

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

In re:

Big Village Holding LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-10174 ()

(Joint Administration Requested)

**DECLARATION OF KASHA CACY IN SUPPORT OF
CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS**

I, Kasha Cacy, pursuant to 28 U.S.C. § 1746, and under penalty of perjury, declare the following to the best of my knowledge, information and belief:

1. I am the Global Chief Executive Officer of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”). I am familiar with the Debtors’ business and financial affairs and assets and liabilities, having served in this role since 2018. Prior to joining the Debtors, I was the President and U.S. Chief Executive Officer of Universal McCann, a full-service marketing and media agency network, where I was responsible for all U.S. operations, including more than 1,200 employees in five offices, while overseeing major U.S. based client relationships. In 2015, I was recognized as “one of 2015’s most indispensable executives” on the Adweek 50, and was also recognized as an Adweek Media All-Star. In 2020, I was awarded “Working Mother of the Year” by She Runs It. I received a B.S. in mathematics from Union College, and have more than 30 years’ experience in the advertising and marketing industry.

¹ The Debtors in these chapter 11 cases, along with the last four digits of their respective federal tax identification numbers, are: Big Village Holding LLC (6595); Big Village Group Holdings LLC (5882); Big Village Group Inc. (6621); Big Village Insights, Inc. (8960); Big Village Media LLC (7288); EMX Digital, Inc. (5543); Big Village USA Corporation, Inc. (3414); Big Village Agency, LLC (0767); Balihoo, Inc. (9666); Deep Focus, Inc. (8234); and Trailer Park Holdings Inc. (1447). The Debtors’ service address is 301 Carnegie Center, Suite 301, Princeton, NJ 80540.

2. All facts set forth in this declaration (this “**Declaration**”) are based on: (a) my personal knowledge; (b) my communications with members of the Debtors’ Boards of Directors or Managers (collectively, the “**Board**”), management team, and the Debtors’ consultants and professional advisors (collectively, “**Company Representatives**”); or (c) my opinions developed through my overall professional experience, personal knowledge of the Debtors’ history, financial condition, and business operations and affairs.

3. If called as a witness, I could and would testify competently to the matters set forth herein based on the foregoing. My testimony is further based on my review of the Debtors’ books and records and other relevant documents and information compiled and communicated to me by Company Representatives. I am duly authorized to submit this Declaration on behalf of the Debtors.

4. On the date hereof (the “**Petition Date**”), each of the Debtors commenced a voluntary case under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”). The Debtors intend to continue in possession of their assets and the management of their business as debtors in possession during the pendency of these chapter 11 cases (collectively, the “**Chapter 11 Cases**”).

5. This Declaration is submitted: (a) to provide a brief overview of the Debtors and these Chapter 11 Cases; and (b) in support of the Debtors’ chapter 11 petitions and “first day” motions and applications (collectively, the “**First Day Pleadings**”), which have been filed to minimize the adverse effects of the Debtors’ filing for chapter 11 protection, and to enhance the Debtors’ ability to maximize value for the benefit of their estates and creditors through the chapter 11 process, including the contemplated sale of some or substantially all of their assets pursuant to a robust auction and sale process.

6. This Declaration is organized into the following sections: *Section I* provides a brief overview of the Debtors' business and history; *Section II* summarizes the Debtors' equity ownership and capital structure; *Section III* describes the circumstances that led to the commencement of these Chapter 11 Cases, the Debtors' marketing and sale efforts, their efforts to obtain consensual use of cash collateral, and the Debtors' objective for these Chapter 11 Cases and the contemplated means by which that objective will be met; and finally *Section IV* provides the relevant facts in support of the First Day Pleadings and briefly summarizes the relief requested thereby.

7. A chart detailing the organizational structure of the Debtors as of the Petition Date is attached hereto as Exhibit 1 (the "**Org Chart**").

I. The Debtors' Business and Formation

A. Debtors' Business

8. The Debtors are a global advertising, technology, and data company with operations in the United States, European Union, and Australia. They assist their clients in understanding and reaching their target audiences through market research, content creation, media execution, and measurement. The Debtors deliver their advertising and digital content across multiple media channels and online platforms, and facilitate the implementation of targeted, data-driven advertising strategies which encompass all of the technology and intelligence necessary to execute global advertising campaigns. To that end, the Debtors operate through three primary business lines: Big Village Digital Insights ("**Insights**"), EMX Digital ("**EMX**"), and Big Village Agency ("**Agency**"). However, as of the Petition Date and as discussed more fully below, the Debtors have partially ceased EMX's operations.

9. Insights is the Debtors' market research arm focused on business insights and strategy, qualitative and quantitative consumer insights, product research, consumer experience tracking, and brand measurement. These offerings assist clients in delivering the right message and experience to the right consumer. For example, Insights worked with the Ad Council during their COVID-19 Vaccine Education Initiative to identify groups of people who were "open to COVID vaccines, though still hesitant to get one" and create segments of these consumers that could be targeted in media with messaging urging them to get more information about the vaccine. Insights also helps identify and effectively pursue new markets, audiences, and solutions. Notable clients of Insight include Altria, Aramark, Bissell, Fidelity, Healthcore, Johnson & Johnson, Optum Health, and T-Mobile.

10. Agency is an integrated, digitally-focused advertising agency that combines world-class digital-centric creative offerings, highly strategic media planning services, and expertise in understanding the Millennial and Z generations. Agency provides end-to-end marketing services as well as point solutions. For example, on the full service side of the business, Agency provides brand strategy, creative development, media execution, and measurement for the Aruba Tourism Board, executing all paid marketing efforts to drive US consumers to Aruba for vacation. On the point solutions side of the business, Agency is the social media agency of record for HBO and HBO Max, and executes all social media campaigns across a wide variety of social platforms on their behalf. Agency also houses Cassandra, the world's longest running youth and generational marketing research platform and consultancy. Cassandra sells a subscription service that provides access to insights and reports generated throughout the year, as well as bespoke consulting engagements for clients like Google, Facebook, and Amazon.

11. EMX is the Debtors' ad placement marketplace. It is a premium, direct-to-publisher supply-side platform that connected over 13,000 publishers and premium brands, generating more than 600 billion ad placement requests per month. The foundation of EMX is a real-time bidding exchange, which provides a competitive edge in maintaining low infrastructure costs, maximizing ad delivery speed, optimizing auction dynamics, and minimizing user data processing time. This custom-built, patented exchange technology maximizes the efficiency of every transaction. For example, a major media group integrated EMX into their client-side bidding network, resulting in increased demand, higher bid competition, faster response rates, and ultimately, increased revenue. The EMX exchange was integrated into major direct service providers including The Trade Desk, Amobee, Adobe, and Criteo, and was integrated with 13,000 publishers including ABC Television Group, AMC Networks, SamsungTV Plus, Vizio, Conde Nast, Hearst, CBSi, and Verizon Media. In addition to the exchange, EMX also offers full-service programmatic campaign strategy, planning, execution, and measurement through a managed service offering and unique local marketing solutions to execute local campaigns (the "**Managed Services Business**"). Due to the Debtors' deteriorating cash position, they were forced to partially shut down the EMX business, including the EMX exchange. However, they continue to operate the Managed Services Business, which the Debtors' expect to sell as a going concern through these Chapter 11 Cases.

B. Debtors' Formation

12. Founded in 2005 under the name the Engine Group Ltd. ("**Engine**"), the Debtors' predecessor was, at one time, the United Kingdom's largest privately held communications and advertising company. Engine received its first significant investment in late 2010, when H.I.G Europe, the European advisor to H.I.G Capital, made an investment of £62.5

million for a forty-percent stake in the business. At the time of this investment, Engine had more than 600 employees across twelve different communications companies operating in disciplines such as digital communications, advertising, direct marketing, public relations, and strategy consultancy. The partnership with and support of H.I.G. allowed Engine to expand into new markets, namely the United States, China, and Brazil.²

13. By 2013, Engine's operations had expanded to encompass more than 850 employees working across thirteen business lines. Engine's 2013 financial results showed that its revenue had surpassed £100 million, and it had raised an additional £3.4 million to fund small acquisitions.³ At this time, Engine had offices in London, New York, San Francisco, Shanghai, Hong Kong, Brussels, and Edinburgh.

14. In 2014, Lake Capital Partners ("**Lake Capital**"), through certain of its subsidiaries and investment vehicles, completed a leveraged buyout for all of the equity in Engine for £100 million. Lake Capital's acquisition provided Engine with a new debt facility, which funded working capital and other potential acquisitions. Through this acquisition, Engine partnered with two of Lake Capital's portfolio companies: (a) ORC International Inc., a global market search and business intelligence business; and (b) Trailer Park Holdings, LLC ("**Trailer Park**"), an entertainment and content marketing agency.

15. In May of 2018, the Debtors acquired three businesses that formed the foundation for the EMX business: bRealTime, Baliwoo, and Clearstream.

16. Engine operated in conjunction with these portfolio companies through mid-2021. In August of 2021, the Debtors sold substantially all of the assets of Trailer Park to

² <https://higcapital.com/news/release/an-affiliate-of-h.i.g.-europe-acquires-strategic-stake-in-the-engine-group>

³ <https://www.privateequityinternational.com/hig-seals-exit-from-the-engine-group/>

Erie Street Growth Partners and Origami Capital Partners for approximately \$65 million (consisting of approximately \$44.5 million in cash and the assumption of \$22 million in debt) (the “**Trailer Park Sale**”).⁴

17. In March of 2022, Next Fifteen Communications Group acquired Engine Group UK, the United Kingdom division of Engine’s business, along with approximately 600 employees, for £77.5 million (the “**Next 15 Sale**”). The Next 15 Sale included substantially all of the Debtors’ assets and personnel in the United Kingdom, including their creative, public relations, and digital consulting lines of business.

18. After the Next 15 Sale, the Debtors rebranded themselves as “Big Village” to reflect a renewed mission to eliminate the traditional silos of the marketing and advertising industries, and continued to provide a full range of marketing and advertising solutions to their clients. As of the Petition Date, the Debtors continue to operate across the United States, European Union, and Australia.

II. The Debtors’ Equity Ownership and Capital Structure

A. Equity Ownership

19. As reflected in the Org Chart, the equity interests of Debtor Big Village Holding LLC (“**Holding**”), a limited liability company organized under the laws of the State of Delaware, are held by: (a) the management of Holding, which hold 6.7% of its equity interests, (b) ORC Conduit, LLC, which holds 69.2% of Holding’s equity interests, (c) Trailer Park, which holds 16.8% of Holding’s equity interests, and (d) Holding’s minority shareholders, which hold 7.3% of its equity interests.

⁴ The principal of Erie Street Growth Partners is also a founder and principal of Lake Capital, and one of the Debtors’ board members.

20. Holding, in turn, owns ninety-percent (90%) of Debtor Big Village Group Holdings LLC (“**BVGH**”).⁵ BVGH owns 100% of the equity interests in Debtor Big Village Group, Inc., a Delaware corporation. The entities beneath Big Village Group, Inc. on the Org Chart consist of the Debtors’ various operating subsidiaries.

B. Capital Structure⁶

21. The Debtors’ current capital structure is generally described as follows:

i. Prepetition Credit Agreement

22. The Debtors’ current secured credit facilities were originally established in 2017. However, they were substantially amended and restated in 2020 as part of the Debtors’ efforts to combat the effects on their operations and revenue streams from the COVID-19 pandemic.

23. On November 17, 2020, Debtor Big Village Group, Inc., EMX Digital, Inc., Big Village Insights, Inc., Big Village Group Holdings, LLC, and certain subsidiaries party thereto as borrowers (the “**Prepetition Borrowers**”) and the prepetition lenders (such financial institutions in such capacities, the “**Prepetition Lenders**”) and BNP Paribas (“**BNPP**”) as administrative agent (in such capacity, the “**Agent**”, and together with the Prepetition Lenders, the “**Prepetition Secured Parties**”), entered into that certain under that certain *Amended and Restated Credit and Guaranty Agreement*, dated as of November 17, 2020 (as amended by that certain Amendment No. 1 to Credit Agreement, dated as of March 2021, as further amended by that certain Amendment No. 2 and Limited Consent, dated as of February 22, 2022, as further amended by that certain First Amendment to Amendment No. 2 and Limited Consent, dated as of September

⁵ Certain of the Prepetition Secured Parties own the remaining 10% of BVGH.

⁶ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the applicable prepetition credit documents described herein.

1, 2022, and as the same may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**Prepetition Credit Agreement**” and together with all other related documents, guarantees, and agreements, including, without limitation, security agreements, mortgages, pledge agreements, assignments, financing statements, and other agreements, documents, instruments or certificates executed in connection with the Prepetition Credit Agreement, the “**Prepetition Financing Documents**”).

24. The Prepetition Credit Agreement provided for a restructuring of the Company’s secured debt obligations by, among other things, (a) amending and restating that certain *First Lien Credit and Guaranty Agreement*, dated as of September 15, 2017, and (b) terminating that certain *Second Lien Credit and Guaranty Agreement*, dated as of September 15, 2017. After the restructuring of these facilities, the Prepetition Borrowers secured debt obligations were approximately \$158 million under the Prepetition Credit Agreement.

25. In 2021 and 2022, the Debtors consummated the Trailer Park Sale and the Next 15 Sale, with the proceeds being used to pay down the Prepetition Credit Agreement. As of the Petition Date, the Prepetition Borrowers were indebted to the Prepetition Secured Parties under the Prepetition Financing Documents, for (a) an aggregate principal amount of \$49,291,858.41 of 2020 Term Loans (as defined in the Prepetition Credit Agreement), and (b) accrued and unpaid interest, fees, and costs, expenses (including any attorneys’ and financial advisors’ fees), charges, indemnities, and other obligations incurred or accrued with respect to the foregoing pursuant to, and in accordance with, the Prepetition Credit Agreement.

ii. Trade Debt

26. As of the Petition Date, the Debtors’ books and records list approximately \$48 million in outstanding trade liabilities.

III. Circumstances Leading to these Chapter 11 Cases; Chapter 11 Objectives

A. The Debtors' Business Is Continuing to Face a Number of Significant Challenges

27. Marketing services, research, and media are not often viewed as “mission-critical” functions and represent opportunities for cost savings during difficult economic times. In times of cash preservation, it can be the first place where budgets are cut. This is especially true with programmatic media, where there are limited up front commitments, allowing advertising partners to easily and quickly reduce spending. With almost every industry under pressure, the Debtors began to face significant financial challenges at the onset of the COVID-19 pandemic.

28. In a first step to address their liquidity issues in 2020, the Debtors entered into multiple forbearances and amendments with the Prepetition Lenders. These restructuring efforts ultimately led to the establishment of the current Prepetition Credit Agreement and an equity infusion of cash in late 2020. Further, because the Debtors were ineligible for COVID-19 relief programs, they were forced to reduce headcount and implement temporary pay cuts for employees. The Debtors quickly recognized that the businesses could not sustain the significant debt burden, and began exploring alternatives to reduce their debt obligations. To that end, in 2021 the Debtors commenced a marketing process for certain assets and businesses that did not have strong synergistic ties to their go-forward business plan.

29. In August of 2021, the Debtors consummated the Trailer Park Sale, and in March of 2022, the Debtors consummated the Next 15 Sale. The proceeds of both the Trailer Park Sale and the Next 15 Sale were used to pay down the amounts outstanding under the Prepetition Credit Agreement, which reduced the Debtors' overall debt and provided them with additional working capital. However, as the company divested these assets, they became unable to support their centralized service costs. While the Debtors initiated further cost-savings measures to right

size headcount and cost structure, they have been unsuccessful in reducing their lease obligations. Indeed, two of the Debtors' leases, located in New York City and Los Angeles, represent nearly half of their fixed costs.

30. Following the Trailer Park Sale, the Next 15 Sale, and the above-mentioned cost-savings measures, the Debtors were able to stabilize the Agency and Insights businesses. EMX was also recovering in the first quarter of 2022, but was hit with the subsequent media spend pull-back due to declining economic conditions in the second and third quarters of 2022, along with broader industry headwinds. In response to the decline in revenue and unstable economic conditions, the Debtors further eliminated centralized costs and executed a restructuring of the EMX business.

31. EMX's primary asset is an automated technology platform that allows buyers and sellers to transact in real time. The technology has a relatively fixed cost to operate, and therefore, profitability increases significantly as additional revenue is received. In the past few months, the Debtors have made significant progress connecting additional buyers to the platform and improving revenue. These efforts enabled EMX to operate at lower revenue thresholds in 2023, and EMX was positioned to maximize revenue and profitability when the advertising market rebounds. However, demand for the EMX service continued to slow due to prevailing economic and industry factors.

32. Unfortunately, the Debtors' liquidity situation critically eroded before they were able to capitalize on the restructured EMX business. Traditionally, the fourth quarter is the Debtors' highest revenue quarter, but in order to capture these revenues, the Debtors must achieve strong sales during the preceding summer. The Debtors attempted to preserve their sale teams as much as possible to ensure that they could take advantage of the projected fourth quarter income,

but the unavoidable layoffs and overall pullback in the media marketplace strained the business. The Debtors' revenues declined rapidly through the end of the third quarter, and by early October 2022, the Debtors were forced to reinitiate layoffs and preserve liquidity.

B. Despite Significant and Prolonged Efforts, the Debtors Have Been Unable to Successfully Restructure Out of Court

33. Despite these measures, the Debtors' liquidity, performance, and operational challenges have persisted, and in late 2022, the Board began to increasingly consider the need for the Debtors to restructure or otherwise receive a cash infusion to ensure that the Debtors could move forward as a viable business.

34. In furtherance of these restructuring efforts, in September of 2022, the Debtors engaged Stephens Inc. ("**Stephens**"), as their investment banker. In late October of 2022, the Debtors engaged Triple P RTS, LLC, as restructuring advisor, and Young Conaway Stargatt & Taylor, LLP, as restructuring counsel. In November of 2022, the Debtors appointed Jill Frizzley – a seasoned restructuring professional, attorney, and independent fiduciary – as an independent director and member of the Board.

35. Shortly after their retention, Stephens began a formal marketing process for the sale of the Debtors' assets, both on an integrated basis as well as on a business line basis. As part of these efforts, Stephens crafted detailed marketing materials and assembled related diligence information for a confidential electronic data room (the "**Data Room**") and a confidential information presentation with the assistance of the Debtors and their other professional advisors. Stephens developed an initial list of approximately forty-four (44) strategic and financial prospective purchasers for the Agency and Insights businesses, and approximately thirty (30) purchasers for the EMX business. Stephens also circulated, via email, a detailed "teaser" and description of the opportunity to acquire the Debtors' assets to all of the prospective purchasers.

Ultimately, twelve (12) parties executed non-disclosure agreements and were granted access to the Data Room.

C. The Board Determined that, Given the Debtors' Lack of Liquidity and Increasing Vendor Pressure, the Only Viable Path Forward to Preserve the Value of the Debtors' Business and Assets Is a Chapter 11 Filing

36. After months of restructuring efforts, and after carefully considering, among other things, the Debtors' cash position and the increasing pressure from the Debtors' vendor and publisher base, the members of the Board determined that the only viable path to preserving and maximizing the value of the Debtors' assets was to commence these Chapter 11 Cases. Around the same time, the Board determined that it was in the Debtors' best interest to sell some or substantially all of their assets through a Court-approved marketing and sale process (the "**Sale Process**"). The Sale Process will provide a transparent and comprehensive avenue through which the Debtors will seek bids for their assets to maximize value for the estates.

37. Despite their prepetition marketing efforts, the Debtors' were unable to identify an actionable transaction for the entire EMX business. Absent significant cost-cutting measures, EMX's cash burn at full operation was unsustainable and would almost immediately drive the Debtors into a forced liquidation. Accordingly, prior to the Petition Date, the Debtors partially ceased operation of the EMX business. While the Debtors will maintain the Managed Services Business to be sold as a going concern, the remainder of EMX will be wound-down through these Chapter 11 Cases. Outside of the Managed Services Business, the Debtors have significantly reduced the EMX employee headcount, and will maintain a small team to assist with the wind-down of the remaining business, which will include collection of EMX's outstanding accounts receivables.

38. In early January, the Debtors received two asset purchase agreements for the Agency and Insights businesses. The Debtors then conducted good-faith, arms'-length negotiations with these prospective buyers simultaneously, and these prospective buyers conducted deeper diligence into the Agency and Insights businesses. After multiple rounds of negotiations with two potential purchasers, the Debtors ultimately selected NMMB, Inc., an affiliate of one of the prepetition lenders, to serve as a stalking horse purchaser for the Agency and Insights Businesses (the "**A&I Stalking Horse Purchaser**"). The A&I Stalking Horse Purchaser's asset purchase agreement (the "**A&I Stalking Horse Agreement**") contemplates a purchase price of \$12 million in cash, plus the assumption of certain liabilities and executory contracts, and satisfaction of all cure costs.

39. Around the same time, the Debtors also received an offer for the Managed Services Business. After multiple rounds of negotiations with the potential purchaser, the Debtors selected ZStream Acquisition LLC to serve the stalking horse purchaser for the Managed Services Business (the "**EMX Stalking Horse Purchaser**" and together with the A&I Stalking Horse Purchaser, the "**Stalking Horse Purchasers**"). The EMX Stalking Horse Purchaser's asset purchase agreement (the "**EMX Stalking Horse Agreement**" and together with the A&I Stalking Horse Agreement, the "**Stalking Horse Agreements**") contemplates a purchase price of \$2.1 million in cash, including the acquisition of certain outstanding accounts receivables on a dollar-for-dollar basis, plus the assumption of certain liabilities and executory contracts, and satisfaction of all cure costs. Importantly, it is anticipated that the EMX Stalking Horse Agreement will preserve approximately 20 jobs for rank and file employees.

40. The Stalking Horse Agreements provide the best option to maximize value for the Debtors estates. The Debtors' entry into the Stalking Horse Agreements, together with the

consensual use of cash collateral, permits the Debtors to conduct a value-maximizing Sale Process that is backstopped by the proposed Stalking Horse Purchasers. The Debtors' consummation of any sales pursuant to the terms of the Stalking Horse Agreements is subject to higher or otherwise better offers (in whole or through a combination of bids) that the Debtors may receive for their assets pursuant to the Bidding Procedures Motion (as defined below).

41. Further, the Stalking Horse Agreements benefit the Debtors by serving as a floor for an overbid process to ensure that the Debtors receive the highest or otherwise best offer for the sale of their assets. Accordingly, if the Debtors were to continue to market their assets without the benefit of the Stalking Horse Purchasers serving as the floor, the Debtors might encounter greater challenges in their pursuit of the highest or otherwise best offer for their assets.

42. Therefore, the Debtors believe that, subject to Court approval and under the supervision of the Court, the proposed Sale Process will allow them to move their Chapter 11 Cases forward with much needed certainty provided by the contemplated sale, and with a clear message to the Debtors' employees, customers, publishers, vendors, and the marketplace, all of which the Debtors believe is necessary and critical to the success of their chapter 11 efforts and the preservation of their business operations.

i. Bidding Procedures Motion

43. Given the nature of their assets, the prospective buyers, and the prepetition marketing process, the Debtors and their professional advisors are confident that interested parties will be able to assess the sale opportunity in an expeditious and thorough manner, and the Debtors are pursuing a value-maximizing transaction in the first approximately 60 days of these Chapter 11 Cases. The Sale Process has been designed in accordance with the milestones for these Chapter 11 Cases, in keeping with the Debtors' liquidity position and as contemplated by the Stalking

Horse Agreements and the Cash Collateral Motion (as defined below) (collectively, the “**Case Milestones**”).

44. In furtherance of Stephens’ efforts to actively market the Debtors’ assets for sale, and in accordance with the Case Milestones, the Debtors will be filing a motion (the “**Bidding Procedures Motion**”) seeking authority to proceed with a bidding and auction process to consummate a sale or series of sales (the “**Sale**”) that the Debtors expect will generate maximum value for their assets. To facilitate the Sale, the Debtors, in consultation with Stephens and their other professional advisors, will propose certain customary bidding procedures to preserve flexibility in the Sale Process, generate the greatest level of interest in the Debtors’ assets, and result in the highest or otherwise best value for those assets. Among other things, the Bidding Procedures Motion will seek approval of procedures that, in the Debtors’ business judgment, will create an appropriate timeline for the Sale Process, consistent with the Case Milestones. Also, given the Debtors’ current liquidity situation, the Debtors believe that a prompt sale of their assets will maximize value to the greatest extent possible under the circumstances of these Chapter 11 Cases, and generate the highest possible recoveries in the most efficient and expeditious manner possible, which will inure to the benefit of the Debtors’ creditors and other stakeholders. The Debtors also believe that it will ensure, to the benefit of their estates, that the market has certainty around the parameters of the Sale Process.

ii. Consensual Use of Cash Collateral

45. To enable the Debtors to fund the administration of these Chapter 11 Cases and the Sale Process, the Debtors, through their professional advisors, engaged in negotiations with the Prepetition Secured Parties regarding the consensual use of cash collateral to fund these Chapter 11 Cases. It is essential to the Debtors’ efforts to preserve and maximize the value of their

assets that they obtain the authority to use the cash derived from operating the business (the “**Cash Collateral**”). The Debtors will use the Cash Collateral to fund certain operating expenses related to the Debtors’ business operations and administrative fees related to these Chapter 11 Cases, subject to an approved budget (the “**Approved Budget**”). The Debtors believe that the use of Cash Collateral will be sufficient to fund their operations and the costs of these Chapter 11 Cases, including the Sale Process, without the need for debtor-in-possession financing.

46. The reasons supporting the Debtors’ need to use Cash Collateral during the course of these Chapter 11 Cases are compelling. The use of Cash Collateral is required to fund the day-to-day operating expenses, including payments to employees and otherwise sustaining the going concern value of the Debtors’ businesses. Unless the Court authorizes use of the Cash Collateral, the Debtors will be unable to pay for services and expenses necessary to preserve and maximize the value of the Debtors’ assets. Indeed, absent sufficient funds to support the Debtors’ business operations, the value of the Debtors’ assets will quickly erode. Therefore, immediate authorization to use Cash Collateral in accordance with the Approved Budget is in the best interests of the Debtors’ estates and creditors.

IV. First Day Pleadings⁷

A. Facts In Support of First Day Motions

47. To enable the Debtors to operate effectively and to avoid the adverse effects of these Chapter 11 Cases, the Debtors have filed the motions and applications described below.

48. In connection with the preparation for the commencement of these Chapter 11 Cases, I reviewed each of the First Day Pleadings referenced below. The First Day Pleadings

⁷ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the applicable First Day Pleading.

were prepared with my input and assistance, or the input and assistance of employees or other representatives of the Debtors working under my supervision. I believe the information contained in the First Day Pleadings is accurate and correct. As set forth more fully below, I believe that the entry of orders granting the relief requested in these motions and applications is critical to the Debtors' ability to preserve the value of their estates, assist in their chapter 11 efforts, and avoid any unanticipated interruption to their business operations that might otherwise be caused by the commencement of these Chapter 11 Cases. Absent the relief requested in the First Day Motions, I believe that the Debtors would suffer immediate and irreparable harm.

B. Administrative First Day Motions

i. Debtors' Motion for an Order, Pursuant to Bankruptcy Rule 1015 and Local Rule 1015-1, Authorizing the Joint Administration of the Debtors' Chapter 11 Cases (the "Joint Administration Motion")

49. The Debtors seek the joint administration of these Chapter 11 Cases for procedural purposes only. I believe that it would be far more practical and expedient for the administration of these Chapter 11 Cases if the Court were to authorize their joint administration. Joint administration will reduce costs and facilitate the administrative process by avoiding the need for duplicative notices, applications and orders. It is my understanding that no prejudice will befall any party by the joint administration of the Debtors' cases, as the relief sought therein is solely procedural, and not intended to affect substantive rights.

ii. Debtors' Application for the Retention and Appointment of Kroll Restructuring Administration LLC as Claims and Noticing Agent (the "Kroll Retention Application")

50. The Debtors request entry of an order, pursuant to section 156(c) of title 28 of the United States Code and Local Rule 2002-1(f), authorizing the retention and appointment of Kroll Restructuring Administration LLC ("**Kroll**") as claims and noticing agent in these Chapter

11 Cases. I believe that the relief requested in the Kroll Retention Application will ease the administrative burden on the Clerk of the Court in connection with the prosecution of these Chapter 11 Cases. In addition, I have been advised by counsel that Kroll's retention is required by the Local Rules in light of the anticipated number of creditors in these Chapter 11 Cases.

51. Therefore, on behalf of the Debtors, I respectfully request that the Kroll Retention Application be approved.

C. Operational First Day Motions

i. Debtors' Motion for Interim and Final Orders, Pursuant to Sections 105(a) and 366 of the Bankruptcy Code, (A) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Utility Services, (B) Deeming Utility Companies Adequately Assured of Future Payment, (C) Establishing Procedures for Determining Additional Adequate Assurance of Payment, and (D) Setting a Final Hearing Related Thereto (the "Utilities Motion")

52. Through the Utilities Motion, the Debtors request the entry of interim and final orders, among other things: (a) prohibiting the Utility Companies from altering, refusing, or discontinuing Utility Services on account of prepetition invoices, including the making of demands for security deposits or accelerated payment terms; (b) deeming the Utility Companies adequately assured of future payment; (c) establishing procedures for determining additional adequate assurance of future payment and authorizing the Debtors to provide additional adequate assurance of future payment to the Utility Companies; and (d) setting a final hearing related to the relief requested in the Utilities Motion.

53. The Utility Companies provide the Debtors with telecommunications, internet connectivity, electricity, and other similar services. The Utility Companies service the Debtors' headquarters and other office buildings. The Debtors could not operate their business or serve their customers in the absence of continuous Utility Services. Thus, any interruption in such

services would disrupt the Debtors' day-to-day operations and be incredibly harmful to their business.

54. In general, the Debtors have established a good payment history with the Utility Companies, making payments on a regular and timely basis. To provide adequate assurance to the Utility Companies, as required under section 366 of the Bankruptcy Code, the Debtors propose to deposit a sum of \$2,000, which represents 50% of the Debtors' estimated monthly cost of Utility Services subsequent to the Petition Date, into a segregated account to be maintained during the pendency of these Chapter 11 Cases in the manner provided for in the Proposed Orders.

55. I believe and am advised that the Assurance Procedures are necessary, because if such procedures were not approved, the Debtors could be forced to address numerous additional adequate assurance requests by the Utility Companies in a disorganized manner during the critical first weeks of these Chapter 11 Cases. Moreover, a Utility Company could unilaterally determine, on or after the 30th day following the Petition Date, that it is not adequately assured of future payment and discontinuing service or making an exorbitant demand for payment to continue service.

56. Accordingly, on behalf of the Debtors, I respectfully request that the Utilities Motion be approved.

ii. *Debtors' Motion for Interim and Final Orders, Pursuant to Sections 105(a), 363(b), 507(a)(8), 541, 1107(a), and 1108 of the Bankruptcy Code, (A) Authorizing the Debtors to Pay Certain Prepetition Taxes and Fees and Related Obligations, (B) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto, and (C) Scheduling a Final Hearing (the "Taxes and Fees Motion")*

57. The Debtors request authority to pay certain prepetition taxes and fees that, in the ordinary course of business, accrued or arose before the Petition Date. In the ordinary course of business, the Debtors incur or collect certain Taxes and Fees and remit such Taxes and Fees to

various Authorities in accordance with applicable law. Any failure to pay the Taxes and Fees could impair the Debtors' ability to continue their business operations. Any unexpected or inopportune interruption of the Debtors' operations during the course of these Chapter 11 Cases could diminish estate value and frustrate the Debtors' chapter 11 efforts. In addition, certain of the Authorities may take precipitous action against the Debtors' directors and officers for certain unpaid Taxes and Fees that undoubtedly would distract those individuals from their duties related to the Debtors' prosecution of these Chapter 11 Cases. Finally, based on my knowledge and conversations with the Debtors' professional advisors, it is my understanding that certain of the Taxes and Fees are entitled to priority status under the Bankruptcy Code and, as a result, must be paid in full before any general unsecured obligations may be satisfied.

58. Accordingly, on behalf of the Debtors, I respectfully request that the Taxes and Fees Motion be approved.

iii. Debtors' Motion for Interim and Final Orders, Pursuant to Sections 105(a), 363, and 364 of the Bankruptcy Code, (A) Authorizing (I) Payment of Prepetition Obligations Incurred in the Ordinary Course of Business in Connection with Insurance Programs, Including Payment of Policy Premiums and Broker Fees, and (II) Continuation of Insurance Premium Financing Programs; (B) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto, and (C) Scheduling a Final Hearing (the "Insurance Motion")

59. The Debtors request authority to (a) continue and, to the extent necessary, renew the Insurance Programs and pay policy premiums, and Broker Fees arising thereunder or in connection therewith, including such prepetition obligations arising in the ordinary course of business, and (b) continue the Financed Insurance Programs and enter into new premium financing programs, as necessary, under substantially similar terms, in the ordinary course of business.

60. In the ordinary course of business, the Debtors have maintained, and continue to maintain, among others, insurance programs for directors and officers, employment

practices and fiduciary liability, general liability, property, business automobile, cyber, and umbrella and excess liability, (collectively, the “**Insurance Programs**”). Continuation of the Insurance Programs is essential for preserving the value of the Debtors’ assets and, in most cases, such coverage is required by the various contracts and laws that govern the Debtors. Furthermore, it is my understanding that, pursuant to the chapter 11 operating guidelines issued by the United States Trustee for Region 3 pursuant to 28 U.S.C. § 586, the Debtors are obligated to maintain certain insurance coverage, which coverage is provided by the policies included in the Insurance Programs.

61. Similarly, the services provided by the Broker are critical to ensuring that the Debtors obtain the necessary insurance coverage on advantageous terms at competitive rates, and the Brokers have a significant amount of institutional knowledge regarding the Debtors’ insurance needs. If the Debtors were forced to replace the Brokers, the Debtors would necessarily be required to spend time, energy and resources getting a new insurance broker up to speed on the Debtors’ insurance needs.

62. Because it is not economically advantageous for the Debtors to pay the premiums on each of their Insurance Programs on an annualized basis, from time to time, in the ordinary course of business, the Debtors finance the premiums on certain of the Insurance Programs. If the Debtors are unable to continue making payments under their premium financing agreement, the financier may be permitted to terminate the Financed Insurance Programs. The Debtors would then be required to obtain replacement insurance on an expedited basis and likely at a significantly increased cost.

63. Accordingly, on behalf of the Debtors, I respectfully request that the Insurance Motion be approved.

- iv. *Debtors' Motion for Entry of Interim and Final Orders (A) Authorizing the Debtors to Maintain and Honor Certain Prepetition Customer Deposit Programs, (B) Authorizing Banks to Honor and Process Check and Electronic Transfer requests Related Thereto, and (C) Granting Related Relief (the "Customer Program Motion")*

64. In the ordinary course of business, the Debtors collect and hold Customer Deposits that are intended to be remitted to publishers or ad services (the "**Providers**"). As of the Petition Date, the Debtors believe that they hold approximately \$2,000,000 in Customer Deposits. Failure to maintain the Customer Deposits in the ordinary course of business would severely disrupt the Debtors' business operations.

65. The Debtors believe that their ability to continue the Customer Deposits and to honor their obligations thereunder in the ordinary course of business, on the terms forth in the Customer Programs Motion, is necessary to (i) retain their reputation for reliability, (ii) meet competitive market pressures, (iii) maintain positive customer relationships, and (iv) ensure customer satisfaction, preserving brand value during the Chapter 11 Cases and thereby enhancing the Debtors ability to maximize value. Accordingly, for the reasons set forth herein and in the Customer Programs Motion, the relief requested in the Customer Programs Motion is necessary to avoid immediate and irreparable harm to the Debtors, for the Debtors to operate their business without interruption, and to preserve value for the Debtors' estates.

- v. *Debtors' Motion for Entry of Interim and Final Orders (A) Authorizing the Debtors to Pay Certain Prepetition Claims of Critical Vendors and Service Providers; (B) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto; and (C) Granting Related Relief (the "Critical Vendor Motion")*

66. Through the Critical Vendor Motion, the Debtors request authority to (a) pay, in the ordinary course of business, certain prepetition claims of critical vendors and service

providers (each, a “**Critical Vendor Claim**,” and collectively, the “**Critical Vendor Claims**”), in an amount up to \$1.5 million (the “**Critical Vendor Claims Cap**”)

67. In the ordinary course of business, the Debtors engage a limited number of providers (collectively, the “**Critical Vendors**”) for certain services that the Debtors depend upon to drive revenue. Any interruption in these services—however brief—risks materially disrupting the Debtors’ operations and could cause irreparable harm to their business, goodwill, and customer base, and will likely hinder the Debtors’ ability to realize maximum proceeds from the Sale Process.

68. The Debtors have conducted an extensive analysis and review of the Debtors’ immediate operational needs and sale efforts, and have concluded that there is a significant risk that the Critical Vendors will cease doing business with the Debtors unless their Critical Vendor Claims are paid. Should any Critical Vendor stop supplying services to the Debtors, the Debtors’ sale efforts would be adversely affected as a result for the reasons outlined in the Critical Vendor Motion. The Debtors and their advisors closely analyzed the Debtors’ needs during the projected sale timelines, and determined the Critical Vendors Claim Cap with those needs in mind. As such, the Debtors submit that the amount of the Critical Vendor Claims Cap pales in comparison to the likely damage to the Debtors’ businesses and estates should the relief requested herein not be granted.

69. Accordingly, on behalf of the Debtors, I respectfully request that the Critical Vendor Motion be approved.

vi. *Debtors’ Motion for Interim and Final Orders, Pursuant to Sections 105(a), 345, 363, 1107(a), and 1108 of the Bankruptcy Code, Bankruptcy Rule 2015, and Local Rule 2015-2, (I) Authorizing and Approving Continued Use of Cash Management System, (II) Authorizing Use of Prepetition Bank Accounts and Business Forms, (III) Waiving the Requirements of Section*

345(b) on an Interim Basis, and (IV) Granting Certain Related Relief (the “Cash Management Motion”)

70. Through the Cash Management Motion, the Debtors request: (a) approval of the continued use of the existing cash management system; (b) granting the Debtors a waiver of certain bank account and related requirements of the Office of the United States Trustee for the District of Delaware to the extent that such requirements are inconsistent with (i) the Debtors’ practices in connection with their existing cash management system, or (ii) any action taken by the Debtors in accordance with any order granting the relief requested in this Motion or any other order entered in these Chapter 11 Cases; and (c) waiving the requirements of section 345(b) of the Bankruptcy Code with respect to the Debtors’ deposit practices on an interim basis.

71. In the ordinary course of business, the Debtors utilize a central cash management system to collect, transfer, and disburse funds generated by their operations (the “**Cash Management System**”). It is critical that the Debtors be able to consolidate management of cash and centrally coordinate transfers of such funds to operate their business efficiently and effectively. Any disruption to the Cash Management System would seriously harm the Debtors. Maintenance of the existing Cash Management System will prevent any unexpected or inopportune interruption to the Debtors’ business operations while protecting the Debtors’ cash for the benefit of their estates. Requiring the Debtors to change their Cash Management System at this critical time would, among other things, cause unnecessary disruption to the Debtors and their business affairs.

72. The Cash Management System provides significant benefits to the Debtors, including the ability to: (a) closely track, and thus control, all corporate funds; (b) ensure cash availability; and (c) reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate account balance and presentment information. A disruption

in the Cash Management System could cause delays in the collection and disbursement of funds, thus impeding the Debtors' ability to avoid an unexpected or inopportune interruption in their operations during the pendency of these Chapter 11 Cases.

73. The Debtors' Chapter 11 Cases will be facilitated by preserving the "business as usual" atmosphere, and avoiding the distractions that would inevitably be associated with a substantial disruption in the Cash Management System. Furthermore, if enforced, the U.S. Trustee Guidelines would cause enormous disruption to the Debtors' business and would impair the Debtors' chapter 11 efforts. I believe that maintaining the Bank Accounts is necessary to avoid delays in paying debts incurred postpetition, and to ensure as smooth a transition into chapter 11 as possible. If the Debtors are required to transfer their existing Bank Accounts, it will be disruptive, time consuming, and expensive. Likewise, it would be costly and disruptive to require the Debtors to begin using new stationary and business forms.

74. Accordingly, on behalf of the Debtors, I respectfully request that the Cash Management Motion be approved.

- vii. *Debtors' Motion for Entry of Interim and Final Orders, Pursuant to Sections 105(a), 363(b), 507(a)(4), and 507(a)(5) of the Bankruptcy Code, (A) Authorizing (I) Payment of Prepetition Employee Wages, Salaries, and Other Compensation; (II) Payment of Accrued Prepetition Obligations Owed to Independent Contractors; (III) Continuation of Bonus Obligations to Be Paid in the Ordinary Course; (IV) Payment of Prepetition Employee Business Expenses; (V) Contributions to Prepetition Employee Benefit Programs and Continuation of Such Programs in the Ordinary Course; (VI) Payment of Severance Obligations; (VII) Payment of Workers' Compensation Obligations; (VIII) Payments for Which Prepetition Payroll Deductions Were Made; (IX) Payment of All Costs and Expenses Incident to the Foregoing Payments and Contributions; and (X) Payment to Third Parties of All Amounts Incident to the Foregoing Payments and Contributions; and (B) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto (the "Employee Wages Motion")*

75. Through the Employee Wages Motion, the Debtors request authority to, in accordance with their stated policies: (a) pay accrued prepetition Employee wages, salaries, commissions, and other compensation; (b) pay accrued prepetition Independent Contractor obligations; (c) continue to honor bonus obligations in the ordinary course; (d) pay prepetition employee business expenses; (e) make contributions to prepetition benefit programs provided to the Employees, the most significant of which are described below, and continue such programs in the ordinary course of business with respect to the Employees; (f) honor severance obligations; (g) honor workers' compensation obligations; (h) make payments for which prepetition payroll deductions were made; (i) pay processing costs and administrative expenses relating to the foregoing payments and contributions; and (j) make payments to third parties incident to the foregoing payments and contributions (collectively, and as described in greater detail below and in the Employee Wages Motion, the "**Employee Wages and Benefits**").

76. Prior to the Petition Date, the Debtors employed approximately 320 Employees (as defined below). However, shortly before the Petition Date, the Debtors partially ceased operations of EMX Digital, Inc., and terminated approximately 35 Employees. While the Debtors believe that these terminated Employees were paid through their respective termination dates prior to the Petition Date, out of an abundance of caution, such amounts were included in the calculation of Unpaid Wages (as defined below).

77. As of the Petition Date, the Debtors' workforce comprises of approximately 260 full-time, salaried employees (the "**Full-Time Employees**") and sixteen (16) freelance, part-time employees that are paid hourly (the "**Part-Time Employees**," and together with the Full-time Employees, the "**Employees**"). The Employees work in various states across the United States. The Debtors have offices located in Los Angeles, California, San Francisco, California, Chicago,

Illinois, Boston, Massachusetts, Minneapolis, Minnesota, Princeton, New Jersey, Cincinnati, Ohio, and New York, New York, but immediately prior to the Petition Date, majority of the Employees were working remotely.

78. In addition, the Debtors supplement their workforce by retaining from time to time individuals and vendors with specialized expertise as independent contractors (the “**Independent Contractors**,” and together with the Employees, the “**Workforce**”). The number of Independent Contractors employed by the Debtors at any given time fluctuates depending on the Debtors’ business needs. The Independent Contractors fill immediate business needs of the Debtors and allow the Debtors to have a flexible Workforce to meet their operational needs in a cost-effective manner.

79. In the ordinary course of business, the Debtors maintain a variety of business practices, programs, and policies for their Employees. The following table contains descriptions of the significant Employee Wages and Benefits programs, and the Debtors’ estimates of the fees and expenses, including amounts owed to third-party administrators, incident to the Employee Wages and Benefits obligations that have accrued but remain unpaid as of the Petition Date:

<u>Employee Wages and Benefits</u>	<u>Aggregate Amount</u>
Unpaid Wages	\$1,600,000.00
Payroll Processor Fees	\$18,000.00
Employee Expenses	\$50,000.00
Wage Deductions	\$250,000.00
Trust Fund Taxes and Payroll Taxes	\$350,000.00

Health Benefits	\$200,000.00
Paid Time Off	Unless required by applicable state law, no cash-out payments for accrued and unused Paid Time Off will be made. However, the Debtors intend to continue the Paid Time Off programs in the ordinary course of business.
401(k) Plan	\$10,000.00
Life and AD&D Insurance and Disability Benefits	\$21,000.00
Severance Obligations	\$67,000.00
Workers' Compensation Program	\$13,250.00

80. The Debtors' ability to preserve the value of their assets and successfully conduct these Chapter 11 Cases depends on the continued expertise, enthusiasm and service of their Workforce. Due to the disruption and uncertainty that typically accompanies a chapter 11 filing, the Debtors believe that the morale and performance of their Employees may be adversely affected. If the Debtors fail to pay the Employee Wages and Benefits in the ordinary course, their Workforce will suffer personal hardship and, in some cases, may be unable to pay their basic living expenses. This result would have a highly negative impact on workforce morale, and likely would result in unmanageable performance issues, thereby resulting in immediate and irreparable harm to the Debtors and their estates.

81. Accordingly, on behalf of the Debtors, I respectfully request that the Employee Wage Motion be approved.

viii. Debtors' Motion for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral; (B) Granting Adequate Protection; (C) Scheduling

a Final Hearing; and (D) Granting Related Relief (the “Cash Collateral Motion”)

82. Through the Cash Collateral Motion, the Debtors intend to request entry of interim and final orders, authorizing the Debtors’ use of Cash Collateral and granting adequate protection to the Prepetition Secured Parties. Importantly, the Debtors have obtained the consent of the Prepetition Secured Parties to use Cash Collateral subject to the terms set forth in the Cash Collateral Motion and the Approved Budget, which will protect the Prepetition Secured Parties from any diminution in value.

83. The Debtors require immediate access to liquidity to ensure they are able to continue operating their businesses during these Chapter 11 Cases, preserve the value of the estates for the benefit of all parties in interest, and administer a value-maximizing Sale Process. However, without prompt access to Cash Collateral, the Debtors would be unable to, *inter alia*, satisfy obligations owed to its publishers, satisfy trade payables incurred in the ordinary course of business, preserve and maximize the value of their estates, and fund the administration of these Chapter 11 Cases, which would cause immediate and irreparable harm to the value of the Debtors’ estates, to the detriment of all stakeholders.

84. During these Chapter 11 Cases, the Debtors will generate cash from their operations and will need to use such cash to satisfy vendor and publisher obligations, maintain insurance coverage, pay taxes, fund payroll, and make other payments essential to the continued management, operation, and preservation of the their businesses. The ability to satisfy these expenses as and when due is essential to the Debtors’ continued operation of its businesses during the pendency of these Chapter 11 Cases. Other than the Cash Collateral, the Debtors do not have access to funds sufficient to continue operation of their businesses.

85. The Debtors have reached an agreement with the Prepetition Secured Parties on an Approved Budget, which, subject to customary permitted variances and roll forwards, will set forth the amounts that the Debtors will be authorized to spend during the course of these Chapter 11 Cases. I have worked closely with the Debtors' management and professional advisors to ensure that the Approved Budget includes those amounts that will be necessary to preserve and maximize the value of the Debtors' estates. The Cash Collateral Motion only seeks authority to expend amounts in the Approved Budget during the period prior to a final hearing on the motion that will avoid any immediate and irreparable harm to the Debtors and their businesses from a failure to have access to the goods and services used to operate the businesses.

86. For the foregoing reasons, the Debtors' continued use of Cash Collateral is necessary to preserve the value of its estate and maximize its value for the benefit of all stakeholders.

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CONCLUSION

87. In conclusion, for the reasons stated herein and in each of the First Day Pleadings, I respectfully request that each First Day Pleading be granted in its entirety, along with such other and further relief as the Court deems just and proper.

I certify under penalty of perjury that, based upon my knowledge, information and belief as set forth herein, the foregoing is true and correct.

Executed: February 8, 2023

/s/ Kasha Cacy

Kasha Cacy

Chief Executive Officer

EXHIBIT 1

Org Chart



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DETAILED LEGAL AND OWNERSHIP STRUCTURE

*Highlighted entities indicate Debtors

