

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:	)	
	)	Chapter 11
	)	
SMILEDIRECTCLUB, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 23-90786 (CML)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

**DECLARATION OF TROY CRAWFORD,  
CHIEF FINANCIAL OFFICER OF SMILEDIRECTCLUB, INC., IN SUPPORT  
OF THE DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS**

---

I, Troy Crawford, hereby declare under penalty of perjury:

**Introduction**

1. The Debtors commence these chapter 11 cases under extremely challenging circumstances. After being unable to obtain third-party financing, the Company's founders have extended a life-line to preserve the business as a going concern. The DIP Facility, which provides for a total of up to \$80 million, affords the Debtors \$20 million on an interim basis. That \$20 million will be used to fund the business and run an expedited marketing process during the first 60 days of these chapter 11 cases. Absent interest in a going-concern transaction between now and November 23, 2023, the DIP Facility provides for an orderly and expeditious liquidation of the business through a chapter 11 plan. Time is of the essence and the Company, its founders, and its advisory team are laser focused on a going concern solution for a company that is firmly believed to have a reason to exist.

---

<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://restructuring.ra.kroll.com/SmileDirectClub>. The location of Debtor SmileDirectClub, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is: 601 West 26th Street, Suite 900, New York, New York 10001.

2. SmileDirectClub, Inc. (“SDC, Inc.,” together with the above-captioned debtors and debtors in possession, the “Debtors,” and collectively with their non-Debtor affiliates, “SmileDirect” or the “Company”) was founded in 2014 based on one simple belief: everyone deserves a smile they love. An industry leader in telehealth-driven clear aligner therapy, SmileDirect’s mission was born from a startling statistic: approximately 1% of the U.S. population receives orthodontic care each year—primarily due to lack of accessibility and exorbitant costs—while an estimated 85% of the population would benefit from this care. SmileDirect helps bridge that gap.



3. Through its pioneering telehealth platform, unique vertically integrated business model, and robust network of dental professional partners, SmileDirect keeps costs down, differentiating the Company from its competitors and making a confident smile more attainable for the underserved global orthodontics market. The Company’s direct-to-consumer approach revolutionized the oral care industry and transformed the smiles of more than two million customers around the world.

4. From its founding through the onset of the COVID-19 pandemic, the Company experienced steady organic growth, consistently driving new customers to the platform and increasing revenue year-over-year. The Company’s revenue grew from approximately \$20.6 million in 2016 to over \$750 million in 2019. Over this period, the Company grew its physical footprint both within the United States—where it currently maintains a state-of-the-art

manufacturing facility and over 110 “SmileShop” retail locations—and globally, with active operations and SmileShop locations across Canada, the United Kingdom, Australia, Costa Rica, Ireland, and Puerto Rico. The Company’s expectations for its business in 2020 included a sales goal of \$1 billion with anticipated additional international expansion.



5. Despite its telehealth care model, SmileDirect was not immune to the COVID-19 pandemic. The Company’s operations during the pandemic were stifled due to, among other things, forced store closures, supply chain disruptions, and labor shortages, reducing the Company’s ability to timely fulfill orders and increasing its cost of doing business. With rising inflation on the heels of the COVID-19 pandemic, combined with the Federal Reserve’s efforts to combat inflation through significant interest rate increases, consumer spending habits dramatically shifted. This dynamic proved particularly detrimental to SmileDirect’s business as the Company’s sales have historically been driven by lower to middle income consumers who are attracted to the Company’s lower prices and financing offerings as compared to competitors.

6. During the COVID-19 pandemic, the Company shifted its business model from SmileShops—which, before the pandemic, were responsible for approximately 90% of the Company’s sales—to doctor-prescribed impression kits shipped directly to the customer’s home. Before the pandemic, this only constituted approximately 10% of the Company’s sales.

This operational shift decreased the Company's conversion rates, and as the COVID-19 pandemic continued and target consumers backed away from discretionary spending, SmileDirect's sales plummeted. By the end of 2020, SmileDirect suffered a net loss of \$278 million, with its publicly traded stock dropping almost 20% in extended trading. This trend continued as SmileDirect reported net losses of \$335.7 million and \$277.9 million in 2021 and 2022, respectively. The Company's losses were driven in large part by the Company's steadily declining revenue following the pandemic. Between 2019 and 2022, revenue decreased by \$279.7 million (37.3%).

7. In light of the lingering impact of the COVID-19 pandemic and the Company's ongoing liquidity challenges, in February 2021, SDC, Inc. raised, in the aggregate, a total of \$747.5 million through (a) the issuance of \$650 million in principal amount of 0.00% convertible unsecured senior notes due 2026 (the "Original Convertible Notes," and together with the Optional Convertible Notes (as defined herein), the "Convertible Notes") and (b) certain capped call transactions resulting in an additional \$97.5 million in incremental financing. These proceeds helped fund the Company's international and operational growth. With the Convertible Notes due 2026, however, the Company faced immense difficulty obtaining any financing from its existing creditors or third parties to help right-size its capital structure.

8. In response to decreasing sales, the continuing macroeconomic decline, and the inflationary environment, the Company undertook a holistic review of its business with the goal of right-sizing its entire operating structure, including its facilities and headquarter footprint, workforce, and other key cost spending. To that end, the Company only allocated capital to core growth initiatives that produce the best return on that capital investment. For example, the Company implemented cost-cutting measures by, among other things, reducing marketing

costs and overhead expenses, and took additional steps to stem losses by suspending certain global operations in underdeveloped or underperforming markets.

9. Although the Company's operational enhancements helped rationalize its business model and improve performance, the Company determined it needed to couple these efforts with outside financing to bolster its deteriorating liquidity position. On April 27, 2022, the Company entered into the HPS Credit Facility, thereby providing the Company with financial flexibility to continue investing in key strategic growth areas. But throughout 2022 and 2023, the inflationary environment persisted, and the Company continued to endure financial challenges due to heavily reduced receipts and, by extension, decreased operating cashflow. The Company instituted an at-the-market offering program, providing access to additional liquidity through the capital markets. The Company also engaged financial consultants in July 2022 to explore additional funding sources or a comprehensive restructuring transaction. These discussions continued for over a year with the Convertible Notes Group as well as other private equity and investment firms.

10. The Company's liquidity challenges were further exacerbated by a long-standing dispute with Align Technology, Inc. ("Align," and the underlying litigation, the "Align Litigation"), the maker of Invisalign and the Company's largest competitor. The deterioration of the Company's relationship with Align came after Align violated the restrictive covenants it had agreed to when it became a 19% investor in the Company and its exclusive third-party supplier. This sparked years-long litigation between the companies, with the most recent arbitration between the parties resulting in a \$63 million judgment entered against SmileDirect on September 12, 2023 (the "Align Judgment"). The California Superior Court stayed Align from taking any action to enforce the Align Judgment through September 29, 2023. The Company vigorously disagrees with the Align Judgment, and the costs associated with the Align Litigation (and consequences of

Align's intended actions) have negatively impacted the Company's liquidity forecast and the Company's ability to negotiate with third parties.

11. At the beginning of 2023, the Company announced two initiatives that would be brought to the market, including (a) its new AI-driven SmileMaker platform, which uses mobile technology to create an initial 3D image of a customer's teeth and preliminary treatment plan and allows a customer to begin their journey on a mobile device and (b) CarePlus, a premium hybrid offering that includes the optionality of in-person doctor visits and customer service enhancements to drive growth through earlier conversion and target a higher-income demographic that could continue discretionary spending notwithstanding a prolonged inflationary environment. The Company achieved five successive quarters of improved EBITDA and, through its financial discipline, was on a path towards becoming EBITDA positive in Q3 2023 and free cash flow positive by Q4 2023. Despite these positive trends, the Company's inability to raise any third-party financing, coupled with the Convertible Notes due 2026 and the Align Judgment, completely hinders the Company's ability to fully realize the benefit of its promising initiatives. Hence the commencement of these chapter 11 cases.

12. As of the Petition Date, and as further described in Part II below, the Company had approximately \$890.6 million of funded debt, consisting of:

- **HPS Credit Facility:** \$138.1 million in principal amount outstanding under the HPS Credit Facility, secured by substantially all assets of non-Debtor SDC U.S. SmilePay SPV (the "SPV"), including the majority of the Company's customer receivables and intellectual property;
- **Secured Promissory Note:** \$5 million in principal amount outstanding under the Secured Promissory Note issued by SmileDirectClub, LLC ("SDC LLC") in exchange for a bridge loan from the Company's founders; and
- **Convertible Notes:** \$747.5 million in unsecured convertible notes issued by SDC, Inc.

13. Two of the Debtors—SDC LLC and SDC Financial LLC (“SDC Financial”)—guarantee 10% of the amounts outstanding under the HPS Credit Facility on an unsecured basis. The continued functioning of the HPS Credit Facility is a critical aspect of the Company’s day-to-day operations because a majority of the Company’s receivables—and, accordingly, revenues—flow through the SPV. To that end, constructively engaging with HPS Investment Partners, LLC (“HPS”) was critical in ensuring the uninterrupted operations of the Company in chapter 11.

14. As the Company’s liquidity forecast worsened, the Debtors engaged FTI Consulting, Inc. (“FTI”), Centerview Partners LLC (“Centerview”), and Kirkland & Ellis LLP (“Kirkland”) to further explore incremental financing opportunities and comprehensive restructuring solutions, including improved liquidity management and potential cost saving/revenue enhancing initiatives, or, in the event the foregoing efforts were unsuccessful, contingency planning. Negotiations with an ad hoc group of unsecured convertible noteholders (collectively, the “Convertible Notes Group”), including with respect to an out-of-court transaction, began in November 2022. In July 2023, Centerview commenced a robust financing process by reaching out to the Company’s existing creditors, including HPS, represented by Latham & Watkins LLP, as legal counsel, and the Convertible Notes Group, represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP, as legal counsel, and Ducera Partners LLC, as investment banker. Centerview simultaneously reached out to various potential third-party lenders and investors seeking financing for the Company in multiple in-court and out-of-court structures. Although Centerview ran a comprehensive and wide-reaching marketing process that resulted in outreach to over 60 parties and at least 20 parties expressing potential interest in the business, these efforts did not result in any actionable proposals.

15. Due to its mounting fundamental business challenges coupled with the Align Judgment and an inability to raise any third-party financing, the Company determined that a chapter 11 filing would be necessary to facilitate a going-concern transaction.

16. Without available creditor third-party financing, the Company turned to its founders to obtain financing and avoid an immediate liquidation of the Company. Following extensive negotiations, the lenders party to that certain DIP Facility credit agreement (collectively, the “DIP Lenders”) agreed to provide debtor-in-possession financing to pursue a potential reorganization or sale. On September 29, 2023, the Debtors and the DIP Lenders entered into an agreement for an up to \$80 million debtor-in-possession financing facility (the “DIP Facility”) to fund the Debtors’ operations during these chapter 11 cases. The DIP Facility includes:

- a \$20 million initial draw upon entry of the interim DIP order;
- a \$30 million delayed draw upon the later of (a) entry of the final DIP order and (b) satisfaction of the Delayed-Draw Condition;
- a \$5 million rollup of the Secured Promissory Note upon entry of the final DIP order; and
- a \$25 million accordion (spread ratably between the initial and delayed draw funding) made available to all holders of the Convertible Notes.

17. With the DIP Facility and the HPS Forbearance Agreement (detailed below) in place, the Debtors commenced these chapter 11 cases to pursue a value-maximizing going-concern transaction. To that end, the DIP Facility and the HPS Forbearance Agreement contemplate that the Debtors will pursue a chapter 11 plan of reorganization that anticipates a sale of the equity in the reorganized Debtors to the highest bidder. In connection therewith, the founders have indicated that they would invest \$30 million of exit capital in an acceptable transaction. Immediately after the Petition Date, the Debtors intend to launch a 60-day marketing process for the sale of the Debtors’ equity under a plan of reorganization—or for any other restructuring transactions that



parties wish to propose—in partnership with the founders or otherwise. The marketing process will be conducted by Centerview and overseen by the special committee of SDC, Inc. (the “Special Committee”), comprised of disinterested and independent directors Alex Dimitrief, Linda Williams, and Edward W. Ward, III (collectively, the “Disinterested Directors”). The Company’s founders do not sit on the Special Committee.

18. If the Debtors are unable to implement a transaction to preserve the business as a going-concern, the Debtors will instead pursue an orderly liquidation of their estates through a chapter 11 plan of reorganization. The DIP Facility includes a \$2.5 million minimum liquidity covenant, which is intended to be reserved to fund a wind-down budget (the “Wind-Down Budget”) to facilitate an orderly wind-down of the Company, if necessary. The HPS Forbearance Agreement also contemplates that the Debtors will agree to a detailed plan for a liquidation, should it be necessary, with HPS within 30 days of the Petition Date.

19. Shortly after the Petition Date, the Debtors intend to file a chapter 11 plan (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”), which will include a toggle structure to provide flexibility to implement a going-concern sale of the Debtors’ reorganized equity or, if a going-concern transaction cannot be achieved, an orderly liquidation. The DIP Facility and the HPS Forbearance Agreement contemplate the following milestones with respect to these chapter 11 cases and the Plan:

Date	Proposed DIP Milestones
October 4, 2023	Entry of interim DIP order
October 24, 2023	Entry of final DIP order
November 23, 2023	Deadline to receive actionable bids
November 28, 2023	Deadline to test the Delayed-Draw Condition
December 23, 2023	Entry of an order confirming the Plan
December 28, 2023	Satisfaction of each condition precedent to the effectiveness of the Plan

### **Background and Qualifications**

20. I am the Chief Financial Officer of SmileDirect. I joined SmileDirect as Chief Accounting Officer in January 2020 and was named Chief Financial Officer in June 2022 after serving as Interim Chief Financial Officer between January 2022 and June 2022. Before joining the Company, I served as the Senior Vice President and Chief Accounting Officer of GameStop from June 2010 to December 2019, after serving as its Vice President, Controller from 2006 to 2010. From 1993 to 2006, I held various financial management positions, including Controller at CompUSA. Before that, I held various finance and accounting positions with Cinemark USA, Inc. I hold a Bachelor of Business Administration degree in Accounting from the University of Texas at Austin.

21. As Chief Financial Officer, I am responsible for overseeing all aspects of the Debtors' financial management and reporting, including accounting, finance, tax, internal audit, investor relations, capital markets, and information services for the Debtors. I also oversee the Debtors' operations, including, but not limited to, financial planning, building business relationships, and monitoring cash flow. Therefore, I am generally familiar with the day-to-day operations, business and financial affairs, and books and records of SDC, Inc. and its direct and indirect Debtor subsidiaries. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my discussions with other members of the Debtors' management team and advisors (including the teams from Kirkland, as legal counsel, Centerview, as investment banker, and FTI, as financial advisor, who are working under my supervision), my review of relevant documents and information concerning the Debtors' operations, financial affairs, and restructuring initiatives, and/or my opinions based upon my experience and knowledge.

\* \* \* \* \*

22. On today’s date (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), with the United States Bankruptcy Court for the Southern District of Texas (the “Court”). To minimize the adverse effects on their business, the Debtors filed motions seeking various forms of relief (collectively, the “First Day Motions”). I submit this declaration (the “Declaration”) to assist the Court and parties in interest in understanding the circumstances that compelled the commencement of these chapter 11 cases and in support of the Debtors’ chapter 11 petitions and the First Day Motions. I am over the age of 18 and am authorized to submit this Declaration on behalf of the Debtors. If called as a witness, I could and would testify competently to the facts set forth in this Declaration.

23. To familiarize the Court with the Debtors, their business, the circumstances leading to these chapter 11 cases, and the relief the Debtors seek in the First Day Motions, this Declaration is organized as follows:

- **Part I** provides an overview of the Debtors’ corporate history and business operations;
- **Part II** describes the Debtors’ prepetition corporate and capital structure;
- **Part III** describes the circumstances leading to the commencement of these chapter 11 cases;
- **Part IV** describes the Debtors’ prepetition initiatives to bolster liquidity and obtain debtor-in-possession financing, including the Debtors’ proposed path forward in chapter 11; and
- **Part V** provides further factual support for the Debtors’ chapter 11 petitions and the First Day Motions.

## **Part I: Corporate History and Business Operations**

### **I. SmileDirect Corporate History**

24. SmileDirect was founded in May 2014 by childhood friends and entrepreneurs Jordan Katzman and Alexander Fenkell. Katzman and Fenkell both grew up wearing braces and learned firsthand the personal challenges associated with wearing metal braces and the transformative power of a smile. Katzman and Fenkell discovered the high costs associated with traditional orthodontic treatments and the limited access to orthodontic services in many communities. The pair dreamed of the day that they could find a more affordable and attractive way to straighten teeth without sacrificing quality of care. With the support of Katzman's family, the founders' idea was brought to life, premised on the belief that affordable and convenient premium oral care should be accessible and comfortable for everyone. Jordan Katzman's father, David, serves as the Company's Chief Executive Officer and Chairman of the Board and manages a private investment group, Camelot Venture Group. Jordan's uncle, Steven, serves as the Company's Chief Operating Officer.

25. Originally headquartered in Detroit, Michigan, SmileDirect launched operations in 2014 by purchasing and selling clear aligners and retainers manufactured by third parties. The Company grew quickly, achieving numerous significant milestones in the years following its inception:

- ***Website Launch.*** In 2014, the Company launched its first website, pioneering a telehealth platform for orthodontia for customers who would typically be unable to benefit from orthodontic care.
- ***SmileShops.*** In 2016, the Company opened its first "SmileShop" in New York, giving its customers more convenient ways to access oral care in person. Presently, the Company operates over 144 SmileShops globally, including eight locations in Texas and four in the Houston area.
- ***Manufacturing Facilities.*** In 2016, the Company opened its first manufacturing facility in Antioch, Tennessee, to lower its manufacturing costs, increase supply

redundancy, and add capacity to support its growth. The state-of-the-art facility is one of the largest 3D printing and clear aligner production facilities in the U.S. The Company also recently opened another manufacturing facility in Columbia, Tennessee, which, although not currently operational, could create up to 600 new jobs as part of the expansion.

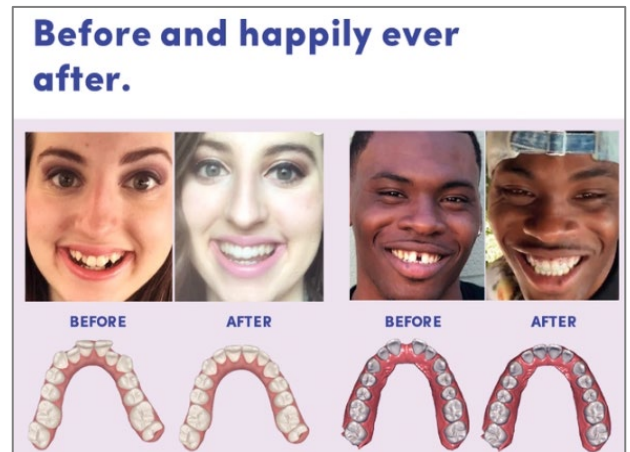
- **Global Expansion.** In 2018, the Company launched its international operations by offering services to customers in Canada. In 2019, the Company expanded its global presence, commencing operations in Europe and Australia. The Company has since wound down certain global operations but currently maintains operations in the U.S., Canada, the United Kingdom, Australia, Costa Rica, Ireland, and Puerto Rico.
- **Strategic Partnerships.** In 2019, the Company secured partnerships to open SmileShop locations within existing retail storefronts, including CVS and Walgreens, more than doubling SmileDirect's physical footprint and consumer access to teledentistry. Additionally, the Company was added as an in-network healthcare option for various insurance companies, including, among others, United Healthcare and Aetna Dental Members, providing greater benefits and an enhanced coverage experience for patients.
- **Going Public.** After years of growth and expansion, on September 12, 2019, SDC, Inc., the Company's public parent company, completed an initial public offering (the "IPO") on the Nasdaq Global Select Market ("NASDAQ") under the ticker symbol "SDC."

26. SmileDirect employs a global workforce of over 1,800 employees. In addition, SmileDirect partners with a network of more than 1,150 orthodontists and dentists that offer SmileDirect products and services to their patients through the Partner Network. The Company services customers across all 50 U.S. states, Canada, the United Kingdom, Australia, Ireland, and Puerto Rico.

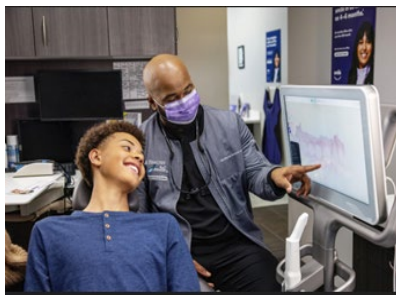
## II. SmileDirect's Business Operations

### A. Customer Journey

27. In large part through its marketing efforts and customer initiatives, SmileDirect quickly became one of the most recognized names in the telehealth and orthodontia industries. The Company has successfully leveraged its branding and marketing efforts to drive demand for oral care services, and to improve its market penetration through strategic relationships within and outside of the oral care industry. SmileDirect empowers customers to choose how they would like to interact with the Company to begin their smile transformation journey. Customers can visit SmileDirect's website or download the Company's mobile application to learn more about the aligner process, read first-hand reviews, and view before and after photographs from SmileDirect's other customers. Customers then proceed with their own SmileDirect journey through one of the following options:



- ***In Person at a SmileShop.*** A customer can use the Company's website or mobile application to easily book an appointment to take a free, in-person 3D oral image at any of the Company's popup locations or permanent SmileShops across the globe. At the 30-minute appointment, approximately 6,000 photos per second are taken to create a highly detailed digital map of the customer's smile. SmileShop employees also collect from the customer traditional photos of their teeth and gums, their dental and health history, their chief complaint, and an informed consent for treatment (collectively with the 3D image, the "Initial Customer Information").



- ***In Person at a Partner Network location.*** SmileDirect partners with dentists and orthodontists at over 1,150 Partner Network locations. If a Partner Network doctor's patient is interested in SmileDirect, the partner doctor takes the 3D oral image or takes a physical impression of the patient's teeth at their office and collects the rest of the Initial Customer Information.

- **Remotely with the mobile application.** A customer may download the Company's mobile application to take a 3D image of their teeth using the Company's groundbreaking SmileMaker technology, which is then uploaded to the Company's proprietary artificial intelligence platform to generate a preliminary treatment plan to see how their teeth will shift over time and an illustrative smile transformation graphic. If the customer is interested in pursuing treatment, the customer can then visit a SmileShop or Partner Network dental practice for a final 3D scan or order a doctor-prescribed impression kit which the customer then returns to the Company's affiliated dental lab for inspection and scanning.

- **Remotely with an impression kit.** A customer may request an easy-to-use, doctor-prescribed impression kit online, which the Company ships directly to the customer. The Company's impression kits are simple to use and can typically be completed by a customer within 30 minutes. The customer then returns their completed impression in a pre-paid shipping box so that the impression can be scanned and digitized at the Company's affiliated dental lab. Customer who use the impression kit must also upload the remaining Initial Customer Information to the Company's website.



- **Remotely and In Person through the CarePlus Model.** CarePlus offer customers the opportunity to begin their journey in the dentist's chair and continue their treatment virtually through the Company's teledentistry platform, but with the optionality of remote or in-person check-ins at the Partner Network dental practice location.



28. Using the 3D image from the scan or the scan of the impression, along with the other Initial Customer Information, SmileDirect's highly trained treatment set-up technicians create a preliminary custom treatment plan that demonstrates how the customer's teeth will move during treatment. Next, one of the dentists or orthodontists licensed in the jurisdiction of the

customer’s residence and within the Company’s network of affiliated doctors (the “Treating Doctor”) conducts his or her initial comprehensive exam of the patient by reviewing the Initial Customer Information and determining whether additional information and/or clearances are necessary before making a decision as to treatment. If additional information and/or clearances are necessary, as determined by the Treating Doctor, the customer is informed of the need for such additional information and/or clearances and must provide the same. If the Treating Doctor, after reviewing all information that he or she deems is clinically appropriate to diagnose and determine if treatment is appropriate, determines that the customer is a viable candidate for treatment with clear aligner therapy using a telehealth model, the Treating Doctor will then review, modify as necessary, and approve the customer’s treatment plan. If the customer is deemed to be a good candidate for clear aligners using a telehealth platform by the Treating Doctor and decides to proceed with treatment, the Treating Doctor will issue a prescription for treatment. The Company then custom manufactures the aligners pursuant to the prescription and ships the aligners directly to the customer. Through the Company’s telehealth platform and support staff that the Company provides the Treating Doctor, the Treating Doctor monitors the customer’s progress, requests additional information and/or clearances from the customer, and communicates seamlessly with the customer over the course of treatment. Through this customer-centric platform, SmileDirect has broken away from the traditional orthodontics industry and, in the process, has helped more than two million customers to date.





**B. Professional Corporations**

29. SmileDirect does not engage in the practice of dentistry. Rather, the Company supports its customers in its capacity as a Dental Support Organization (“DSO”), providing a suite of products and non-clinical administrative support services to dental practices and their affiliated professionals. More specifically, the Company contracts with a network of non-Debtor, third-party owned professional corporations (collectively, the “PCs”) and their affiliated doctors to provide a suite of non-clinical administrative support services, including access to and use of the Company’s tele-dentistry platform. As a result, the Company is required to register in those states that require registrations of DSOs, which currently include Texas, Nevada, and Kansas.

30. The doctors affiliated with the PCs are licensed to practice dentistry in their respective jurisdictions and are engaged as independent contractors or employees of the PCs. The PCs are owned by independent doctors and are registered to engage in business in their respective jurisdictions. It is through the PCs that the clinical services for clear aligner therapy are rendered to SmileDirect customers. The Company’s arrangement with the PCs is governed by a number of contractual agreements, including management services agreements, supply agreements, and licensing agreements. As of the Petition Date, the Company has been engaged by approximately 49 dentist-owned PCs.

**C. Partner Network**

31. In response to market demand and requests by dentists and orthodontists to provide an affordable clear alignment treatment to their patients, SmileDirect grew its collaborative model by permitting non-affiliated dentists and orthodontists (collectively, the “Partner Network”) to offer SmileDirect products and services to their patients. The Partner Network model allows patients to start their customer journey in a dentist’s office. The customer’s regular dentist will collect the same patient information that the SmileShop or popup locations collect for subsequent

review and assessment by one of the Treating Doctors in the Company's PC network. The process thereafter remains the same—a Treating Doctor reviews all of the Initial Customer Information as a part of his or her initial comprehensive exam of the patient and determines whether additional information and/or clearances are necessary. Once the Treating Doctor has the information and/or clearances needed, the Treating Doctor will assess and diagnose the customer and determine whether they are a viable candidate for clear aligner therapy using a telehealth platform. If the Treating Doctor deems the customer to be a viable candidate for treatment, they will then review, modify, and approve the custom treatment plan and issue a prescription. The Company then produces and ships the custom aligners directly to the patient, and the Treating Doctor continues his or her oversight and care of the patient through the end of treatment by tracking—with the support of the front and back office staff provided by the Company—the customer's progress with regular virtual check-ins. Through SmileDirect's CarePlus model, customers can also have in-person check-ins by visiting their local Partner Network dentist. SmileDirect currently has more than 1,150 dental practices in its Partner Network.

32. The Partner Network model not only enhances the Company's commitment to customer convenience by enabling the Company to meet customers through the channel that makes the most sense for them, but it also allows the Company to improve its credibility with customers who are more likely to seek a reference from a dental professional before deciding on a teeth-straightening provider. The Partner Network puts SmileDirect directly in front of dental professionals, allowing the Company to educate and build credibility in the dental community and deepen its foundation for future growth by improving its chances for success with higher-income customers.

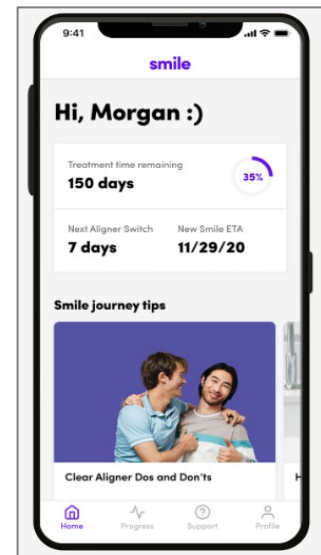
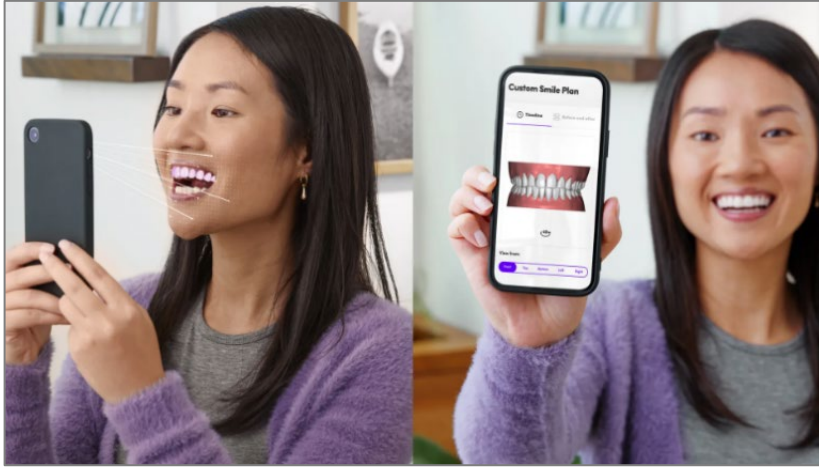
**D. Proprietary Technology**

33. SmileDirect relies on advanced algorithms, technology, and data science as the foundation of the Company's operations and strategic decision-making. The Company has invested in expanding its proprietary technology platform to support a growing direct-to-consumer marketplace that simplifies the oral care process.

34. SmileDirect's expertise in leveraging data and process engineering allows it to continually evolve how the Company interacts with its customers. As the first clear aligner company to build a scalable, integrated technology platform and doctor network for teledentistry, SmileDirect can manage the entire end-to-end process in a customer's journey, from the moment a customer visits the Company's website or mobile application all the way through aligner manufacturing, fulfillment, and treatment monitoring by a customer's Treating Doctor through completion of treatment. The Company's proprietary platform supports rapid and efficient communication between its customers and their Treating Doctors, as well as with the front and back office teams that support the Treating Doctors. Managing the customer journey from start to finish provides SmileDirect with a comprehensive understanding of its customers and enables the Company to provide personalized, data-driven insights. The Company's technology platform also enables the Company to quickly test and pilot new solutions and rapidly implement changes to its platform to deliver the best outcome for its customers and business.

35. A key piece of the Company's technological platform is its fully integrated SmileDirect mobile application, which uses SmileMaker AI technology to scan customers' teeth and provide a "Custom Smile Plan"—an interactive 3D model that shows users how SmileDirect aligners can straighten their teeth and how long that process could take. SmileMaker technology accelerates the creation of potential treatment plans from a matter of weeks to a matter of minutes, driving improved sales conversion. Once treatment is underway, the Company's mobile

application enables users to monitor their progress, stay on track with customized notifications and timers, chat with a dental care support team that is available 24 hours a day, 7 days a week, and access an aligner guide and FAQ for helpful tips and tricks. The Company's mobile application is available to all customers, not just those who specifically utilize the SmileMaker technology.



### **E. Manufacturing and Suppliers**

36. In 2016, SmileDirect shifted its strategy from selling third party-manufactured clear aligners to manufacturing its own clear aligners. This decision was made to streamline production and lower manufacturing costs, increase supply redundancy, and add capacity to support growth. The Company opened its first state-of-the-art manufacturing facility in Antioch, Tennessee, where it currently employs approximately 300 team members. The Company's manufacturing processes rely on complex three-dimensional scanning, geometrical manipulation and modeling technologies, laser-cutting capabilities, and sophisticated 3D printing. Since the Company's clear aligners and retainers are designed for individual customers, they are custom manufactured to fill prescriptions. The Company continues to make significant advances in manufacturing automation to improve quality and reduce cost.



37. Although SmileDirect manufactures its aligners, it relies on third-party suppliers to provide the raw materials needed to manufacture its aligners and for the putty used in its doctor-prescribed impression kits. The Company also relies on a third-party service provider to assemble and distribute its doctor-prescribed impression kits.

#### F. Continued Product Innovation

38. Since its founding, the Company has continued to push the envelope with its creation of new aligner products and technology to expand and enhance its core offerings, including:

- ***Nighttime Clear Aligners.*** In 2020, the Company launched its innovative Nighttime Clear Aligner product into both U.S. and international markets. The product requires only 10 hours of nightly wear and enables the Company to expand its market to customers who are unwilling or unable to wear aligners for the 22-hour daily-wear cycle typically required with traditional clear aligner therapy.
- ***Comfort Sense Technology.*** In 2021, the Company launched its Comfort Sense technology, featuring patented laser technology that precision-cuts the customer's aligners for a smoother and more comfortable fit.
- ***SmileOS.*** In 2021, the Company launched its new treatment planning system known as "SmileOS." This next generation proprietary treatment planning software enables the Company's network of appropriately licensed doctors to treat more patients, more accurately predict tooth movements, and better visualize a patient's treatment.
- ***CarePlus.*** In 2023, the Company launched its CarePlus aligner offering, utilizing its growing Partner Network to offer customers the opportunity to begin their journey in the dentist's chair and continue their treatment virtually through the Company's teledentistry platform or with in-person check-ins at a Partner Network location if

desired or needed. The CarePlus initiative delivers a hybrid approach to remote and in-person care at an affordable price and with a concierge-level of professional support.

- ***SmileMaker Platform.*** In 2023, the Company rolled out its innovative AI-driven SmileMaker platform globally, which uses mobile technology to create an initial 3D image of a customer's teeth and treatment plan, decreasing the path to purchase time by giving users an instant view of their potential treatment plan and length of treatment.

39. A customer's journey does not stop when the customer completes their initial treatment plan. After treatment, each customer achieves a smile they are proud of and focused on maintaining. The Company offers, among other things, retainers, toothbrushes, toothpastes, water flossers, and whitening and cleaning products to help its customers protect the investment they made in their smile through treatment. The Company remains focused on developing its brand of innovative products to drive awareness, trial, and repeat purchases through a diverse portfolio of differentiated oral products.

40. For example, in 2022, the Company launched the: (a) Sensitivity Whitening Kit, broadening its award-winning teeth-whitening portfolio by introducing a product designed for those with sensitive teeth; (b) Fast-Dissolving Whitening Strips, which compete directly with the largest platform in the teeth-whitening category; and (c) first-to-market Stain Barrier pen, a proactive treatment to help shield against staining beverages such as coffee, tea, and wine. These product launches support and enhance the Company's reputation as an innovative oral care provider with products that are designed to meet customer needs.



41. With more than two million customers helped to date, the Company has one of the largest repositories of data in the oral care sector. Using this data and artificial intelligence, along with other technologies, the Company remains focused on enhancing its existing offerings, improving its manufacturing, and producing new cutting-edge products.

**G. Regulatory Environment**

42. The Company operates in a heavily regulated industry where many of the Company's products are regulated by the Food and Drug Administration (the "FDA") and other foreign governing bodies. The FDA regulates the development, testing, manufacturing, labeling, promotion, distribution, and marketing of medical devices. In general, certain of the Company's products must receive a pre-market clearance from the FDA before they can be marketed in the U.S., as well as pre-market clearances for market modifications to the Company's existing products.

43. Under FDA regulations, medical devices are classified as Class I, Class II, or Class III devices depending on the risks imposed on end users, with Class III designating the highest risk devices. The Company's products are primarily designated as Class I and Class II. In general, Class I devices, including the Company's retainers and a majority of its oral care products, (a) may be marketed in the U.S. without premarket clearance or approval by the FDA and (b) must comply with general controls, including requirements related to establishment registration and device listing, labeling, medical device reporting, and the Quality System Regulation. In addition to general controls, certain Class II devices, including the Company's clear aligners, must comply with design controls, premarket notification and clearance (*e.g.*, clearance pursuant to section 510(k) of the Food, Drug, and Cosmetic Act), and applicable special controls. Domestic and foreign manufacturers of medical devices sold in the U.S. are subject to routine inspections by the FDA.

## **H. SmilePay**

44. To further democratize access to care and reduce price as a barrier to entry, the Company offers customers the option of paying the entire cost of their treatment upfront or enrolling in a convenient monthly payment plan (“SmilePay”) that provides a flexible payment option without the need for a credit check. With a \$250 down payment and an average monthly payment of only \$89 over a period of 28 months, SmilePay provides a more affordable option for those who cannot make the full \$2,250 payment upfront. SmilePay reduces purchasing friction by removing the complex third-party financing process, resulting in higher conversion and a better overall customer experience. Approximately 60% to 70% of the Company’s customers elect to purchase aligners using SmilePay.

## **I. Lifetime Smile Guarantee**

45. As a testament to its confidence in the quality and efficacy of its product, the Company offers a “Lifetime Smile Guarantee” which ensures a full refund if a customer is not satisfied for any reason within the first 30 days of purchase, and a pro-rated refund, or additional aligners at no cost for further adjustment, if the customer is not satisfied at any point later in the treatment process. Similarly, SmileDirect offers any customer who started their journey by purchasing a doctor-prescribed impression kit, but whose Treating Doctor subsequently determines that the clear aligner treatment through the use of a remote platform is not a viable option, the opportunity to receive a full refund for the purchase of the impression kit, subject to certain terms and conditions.

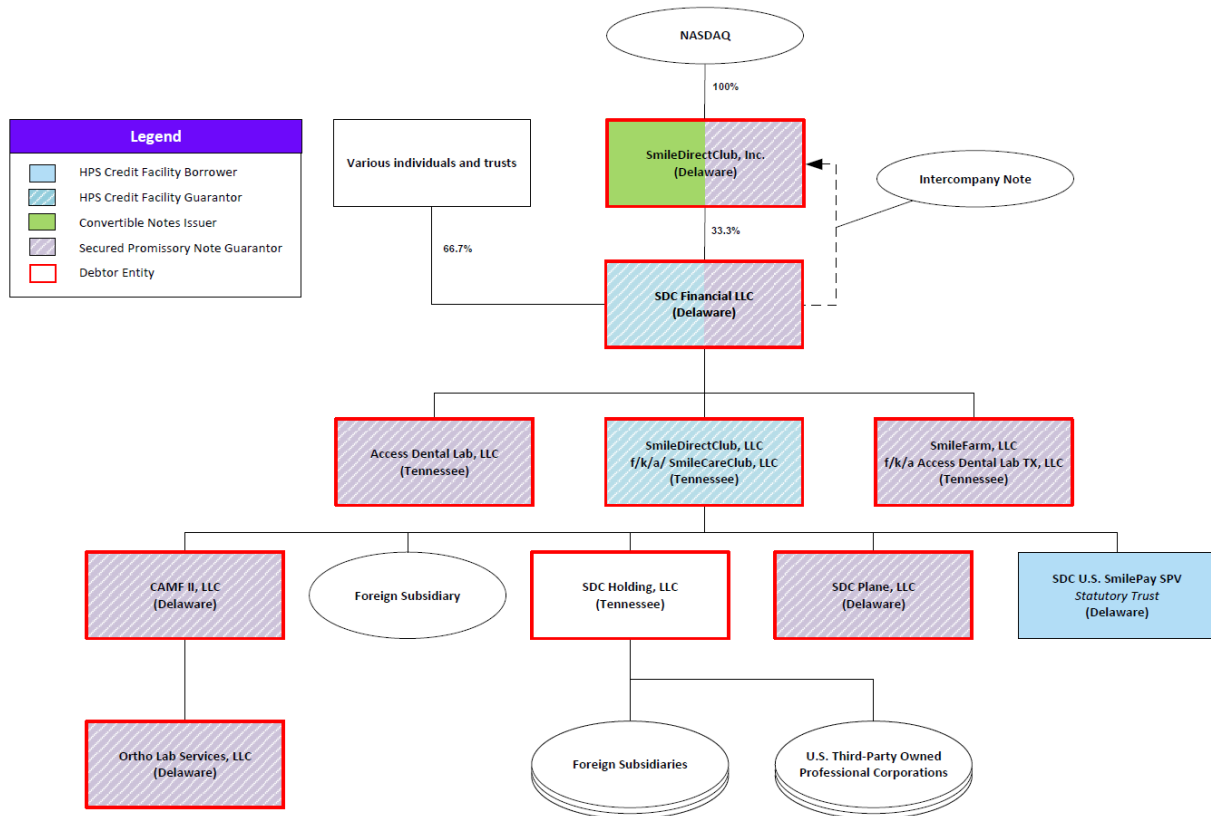
## **Part II: The Company’s Prepetition Corporate and Capital Structure**

### **I. Prepetition Corporate Structure**

46. The Company’s organizational structure consists of 28 corporate entities, 9 of which are Debtors in these chapter 11 cases. Of the 28 entities, 18 are non-U.S. entities—



incorporated in Australia, Canada, Germany, France, Taiwan, Ireland, Mexico, the Netherlands, New Zealand, Singapore, Spain, Costa Rica, and the UK—and none of which are Debtors in these chapter 11 cases. A simplified version of the organizational chart illustrating SmileDirect’s corporate structure is set forth below.



47. SDC, Inc., a Delaware corporation and the Company’s public parent company, was formed in April 2019 to facilitate the IPO and related transactions. SDC, Inc. has a 31.7% equity interest in SDC Financial, a Delaware limited liability company, which, through its direct and indirect subsidiaries, conducts the Company’s operations.

48. In connection with the IPO, on September 13, 2019, SDC, Inc. entered into a Tax Receivable Agreement (the “Tax Receivable Agreement”) with SDC Financial and various members of SDC Financial who then-owned approximately 73% of its membership interests (the “Continuing LLC Members”). Pursuant to the terms of the Tax Receivables Agreement,

SDC, Inc. agreed to pay the Continuing LLC Members 85% of the amount of cash tax savings, if any, in U.S. federal, state, and local income tax or franchise tax that SDC, Inc. actually realized as a result of: (a) the increases in tax basis attributable to exchanges of membership interests by the Continuing LLC Members as a result of the transactions related to the IPO; and (b) tax benefits related to imputed interest deemed to be paid by SDC, Inc. as a result of the Tax Receivable Agreement.

49. SPV is a wholly-owned, bankruptcy-remote, special purpose direct subsidiary of SDC LLC. SPV is not a Debtor in these chapter 11 cases and was formed as a Delaware statutory trust. SDC LLC and Wilmington Trust, National Associations, as owner trustee, are party to that certain Third Amended and Restated Trust Agreement, dated as of April 27, 2022, setting forth the terms and conditions governing control of SPV and its assets.

## II. Prepetition Capital Structure

50. As of the Petition Date, SmileDirect had approximately \$890.6 million in total principal outstanding under its funded debt obligations:

<b>Funded Debt</b>	<b>Approximate Principal Amount Outstanding</b>	<b>Interest Rate</b>	<b>Maturity Date</b>
HPS Credit Facility	\$138.1 million	Base Rate+9.75%	October 27, 2025
Secured Promissory Note	\$5 million	S+9.75%	August 4, 2024
Convertible Notes	\$747.5 million	N/A	February 1, 2026
<b>Total Funded Debt Obligations</b>	<b>\$890.6 million</b>		

### A. HPS Credit Facility

51. On April 27, 2022, SPV entered into a Loan Agreement by and among SPV, as borrower, SDC, LLC, as the seller and servicer, certain lenders party thereto, and HPS, as administrative agent and collateral agent, providing a 42-month secured delayed-draw term loan

facility to SPV in an aggregate maximum principal amount of up to \$255 million (the “HPS Credit Facility”).

52. Subject to certain exceptions, the HPS Credit Facility is secured by first-priority security interests in substantially all of the SPV’s assets, which consist of, among other things, certain receivables and intellectual property. Under the terms of the HPS Credit Facility, the amount of loans available to be drawn by the SPV at any time is calculated based on the receivables that secure the obligations thereunder and a cash reserve account. As and when collections on such receivables are made, cash may be released (subject to certain conditions) to be used by the SPV for any purpose, free and clear of the lien granted to HPS. SPV’s obligations under the HPS Credit Facility are guaranteed on a limited basis by SDC, LLC and SDC Financial (together, the “HPS Guarantors”). The HPS Guarantors guarantee (a) on a full recourse basis, up to 10% of SPV’s outstanding obligations under the HPS Credit Facility, plus enforcement costs, and (b) certain losses incurred by HPS as a result of fraud, misrepresentation, legal, and regulation violations and certain other actions and omissions by SPV and/or certain of its affiliates. The HPS Guarantors do not pledge their assets to secure any obligations of SPV under the HPS Credit Facility. As of the Petition Date, there is approximately \$138.1 million in principal outstanding under the HPS Credit Facility. The HPS Credit Facility contains a requirement that SPV maintain in a segregated cash reserve account a minimum amount based on the principal amount of loans outstanding under the HPS Credit Facility and the most recently calculated adjusted net accounts receivable. As of September 20, 2023, the balance in the cash reserve account was approximately \$33.9 million, and the SPV may be required to contribute additional cash to the cash reserve account based on the calculation of adjusted net accounts receivable as of the Petition Date.

**B. Secured Promissory Note**

53. On August 4, 2023, SDC, LLC entered into a Revolving Credit and Security Agreement providing the Company with a \$10 million line of credit (the “Line of Credit”) from Cluster Holdco LLC (“Cluster”), a Delaware limited liability company that is beneficially owned by David Katzman, the Company’s Chief Executive Officer. As of the Petition Date, \$5 million of the Line of Credit remains outstanding.

54. SDC, LLC issued Cluster a secured promissory note (the “Secured Promissory Note”) in the principal amount of \$10 million to evidence the amounts loaned by Cluster under the Line of Credit. The Secured Promissory Note is guaranteed by SDC, Inc., SDC Financial, Access Dental Lab, LLC, SmileFarm, LLC, CAMF II, LLC, SDC Plane, LLC, and Ortho Lab Services, LLC (collectively, the “Secured Promissory Note Guarantors”) and is secured by substantially all of the assets of the Secured Promissory Note Guarantors.

**C. Convertible Notes**

55. On February 9, 2021, SDC, Inc. issued the Convertible Notes. SDC, Inc. and Wilmington Trust, National Association, as trustee, entered into an indenture on February 9, 2021 (the “Indenture”) providing for the issuance of the Convertible Notes. SDC, Inc. also granted the initial purchasers of the Original Convertible Notes an option to purchase up to an additional \$97.5 million in aggregate principal amount of the Convertible Notes (the “Optional Convertible Notes”), which the purchasers partially exercised on February 9, 2021, and fully exercised on February 11, 2021, with respect to the remaining options. The Convertible Notes do not bear regular interest and the principal amount of the Convertible Notes do not accrete. As of the Petition Date, there is approximately \$747.5 million in principal outstanding under the Indenture.

56. On February 4, 2021, in connection with the pricing of the Convertible Notes, SDC, Inc. entered into privately negotiated capped call transactions with certain of the initial

purchasers of the Convertible Notes and/or their respective affiliates and/or other financial institutions (the “Capped Call Counterparties”). On February 9, 2021, and February 11, 2021, in connection with the exercise of the Optional Convertible Notes, SDC, Inc. entered into additional privately negotiated capped call transactions with the Capped Call Counterparties. The capped call transactions cover, subject to anti-dilution adjustments substantially similar to those applicable to the Convertible Notes, the number of shares of Class A Common Stock initially underlying the Convertible Notes.

57. In connection with the issuance of the Convertible Notes, SDC, Inc. entered into three intercompany convertible promissory notes (collectively, the “Intercompany Convertible Notes”) with SDC Financial, whereby SDC, Inc. provided the net proceeds from the issuance of the Convertible Notes to SDC Financial. The terms of the Intercompany Convertible Notes mirror the terms of the Convertible Notes issued by SDC, Inc. The intent of the Intercompany Convertible Notes is to maintain the parity of shares of Class A Common Stock with the membership interests of SDC Financial as required by SDC Financial’s LLC Agreement.

#### **D. Equity Securities and Other Securities**

58. The Company has several issued and outstanding types of equity securities or securities exercisable for, or convertible or exchangeable into, shares of SDC, Inc. capital stock.

59. **Common Stock.** SDC, Inc.’s Class A common stock, par value \$0.0001 per share (the “Class A Common Stock”), is listed on NASDAQ under the ticker symbol “SDC.” SDC, Inc.’s Class B common stock, par value \$0.0001 per share (the “Class B Common Stock”), does not participate in the earnings or losses of the Company and therefore are not participating securities.

60. **HPS Warrants.** On May 12, 2020, SPV entered into a Loan Agreement by and among SPV, as borrower, SmileDirectClub, LLC (“SDC, LLC”), as seller and servicer, certain

lenders party thereto, and HPS, as administrative agent and collateral agent, providing a five-year secured term loan facility to SPV in an initial aggregate maximum principal amount of \$400 million, net of original issue discount of \$12 million (the “2020 HPS Credit Facility”). On March 29, 2021, using the proceeds from the Convertible Notes financing, the 2020 HPS Credit Facility was paid in full and terminated. In connection with the 2020 HPS Credit Facility, the Company issued warrants to affiliates of HPS (collectively, the “HPS Warrants”), exercisable at any time into an aggregate of 3,889,575 shares of the Company’s Class A Common Stock. The termination and payoff of the 2020 HPS Credit Facility did not impact the HPS Warrants.

61. **LLC Units.** Subject to certain limitations and exceptions, and pursuant to certain provisions of the SDC Financial LLC Operating Agreement, the holders of LLC units following the consummation of the IPO and the reorganization transactions in connection therewith (each, a “Continuing LLC Member”) may exchange LLC units (with automatic cancellation of an equal number of shares of Class B Common Stock) for shares of Class A Common Stock on a one-for-one basis, subject to customary adjustments.

62. **Stock Options and Restricted Stock Units.** In August 2019, in connection with the IPO, the Company adopted an incentive compensation plan. The Company currently has two types of share-based compensation awards outstanding under the incentive compensation plan: (a) Class A Common Stock options; and (b) Class A restricted stock units, including those issued pursuant to incentive bonus awards.

### **Part III: Events Leading to the Commencement of these Chapter 11 Cases**

#### **I. Fallout from the COVID-19 Pandemic**

63. **Initial Shutdown.** The Company’s global operations were precipitously impacted by the worldwide spread of COVID-19 and the resultant shuttering of the global economy. Following the World Health Organization’s declaration of COVID-19 as a pandemic, national,

state, and local governments in the United States and throughout the world imposed curfews, social distancing protocols, and shelter-in-place orders that severely impacted the regions in which the Debtors operated. These unprecedented events affected the Company's ordinary course operations by forcing the closure of its manufacturing facilities and the majority of its SmileShops worldwide. SmileDirect experienced a significant decline in SmileShop traffic and related consumer spending as well as numerous operational challenges as a result of the COVID-19 pandemic, actions taken by governments and citizens in response, and the upheaval in the global financial markets that followed. This dynamic continues to have long-lasting effects on the Debtors' business and liquidity position, accelerating the need to implement a strategic transaction.

64. ***Supply Chain and Manufacturing Challenges.*** The COVID-19 pandemic led to long-lasting disruption to supply chains for companies around the world. SmileDirect similarly faced delays in obtaining raw materials, other components, and final assemblies due to the significant ongoing stress on the global supply chain. Although the Company manufactures its aligners in-house, there are numerous raw materials required to produce the aligners and putty used for the Company's impression kits. As a result, the Company was unable to timely fulfill customer orders, stunting its ability to generate revenue. Moreover, beginning in 2021, supply chain delays and the cost of many of SmileDirect's primary inputs increased substantially, reduced the Company's margins, and impacted operational cash flow.

65. ***Shrinking Labor Force.*** The unprecedented and unforeseen disruption to the Company's business required SmileDirect to make difficult decisions with respect to its operations and workforce. As a direct consequence of the COVID-19 pandemic, the Company announced plans to suspend operations in many of the foreign countries where the Company had an established footprint, including, among others, Mexico, Spain, Germany, the Netherlands,

Austria, and Hong Kong. The Company was also forced to implement furloughs of its remaining headquarters and retail workforce both at home and abroad. This severe and unforeseen reduction in force resulted in an immediate loss of key personnel, which, in turn, created delays and mass disruption to the Company's business.

66. ***Inflation.*** Rising inflation on the heels of the COVID-19 pandemic combined with the Federal Reserve's efforts to combat inflation through interest rate increases created significant macroeconomic headwinds that reverberated through the economy. Despite the flexibility of care offered by SmileDirect, the Company remained exposed to these macroeconomic forces. The Company faced increasing expenditures as a result of the rising cost of raw materials due to inflation. Moreover, once the products were ultimately produced, the pandemic's role in rising freight and delivery costs caused significant financial strain due to the Company's reliance on delivery capabilities in its business model.

67. In the face of rising inflation, the Company incrementally increased its prices to offset its higher expenses. Due in part to higher prices, however, consumer demand for the Company's products continued to steadily decline. As the cost of doing business rose and consumer appetite for the Company's products fell, the result was decreased revenue generation and profitability.

68. ***Shifting Consumer Behavior.*** In response to macroeconomic factors, consumer confidence in the economy waned, and consumer spending habits drastically changed. The pandemic created inflationary pressures that led to higher inventory costs and reductions in consumer discretionary spending. SmileDirect's flexible, affordable, and widely-accessible services have been essential to the Company's success in expanding global access to orthodontic care. The Company's core demographic is comprised of individuals whose median annual



household income is approximately \$68,000 and who have historically been deprived of access to orthodontia due to the burdens of cost, time, and availability. Unfortunately, this demographic was and continues to be particularly susceptible to the devastating impact of the COVID-19 pandemic, including with respect to rising inflation, underemployment, and a struggle to pay household expenses.

69. The foregoing has led to a sharp decline in the Company's year-over-year performance following the pandemic. Specifically, between 2019 and 2020, the Company's revenues decreased by \$93.6 million (or 12.5%). The Company's revenues continued to decline thereafter, decreasing by \$19.2 million (or 2.9%) between 2020 and 2021 and \$166.9 million (or 26.2%) between 2021 and 2022.

## **II. Ongoing Litigation**

70. Another key long-term challenge facing the Debtors' business has been the management of liabilities in connection with ongoing litigation. Litigation has resulted in substantial costs and a diversion of management's attention and resources, further necessitating the commencement of these chapter 11 cases. Since 2016, the Debtors have been subject to numerous lawsuits. In addition to the Align Litigation, SmileDirect is subject to various shareholder class actions related to its IPO, other non-shareholder class actions, false advertising litigation, and securities litigation. The Company denies any alleged wrongdoing with respect to such litigation and is vigorously defending itself.

71. ***Align Litigation.*** In 2016, Align became an investor, strategic partner, and exclusive third-party supplier of aligners to SmileDirect when it acquired a 17%, which eventually increased to a 19%, ownership stake in the Company. The companies' business relationship was ultimately dissolved in 2019, when an arbitrator found that Align violated the terms of mutually-agreed upon non-compete and confidentiality provisions by attempting to replicate

SmileDirect's business model and compete with SmileDirect through its own Invisalign retail concept. The arbitrator ordered Align to close its retail locations and return its ownership stake in SmileDirect. The judgment also barred Align from competing against the Company until August 2020, and from using the Company's confidential information on a permanent basis.

72. After a series of other arbitrations between the parties, on August 27, 2020, Align initiated a confidential arbitration proceeding against SmileDirect before the American Arbitration Association ("AAA"), alleging that the Company breached the exclusive supply agreement between the parties that was entered into in 2016 and expired at the end of 2019. SmileDirect subsequently filed counterclaims against Align alleging breaches by Align under that same supply agreement. A hearing on certain of Align's claims and one of the Company's counterclaims occurred in July 2022. On October 27, 2022, the arbitrator issued an interim award against the Company on certain of Align's claims, specifically stating that it was not a final award. On March 6, 2023, Align filed a petition to confirm the arbitrator's interim award in the Superior Court of California, County of Santa Clara (the "California Superior Court").

73. A second hearing addressing the balance of the Company's counterclaims occurred in February 2023. On May 18, 2023, the arbitrator issued a final award, finding that the Company breached the supply agreement and that Align did not, awarding Align \$63 million in damages. On May 30, 2023, Align filed a petition to confirm the final award in the California Superior Court. On June 16, 2023, the Company filed a petition to vacate the final award before the same court. A hearing on the petitions was held in early August and, on August 21, 2023, the California Superior Court entered an order confirming the arbitration award in favor of Align and denying the Company's petition to vacate.

74. On September 12, 2023, the California Superior Court entered the Align Judgment on its order granting Align’s petition to confirm the arbitration award and denying the Company’s petition to vacate that award. The Company has 60 days from that date to appeal the decision. With the award due and payable immediately when the stay is lifted on September 29, 2023, and the significant cost and uncertainty around a potential appeal, the Align Judgment presents an imminent threat to the Company’s liquidity and efforts to reorganize, further necessitating the commencement of these chapter 11 cases.

75. ***Shareholder Class Actions.*** From September 2019 to December 2019, a number of purported shareholder class action complaints were filed in the U.S. District Court for the Middle District of Tennessee and in state courts in Tennessee, Michigan, and New York against the Company, members of the Board, certain of the Company’s current or former officers, and the underwriters of the IPO. The complaints allege, among other things, that the registration statement and the prospectus filed with the Securities and Exchange Commission (the “SEC”) in connection with the IPO, were (a) inaccurate and misleading, (b) contained untrue statements of material facts, (c) omitted to state other facts necessary to make the statements made not misleading, and (d) omitted to state material facts required to be stated therein. Each complaint seeks unspecified money damages, other equitable relief, and attorneys’ fees and costs. As of the Petition Date, these matters are in the discovery phase.

76. ***Non-Shareholder Class Actions.*** There are three non-shareholder class action suits pending against the Company. One class action was filed in September 2019 in the U.S. District Court for the Middle District of Tennessee by a SmileDirect consumer and three orthodontists. The plaintiffs asserted claims for breach of warranty, false advertising under the Lanham Act, common law fraud, and various state consumer protection statutes relating to the Company’s

advertising. On September 20, 2022, the arbitrator confirmed that the consumer claims are subject to binding arbitration on an individual basis, while all remaining consumer claims remain stayed. As of the Petition Date, briefing on class certification is complete, but no hearing date on the class certification motion or trial date has been scheduled.

77. ***False Advertising.*** On January 3, 2023, Align filed a complaint against the Company and certain of its officers and founders in the United States District Court for the Northern District of California, purporting to set forth claims for alleged false advertising in violation of the Lanham Act. The court granted the Company's motion to dismiss as to all of the federal claims with leave to amend, and ruled that Align could only seek injunctive relief as to its state law claims. Align has subsequently filed an amended complaint. The Company believes that Align's claims are without merit.

#### **Part IV: Prepetition Initiatives and Proposed Debtor in Possession Financing**

##### **I. Prepetition Marketing Efforts**

78. In July 2023, the Company sought a near-term, holistic solution that would provide a runway to implement its business initiatives. Centerview worked closely with the Company's management team and other advisors to explore various strategic and financial alternatives with both existing members of the Company's capital structure and potential third-party investors. More specifically, Centerview assisted the Company in its efforts to (a) refinance the HPS Credit Facility, (b) solicit capital investments from the Convertible Notes Group and other third-party lenders, and (c) negotiate and finalize the Secured Promissory Note. Centerview also evaluated other potential transactions and strategic alternatives, including, among other things, raising common equity.

79. From July 2023 through September 2023, Centerview engaged 61 prospective lenders and investors to evaluate multiple financing structures, including a refinancing of the HPS

Credit Facility through a renewed and expanded asset-based lending facility, junior capital with liens and claims consistent with the proposed DIP Facility on an out-of-court basis, and a DIP Facility junior to the HPS Credit Facility. 25 of the 61 parties executed non-disclosure agreements (collectively, the “Potential Lenders and Investors”) and received access to a confidential information memorandum, a financial model of the Debtors’ business, and other related diligence materials. The Potential Lenders and Investors, however, provided only one proposal that would have failed to adequately address the Company’s liquidity needs or otherwise declined the Company’s invitation to participate.

80. The Company, with the assistance of Centerview, negotiated an exchange transaction whereby members of the Convertible Notes Group would provide approximately \$85 million in new capital. Simultaneously with these negotiations, Centerview and the Company’s other advisors, working with HPS, negotiated an amendment to the HPS Credit Facility as the contemplated agreement with the Convertible Notes Group would have required the consent of HPS. Although the Company was confident that it could finalize a deal with the Convertible Notes Group, the Convertible Notes Group ultimately declined to move forward.

81. Without any financial commitments from the Potential Lenders and Investors, in August 2023 the Company turned to Cluster in a final effort to obtain incremental financing, resulting in entry into the Secured Promissory Note in August 2023. The Secured Promissory Note provided the Company with additional runway to evaluate and negotiate strategic and financing alternatives. Based on Centerview’s engagement with, and responses from, the Potential Lenders and Investors and the Convertible Notes Group, it was apparent that the Company would not be able to proceed with an out-of-court restructuring.

## **II. Enhanced Corporate Governance**

1. In August 2023, to ensure a thorough and fair process with respect to the Debtors' review of strategic alternatives and potential conflict matters, the board of directors of SDC, Inc. (the "Board") formed the Special Committee. The Special Committee was formed to conduct an independent review and negotiation of one or more potential recapitalization, reorganization, or restructuring transactions involving the claims against or interests in the Company, including a potential amendment, modification, refinancing, or restructuring of the Company's funded debt, new financings, and new equity investments (each, a "Strategic Transaction"). The Board delegated to the Special Committee the exclusive authority to review, develop, investigate, negotiate, and approve binding entry into a Strategic Transaction on behalf of the Company.

## **III. Proposed Debtor-in-Possession Financing**

82. As it became clear that an out-of-court transaction was not feasible, Centerview re-engaged with HPS, the Convertible Notes Group, and the Potential Lenders and Investors in search of committed third-party debtor-in-possession financing. As discussed in the declaration of Ryan Kielty in support of the Debtors' motion seeking approval of the DIP Facility, HPS and the Convertible Notes Group ultimately declined to participate in the DIP Facility and only one third-party submitted an indication of interest, which was ultimately deemed to be unactionable.

83. Despite Centerview's extensive marketing efforts, it became apparent that no viable third-party postpetition financing sources were available to the Debtors. As a result, the DIP Lenders quickly stepped in to fund up to \$50 million in new money under the DIP Facility to, among other things, prevent an immediate liquidation of the Company and ensure there was a process to potentially preserve a going concern. The terms of the DIP Facility were subject to good-faith, arm's-length negotiations between the Debtors, the DIP Lenders, represented by independent counsel, and HPS. The DIP Facility will provide financing necessary to, among other

things, administer these chapter 11 cases, fund the business, pay vendors in the ordinary course, and ensure that wages, taxes, and other obligations are paid. Access to such financing at this time is critical to enable the Debtors to execute on one or more potential comprehensive restructuring transactions. Moreover, in light of the Debtors' entry into the DIP Facility with the DIP Lenders, HPS agreed to engage constructively with the Debtors, forbearing on certain defaults that arose under the HPS Credit Facility as a result of the Debtors' chapter 11 filing.

84. The DIP Facility contemplates super-priority claims and a first-priority priming lien on substantially all assets of the Debtors, which excludes the assets in the non-Debtor SPV that is the obligor on the HPS Credit Facility. More specifically, the DIP Facility provides the Debtors with access to up to \$80 million, with the Debtors obtaining \$20 million upon entry of an interim order approving the DIP Facility. If the Debtors satisfy a net cash flow test over the first 60 days of the chapter 11 cases and the Debtors obtain an actionable bid as determined by the Special Committee (the "Delayed-Draw Condition"), the DIP Lenders have committed to provide the Debtors with an additional \$30 million on the date that is 60 days following the Petition Date. Alternatively, if the Delayed-Draw Condition is not satisfied by 60 days following the Petition Date, the Debtors will pursue confirmation of a chapter 11 plan of liquidation. The other material terms of the DIP Facility are as follows:

Term	Description
Size	Up to \$80 million super-priority first lien debtor-in-possession delayed-draw term loan, consisting of: <ul style="list-style-type: none"> <li>• \$20 million of new-money funded by the DIP Lenders upon entry of the interim DIP order;</li> <li>• \$5 million rollup of the Secured Promissory Note upon entry of the final DIP order;</li> <li>• \$30 million of new-money funded by the DIP Lenders upon the later of (a) entry of the final DIP order and (b) satisfaction of the Delayed-Draw Condition; and</li> </ul>

	<ul style="list-style-type: none"> <li>• \$25 million accordion (spread ratably between the interim funding and the delayed draw funding) made available to all holders of the Convertible Notes.</li> </ul>
Scheduled Maturity	December 29, 2023, except that if the chapter 11 plan of liquidation has become effective, the DIP Facility shall remain outstanding for an additional 90 days to provide for repayment from proceeds of liquidation of DIP Facility collateral.
Roll-Up	\$5 million rollup of amounts owed to Cluster under the Line of Credit as secured pursuant to the Secured Promissory Note by substantially all of the assets of the Company, upon entry of the final order approving the DIP Facility.
Rate	17.5% PIK
Fees	<ul style="list-style-type: none"> <li>• <u>Upfront fee</u>: 5.00% PIK, earned and payable upon entry of the interim and final DIP orders, in respect of each of the DIP loans</li> <li>• <u>Exit fee</u>: 5.00% PIK, earned upon entry of the final DIP order and payable upon maturity, acceleration, or repayment of the DIP Facility</li> <li>• No breakup or backstop fee</li> </ul>
DIP Collateral	<i>Pari passu</i> super-priority lien on substantially all assets of the Company (excluding the assets of the SPV).

85. Moreover, as previously discussed, the DIP Facility establishes case milestones to ensure that these chapter 11 cases proceed at an appropriate yet expeditious pace consistent with the requirements of the DIP Facility and the Debtors' anticipated liquidity runway.

86. As detailed further in the Centerview and FTI declarations in support of the DIP Facility, the Debtors require immediate access to additional liquidity to ensure that they are able to continue to operate during these chapter 11 cases. Specifically, based on the Debtors' forecast, the Debtors anticipate that they will be unable to generate sufficient levels of operating cash flow in the ordinary course of business to cover the projected restructuring costs of these chapter 11 cases without access to the postpetition financing provided by the DIP Facility. The liquidity provided by the DIP Facility is necessary to avoid an immediate liquidation of the Debtors' businesses. Absent the availability of such funds, the Debtors would likely be unable to pursue a path that would maintain the Company as a going concern.



#### IV. HPS Forbearance Agreement

87. For the DIP Facility—and the Debtors’ business—to function, the Debtors required a forbearance from HPS with respect to the HPS Credit Facility. Specifically, the Debtors required HPS to waive a variety of defaults, including liquidity covenants, bankruptcy defaults, and covenants prohibiting the incurrence of the DIP, each of which HPS could otherwise seek to enforce against the non-Debtor SPV. In exchange, the Debtors agreed to, among other things, true up the borrowing base securing the HPS Credit Facility, through cash payments to a restricted account at the SPV, immediately before the Petition Date and weekly on a postpetition basis. These and the other terms and conditions of the agreement with respect to the HPS Credit Facility are explained in further detail below and documented in a forbearance agreement entered into between the Debtors and HPS shortly before the Petition Date (the “HPS Forbearance Agreement”):

- **Cash Control:** The Debtors will enter into a revised control agreement to govern a certain bank account into which the collections on accounts receivable are deposited. The revised agreement will require notice to HPS and the lenders under the HPS Credit Facility (collectively, the “Lender Parties”) of any cash releases and their confirmation that the conditions to such releases thereunder have been satisfied.
- **Reporting:** In addition to the reporting requirements required under the preexisting credit agreement between the Debtors and HPS, the Debtors will provide additional reporting of (a) weekly certificates demonstrating the calculation of the permitted loan balance and (b) notices and other reporting delivered under the DIP Facility.
- **DIP Facility:** The Debtors will ensure all definitive documentation governing the DIP Facility is in a form acceptable to the Lender Parties.
- **Borrowing Base True-Up:** The Debtors will make additional cash deposits into the cash reserve account that secures the HPS Credit Facility as of the end of each business day immediately following weekly delivery of the permitted loan balance certificate, to the extent that such permitted loan balance calculation requires such additional cash deposit.

- **Cash Reserve Release:** The Debtors may release or apply amounts on deposit in the cash reserve account upon written notice to the Lender Parties, so long as the Debtors meet the criteria required under the HPS Facility Agreement, including certain release conditions, minimum amount provisions, permitted loan balance calculations and the absence of a termination event.
- **Third-Party Servicing Agreement:** Within 10 days of the Petition Date, the agreement between SDC, Inc. and Healthcare Finance Direct, LLC, with respect to servicing the Debtors' receivables, shall be (a) novated on terms reasonably acceptable to the Lender Parties and (b) amended, on terms reasonably satisfactory to the Lender Parties, to reflect reduced services and reduced fees paid thereto.
- **Liquidation Plan:** Within 30 days of the Petition Date, the Debtors will prepare, to the reasonable satisfaction of the Lender Parties, a liquidation plan for certain receivables and other assets.
- **Advance Rate Decrease:** To the extent the Debtors do not emerge from these chapter 11 cases within 90 days after the Petition Date, the advance rate used to calculate the permitted loan balance will be reduced from 85% to 82.5% on the 90th day and will be reduced by an additional 2.5% at the expiration of each subsequent 30-day period.
- **Lender Expenses:** The Debtors will reimburse the Lender Parties on a monthly basis for certain expenses and will make such payments within 10 days of the submission thereof.

88. Importantly, the HPS Forbearance Agreement provided the Debtors with the critical runway needed to engage in good-faith negotiations and, ultimately, enter into the DIP Facility. Absent the availability of such funds, the Debtors would likely be unable to pursue a path that would maintain the Company as a going concern. The motion to approve the DIP Facility (the "DIP Motion") requests authority for the Debtors to comply with the HPS Forbearance Agreement and other relief with respect thereto.

#### **Part V: Evidence in Support of First Day Motions**

89. The Debtors have filed a number of First Day Motions seeking orders granting various forms of relief intended to stabilize the Debtors' business operations, facilitate the efficient

administration of these chapter 11 cases, and expedite a swift and smooth potential restructuring of the Debtors' balance sheet.

90. The First Day Motions request authority to pay certain prepetition claims. I understand that Federal Rule of Bankruptcy Procedure 6003 provides, in relevant part, that the Court shall not consider motions to pay prepetition claims during the first 21 days following the filing of a chapter 11 petition "except to the extent relief is necessary to avoid immediate and irreparable harm." In light of this requirement, the Debtors have narrowly tailored their requests for immediate authority to pay certain prepetition claims to those circumstances where the failure to pay such claims would cause immediate and irreparable harm to the Debtors and their estates. Other relief will be deferred for consideration at a later hearing.

91. I am familiar with the information contained in each First Day Motions and believe that the relief sought in each motion (a) is necessary to enable the Debtors to operate in chapter 11 with minimal disruption or loss of productivity and value, (b) constitutes a critical element for the Debtors to successfully implement a chapter 11 strategy, and (c) best serves the Debtors' estates and creditors' interests. A description of the relief requested and the facts supporting each of the First Day Motions is detailed below:

92. ***Joint Administration Motion.*** The Debtors' *Emergency Motion for Entry of an Order (I) Directing Joint Administration of the Chapter 11 Cases and (II) Granting Related Relief* seeks joint administration of the Debtors' cases for procedural purposes only, given the integrated nature of the Debtors' operations. Joint administration for procedural purposes only will provide significant administrative convenience without harming the substantive rights of any party in interest. Parties in interest will also benefit from the cost reductions associated with the joint administration of these chapter 11 cases.

93. **156(c) Retention.** The *Emergency Ex Parte Application for Entry of an Order Authorizing the Employment and Retention of Kroll Restructuring Administration LLC as Claims, Noticing, and Solicitation Agent* seeks authority to employ Kroll Restructuring Administration LLC (“Kroll”) as claims, noticing, and solicitation agent for the Debtors. Kroll’s employment is in the best interest of the estates in light of the number of parties in interest and the complexity of the Debtors’ businesses because it will provide the most efficient means for noticing and processing proofs of claim. Further, Kroll has the expertise required for complex chapter 11 cases.

94. **Creditor Matrix Motion.** The Debtors’ *Emergency Motion for Entry of an Order (I) Waiving the Requirement to File a List of Equity Security Holdings, (II) Authorizing the Debtors to Redact Certain Personally Identifiable Information, (III) Approving the Form and Manner of Notifying Creditors of the Commencement of the Chapter 11 Cases and Other Information, and (IV) Granting Related Relief* seeks authority to (a) waive the requirement to file a list of, and provide notice directly to, certain equity security holders of Debtor SDC, Inc.; (b) redact certain personally identifiable information for individuals within the consolidated list of creditors (the “Creditor Matrix”), the schedules of assets and liabilities and the statements of financial affairs, claims registers, and proofs of claim; (c) approve the form and manner of the notice of commencement of these chapter 11 cases, substantially in the form attached to the corresponding proposed order as Exhibit A; and (d) grant related relief. Approval of the form and manner of the notice of commencement is necessary to not only properly serve notice to numerous interested parties, but also to avoid confusion among creditors and prevent the Debtors’ estates from incurring unnecessary costs associated with serving multiple parties listed on the Debtors’ voluminous Creditor Matrix.

95. **Schedules/SOFA Motion.** The Debtors' Emergency Motion for Entry of an Order (I) Extending Time to File (A) Schedules and Statements and (B) Rule 2015.3 Financial Reports and (II) Granting Related Relief seeks authority to extend the deadline by which the Debtors must file their Schedules and Statements and 2015.3 Reports to 59 days from the Petition Date. To prepare their Schedules and Statements and 2015.3 Reports, the Debtors will have to compile information from books, records, and documents relating to thousands of claims, assets, leases, and contracts from each of the nine Debtor entities, which will require significant expenditure of time and effort. As such, ample cause exists to extend the time by which the Debtors must prepare their Schedules and Statements and 2015.3 Reports. The preparation of these documents was not practicable prior to the Petition Date given the Debtors' focus on preparing a smooth transition into chapter 11. Finally, the relief requested will not prejudice any party in interest.

96. **Taxes Motion.** The Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Payment of Certain Taxes and Fees and (II) Granting Related Relief seeks authority to (a) remit and pay certain prepetition and postpetition Taxes and Fees to various governmental authorities in the ordinary course of business, (b) make Intercompany Tax Distributions, and (c) undertake certain typical postpetition Tax Planning Activities. Failure to pay the Taxes and Fees could materially disrupt the Debtors' business operations. Further, claims on account of certain of the Taxes and Fees may be priority claims entitled to payment before general unsecured claims, and certain of those claims may be entitled to secured status. Finally, the Debtors' failure to pay the prepetition Taxes and Fees as they come due may ultimately increase the tax liability for the Debtors and their estates or result in personal liability for the Debtors' directors and officers, which would distract these critical personnel from the Debtors' restructuring efforts.

97. **NOL Motion.** The Debtors' Emergency Motion for Entry of an Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief seeks approval of certain procedures related to transfers of, or declarations of worthlessness with respect to, Debtor SDC, Inc.'s existing classes of common stock and directing that any transfer of such common stock in violation of these procedures shall be null and void *ab initio*. The implementation of these procedures is necessary and appropriate to enforce the automatic stay and, critically, to preserve the value of the Tax Attributes for the benefit of the Debtors' estates.

**Insurance Motion.** The Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) Continue Insurance Coverage Entered Into Prepetition and Satisfy Prepetition Obligations, (B) Honor and Renew the Premium Financing Agreement Entered Into Prepetition, (C) Renew, Amend, Supplement, Extend, or Purchase Insurance Policies, (D) Continue to Pay Brokerage Fees, and (E) Maintain the Surety Bond Program, and (II) Granting Related Relief seeks authority to (a) continue existing insurance coverage, renew or otherwise supplement insurance coverage on a postpetition basis, and satisfy payment of prepetition obligations related to certain brokerage fees and (b) grant related relief. Continuation and renewal of the Insurance Policies and Surety Bond Program and the Debtors' potential entry into new insurance policies is essential to preserving the value of the Debtors' business, properties, and assets.

98. **Utilities Motion.** The Debtor's Emergency Motion for Entry of an Order (I) Approving the Debtor's Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Services, (III) Approving the Debtor's Proposed Procedures for Resolving Additional Assurance Requests, and (IV) Granting Related Relief seeks a court order (a) approving the Debtors' proposed adequate

assurance of payment of future utility services and determining that such proposed adequate assurance provide the Utility Providers with adequate assurances of payment, (b) prohibiting Utility Providers from altering, refusing, or discontinuing service, and (c) approving the Debtors' proposed procedures for resolving any additional adequate assurance requests. Ensuring uninterrupted utility services is essential to operating in the ordinary course and thus maximizing the value of the Debtors' business.

99. **Cash Management Motion.** The Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Using the Cash management System and Maintain Existing Bank Accounts, (B) Maintain Existing Bank Accounts, Business Forms, and Books and Records, and (C) Continue Intercompany Transactions, (II) Granting Administrative Expense Status to Postpetition Intercompany Transactions, and (III) Granting Related Relief seeks authority to (a) continue to operate their Cash Management System and maintain their existing bank accounts, including honoring certain prepetition and postpetition obligations related thereto, (b) continue to perform Intercompany Transactions with each of the Debtors and with their non-Debtor affiliates consistent with past practice, (c) maintain existing business forms and books and records, (d) maintain the Corporate Credit Card program; (e) continue to accept non-cash payments consistent with past practice; (f) grant postpetition Intercompany Transactions administrative expense priority; and (g) granting related relief. The Debtors depend on the efficient collection, transfer, and disbursement of funds to operate in the ordinary course. The Cash Management System is (i) tailored to meet the Debtors' operating needs, (ii) enables the Debtors to control and monitor company funds, (iii) ensures cash availability and liquidity, (iv) complies with requirements in its financing arrangements, and (v) reduces administrative expenses incurred in connection with the movement of funds and the reporting of accurate account

balances. The Cash Management System is a critical component of the Debtors' overall business. Any disruption of the Cash Management System would have a severe and adverse effect on the Debtors' operations. Additionally, Intercompany Transactions are an integral part of the Cash Management System and essential to the Debtors' continued operations. Absent the relief requested, the Debtors would be required to adopt a new, segmented cash management system, which would be financially and logistically burdensome and cause the Debtors' operations to grind to a halt, reducing the value of the Debtors' business enterprise.

100. ***Wages Motion.*** The Debtors' *Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs and (II) Granting Related Relief* seeks authority for the Debtors to honor and continue their employee Compensation and Benefits programs. The Debtors are seeking authority to pay and honor certain prepetition claims relating to the Compensation and Benefits, including, among other things, wages, salaries, commissions, other compensation, withholding obligations, payroll processing fees, reimbursable expenses, employee bonus programs, health insurance, life insurance, workers' compensation benefits, short- and long-term disability coverage, supplemental benefits, retirement plans, paid leave, severance, and other benefits that the Debtors have historically directly or indirectly provided to their employees in the ordinary course of business. The Debtors' employ over 1,800 employees, who provide the Debtors with services necessary to conduct the Debtors' business, and the Debtors believe that absent the payment of the Compensation and Benefits owed to their employees, the Debtors may experience employee turnover and instability at this critical time in these chapter 11 cases. Further, the vast majority of the Debtors' employees rely exclusively or primarily on the Compensation and Benefits to pay their daily living expenses and support



themselves or their families. Thus, the employees will face significant financial consequences if the Debtors are not permitted to continue the Compensation and Benefits in the ordinary course of business. Consequently, the relief requested is necessary and appropriate.

101. **Customer and Partner Programs Motion.** The Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Debtors to Maintain and Administer their Existing Customer and Partner Programs and Honor Certain Prepetition Obligations Related Thereto and (II) Granting Related Relief seeks authority to (a) maintain and administer their critical Customer and Partner Programs and honor certain related prepetition obligations on a postpetition basis in the ordinary course and (b) grant related relief. The Debtors' Customer and Partner Programs include the DSO Program, the Partner Network, the SmilePay Program, the CarePlus Program, the Lifetime Smile Guarantee, the Gift Card Program, the Sales Promotions, and the Credits. The Debtors believe that, given their revenue model and the importance of their Partner relationships, maintaining the Partner Programs is essential to the continued health and sustainability of the Debtors' business. Further, the Customer Programs maintain loyalty with the Debtors' customers, increase sales opportunities, and overall position the Debtors to compete within their markets. Thus, administering the Customer and Partner Programs in the ordinary course and paying prepetition amounts outstanding related thereto is necessary to maintain ongoing relationships with their Customers and Partners and will ultimately inure to the benefit of the Debtors' estates.

102. **Vendors Motion.** The Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Debtors to Pay Certain Prepetition Claims of (A) 503(b)(9) Claimants, (B) Lien Claimants, (C) Critical Vendors, and (D) Foreign Claimants, (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related Relief seeks authority to

(a) pay, in the ordinary course of business, certain prepetition trade claims, (b) confirm the administrative expense priority status of Outstanding Orders and authorize, but not direct, the payment of such obligations in the ordinary course of business, and (c) grant related relief. The Debtors' network includes highly specialized vendors, suppliers, and other business partners that provide the Debtors with essential goods and services. Payment of the prepetition trade claims owed to critical vendors and suppliers is essential to ensure the ongoing operation of the business because absent payment, suppliers of critical products and services may assert liens, withhold delivery of product, or refuse to manufacture and ship new supplies. Most of these vendors and suppliers are virtually irreplaceable due to the specialized nature of the products and services they provide, and, even where alternatives may exist, the time and costs associated with switching to a new provider would likely be significant and detrimental to the Debtors' estates.

103. **DIP Motion.** The Debtors' *Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Authorizing the Use of Cash Collateral, (IV) Modifying the Automatic Stay, and (V) Scheduling a Final Hearing* seeks authority to approve (a) the DIP Facility and (b) the consensual use of Cash Collateral. Upon approval, the Debtors will use the proceeds of the DIP Facility to, among other things, honor employee wages and benefits, procure goods and services, and fund general and corporate operating needs and the administration of these chapter 11 cases. Approval of the DIP Facility will provide the Debtors with liquidity critical to a soft landing into chapter 11 and lay the groundwork for a comprehensive restructuring.

104. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: September 29, 2023

/s/ Troy Crawford

Name: Troy Crawford

Title: Chief Financial Officer

SmileDirectClub, Inc.