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Case No. 2023-0195-PAF

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: THEONYS, INC., a Delaware corporation, Assignor, To: TI ASSIGNEE, LLC, a Delaware limited liability company, Assignee.	))))))))))))))	C.A. No. 2023-0195

ORDER GOVERNING THE ASSIGNMENT
FOR THE BENEFIT OF CREDITORS

This voluntary assignment for the benefit creditors (the "Assignment") shall proceed as follows:

1. Within 10 days of this order, the assignee shall file on the docket a detailed affidavit or affidavits (the "Initial Affidavit") containing the following information, to the extent not already included in the petition or affidavit of inventory already on file:

   a. The description of the affiant and the affiant's relationship with the assignor or assignee;

   b. A description of the assignee, its experience, its principal or parent entity, and the events leading up to its creation;

c. A description of the assignor, its business prior to the Assignment, and its corporate and capital structure;

d. A detailed description of any debt obligation secured by all or substantially all of the assignor's assets, including the purpose of the obligation at the time it was entered, and its current status;

e. The events leading up to the Assignment;

f. Any efforts to sell the assignor or its assets within the year prior to the date of the Assignment;

g. A description of how the assignee was engaged;

h. A description of the terms of any agreement, arrangement, or understanding concerning the assignor or its assets between or among, on the one hand the assignee or its principal, and on the other hand any director, officer, employee, or creditor of the assignor, or any potential acquirer of the assignor or its assets;

i. If the assignee contemplates the disposition of any of the assigned assets prior to the submission of the appraisals required by 10 *Del. C.* §7382 and the bond required by 10 *Del. C.* § 7383, a detailed explanation for doing so; and

j. The assignee's efforts to collect the documents identified in paragraph 2 of this order and the reasons for any inability to provide the information requested herein.

2. The Initial Affidavit shall include the following exhibits, to the extent not already included in the petition and affidavit of inventory:

a. Documents evidencing the assignor's authorization to enter into the Assignment;

b. Documents evidencing the terms of the assignee's engagement, including the Assignee's fee schedule.

c. Documents evidencing the terms of any engagement of the assignee or its parent entity with the assignor, any of its directors, officers, employees, or creditors relating to the assignor or its assets at any time within one year of the date of the Assignment;

d. Documents evidencing any agreement, arrangement, or understanding between the assignee or its parent entity and any person relating to the Assignment or the assigned assets;

e. Documents evidencing any agreement, arrangement, or understanding between or among any director, officer, employee, or creditor relating to the Assignment.

f. A list of all engagements for which the parent of the assignee or any of its affiliates has served as an assignee in an assignment proceeding filed in this court over the last three years.

3. To the extent not already included in the affidavit of inventory, the Initial Affidavit shall also include the following:

a. The Assignor's balance sheet as of the date of the assignment or the most recent fiscal period available;

b. A list of all of the assignor's known creditors, organized by the creditors' status as secured or unsecured creditors, each creditor's priority to the assigned assets, and the amounts owed to each creditor;

c. The affidavit shall indicate whether any of the assignor's known creditors is a director, officer, employee, or stockholder of the assignor or is otherwise affiliated with any of the foregoing persons.

d. An explanation of the assignee's efforts to investigate and obtain the information requested in this paragraph.

4. The assignee shall not grant: (a) a security interest in the assigned assets; (b) enter into any agreement providing for the sale of the assignor's business as a going concern; or (c) enter into any agreement

providing for the sale of all or substantially all of the Assignment assets in a single transaction unless at least ten business days before entering into any such agreement, the assignee: (i) files with the court an affidavit explaining the reasons for entering into the agreement and the identifying the counterparty and its affiliation with any director, officer, employee, or creditor of the assignor; (ii) attaches the proposed terms of the agreement; and (iii) provides notice of the foregoing to all known creditors and other persons in interest.

5. Within ten days of entry of this order, the assignee shall file a motion seeking the appointment of appraisers pursuant to 10 *Del. C.* § 7382 and a proposed form of order. The motion shall include:

   a. A description of the proposed compensation structure for each appraiser;

   b. A list of the engagements involving assignments for the benefit of creditors that the appraiser has performed in the last three years, which shall also identify the engagements with or for the parent of the assignee during that same period;

   c. A detailed description of any compensation arrangement between the appraiser and the parent of the assignee involving assignment proceedings generally;

d. Sworn declarations by the appraisers identifying any known relationship between the appraiser and the assignor or any of its directors, officers, creditors, or potential acquirers of the assigned assets or attesting to the absence of the foregoing.

6. Absent leave of court for good cause shown, the appraisals required by 10 *Del C.*§ 7382 shall be filed within 30 days after the court enters an order appointing appraisers. Any motion to extend this deadline shall be accompanied by an affidavit explaining the need for extension. If any extension is granted, the assignee shall not dispose of any of the assigned assets or enter into any agreement to dispose of any of the assigned assets until an order is entered fixing bond pursuant to 10 *Del. C.* § 7383.

7. Motions to waive the appraisal requirement will be considered only in the exceptional circumstance where (i) the assignment assets consist solely of cash or cash receivables; (ii) face value of the cash and cash receivables are not sufficient to satisfy the indebtedness to the first position creditor; (iii) the first position creditor agrees with the face value of the cash and cash receivables and files a sworn declaration agreeing to waiver of the appraisal requirement. *See in re Weaver Hldg. Co.*, 2011 WL 5910707, at *1 (Del. Ch. Nov. 28, 2011).

8. The assignee shall file a motion to fix a bond in accordance with 10 *Del. C.* 7383 on the date that the appraisals are filed. The court will not entertain any motion to waive the bond requirement of. *See Weaver*, 2011 WL 5910707, at *1.

9. The assignee shall render an account pursuant to 10 *Del C.* § 7385 every year form the date of the assignee's bond until the Assignment is closed in accordance with Section 7385. The account shall include a detailed affidavit explaining the assignee's activity during the reporting period and an estimated date for completion of the Assignment. The assignee shall provide notice of the account to all known creditors and persons in interest and shall advise that any exceptions to the account, other than the final account, shall be filed with the Register in Chancery no later than 30 days after the filing of the account.

10. Upon completion of the assignee's charge under the Assignment, the assignee shall file a motion to approve the final account, discharge the assignee, and close the assignment (the "Discharge Motion"). Upon the filing of the Discharge Motion, counsel for the assignee should contact chambers for a hearing date on the Discharge Motion, which will be scheduled no sooner than 45 days after the filing of the Discharge Motion. The Discharge Motion shall include:

a. A detailed final account, accompanied by an affidavit of the assignee detailing the final account and all of the assignee's activities since the filing of the prior account, if any.

b. A form of scheduling order providing for a hearing to consider the Discharge Motion and any exceptions to the proposed final account.

c. A form of notice to all known creditors and persons in interest, advising them of the Discharge Motion, the date, time, and place of the hearing to consider the Discharge Motion, and the opportunity to file exceptions in advance of the hearing on the Discharge Motion.

d. A form of final order providing for the approval of the Discharge Motion.

e. An acknowledgement that the assignee's counsel will file a declaration in advance of the hearing certifying that notice was provided to all creditors and interested persons in accordance with the scheduling order.

/s/ Paul A. Fioravanti, Jr.
Vice Chancellor

Dated: May 22, 2023