 2022 through September 30, 2022, the Debtors generated net income ranging from negative \$9 million to negative \$11 million. As of September 30, 2022, cash from operations was negative \$15 million.

D. Employees

25. As of the Petition Date, the Debtors employ approximately 717 employees. Approximately 549 of the employees are employed full-time and approximately 168 are part-time employees. The Debtors also use the personal services of a few individuals who are not employees but who are hired by the Debtors as independent contractors or temporary workers in their stores and the Warehouse. None of the Debtors' employees are subject to a collective bargaining agreement.

E. Intellectual Property

26. The Debtors own and control a number of trademarks, trade names, registered domain names, and other intellectual property rights that, in the aggregate, are important to the Debtors' businesses. The Debtors' intellectual property portfolio protects, among other things, the Debtors' trademarks and logos, and provides the Debtors with a competitive advantage.

II. The Debtors' Organizational Structure

27. Medly Health Inc. ("Medly Parent"), a Delaware corporation, is the ultimate parent company of each of the other Debtors. A chart detailing the Debtor's organizational structure is attached hereto as **Exhibit A**.

III. The Debtors' Debt Structure

A. Secured Debt

28. The following chart summarizes the Debtors' funded secured debt as of the Petition

Date:

Lender/Agent	Principal Amount Owed as of Petition Date	Lien and Payment Priority
Silicon Valley Bank	\$20 million	1 st
TriplePoint Capital	\$81 million	2 nd , <i>pari passu</i> with Secured Note obligations, provided that the liens securing the Bridge Loan (defined below) are senior to the liens of the Consenting Noteholders (defined below)
Secured Notes	\$10 million	2 nd , <i>pari passu</i> with the TriplePoint obligations; 3 rd with respect to Bridge Loan for Consenting Noteholders.

a. Silicon Valley Bank

29. The Debtors are party to that certain Loan and Security Agreement dated as of November 1, 2019 as amended by a certain Joinder and First Loan Modification Agreement dated as of September 17, 2020, and as further amended by a certain Joinder and Second Loan Modification Agreement dated as of March 25, 2022 (as may be further amended, modified, supplemented or restated, the "SVB Loan Agreement") by and between the Debtors and Silicon Valley Bank ("SVB").² The Debtors' obligations under the SVB Loan Agreement are secured by first priority liens on (a) the Debtors' goods, accounts (including health-care receivables), equipment, inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, general intangibles, intellectual property, commercial tort claims,

² The original SVB Loan Agreement was executed by the four (4) Debtors in existence at that time. As the Debtors opened new stores or acquired new entities, each such entity executed a joinder to the SVB Loan Agreement, thus becoming "Borrowers" thereunder.

documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and all books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing, and (b) the intellectual property described in the Amended and Restated Intellectual Property Security Agreement dated as of March 25, 2022.

30. On August 29, 2022, as the Debtors were struggling with the liquidity crisis described below, the Debtors and SVB entered into that certain Forbearance and Third Modification Agreement (the “Forbearance Agreement”) pursuant to which SVB agreed, *inter alia*, to (a) forbear from exercising its remedies under the SVB Loan Agreement as a result of the Debtors’ defaults thereunder and (b) consented to the Debtors’ borrowing an additional \$10 million from TPC (defined below) and up to \$10 million from the Noteholders (defined below).

31. As of the Petition Date, the Debtors owe the Lenders under the SVB Loan Agreement approximately \$20 million in principal, plus interest, fees and costs.

b. TriplePoint Capital

32. The Debtors are party to that certain Plain English Growth Capital Loan and Security Agreement dated as of November 20, 2020, as amended by that First Amendment to Plain English Growth Capital Loan and Security Agreement dated as of March 25, 2022, and that certain Forbearance Agreement and Second Amendment to Plain English Growth Capital Loan and Security Agreement (as may be further amended, modified, supplemented or restated, the “TPC

Loan Agreement”) by and between the Debtors and TriplePoint Venture Growth BDC Corp., as a lender and as collateral agent (“TPVG”), TriplePoint Private Venture Credit Inc., as a lender (“TPVC”), and TriplePoint Capital, LLC, as a lender (“TPCLLC”, collectively with TPVG and TPVC, “TPC”). The Debtors’ obligations to TPC under the TPC Loan agreement are secured by liens on all of the Debtors’ personal property assets (the “TPC Collateral”). Pursuant to the terms of that certain Subordination Agreement dated as of November 20, 2020 between SVB and TPC (as amended, the “Subordination Agreement”), TPC’s right to payment and all liens on the TPC Collateral are subordinated to SVB’s liens and right to full payment of all amounts owing under the SVB Loan Agreement.

33. Following MidCap’s refusal to close on the \$100 million MidCap loan facility, the failure to fund the \$30 million round of preferred equity financing described in Paragraph 45 below and the discovery of potential financial and accounting irregularities under the former CEO, at the request of the Debtors, on August 29, 2022, TPC advanced an additional \$10 million term loan facility to help the Debtors fund a rescue plan to emerge from its liquidity crisis. TPC entered into an amendment to its existing subordination agreement with SVB and a new intercreditor agreement with the Noteholders (defined below).

34. On November 30, 2022, TPC advanced an additional \$1 million under the TPC Loan Agreement to bridge the gap pending the commencement of these Chapter 11 Cases (the “Bridge Loan”). In connection therewith, TPC and certain of the Noteholders (the “Consenting Noteholders”) executed that Consent Under Intercreditor Agreement, pursuant to which the Consenting Noteholders consented to the funding of the Bridge Loan and agreed that the Bridge Loan would be senior to the Consenting Noteholder Obligations (as defined therein).

35. As of the Petition Date, the total outstanding amount due under the TPC Loan Agreement is approximately \$81 million in principal, plus interest, fees and costs.

c. Secured Notes

36. On August 29, 2022 and August 30, 2022, the Debtors issued secured promissory notes in the aggregate principal amount of \$10 million (the “Secured Notes”) to Greycroft Partners V, L.P., Greycroft ACI Evolution Fund I, L.P., Volition Capital Select Fund I, L.P., Volition Capital Fund III, L.P., Prysm Capital Fund I, L.P., F-Prime Capital Partners Health IT and Services Fund II LP, and Eight Roads Ventures India III LP, HTC Global Services Inc., and Lindenwood Health Inc. (collectively, the “Noteholders”). The Noteholders entered into subordination agreements with SVB and TPC, respectively (the “Noteholder Subordination Agreements”). The Noteholder Subordination Agreements set forth the agreed priority of the Debtors’ payment obligations to SVP, TCP and the Noteholders as well as the priority of the liens securing such obligations. Generally speaking, SVB’s liens have first priority, while TPC’s liens have second priority, except that TPC’s liens and the Noteholder’s liens are *pari passu* and equal in priority up to the principal amount of the Secured Notes, and further provided that the Bridge Loan has priority over the Secured Notes of the Consenting Noteholders.

37. Approximately 60% of the amounts owing under the Prepetition Notes are held by insider entities who are also equity holders and are represented on the Debtors’ boards of directors.

38. As of the Petition Date, the total outstanding amount due under the Secured Notes is approximately \$10 million in principal, plus interest, fees and costs.

B. Unsecured Debt

39. As of the Petition Date, the Debtors estimate they owe approximately \$47 million of unsecured indebtedness, including factoring obligations, trade debt and payables, and amounts owed to former and current employees.

C. Equity

40. As noted above and in **Exhibit A**, Medly Parent is the ultimate parent entity of each of the other Debtors.

41. Medly Parent's common and preferred stock is privately held. The common stock is held by individuals, primarily the Debtors' founders, employees and other individuals. Medly Parent's preferred stock is primarily held by funds and certain individuals, including the Noteholders, the Investors (defined below) and TPC related entities.

42. On July 29, 2022, Medly Parent entered into a Series C-1 Preferred Stock Purchase Agreement with the investors identified therein (the "Investors") pursuant to which the Debtors were authorized to issue up to 50,000,000 shares of new series C-1 preferred stock (the "Series C-1 Preferred Stock") at a purchase price of \$.20 per share. A subset of the Investors owning Series C-1 Preferred Stock are also Noteholders. The issuance of the Series C-1 Preferred Stock did not raise the full amount originally anticipated, as the second round of payments by the Investors was tied to closing of the MidCap (as defined below) and TCP loans which ultimately fee through, and as a result, the Debtors did not receive any additional funding from the Investors.

IV. Events Leading to the Commencement of the Chapter 11 Cases

A. Industry and Operational Challenges

43. The Debtors' niche digital pharmacy model has proven unprofitable and unsustainable. By focusing predominately on specialized prescriptions, which are significantly lower margin than standard prescriptions and which are by their very nature less commonly

prescribed by doctors, the Medly stores failed to generate the volume of prescriptions necessary for them to operate profitably. The expenses associated with the digital pharmacy, especially those required for the IP systems build out and labor costs, grossly exceeded revenues generated by the business. Prior to the Pharmaca acquisition, the Medly digital pharmacy operations lost an average of \$12-14 million each month for over a year.

44. Moreover, in addition to the operational challenges the Debtors faced, in August of 2022, the Debtors' senior management became aware of certain operational and accounting irregularities conducted by the Debtors' original founders and certain other related individuals. Management promptly reported the issues to the Debtors' board of directors (the "Board"). The Board terminated the members of the Debtors' founders group who were involved in the improper activities. I was brought in as CEO at this time to ensure appropriate controls were put into place and to address the Debtors' immediate and longer-term operational imperatives, including an effort to reclaim Pharmaca's traditional health and wellness oriented customers, and address financing needs. At present, the Debtors' senior management team consists only of individuals who were not involved in the activities conducted by the founders group.

B. Debtors' Liquidity Crisis

45. As noted above, the Debtors' operations were consistently losing money month over month. In response, the Debtors were forced to close certain underperforming stores in an effort to bolster the profitability of the remaining stores. Moreover, in early August 2022, the Debtors suffered another cash setback. On August 11, 2022, the Debtors were set to receive \$100 million in financing from MidCap Funding IV Trust ("MidCap") and TPC. Just hours before the funds were to be disbursed, Midcap informed the Debtors that it would not be making the loan. As a result, Medly's equity investors refused to fund an expected \$30 million under a pending round of preferred equity funding. TPC and certain Noteholders provided separate rounds of secured financing in the aggregate amount of \$20 million to fund a restructuring plan proposed to TPC by the Debtors. While the Debtors negotiated new financing to replace the lack of funding from MidCap and equity investors, the Debtors faced an immediate and critical liquidity crisis

with devastating effects. For three and a half weeks, the Debtors were unable to purchase drugs with which to fill prescriptions. Sales plummeted by eighty percent (80%). With the Debtors unable to disburse necessary medications, many customers simply took their prescriptions elsewhere so they could be timely filled.

46. As a result of this critical and unanticipated liquidity crunch, in August, the Debtors closed more than twenty (20) stores, shuttered their Utah call center and commenced to terminate the employment of approximately 617 employees. In connection with the closures, the Debtors sent notices under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq. (the “WARN Act”) to employees in New York and Utah. In total, approximately fifty-two percent (52%) of the Debtors’ workforce was separated from employment between early August and early November.

V. The Debtors’ Objectives in the Chapter 11 Cases

47. The Debtors commenced these Chapter 11 Cases to pursue one or more asset sales with a goal to maximize and preserve value for all stakeholders. As noted above, the four remaining Medly stores are slated to close following approval of a sale of the Debtors’ Medly prescription lists. In addition, the Debtors intend to sell substantially all of their assets related to the Pharmaca business on a going concern basis pursuant to a sale process to be approved by the Bankruptcy Court. The Debtors believe these actions represent their best option to preserve and maximize value for all stakeholders while ensuring that affected Medly customers have a path to transfer their prescriptions to a new provider following the closing of the sale.

Relief Sought in the First Day Pleadings

I. Administrative Motions

A. Joint Administration Motion

48. The Debtors request entry of an order directing joint administration of their Chapter 11 Cases, for procedural purposes only, pursuant to Rule 1015(b) of the Federal Rules of

Bankruptcy Procedure providing for the Court to maintain one file and one docket for all of the Debtors' Chapter 11 Cases under the lead case, *Medly Health Inc., et al.*

49. The Debtor entities are "affiliates" as that term is defined in section 101(2) of the Bankruptcy Code. Accordingly, joint administration of these Chapter 11 Cases will allow for the efficient administration of the Debtors' interrelated Chapter 11 Cases, will yield significant cost savings, and will not prejudice the substantive rights of any party in interest.

50. I believe that entry of an order directing joint administration of the Chapter 11 Cases will reduce fees and costs by avoiding duplicative filings and objections. Joint administration also will allow the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") and all parties-in-interest to monitor the Chapter 11 Cases with greater ease and efficiency. Accordingly, on behalf of the Debtors, I respectfully submit that the Joint Administration Motion should be approved.

B. Creditor Matrix Motion

51. In the Creditor Matrix Motion, the Debtors seek an order (a) authorizing the Debtors to (i) file a consolidated list of creditors in lieu of submitting a separate mailing matrix for each Debtor, (ii) file a consolidated list of the Debtors' thirty largest unsecured creditors in lieu of filing lists for each Debtor, and (iii) redact certain personally identifiable information for the Debtors' individual creditors; and (b) granting related relief.

52. Although I understand that a list of creditors usually is filed on a debtor-by-debtor basis, in some cases involving more than one debtor, the debtors may file a consolidated creditor matrix "in the interest of justice." Requiring the Debtors to segregate and convert their computerized records to a Debtor-specific creditor matrix format would be an unnecessarily burdensome task and result in duplicate mailings.

53. Similarly, I submit that it is appropriate for the Debtors to file a single list of their thirty largest general unsecured creditors on a consolidated basis. Because the list of creditors that hold the 30 largest unsecured claims against each Debtor (the "Top 30 List") of the Debtors could overlap, and certain Debtors may have fewer than thirty (30) significant unsecured creditors, the

Debtors submit that filing separate Top 30 Lists for each Debtor would be of limited utility. In addition, the exercise of compiling separate Top 30 Lists for each individual Debtor could consume an excessive amount of the Debtors' limited time and resources. Further, I believe that a single, consolidated list of the Debtors' thirty largest unsecured, non-insider creditors will aid the U.S. Trustee in its efforts to communicate with these creditors.

54. Additionally, I believe that it is appropriate to authorize the Debtors to redact from any paper filed or to be filed with the Court in these Chapter 11 Cases the home addresses of individual creditors—including the Debtors' current and former employees—because such information could be used, among other things, to perpetrate identity theft or to locate survivors of domestic violence, harassment, or stalking.

55. The Debtors propose to provide an unredacted version of the Creditor Matrix (and any other applicable filings) to the U.S. Trustee, counsel to any official committee of unsecured creditors appointed in these Chapter 11 Cases, any party in interest upon reasonable and legitimate request, and the Court.

56. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Creditor Matrix Motion.

C. The 156(c) Application

57. In the 156(c) Application, the Debtors seek entry of an order appointing Epiq Corporate Restructuring, LLC ("Epiq") as their Claims and Noticing Agent in the Chapter 11 Cases, including assuming full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in the Chapter 11 Cases. It is my understanding that the Debtors' selection of Epiq to act as the Claims and Noticing Agent has satisfied this Court's protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c), in that the Debtors, with the assistance of their advisors, have obtained and reviewed engagement proposals from at least two other court-approved claims and noticing agents to ensure selection through a competitive process. Moreover, I submit, based on input from the Debtors' advisors regarding all engagement proposals obtained and reviewed, that Epiq's rates are competitive and

reasonable given Epiq's quality of services and expertise. Although the Debtors have not yet filed their schedules of assets and liabilities, it is anticipated that there could be thousands of entities to be noticed. In view of the number of anticipated claimants and the complexity of the Debtors' businesses, I believe that the appointment of a claims and noticing agent is required by Rule 2002-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, and is otherwise in the best interests of both the Debtors' estates and their creditors.

II. Operational Motions Requesting Immediate Relief

A. Cash Management Motion

58. By the Cash Management Motion, the Debtors request interim and final (i) authority to continue using their existing cash management system (the "Cash Management System") including the payment of all fees related thereto; (ii) authority for continued use of their existing business forms; and (iii) related relief.

59. In the ordinary course of business, the Debtors utilize their centralized Cash Management System to collect, manage, and disburse funds used in their business. The Cash Management System is essential to the stability of the Debtors' assets and business objectives, and to maximizing the value of their estates. Any disruption to the Cash Management System would unnecessarily and significantly disrupt the Debtors' operations and impede the successful administration of their Chapter 11 Cases.

60. I believe that the relief requested in the Cash Management Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in these Chapter 11 Cases with minimal disruption, thereby benefiting all parties in interest. Accordingly, for the reasons set forth herein and in the Cash Management Motion, on behalf of the Debtors, I respectfully submit that the relief requested in the Cash Management Motion should be granted.

B. Wages Motion

61. By the Wages and Benefits Motion, the Debtors seek entry of interim and final orders granting them (a) authorizing, but not directing, the Debtors to (i) pay prepetition wages, salaries, commissions, other compensation, and reimbursable employee expenses, and (ii) continue employee benefits programs in the ordinary course, including payment of certain prepetition obligations related thereto; and (b) granting related relief.

62. The Debtors' workforce performs a variety of functions critical to the Debtors' operations and the administration of the Debtors' estates. In many instances, these individuals are intimately familiar with the Debtors' businesses, processes, and systems, and who cannot be easily replaced. The Debtors' failure to honor their obligations to their workforce could lead to considerable attrition, which would severely threaten the Debtors' ability to operate at this crucial juncture. Indeed, without the continued, uninterrupted services of their employees and other individuals, the Debtors simply could not run their businesses and maximize value for the benefit of all stakeholders.

63. More importantly, many of the Employees and Contractors (as defined in the Wage Motion) rely on the compensation and benefits they receive to pay daily living expenses and secure services central to their health and welfare. As such, the Debtors' workforce would be exposed to significant hardship if the Debtors are not permitted to continue satisfying the obligations described in the Wage Motion,

64. Accordingly, for the reasons set forth herein and expanded on in the Wage Motion, on behalf of the Debtors, I respectfully submit that the relief requested in the Wage Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in the Chapter 11 Cases with minimal disruption, thereby maximizing value for the estates.

C. Insurance Motion

65. The Debtors request the entry of an order authorizing, but not directing, the Debtors to continue and, to the extent necessary, revise, extend, renew, supplement, or change the Debtors' pre-petition Insurance Policies (defined in the Insurance Motion), or enter into new policies or

surety bonds, if necessary, in the ordinary course of business and pay prepetition obligations in respect thereof.

66. In the ordinary course of business, the Debtors have maintained, and continue to maintain, a number of insurance programs and surety bonds through several different carriers. Continuation of these insurance programs and surety bonds is essential for preserving the value of the Debtors' assets.

67. Accordingly, for the reasons set forth herein and expanded on in the Insurance Motion, on behalf of the Debtors, I respectfully submit that the relief requested in the Insurance Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in the Chapter 11 Cases with minimal disruption, thereby maximizing value for the estates.

D. Utilities Motion

68. By the Utilities Motion, the Debtors seek entry of interim and final orders: (i) approving the Debtors' proposed form of adequate assurance of payment to the Utility Companies (as defined below); (ii) establishing procedures for resolving objections by Utility Companies relating to the adequacy of the proposed adequate assurance provided by the Debtors; (iii) prohibiting the Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtors on the basis of the commencement of these Chapter 11 Cases and/or any outstanding prepetition debts; and (iv) granting related relief, all as more fully set forth in the Motion.

69. In the ordinary course of business, the Debtors obtain various essential utility services (collectively, the "Utility Services"), including electricity, water, and network/internet, from a number of utility companies (collectively, the "Utility Companies"). A list of the Utility Companies and, where available, the Debtors' account number with each Utility Company is attached to the Utilities Motion as **Exhibit C**. The Debtors rely on the Utility Companies to provide Utility Services in all their locations. In locations with Utility Services, the Debtors rely on the Utility Companies to provide necessary support to their employees, vendors, and customers.

Accordingly, I believe preserving the Utility Services on an uninterrupted basis is essential to the Debtors' ongoing operations, and even a brief alteration or discontinuation of service would likely cause severe disruption to the Debtors' business.

70. The Debtors have proposed to provide Utility Companies with Adequate Assurance of payment for Utility Services and customary procedures for resolving any disputes. I understand such procedures are routinely approved in this district and would request the Court approve the Utilities Motion to ensure the Debtors maintain uninterrupted Utility Services.

E. Tax Motion

71. By the Tax Motion, the Debtors seek entry of an order authorizing (a) authorizing the Debtors to remit and pay (or use tax credits to offset) Taxes and Fees (as defined therein) in the ordinary course of business that are payable or become payable during these Chapter 11 Cases (including any obligations subsequently determined upon audit or otherwise to be owed for periods prior to the Petition Date); and (b) granting related relief.

72. In the ordinary course of business, the Debtors collect, withhold, and incur sales, use, and income taxes, as well as other governmental taxes, fees, and assessments (collectively, the "Taxes and Fees").³ The Debtors pay or remit, as applicable, Taxes and Fees to various governmental authorities (each, an "Authority," and collectively, the "Authorities") on a periodic basis (monthly, quarterly, semi-annually, annually, and on an ad hoc basis depending on the Debtors' reporting calendar) depending on the nature and incurrence of a particular Tax or Fee and as required by applicable laws and regulations. A schedule identifying the Authorities is attached to the Tax Motion as **Exhibit C**.

73. Any failure by the Debtors to pay the Taxes and Fees could materially disrupt the Debtors' business operations in several ways, including (but not limited to): (a) the Authorities may initiate audits of the Debtors, which would unnecessarily divert the Debtors' attention from the Chapter 11 Cases; (b) the Authorities may attempt to suspend the Debtors' operations, file

³ The Tax Motion does not seek relief with respect to the Debtors' collection and remittance of employee-related taxes and withholdings, which are instead addressed in the Wage Motion.

liens, seek to lift the automatic stay, or pursue other remedies that will harm the estates; and (c) in certain instances, the Debtors' directors and officers could be subject to claims of personal liability, which would likely distract those key individuals from their duties related to the Debtors' restructuring. Taxes and Fees not paid on the due date as required by law may result in fines and penalties, the accrual of interest, or both. The Debtors also collect and hold certain outstanding tax liabilities in trust for the benefit of the applicable Authorities, and these funds may not constitute property of the Debtors' estates. Accordingly, I submit that the relief requested in the Tax Motion should be approved.

F. Shippers Motion

74. By the Shippers Motion, the Debtors seek entry of an order authorizing them to pay, in the ordinary course of business, certain prepetition claims of the Debtors' Shippers and Warehousemen (as defined below) who have or may have remedies available under nonbankruptcy law to secure payment of their claims. A description of the various Shippers is set forth in the Shippers Motion.

75. As part of their business operations, the Debtors rely on a variety of service providers, common carriers, contract carriers, freight brokers, shippers, and truckers (collectively, the "Shippers") to transport and deliver the goods sold by the Debtors (the "Merchandise"). The Shippers may use certain warehousemen (the "Warehousemen") to store Merchandise while in transit. Such warehousing of Merchandise is controlled and paid directly by the Shippers, with the cost passed along to the Debtors.

76. The Debtors believe that the cost of replacing or reconstructing their existing supply chain network far exceeds the amount of claims outstanding to the Shippers and Warehousemen. The cost of the disruption to the Debtors' estates that would be caused by the retention by the Shippers or Warehousemen of Merchandise would likely far outweigh the outstanding Shipping Claims.

77. Accordingly, by the Shippers Motion, the Debtors seek to prevent the breakdown of their delivery network by requesting authority to pay certain prepetition claims relating to the

Shippers and Warehousemen that the Debtors determine are necessary or appropriate to: (a) obtain release of critical or valuable Merchandise that may be subject to liens; (b) maintain a reliable, efficient, and smooth distribution system; and (c) induce critical Shippers and Warehousemen to continue to carry Merchandise and make timely delivery. Notably, the Debtors only seek authority, not direction, to make such payments.

78. Accordingly, for the reasons set forth herein and expanded on in the Shippers Motion, on behalf of the Debtors, I respectfully submit that the relief requested therein is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in the Chapter 11 Cases with minimal disruption, thereby maximizing value for the estates.

G. Customer Programs Motion

79. By the Customer Programs Motion, the Debtors seek entry of an order, substantially in the form attached hereto to the Customer Programs Motion, (a) authorizing the Debtors to (i) maintain and administer their Customer Programs (defined below) and (ii) honor certain prepetition obligations related thereto; and (b) granting related relief.

80. The Debtors historically have provided certain incentives, discounts, and accommodations to their customers to attract and maintain positive customer relationships, the majority of which do not independently entail the expenditure of cash (such programs, as described below, collectively, the "Customer Programs"). In particular, the Debtors maintain the "Be Well Rewards" loyalty program through the Pharmaca business. This program is a loyalty rewards program where enrolled members earn "Be Well Rewards" points that are deposited into a customer's membership account with the Debtors.

81. The Debtors believe that their ability to continue the Customer Programs and to honor any obligations thereunder in the ordinary course of business is necessary to retain their reputation for reliability, comply with their legal obligations, meet competitive market pressures, and ensure customer satisfaction. Continuing the Customer Programs allows the Debtors to maintain the goodwill of their current customers and partners, attract new customers and partners,

and, ultimately, enhance their businesses' revenue and profitability to the benefit of all of the Debtors' stakeholders.

82. Accordingly, for the reasons set forth herein and expanded on in the Customer Programs Motion, on behalf of the Debtors, I respectfully submit that the relief requested therein is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in the Chapter 11 Cases with minimal disruption, thereby maximizing value for the estates.

H. HIPAA Motion

83. The Debtors request that the Bankruptcy Court enter an order authorizing certain procedures to maintain the confidentiality of customer information as required by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), while providing required disclosures in these Chapter 11 Cases. The Debtors further request that the Court establish the procedures described in the HIPAA Motion (the "Privacy Procedures") to balance the need to protect confidential health information pursuant to HIPAA with the need to disclose information regarding these Chapter 11 Cases to the public.

84. HIPAA and its corresponding regulations impose stringent standards on health care providers and establish significant penalties for any health care provider that uses or discloses patient information. *See* 42 U.S.C. § 1302d *et seq.*, 45 C.F.R. § 164.502. Because the Debtors qualify as health care providers that transmit health information, they are considered "covered entities" under 45 C.F.R. § 160.103. This designation prevents the Debtors from disclosing, except in limited circumstances, "individually identifiable health information." 45 C.F.R. § 164.502. HIPAA defines "individually identifiable health information" as any information relating to the individual's "past, present or future physical or mental health or condition, the provision of health care to the individual, or the past, present or future payment for the provision of health care to the individual" that also "identifies the individual or for which there is a reasonable basis to believe that the information can be used to identify the individual." 42 U.S.C. § 1302d(6). Individually

identifiable health information is referred to as “PHI” (protected health information) under HIPAA.

85. The Debtors believe the procedures outlined in the HIPAA Motion appropriately balance the need to maintain confidential patient information under HIPAA with the need for adequate disclosure under the Bankruptcy Code. Given the nature of any information that may reveal even the identity of patients, confidentiality in this context is of paramount importance.

86. Accordingly, for the reasons set forth herein and expanded on in the Customer Programs Motion, on behalf of the Debtors, I respectfully submit that the relief requested therein is in the best interests of the Debtors’ estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in the Chapter 11 Cases with minimal disruption, thereby maximizing value for the estates.

I. DIP Motion

87. Prior to the Petition Date, the Debtors faced severe liquidity challenges and recognized a need for further outside financing. The Debtors attempted over the course of months to raise additional financing, which culminated in \$10 million of additional financing under the TPC Loan Agreement and \$10 million under the Secured Notes in late August 2022. That financing proved insufficient for the long term and the Debtors were required to scramble to obtain additional bridge financing of \$1 million under the TPC Loan Agreement, which closed on November 30, 2022. Facing a further imminent liquidity shortfall (access to Cash Collateral alone is insufficient) and realizing the futility of obtaining outside financing in the face of \$91 million of existing senior secured debt, the Debtors turned again to the TPC for debtor-in-possession financing. Fortunately, TPC again agreed to extend financing, provided that such financing would consensually prime the Debtors’ obligations under the SVB Loan Agreement, the TPC Loan Agreement and the Secured Notes. Ultimately, TPC (through the entities defined as the DIP Lenders in the DIP Motion) was willing to provide the DIP Credit Facility (as defined in the DIP Motion) to the Debtors on the terms set forth in the DIP Term Sheet (as defined in the DIP Motion). After extended arms’ length and good faith negotiations, the Debtors, in an exercise of their sound

business judgment, determined that the terms of the proposed DIP Credit Facility represent a fair and reasonable outcome for these estates and should be approved by this Court.

88. The Debtors' estates will suffer immediate and irreparable harm if the relief requested in the DIP Motion is not granted. The Debtors do not have sufficient cash on hand to fund these Chapter 11, and thus access to DIP Credit Financing and the use of cash collateral is critical to ensure the Debtors' smooth entry into chapter 11. The commencement of these Chapter 11 Cases will place increased demands on the Debtors' liquidity due to, among other things, the costs of administering the Chapter 11 Cases. The relief requested is necessary to avoid the immediate and irreparable harm that would otherwise result if the Debtors are denied the proposed interim and final borrowings, including, among other things, frustrating the Debtors' ability to successfully navigate the Chapter 11 Cases. The DIP Credit Financing has been evaluated by the Debtors and their professionals, and it will provide sufficient liquidity to fund the Chapter 11 Cases. The Debtors negotiated the DIP Credit Financing, the use of cash collateral, and the adequate protection proposed in the DIP Motion in good faith and at arms' length, and I submit that the terms of the DIP Credit Facility are reasonable and the best that could be obtained under the facts and circumstances of these Chapter 11 Cases.


89. Accordingly, for the reasons set forth herein and expanded on in the DIP Motion, on behalf of the Debtors, I respectfully submit that the relief requested therein is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in the Chapter 11 Cases with minimal disruption, thereby maximizing value for the estates.

CONCLUSION

I have reviewed each of the First Day Pleadings. All of the facts set forth in the First Day Pleadings are true and correct to the best of my knowledge and belief based upon (a) my personal knowledge of the Debtors' operations and finances, (b) information learned from my review of relevant documents, (c) information supplied to me by other members of the Debtors' management team and the Debtors' advisors, and/or (d) my opinion based upon my knowledge and experience or information I have reviewed concerning the Debtors' operations and financial condition. Accordingly, the Debtors respectfully request that the relief requested in each of the First Day Pleadings be granted because such relief is a critical element in stabilizing and facilitating the Debtors' operations during the pendency of the Chapter 11 Cases.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Dated: December 9, 2022


Richard Willis
Chief Executive Officer