

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

In re:

BHCOSMETICS HOLDINGS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-10050 (____)

(Joint Administration Requested)

**DECLARATION OF SPENCER M. WARE IN SUPPORT OF
CHAPTER 11 PETITIONS AND REQUESTS FOR FIRST DAY RELIEF**

Pursuant to 28 U.S.C. § 1746, I, Spencer M. Ware, do hereby declare, under penalty of perjury, the following to the best of my knowledge and belief:

1. I am the Chief Restructuring Officer for BHCosmetics Holdings, LLC (“Holdings”), and its debtor affiliates, BHCosmetics Intermediate, LLC, BHCosmetics, LLC, and Visceral Agency LLC, each a Delaware limited liability company (collectively, the “Debtors” or the “Company”). I also serve as Co-Chief Executive Officer for the Debtors. A copy of the organizational chart that includes all of the Debtors is attached hereto as **Exhibit A** (the “Corporate Organization Chart”).

2. I have over twenty years of experience in corporate turnaround and restructuring. I have served as the Chief Restructuring Officer and/or other officer and interim officer roles at Eastern Mountain Sports, LLC, Bob’s Stores, LLC, and J.C. Penney. I have advised a wide range of retailers and consumer products companies, including Staples, Inc., Provo Craft, Gymboree Group, Inc., Janie & Jack, LLC, and General Growth Properties, Inc. I received a Bachelor of Arts in Economics from Haverford College, attended the London School of Economics,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: BHCosmetics Holdings, LLC (7827); BHCosmetics Intermediate, LLC (2918); BHCosmetics, LLC (9106); and Visceral Agency LLC (9266). The Debtors’ service address for purposes of these chapter 11 cases is 8161 Lankershim Blvd., North Hollywood, CA 91605.

and am a Certified Insolvency and Restructuring Advisor and Certified Turnaround Professional. My work as Chief Restructuring Officer at Eastern Outfitters was recognized by M&A Advisor, Turnaround Atlas, and received the Turnaround Management Association's Mid-Sized Transaction of the Year Award. I also was recognized by the American Bankruptcy Institutes in their 40 Under 40 list of outstanding young professionals and received leadership awards from the New York Institute of Credit and the M&A Advisor. In a non-profit capacity I have served, and led, on a wide-range on regional, national, and global boards and associations, including serving as the President of Haverford College's Alumni Association, on the Board of Trustees for the Turnaround Management Association.

3. On January 14, 2022 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief with the United States Bankruptcy Court for the District of Delaware (the "Court") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), thereby commencing these chapter 11 cases (these "Chapter 11 Cases"). The Debtors intend to operate their business and manage their properties as debtors in possession during the pendency of these Chapter 11 Cases.

4. This declaration (this "Declaration") is submitted (i) to provide an overview of the Debtors and these Chapter 11 Cases and (ii) in support of the Debtors' chapter 11 petitions and "first day" motions (each a "First Day Motion," and collectively, the "First Day Motions"), which have been filed or will be filed to minimize the adverse effects of filing for chapter 11 protection and enhance the Debtors' ability to maximize value for the benefit of their estates and creditors.

5. If called as a witness, I could and would competently testify to the matters set forth herein based on my personal knowledge. In my capacity with the Debtors, I am familiar

with the Debtors' day-to-day operations, business affairs, financial condition and books and records. My testimony herein is based on my service as an officer of the Debtors, my review of the Debtors' books and records and other relevant documents, and my review of information compiled and communicated to me by other employees of the Debtors and the Debtors' professional advisors.

6. Prior to the commencement of these Chapter 11 Cases I, among other things, (i) reviewed and discussed the Debtors' strategy regarding the development of potential restructuring alternatives; (ii) supervised the preparation of the documentation needed to implement the restructuring initiatives contemplated during these Chapter 11 Cases; and (iii) met and consulted on a regular basis with the Debtors' other senior management members, Board of Directors (the "Board"), and outside advisors with respect to the foregoing.

7. Section I of this Declaration describes the Debtors' business history, corporate structure, and prepetition indebtedness. Section II describes the events and circumstances that triggered the commencement of these Chapter 11 Cases. Section III discusses the Debtors' need for cash collateral and the efforts the Debtors have expended to reach a consensual agreement in connection therewith. Section IV details the Debtors' objectives for these Chapter 11 Cases and the contemplated means by which such objectives will be met. Finally, Section V sets forth the relevant facts in support of the First Day Motions and summarizes the relief requested thereby.

I. Business History, Corporate Structure, and Prepetition Indebtedness

A. Company History and Corporate Structure

8. Originally launched in 2009, the Debtors are a leading beauty brand specializing in high quality, clean, vegan, and cruelty-free cosmetics and other beauty products, with a specialty in color cosmetics, brushes for the application of cosmetics, and eyelashes. The Debtors sell their products on their e-commerce platform directly to consumers utilizing, among

others, Shopify and Netsuite ERP, and wholesale to various retailers.

9. In the fourth quarter of 2017, the Debtors and/or their predecessors in interest commenced a series of transactions to effectuate the acquisition by MidOcean Partners V-BH, L.P. (“MidOcean”) of 63% of the equity interests in Holdings from BH Bonfire, Inc. In addition, MidOcean funded capital infusions of \$5.5 million and \$4.5 million in November 2018 and February 2019, respectively, in exchange for Preferred Series A units in Holdings. In 2020, MidOcean funded \$19.0 million of Preferred Series B units, increasing its ownership interests in Holdings to 74.4%. In 2021, MidOcean funded \$3.5 million of Preferred Series B units further increasing its ownership interests to a total of 85.85% of the Company’s total membership units.

10. As reflected in the Corporate Organization Chart, Holdings is a holding company that owns 100% of the membership interests in BHCosmetics Intermediate, LLC (“BHCosmetics Intermediate”); (ii) BHCosmetics Intermediate is a holding company that owns 100% of the membership interests in BHCosmetics, LLC (“BHCosmetics”); and (iii) BHCosmetics, which is the entity through which the Debtors conduct their business operations and which owns substantially all of the Debtors’ intellectual property and physical inventory assets, owns 100% of the membership interests in (a) Visceral Agency LLC, an entity through which the Debtors had intended to provide third parties certain creative content services, and (b) BH Cosmetics, GmbH, a non-debtor entity that engages in the sale of cosmetics and related beauty products in Germany.

11. MidOcean holds approximately 85.85% of the Preferred Class B Units issued by Holdings, with the remaining Preferred Class B Units held by certain executive-level employees in connection with the Company’s management incentive plan. In addition to the Preferred Class B Units, MidOcean holds 98.5% of the Preferred Class A Units and 62.7% of the Common Units issued by Holdings, with the remaining units in each of the respective classes held

by the Company's original founders and a former executive.

B. Current Business Operations

12. The Company's product line features an array of color cosmetics and applicators. The Company's business focuses on two sales channels: (i) its digital marketplace, which utilizes a variety of social influencer, celebrity collaborations, and brand partnerships to promote and market its products, and (ii) wholesale sales channels, primarily to Ulta Beauty, Inc. and similar beauty stores. The Company's target market includes "Generation Z" and "Millennial" consumers. The Company retains approximately 3.6 million Instagram followers and 1.8 million Facebook followers.

13. The Company's operations are based in the Los Angeles, California area. Since early 2020, the Company's headquarters (the "Headquarters") has been located in Culver City, California. In addition, the Company has maintained an overflow warehouse (the "Overflow Warehouse") for purposes of storing excess inventory, and a distribution center (the "Distribution Center"), comprising two commercial buildings, which share a parking lot, for purposes of packing and shipping inventory to consumers. For the period from January through November 2021, the Debtors generated approximately \$18.6 million in net sales and had negative adjusted EBITDA of approximately \$14.4 million.

14. As of the Petition Date, the Debtors employed, in the aggregate, approximately 28 employees, all of whom work on a full-time basis. This reflects the reduction in force conducted by the Debtors prior to the commencement of these Chapter 11 Cases. The Debtors' employees are not covered by a collective bargaining agreement.

15. The Debtors order and distribute their merchandise from both domestic and foreign vendors through a worldwide logistics network of common carriers, freight forwarders, customs agents, and other logistics service providers. The Debtors maintain a centralized

distribution system, pursuant to which all merchandise is received, sorted, and repacked at the Debtors' Distribution Center. The Debtors then distribute merchandise from the Distribution Center either directly to consumers or wholesale to stores. Historically, the Debtors also shipped merchandise to their German non-debtor affiliate for resale and distribution throughout Germany.² Shortly before the Petition Date, the Debtors closed their Overflow Warehouse, which was utilized to hold excess inventory, and transitioned any remaining inventory to the Distribution Center.

C. Prepetition Indebtedness

16. The Debtors' prepetition debt structure primarily consists of (i) the Prepetition ABL Facility (as defined below) and (ii) other unsecured debt consisting of, among other things, employee-related liabilities and trade debt, including amounts owed to landlords in connection with certain leases of nonresidential real property.

I. Prepetition Facility

17. On December 28, 2017, BHCosmetics Intermediate, BHCosmetics, and certain other guarantors, entered into that certain *Credit Agreement*, dated as of December 28, 2017 (as amended, restated, modified, supplemented or replaced from time to time, the "Prepetition Loan Agreement")³ with Fifth Third Bank, National Association ("Fifth Third"), as Administrative and Collateral Agent, Lender, L/C Issuer, and Swing Line Lender (in such capacities, the "Prepetition Loan Lenders" and the underlying facility, the "Prepetition Facility"). The Prepetition Facility permits borrowings of up to \$25 million, including an initial term loan commitment in the aggregate principal amount of \$15 million (the "Term Loan"), and a revolving credit commitment (the "Revolving Loan") in the aggregate principal amount of \$10 million, which includes up to a (a) \$2.0

² The Debtors do not intend to continue shipping merchandise to their non-debtor affiliate following the Petition Date, unless paid in advance for that merchandise.

³ Capitalized terms used in describing the Prepetition Facility but not otherwise defined herein shall have the meanings ascribed to such terms in the Prepetition Loan Agreement.

million Swing Line Loan and (b) \$2.5 million Letter of Credit. The Prepetition Facility is guaranteed by each of the Debtors and secured by a first-priority lien on all of the Debtors' assets other than the Excluded Property (the "Collateral"). Availability under the Prepetition Facility is subject to meeting certain testing metrics and sub-limits.

18. On February 6, 2019, the Debtors and Prepetition Loan Lenders entered into that certain *Forbearance Agreement* (the "First Forbearance Agreement"), whereby the Prepetition Loan Lenders agreed to waive certain existing events of default, and the parties agreed to certain liquidity, reporting and testing requirements. The parties thereafter entered into four subsequent forbearance agreements (together with the First Forbearance Agreement, the "Forbearance Agreements"), which, among other things, extended the term of the forbearance period, waived certain testing requirements, precluded the Debtors from making any cash payments to their equity sponsor, and obligated the Debtors to obtain certain additional cash contributions.

19. Under the terms of the Prepetition Loan Agreement, the Prepetition Facility matures on December 28, 2022, which date was subsequently amended by the terms of the Forbearance Agreements. Under the Fifth Forbearance Agreement, dated August 2, 2021 (the "Fifth Forbearance Agreement"), the Debtors are obligated to satisfy all Secured Obligations (as defined in the Prepetition Loan Agreement) no later than September 30, 2022. As of the date hereof, the outstanding balances of the Term Loan and Revolving Loan are \$9,627,614.02 and \$13,856,490.34, respectively, and in each case including accrued and unpaid interest through December 21, 2021, but not including certain fees and other charges.

II. Other Unsecured Debt

20. As of the Petition Date, the Debtors' books and records reflected accounts payable due and owing in an amount exceeding approximately \$14,878,695.10 million on account

of unsecured debt, including amounts owed to the Debtors' landlords for past-due rent.

II. Circumstances Leading to the Commencement of These Chapter 11 Cases and Prepetition Restructuring Efforts

21. The Debtors operate in an extremely competitive retail environment, facing competition from other specialty-retail cosmetic companies. Due to increased competition, the Debtors have faced significant pressure to maintain market share, which has directly and negatively affected their profitability. The Debtors have also struggled to obtain profitability after pursuing an ultimately unsuccessful launch of various product lines, and following a significant capital investment in infrastructure and other overhead.

22. In early 2019, the Company's then-Chief Executive Officer (and former founder) resigned, and the Company engaged the services of an executive search firm to identify a replacement. The Company ultimately selected an industry veteran as a replacement Chief Executive Officer, who also recruited two additional executive-level employees (collectively, the "New Management Team"). After analyzing the Company's business and becoming familiar with its systems and products, the New Management Team recommended material changes to the Company's operations and branding to increase sales, profitability, and brand recognition. Specifically, the New Management Team advised the Board to use 2020 as a transition year to redefine the Company's direct platform towards growth with new product development and unique strategies to obtain and retain direct customers, right size the inventory through connecting and efficiently utilizing the Company's distribution and sales systems, and develop the infrastructure needed to sell product to various wholesale channels.

23. The Board supported the New Management Team's vision for the Company. During the end of 2019 and the beginning of 2020, the New Management Team projected that the Company would need approximately \$14.0 million to support a revamp of the Company's brand

and infrastructure (the “Business Plan”).

24. During 2020, the New Management Team continued to work on the Business Plan. However, as a consequence of the COVID-19 pandemic, sales in the cosmetics industry declined as consumers’ daily routines, and the reasons for wearing cosmetics, changed, which impacted the sub-sector of color cosmetics within which the Company primarily operates even more than many other segments of the cosmetics industry. In 2020, the Company’s revenue dropped from \$55.8 million in 2019 to \$33.6 million. Nonetheless, the Company made strides, including addressing many operational inefficiencies and issues including, among other things: (i) implementing new product distribution systems; (ii) investing heavily in (a) creative brand development and strong management personnel to improve merchandising and pricing strategies and (b) infrastructure to implement sales through wholesale channels; (iii) renegotiating terms with retailers; (iv) signing exclusive promotion agreements with influencers for the launch of two new products; and (v) developing a natural skin care brand, Itsa, to leverage cost basis but generate revenue and profitability by developing the ability to easily add brands to the Company’s product line.

25. Throughout 2021, the Company continued to see an extremely competitive cosmetics market, which resulted in lower than expected sales compounded by high acquisition costs. As a result of liquidity constraints, the Company delayed the launch of Itsa to conserve cash for the launch of products developed in association with the newly signed celebrity influencers, Doja Cat and Iggy Azalea (the “Celebrity Influencer Product Lines”). Doja Cat was, and remains, an extremely popular artist, generating over 63 million streams per month on the streaming platform, Spotify, and having been nominated for eleven Grammy Awards, a Billboard Music Award, five American Music Awards, and three MTV Video Music Awards. She is currently

featured on the cover of the January 2022 issue of *Rolling Stone* magazine. Given the celebrity influencers' large number of social media followers and vast networks, the New Management Team believed that collaborations with the celebrity influencers would deliver significant sales increases.

26. After the first launch of the Celebrity Influencer Product Lines fell below expectations, the Debtors' Board directed the New Management Team to retain Riveron Consulting, LLC ("Riveron") as turnaround advisors to assist the Debtors in managing their cash, explore all viable restructuring alternatives, and structure the Debtors' go-forward strategy.

27. In August 2021, the Company negotiated the Fifth Forbearance Agreement, which included an amortization holiday for two (2) quarters to create additional liquidity. Both the Board and the New Management Team remained optimistic in a turnaround following the second launch of the Celebrity Influencer Product Lines in September 2021. However, the second launch of the Celebrity Influencer Product Lines also fell significantly below expectations, and the Company was left with no clear strategy to return business to growth and sustainability.

28. In this context, the Debtors and their advisors began to focus on exploring restructuring alternatives and, in furtherance thereof, engaged the services of two independent directors, Steven Panagos and Jill Frizzley (together, the "Independent Directors"), each of whom has significant experience providing fiduciary services for distressed companies, and have previously served on the boards of both public and private companies. The Debtors also retained Young Conaway Stargatt & Taylor, LLP, as restructuring counsel, appointed Spencer M. Ware, of Riveron, as Co-Chief Executive Officer and, later, as Chief Restructuring Officer, and Pamela Baxter, an industry veteran with significant experience, as Co-Chief Executive Officer.

29. Prior to the Petition Date, the Board, with the advice of its advisors, considered numerous potential ways to address the Debtors' debt and liquidity issues and maximize

value for the Debtors' various stakeholders, and ultimately determined that it was appropriate to commence a sale process (the "Sale Process") for substantially all of the Debtors' assets, including but not limited to inventory and intellectual property (the "Assets"). Accordingly, on September 29, 2021, the Debtors engaged the services of SSG Capital Advisors, LLC ("SSG"), as investment banker, to market (the "Marketing Process") the Company and solicit proposals from potential purchasers for the sale of the Company either as a going concern or otherwise.

30. From the period of September 29, 2021 through December 2021, SSG performed diligence, established a data room, and crafted an offering memorandum (the "CIM") in preparation to actively market the Debtors and their assets. SSG contacted approximately 281 potential parties in interest, including various cosmetic companies, private equity firms, hedge and fixed income funds, distressed debt buyers, family offices, and certain other banks and companies (the "Target Purchasers") for the purpose of introducing the Debtors and the sale opportunity. Forty-five companies signed confidentiality agreements and were given access to a data room for purposes of performing diligence. SSG sent the CIM to 44 parties. SSG responded to various inquiries and seven parties expressed interest in the Debtors and their Assets. Ultimately, the Debtors received a draft term sheet from a potential purchaser, but after consideration of the proposed terms, timing concerns, and other issues, and in consultation with their lenders, the Debtors determined that the draft term sheet was not actionable without major revision.

31. As the Marketing Process was underway and facing liquidity concerns, during November 2021, the Debtors retained SB360 Capital Partners, LLC ("SB360"), as a consultant to oversee and implement sales (the "Inventory Sales") of the Debtors' physical inventory (the "Inventory Assets") through their e-commerce platform and alternative wholesale channels. In addition, as noted above, the Debtors closed their Overflow Warehouse and

Headquarters and unequivocally surrendered those facilities to the applicable landlords on December 20, 2021 and December 31, 2021, respectively.

32. The Board further determined that a sale (the “IP Sale”) of the Company’s intellectual property assets and related tangible assets (“IP Assets”) may be necessary to maximize the value of the Debtors’ estates, particularly given the strength of the market for distressed assets of comparable size and type. To that end, the Debtors retained Hilco Streambank to serve as consultant and sale agent to market and implement the IP Sale.

33. The Debtors, with the assistance of Hilco Streambank began soliciting interest from third parties that the Debtors, in consultation with their advisors, determined may have a viable interest in purchasing the IP Assets, or a subset thereof. As of the Petition Date, Streambank prepared a detailed information sheet, containing information about the Debtors’ intellectual property portfolio and other assets. The Debtors and Hilco Streambank contacted a total of 84 strategic parties and received responses from 32 parties. A total of 15 parties executed confidentiality agreements and were granted access to an electronic data room (the “Data Room”) containing diligence and other confidential information with respect to the Assets. The Debtors received two written indications of interests, and three parties expressed an interest in acting as a stalking horse purchaser for the Debtors’ intellectual property and certain additional assets.

34. After extensive deliberations with Hilco Streambank and the Debtors’ other advisors regarding the terms of an asset purchase agreement, the Debtors secured a stalking horse agreement (the “Stalking Horse Bid”) with RBI Acquisition Holdings, LLC, a Delaware limited liability company (the “Stalking Horse Bidder”), for the sale of a substantial portion of the Assets, including a majority of the Debtors’ intellectual property and inventory. The total cash consideration for the Stalking Horse Bid is approximately \$4.3 million, subject to higher or

otherwise better offers.

35. The Stalking Horse Bid, which the Debtors negotiated at arms'-length with the assistance of Hilco Streambank and Debtors' other professionals, will serve as a baseline from which all prospective bidders will negotiate. The Stalking Horse Bid contemplates a sale of certain unexpired contracts, inventory, and intellectual property. The Stalking Horse Bidder is responsible for paying any cure costs related to the assumption and assignment of contracts in accordance with the terms and conditions of the Stalking Horse Bid. The Stalking Horse Bid includes various customary representations and warranties by and from the Debtor and the Stalking Horse Bidder, as well as certain conditions to closing and rights of termination.

36. Concurrently herewith, the Debtors will file a motion seeking approval of the Stalking Horse Bid, as well as certain customary bidding protections in favor of the Stalking Horse Bidder, such as an initial overbid amount, and the Stalking Horse Bid includes provisions for the payment of a break-up fee and capped expense reimbursement in the event that the Stalking Horse Bidder is ultimately not the successful purchaser of substantially all of the Debtors' assets.

37. The Debtors, with the assistance of Hilco Streambank, are continuing to engage with potential purchasers of the Debtors' Assets to ensure a robust and competitive Sale Process that maximizes value for the Debtors' stakeholders.

38. At the outset of these proceedings, the Debtors will seek Court authority to (i) assume the agreement with SB360 to continue the sale of the Inventory Assets, conduct a sale of the Debtors' furniture, fixtures, and equipment at the Distribution Center (to the extent that such Assets are not sold in connection with a sale under the Debtors' proposed bidding procedures); (ii) assign certain accounts receivable under a factoring agreement with SB360; (iii) engage Hilco Streambank to conduct a sale of the IP Assets; (iv) establish and implement certain procedures for

the sale of *de minimis* assets; and (v) establish an auction and sale timeline for the sale of Assets, including but not limited to Inventory Assets, IP Assets, furniture, fixtures, and equipment, and other miscellaneous assets that will allow the Debtors to implement certain bidding procedures and maximize value for all interested parties in an efficient and effective manner.

39. After considering all viable restructuring options and taking the steps identified herein to address operational and liquidity challenges prior to the Petition Date, I believe that the Sale Process represents the best means through which to maximize value for the estates and all interested parties.

III. Use of Cash Collateral

40. I, together with the other members of the Company's management and its advisors, have analyzed the Company's business affairs, financial position, contractual arrangements and strategic alternatives and have determined that the Debtors' cash is their sole source of funding for their operations and the costs of administering these Chapter 11 Cases. This analysis included, among other things, an assessment of the Debtors' available liquidity taking into account anticipated cash receipts and disbursements, professional fees, the impact of a chapter 11 filing on business operations, customer and vendor relationships, and other necessary operational payments. Given the existing liens on substantially all of the Debtors' assets, the Debtors negotiated the terms of the consensual use of cash collateral with the Prepetition Loan Lenders.

41. I believe that the Debtors access to their cash is critical to fund the cost of these Chapter 11 Cases and provide the Debtors with the requisite liquidity to pay their ongoing operational needs, such as payments to employees and vendors, and for purposes of maximizing value through a Sale Process. Without access to cash collateral, I believe that substantial value degradation would occur as a result of the Debtors' inability to continue operations, which would

not only impact revenue, but would also negatively impact the Debtors' employees, vendors, customers and brand, jeopardizing the Debtors' ability to effect a successful Sale Process.

42. The Debtors believe that the continued use of cash collateral is necessary to provide the Debtors with sufficient liquidity to conduct a thorough and flexible Sale Process so that they may ultimately conduct a competitive auction for substantially all of their assets under section 363 of the Bankruptcy Code, and maximize the value of the Debtors' estates for the benefit of all stakeholders. The Debtors' primary stakeholders—the Prepetition Loan Lenders—support the Debtors' continued use of cash collateral.

IV. Objectives for Chapter 11 and Proposed Sale Initiatives

43. For the reasons outlined above, the Debtors believe that the commencement of these Chapter 11 Cases is a necessary and prudent measure to maximize the value of the Debtors' estates. At the outset of these proceedings, the Debtors seek authority to continue the Sale Process, including the Inventory Sales and the IP Sale, with the assistance of SB360 and Hilco Streambank, respectively. Further, the Debtors seek Court authority to conduct an auction and sale process that will conclude within approximately 36 days of the Petition Date. To that end, the Debtors will file a motion seeking authority to implement the Sale Process to consummate a sale that they expect will generate maximum value for the Debtors' Assets. In consultation with their professional advisors, the Debtors developed certain bidding procedures (the "Bidding Procedures"), which are designed to preserve flexibility in the Sale Process, generate the greatest level of interest, and result in the highest or best value for the Assets. Among other things, the Bidding Procedures create a timetable for the Sale Process, which will promote efficiency and encourage prompt engagement by potential purchasers.

44. In addition, to avoid incurring any unnecessary administrative expenses with

respect to the Debtors' Overflow Warehouse and Headquarters, which were vacated and unequivocally surrendered on December 20, 2021 and December 31, 2021, respectively, the Debtors will seek to reject the related leases, effective as of the Petition Date. The Debtors will also take a number of steps to reduce their expenses moving forward, including filing additional contract and lease rejection motions, pursuant to which the Debtors will seek to reject various leases and/or contracts that the Debtors and their advisors determine are unlikely to be assumed and assigned and will no longer be necessary to the Debtors' business operations or a buyer.

45. Finally, as these Chapter 11 Cases and the Sale Process progress, the Debtors will continue to analyze their asset portfolio and available disposition alternatives with respect to all available assets in the interests of preserving and maximizing estate value.

V. First Day Motions⁴

46. As a result of my first-hand knowledge, and through my review of various materials and information, discussions with members of the Debtors' management and outside advisors, I have formed opinions as to (a) the necessity of obtaining the relief sought by the Debtors in the First Day Motions, (b) the need for the Debtors to continue to operate effectively while working to maximize the value of the assets for the benefit of all stakeholders, (c) the deleterious effects upon the Debtors of not obtaining the relief sought in the First Day Motions, and (d) the immediate and irreparable harm to which the Debtors will be exposed upon the commencement of these Chapter 11 Cases unless the relief requested in the First Day Motions is granted without further delay.

47. As described more fully below, the relief requested in the First Day Motions was carefully tailored by the Debtors, in consultation with their professionals, to ensure that the

⁴ Capitalized terms used in this section but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Motions, as applicable.

Debtors' immediate operational needs are met so as to allow the Sale Process to succeed, and that the Debtors suffer no immediate and irreparable harm during these Chapter 11 Cases. I, or my colleagues at my instruction, participated in the analysis that informed each First Day Motion, and assisted in developing the relief requested therein and reviewing pleadings related thereto. At all times, the Debtors' management and professionals remained cognizant of the limitations imposed on a debtor-in-possession and, in light of those limitations, the Debtors narrowed the relief requested at the outset of these Chapter 11 Cases to those matters that require urgent relief to sustain the Debtors' immediate operations and preserve value during the pendency of these Chapter 11 Cases.

A. Claims Agent Retention Application

48. The Debtors request entry of an order, pursuant to 28 U.S.C. § 156(c), Bankruptcy Rule 2002(f), and Local Rule 2002-1(f), authorizing the retention and appointment of Epiq Corporate Restructuring, LLC ("Epiq") as claims and noticing agent in these Chapter 11 Cases. I believe that the relief requested in the Epiq retention application will ease the administrative burden on the Clerk of the Court in connection with these Chapter 11 Cases. In addition, I have been advised by the Debtors' proposed counsel that Epiq's retention is required by the Local Rules in light of the Debtors' anticipated number of creditors. In light of the foregoing and Epiq's competitive rates, the Debtors respectfully request that the application to retain Epiq as claims and noticing agent be approved.

B. Utilities Motion

49. By this motion (the "Utility Motion"), and to ensure continued provision of utility services (the "Utility Services") to the Debtors' Distribution Center, the Debtors seek entry of interim and final orders (i) prohibiting the Debtors' utility service providers (collectively, the "Utility Service Providers") from altering, refusing, or discontinuing utility service on account of

unpaid prepetition invoices, (ii) deeming the Utility Service Providers to be adequately assured of future payment, and (iii) establishing procedures for determining additional adequate assurance of future payment and authorizing the Debtors to provide adequate assurance of future payment to the Utility Service Providers. The Debtors propose establishing a segregated account into which the Debtors will deposit a sum equal to approximately 50% of the Debtors' estimated aggregate monthly utility expenses and, additionally, have proposed procedures to address any request made by the Utility Service Providers for additional adequate assurance.

50. Any disruption of the Utility Services would cause irreparable harm to the Debtors' business operations, their estates and the success of the Sale Process. The successful consummation of the Sale Process and the sale of the Assets require that the Utility Services be provided on a continual and uninterrupted basis while the Debtors utilize the Distribution Center. Any disruption of the Utility Services could have a significant impact on the Debtors' business operations and efforts to maximize value for the estates. As the Sales Process concludes, the Debtors will take immediate action to minimize postpetition expenses, including with respect to utility services that will no longer be necessary.

51. For the foregoing reasons, the Debtors submit, and I believe, that the relief requested in the Utility Motion is in the best interest of the Debtors, their estates and their creditors, and should therefore be approved.

C. Cash Management Motion

52. By the motion seeking authority to utilize the Debtors' cash management system (the "Cash Management Motion"), the Debtors seek entry of an order, among other things, (i) authorizing continued use of their existing (a) bank accounts, (b) cash management system, and (c) checks and business forms, and (ii) waiving the requirements of section 345(b) of the

Bankruptcy Code in connection therewith on an interim basis. In addition, the Debtors also request a waiver of certain of the operating guidelines established by the Office of the United States Trustee for the District of Delaware that require the Debtors to close all prepetition bank accounts, open new accounts designated as debtor-in-possession accounts, and provide new business forms and stationery.

53. As described in detail in the Cash Management Motion, the Debtors maintain a cash management and disbursement system in the ordinary course of their operations (the “Cash Management System”). To lessen the disruption caused by the bankruptcy filing and maximize the value of their estates in these Chapter 11 Cases, it is vital that the Debtors maintain their Cash Management System and be authorized to, *inter alia*, pay any outstanding bank service and other fees owed in relation to their Cash Management System.

54. The Debtors maintain current and accurate accounting records of daily transactions and submit that maintaining this Cash Management System will prevent undue disruption to the Debtors’ operations while protecting the Debtors’ cash for the benefit of their estates. It is critical that the Debtors be able to consolidate management of cash and centrally coordinate transfers of funds to efficiently and effectively operate their business operations. Absent obtaining the relief requested in the Cash Management System, the Debtors will not be able to maximize value through the Sale Process.

55. Accordingly, the Debtors request that the relief requested in the Cash Management Motion be approved.

D. Insurance Motion

56. By this motion (the “Insurance Motion”), the Debtors request entry of an order (i) authorizing, but not directing, the Debtors to (a) continue and, to the extent necessary, revise, extend, renew, supplement, or change, the insurance programs (including by obtaining “tail”

coverage) (collectively, the “Insurance Programs”) summarized in the Insurance Motion, (b) pay, in their sole discretion, all undisputed policy premiums, claims, deductibles, retentions, administrative fees, broker fees and other obligations relating to the Insurance Programs (such obligations, the “Insurance Obligations”) that were or are due and payable, and relate to the period before or after the Petition Date, and (c) continue, renew or enter into new premium financing programs; and (ii) authorize the Debtors’ banks (collectively, the “Banks”) to honor and process check and electronic transfer requests related thereto.

57. In the ordinary course of business, the Debtors have maintained, and continue to maintain, a number of insurance policies for, among other things, (i) general liability; (ii) automobile; (iii) umbrella; (iv) excess liability; (v) property/all risk; and (vi) directors’ & officers’ liability, among others. The Debtors employ USI Insurance Services LLC as their insurance broker to assist them with the procurement and negotiation of their Insurance Programs.

58. I believe that maintaining the Debtors’ insurance coverage under the Insurance Programs is a crucial ordinary-course-of-business transaction, and necessary to preserve value during these Chapter 11 Cases. Authority to pay any prepetition Insurance Obligations—to the extent that the Debtors determine that such payment is necessary to avoid cancellation, default, alteration, assignment, attachment, lapse, or any form of impairment of the coverage, benefits or proceeds provided under the Insurance Programs—is imperative, as the insurance coverage provided under the Insurance Programs is essential for preserving the value of the Debtors’ assets, and, in most cases, such coverage is required by the various contracts and laws that govern the Debtors’ operations. Furthermore, it is my understanding that, under the chapter 11 operating guidelines issued by the United States Trustee for Region 3 pursuant to 28 U.S.C. § 586, the Debtors are obligated to maintain certain insurance coverage during these Chapter 11 Cases, and such

coverage is provided by certain of the policies included in the Insurance Programs.

59. Because it is not economically advantageous for the Debtors to pay the premiums on each of their Insurance Programs on an annual basis, from time to time and in the ordinary course of business, the premiums on certain of the Insurance Programs are financed (such programs, the “Financed Programs”) pursuant to premium finance agreements (each, a “PFA”) between the Debtors and AFCO Premium Credit LLC (“AFCO”). If the Debtors are unable to continue making payments under a PFA, AFCO may be permitted to terminate the applicable Financed Program, at which point the Debtors would be required to obtain replacement insurance on an expedited basis and likely at a significantly increased cost. Given the importance of maintaining insurance coverage under the Financed Programs during these Chapter 11 Cases, and preserving the Debtors’ limited liquidity by financing insurance premiums, I believe that it is in the best interest of the Debtors’ estates and creditors that the Debtors be authorized to continue their historic practice of paying amounts due under any PFA as such amounts come due.

60. Accordingly, for the reasons set forth herein and in the Insurance Motion, the Debtors respectfully request that the relief requested in the Insurance Motion be approved.

E. Wages Motion

61. Pursuant to this motion (the “Wages Motion”), the Debtors seek authority to, among other things and subject to the statutory cap on priority claims, (a) pay prepetition employee wages, salaries and other accrued compensation, (b) pay accrued prepetition obligations to independent contractors and supplemental workers employed by the Debtors, (c) to honor any prepetition obligations in respect of, and continue in the ordinary course of business until further notice (but not assume), certain of the Debtors’ employee benefits programs, plans, and policies, (d) to reimburse employees for prepetition expenses that employees incurred on behalf of the Debtors in the ordinary course of business, (e) to pay all related prepetition payroll taxes and other

deductions, (f) honor the Debtors' workers' compensation policies, and (g) to the extent that any of the foregoing programs are administered, insured, or paid through a third-party administrator or provider, to pay any prepetition claims of such administrator and provider in the ordinary course of business to ensure the uninterrupted delivery of payments or other benefits to the employees.

62. As of the Petition Date, the Debtors employ employees, independent contractors, and supplemental workers. Although the Debtors have paid their wage, salary, and other obligations as such payments come due prior to the Petition Date, as of the date hereof, certain prepetition obligations may nevertheless be due and owing.

63. Many of the Debtors' employees rely on their compensation, benefits, and reimbursement of expenses to satisfy their daily living expenses. Consequently, these employees will be exposed to significant financial hardship if the Debtors are not permitted to honor obligations for unpaid compensation, benefits, and reimbursable expenses. Moreover, if the Debtors are unable to satisfy such obligations, employee morale and loyalty will be jeopardized at a time when employee support is critical to the Debtors and the success of the Sale Process.

64. I believe that the relief requested in the Wages Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their business in chapter 11 without disruption to maximize the value of their assets. Accordingly, the Debtors respectfully request that the relief set forth in the Wages Motion be approved.

F. Taxes Motion

65. By this motion (the "Taxes Motion"), the Debtors request entry of an order (i) authorizing, but not directing, the Debtors, in their discretion, to remit certain taxes including sales, use, franchise, commercial activity, business and occupation, and various other taxes, fees, charges, and assessments (collectively, the "Taxes and Fees") that the Debtors incurred prepetition

that are or will become due and payable to various federal, state and local taxing authorities and other governmental authorities (each, an “Authority,” and collectively, the “Authorities”) in connection with the sale of their merchandise, and (ii) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing.

66. Any regulatory dispute or delinquency that impacts the Debtors’ ability to conduct business in a particular jurisdiction could have a wide-ranging and adverse effect on the Debtors’ ability to maximize proceeds generated by the Sale Process. Moreover, some Authorities may initiate an audit of the Debtors if the Taxes and Fees are not paid on time. Such audits will unnecessarily divert the Debtors’ attention away from these Chapter 11 Cases and result in unnecessary expenses. Moreover, if the Debtors do not pay such amounts in a timely manner, the Authorities may attempt to suspend the Debtors’ operations, file liens, seek to lift the automatic stay, seek payment from the Debtors’ managers and officers, or pursue other remedies that will materially and immediately harm the estates.

67. I believe that the Debtors’ failure to pay the Taxes and Fees could have a material adverse impact on the Debtors’ ability to maximize the value of their assets for the benefit of all stakeholders. Additionally, any attempt to collect the Taxes and Fees from the Debtors’ members and officers has the potential to divert the attention of those individuals away from the Debtors’ efforts to maximize the value of their assets through the Sale Process.

68. Accordingly, for the reasons set forth herein and in the Taxes Motion, The Debtors respectfully request that the Taxes Motion be approved.

G. Customer Programs Motion

69. In the ordinary course of business, the Debtors provide customers with certain customer-related programs as described in the Customer Programs Motion (such programs, the “Customer Programs”) that engender goodwill, maintain loyalty, increase sales opportunities,

and allow the Debtors to continue their online sales without interruption. Specifically, through the Customer Programs, the Debtors honor gift cards, offer refunds and exchanges under certain circumstances, provide promotional offers to their customers, and process customer purchases through the use of credit and debit cards.

70. The Debtors believe that their ability to continue the Customer Programs and to honor their obligations thereunder in the ordinary course of business, on the terms forth in the Customer Programs Motion,⁵ is necessary to (i) retain their reputation for reliability; (ii) meet competitive market pressures; (iii) maintain positive customer relationships; and (iv) ensure customer satisfaction, thus preserving brand value during these Chapter 11 Cases and thereby enhancing the Debtors ability to maximize value through the sale initiatives described above. Accordingly, for the reasons set forth herein and in the Customer Programs Motion, the relief requested in the Customer Programs Motion is necessary to avoid immediate and irreparable harm to the Debtors, for the Debtors to operate their business without interruption, and to preserve value for the Debtors' estates.

H. Critical Vendor Motion

71. By this motion (the "Critical Vendor Motion"), the Debtors request entry of interim and final orders, authorizing the Debtors to pay, in their discretion, the claims (the "Critical Vendor Claims") of certain Critical Vendors (as defined below). In the ordinary course of business, the Debtors engage a limited number of providers (collectively, the "Critical Vendors") for certain services that the Debtors depend upon to drive revenue. Any interruption in these services—however brief—risks materially disrupting the Debtors' operations and could cause irreparable harm to their business, goodwill, and customer base, and will likely hinder the Debtors' ability to

⁵ The Debtors will continue to honor gift cards issued prepetition through the Debtors' e-commerce platform during the Sale Process.

realize maximum proceeds from the Sale Process.

72. The Debtors have conducted an extensive analysis and review of the Debtors' immediate operational needs in the context of their wind down and sale efforts, and have concluded that there is a significant risk that the Critical Vendors will cease doing business with the Debtors unless their Critical Vendor Claims are paid. Should any Critical Vendor stop supplying services to the Debtors, the Debtors' sale efforts would be adversely affected as a result for the reasons outlined herein. The Debtors and their advisors closely analyzed the Debtors' needs during the projected sale timelines, and determined the amounts requested to be paid in the Critical Vendor Motion are necessary to avoid the likely damage to the Debtors' businesses and estates should the relief requested herein not be granted.

73. For these reasons and those set forth in the Critical Vendor Motion, the relief requested in the Critical Vendor Motion is in the best interests of the Debtors' estates and creditors and necessary to avoid immediate and irreparable harm to the Debtors.

I. Inventory Sale Agreement Assumption Motion

74. By this motion (the "Inventory Sale Agreement Assumption Motion"), the Debtors seek entry of interim and final orders: (i) authorizing the Debtors to assume the Inventory Sale Agreement (as defined in the Inventory Sale Agreement Assumption Motion) entered into by and between the Debtors and SB360; (ii) confirming, upon entry of the interim order, that the Inventory Sale Agreement is operative and effective until the Court considers the relief requested by the Motion on a final basis; (iii) authorizing the Debtors to continue to conduct Inventory Sales, with such sales to be free and clear of all liens, claims, encumbrances, and interests; and (iv) other related relief.

75. As set forth above, the Debtors decided that proceeding with the sales that are the subject of the Inventory Sale Agreement Assumption Motion and selling the Inventory

Assets pursuant to the terms of the Inventory Sale Agreement was in the best interests of their stakeholders. Upon discussions with the Debtors and their other outside advisors, I believe that the terms of the Inventory Sale Agreement are market-based and consistent with similar agreements that have been approved by courts. I am not aware of any facts to suggest that there was fraud or collusion in connection with the process used to select SB360 and understand that SB360 is not an insider as defined by section 101 of the Bankruptcy Code.

76. I believe that the Debtors' decision to conduct sales of their inventory represents the best path for maximizing recoveries to the Debtors' estates and, to that end, I believe that engaging SB360 pursuant to the Inventory Sale Agreement will (a) ensure the optimal success of the Inventory Sales and (b) minimize the administrative expenses to be borne by the Debtors' estates by, among other things, positioning the Debtors to promptly exit their Distribution Center and reduce related expenses. In particular, SB360's expertise in conducting liquidation sales generally will allow it to oversee and implement the Inventory Sales, with the assistance of the Debtors' management and other outside advisors, in the most efficient and cost effective manner. Accordingly, I believe that entry into the Inventory Sales Agreement, which will enable the Debtors to utilize the experience, skills, and resources of SB360, together with the uninterrupted continuation of the Inventory Sales, will generate maximum return for the estates and all interested parties.

77. Because the relief sought in the Inventory Sale Agreement Assumption Motion is imperative to the Debtors' ability to maximize the value of their estates for the benefit of their creditors through the Inventory Sales, and for the other reasons set forth above and in the Inventory Sale Agreement Assumption Motion, the Debtors respectfully request that the Inventory Sale Agreement Assumption Motion be approved. Moreover, interim approval of the Inventory

Sale Agreement Assumption Motion is a condition precedent to obtaining needed liquidity through the assignment and factoring of certain of the Debtors' accounts receivable, as set forth below.

J. Factoring Motion

78. By this motion (the "Factoring Motion"), the Debtors seek entry of interim and final orders authorizing, but not requiring the Debtors to (i) assign certain accounts receivable (the "Eligible Receivables") under a factoring agreement between the Debtors and SB360; and (ii) satisfy obligations related thereto. With respect to certain purchase orders (the "Purchase Orders") among the Debtors and their wholesale customers, many of which have extended payment terms, the Debtors have elected, in their business judgment to outsource collection of the Eligible Receivables to SB360 pursuant to the Factoring Agreement. The Debtors are seeking authority to implement this practice to enhance the Company's liquidity, mitigate against the Company's limited collection and operational resources, all of which is critical to the success of these Chapter 11 Cases and the ability of the Debtors to consummate a sale of the Assets.

79. As of the effective date of the Factoring Agreement, the Debtors and SB360 have identified existing Eligible Purchase Orders aggregating approximately \$1,439,250.00, that once transitioned to Eligible Receivables (in accordance with the Factoring Agreement) will be factored and collected by SB360 as provided for, and in accordance with the Factoring Agreement. Additional Eligible Purchase Orders to be included in this factoring program shall be identified and mutually agreed upon by the Debtors and SB360. The Factoring Agreement provides that the payment provided in exchange for the assignment of the Eligible Receivables is payable within one business day of the later of (i) the date such Eligible Purchase Order is transitioned to and designated as "Eligible Factored Receivable" (as defined in the Factoring Agreement) or (ii) the date that Interim Approval Order is entered.

80. Agreements like the Factoring Agreement are often entered into under

similar circumstances by retailers of a similar size and nature of the Debtors. Absent access to the liquidity provided by the Factoring Agreement, the Debtors would experience difficulties in continuing their operations while also meeting their ongoing obligations to suppliers, vendors, employees, and other creditors. In contrast, the Factoring Agreement on a postpetition basis will provide the Debtors with a softer landing into, and promote stability during, these Chapter 11 Cases, and facilitate the Debtors' ability to operate normally and without undue disruption. Based on the foregoing, I submit that approval of the Factoring Agreement is in the best interests of their estates and all parties in interest.

K. Cash Collateral Motion

81. In the Cash Collateral Motion, the Debtors seek: authorization, on an interim basis, to (a) use cash collateral and (b) provide adequate protection to the Prepetition Loan Lenders.

82. As discussed above, the Debtors need to utilize cash collateral to fund ongoing operating expenses while the Debtors conduct the Sale Process. Without the use of cash collateral, the Debtors would be unable to pay for necessary operating expenses or business functions critical to the success of their sale efforts, particularly, since the Prepetition Loan Lenders were unwilling to consent to the use of cash collateral outside of the protection afforded under the proposed interim order. The Debtors' ability to operate during these Chapter 11 Cases depends on obtaining the interim and final relief requested in the Cash Collateral Motion.

VI. Conclusion

83. In conclusion, for the reasons stated herein and in each of the First Day Motions filed concurrently or in connection with the commencement of these Chapter 11 Cases, the Debtors respectfully request that each First Day Motion be granted in its entirety, together with

such other and further relief as the Court deems just and proper.

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

Dated: January 15, 2022

/s/ Spencer M. Ware

Spencer M. Ware
Chief Restructuring Officer &
Co-Chief Executive Officer
BHCosmetics Holdings, LLC

EXHIBIT A

Corporate Organization Chart

