

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

**Caption in Compliance with D.N.J. LBR 9004-1(b)**

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*Proposed Counsel to the Debtor and  
Debtor-in-Possession*

In re:

PRESPERSE CORPORATION,

Debtor.<sup>1</sup>

Chapter 11

Case No. 24-18921

Judge: Hon. Michael B. Kaplan

**DECLARATION OF MEHUL SHAH, CHIEF FINANCIAL OFFICER OF  
THE DEBTOR, IN SUPPORT OF CHAPTER 11 PETITION  
AND FIRST DAY PLEADINGS**

I, Mehul Shah, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the Chief Financial Officer (“CFO”) of Presperse Corporation (“Presperse” or “Debtor”), the Debtor in the above-captioned chapter 11 case (the “Chapter 11 Case”).

2. I have been the CFO of the Debtor since I joined Presperse in April 2021, and I am familiar with the Company’s business and financial affairs. I am responsible, together with the other members of the Company’s senior management team for, among other things, devising and

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<sup>1</sup> The Debtor in this chapter 11 case, along with the last four digits of the Debtor’s tax identification number, is Presperse Corporation (7527). The mailing address for the Debtor for purposes of this chapter 11 case is 19 Schoolhouse Rd, Somerset, NJ 08873.

implementing strategies for the Company, including, *inter alia*, (i) understanding and shaping the business and financial affairs of the Company; (ii) developing cash flow analyses and assessing the current liquidity position of the Company; (iii) exploring and implementing various current and future financial strategies for the Company; and (iv) serving as a contact with the Company's creditors and vendors.

3. Prior to my role as CFO at Presperse, I spent approximately 15 years as a finance manager and/or business controller at other companies, including Veeco Instruments Inc., Firmenich SA, Haier America, and Applied Materials, Inc. I have an MBA in finance from Bentley University f/k/a Bentley College (McCallum Graduate School of Business) and an MS in Industrial Engineering from Northeastern University.

4. As a result of my experience with the Debtor as its CFO, my review of public and non-public documents (including the Debtor's books and records), and my discussions with other members of the Debtor's management team, I am generally familiar with and have detailed knowledge of the Debtor's business, financial condition, policies and procedures, day-to-day operations, and business affairs, including its assets, liabilities, operations, future plans, and books and records.

5. Except as otherwise noted, I have personal knowledge of the matters set forth herein or have gained knowledge of such matters from other Presperse employees that report to me in the ordinary course of my responsibilities or from retained advisers. References to the Bankruptcy Code (as defined below), the chapter 11 process, and related legal matters are based on my understanding of such matters in reliance on the explanation provided by Presperse's advisors.

6. I am authorized to submit this declaration (this “First Day Declaration”) on behalf of the Debtor. If called upon to testify, I would testify competently to the facts set forth in this First Day Declaration.

7. On the date hereof (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of New Jersey (the “Court”). The Debtor will continue to operate its business and manage its property and financial affairs as a debtor in possession.

8. I submit this First Day Declaration in support of the Debtor’s: (a) voluntary petition for relief; and (b) “first-day” pleadings filed concurrently with this First Day Declaration (collectively, the “First Day Pleadings”).<sup>2</sup> The Debtor seeks the relief set forth in the First Day Pleadings to minimize the adverse effects of the commencement of the Chapter 11 Case on its business and operations. I have reviewed the Debtor’s petition and the First Day Pleadings and have had the contents of such pleadings explained to me. It is my belief that the relief sought therein is essential to ensure the uninterrupted operation of the Debtor’s business and to successfully maximize the value of the Debtor’s bankruptcy estate.

9. The primary purpose of the Chapter 11 Case is to address and comprehensively resolve alleged talc and asbestos-related liabilities asserted against Presperse based on allegations that Presperse supplied talc products allegedly containing asbestos and which products allegedly caused harm to the talc plaintiffs. Although Presperse disputes all talc-related and asbestos-related

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<sup>2</sup> Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the applicable First Day Pleadings or in the Plan (as defined below).

liability, the mushrooming volume of talc litigation claims,<sup>3</sup>—associated *ad hoc* settlements, and ever-growing litigation costs are not sustainable and has caused significant financial distress to Presperse, a small company with limited and finite assets. Therefore, Presperse believes that the filing of the Chapter 11 Case and the creation of a trust under sections 105 and 524(g) of the Bankruptcy Code for the benefit of holders of Talc Personal Injury Claims (as defined below) is the most efficient and expeditious way for Presperse to reorganize and continue as an ongoing business while providing for fair and equitable treatment of holders of current and future Talc Personal Injury Claims.

10. The Debtor intends to achieve this goal by confirming the *Joint Prenegotiated Plan of Reorganization of Presperse Corporation Pursuant to Chapter 11 of the Bankruptcy Code*, dated September 9, 2024 (including all exhibits thereto and as may be amended, supplemented, or modified from time to time, the “Plan”), filed contemporaneously with this First Day Declaration, pursuant to, among other things, sections 105, 524(g) and 1129 of the Bankruptcy Code.

11. The Plan embodies the terms of a Term Sheet, dated as of March 30, 2024 (the “Term Sheet”). The Term Sheet was finalized following months of contentious negotiations in 2024 following failed negotiations in 2023 among the Debtor, SCOA, the pre-petition Talc Claimants’ Committee<sup>4</sup> (as defined below), and the pre-petition Future Claimants’ Representative (as defined below).

12. Under the Plan, subject to confirmation and its effectiveness, a section 105 and 524(g) trust will be created and funded with substantial cash—namely, \$50 million (inclusive of a

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<sup>3</sup> As of the Petition Date, there were over 275 personal injury cases naming Presperse and, in some cases, also naming its parent, Sumitomo Corporation of Americas (“SCOA”), as defendants in state court cases pending around the country. In addition, Presperse has settled 38 cases, and obtained dismissal of an additional 25 cases in the past 3 years.

<sup>4</sup> The Talc Claimants’ Committee is comprised of law firms that represent over approximately 85% of the current, pending Talc Personal Injury Claims filed against the Debtor prior to the Petition Date.

\$1 million Trust Note to be issued by Presperse and SCOA), and as *reduced by* the Presperse/SCOA Bankruptcy Fees and Costs Contribution Reduction Amount (as defined in the Plan)—to be paid and/or funded by Presperse and/or SCOA for the benefit of current and future holders of Talc Personal Injury Claims. The Plan also provides for the issuance of the Talc Personal Injury Channeling Injunction prohibiting holders of Talc Personal Injury Claims from asserting claims against the Debtor and SCOA arising from Presperse’s sale of talc prior to its emergence from the Chapter 11 Case.

13. Presperse vigorously disputes any and all talc-related or asbestos-related liability. However, the costs associated with continuing to litigate and settle the Talc Personal Injury Claims are simply not sustainable and, therefore, the Debtor believes that the filing of the Chapter 11 Case and the creation of a trust under sections 105 and 524(g) is most efficient and expeditious way for the Debtor to ensure that holders of current and future Talc Personal Injury Claims are treated in a fair and just manner. The tools and protections available in chapter 11 will facilitate the process leading to the confirmation of the Plan.

14. Presperse, as borrower, entered into a Credit Facility Agreement dated as of October 31, 2023 with SCOA, as lender (as amended, including pursuant to the amendments dated May 29, 2024 and June 26, 2024, the “SCOA Financing Facility”), providing an unsecured financing facility to fund Presperse’s ordinary course operations and bankruptcy-related fees and expenses prior to the commencement of the Debtor’s Chapter 11 Case. The SCOA Financing Facility was a continuation of an existing unsecured line pursuant to which SCOA funded Presperse’s operations.

15. To facilitate this Chapter 11 Case and maintain Presperse’s business operations until the Plan can be voted on by the impaired current holders of Talc Personal Injury Claims—

*the only class of creditors impaired under the Plan*—and confirmed by the Court, SCOA has agreed to continue to fund the Debtor through the SCOA Financing Facility.

16. The Debtor contemplates that this SCOA Financing Facility—which the Debtor seeks Court approval to continue to access as an unsecured post-petition facility as part of the First Day Pleadings (and specifically, through the DIP Motion (defined below)—will continue to be available (but only as necessary and to the extent of any shortfalls under the budget projections submitted with the DIP Motion) post-petition as an unsecured DIP financing facility as set forth in further detail below and in the DIP Motion. The SCOA Financing Facility, if approved, will be available solely to the extent necessary to fund the Debtor’s post-petition ordinary course operations and bankruptcy-related fees and expenses.<sup>5</sup> The Debtor further intends that such SCOA Financing Facility will be reinstated and left unimpaired under the Plan.

17. Part I of this First Day Declaration provides an overview of the Debtor’s business, talc-related liabilities, and the events leading to the filing of the Chapter 11 Case. Part II sets forth the relevant facts in support of the First Day Pleadings.

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<sup>5</sup> The Debtor’s currently project adequate funding from their ordinary course operations without the necessity for any borrowings under the SCOA Financing Facility. Nevertheless, for the reasons set forth in detail below and in the DIP Motion, the Debtor seeks Court authority to continue to access the additional borrowing availability under the SCOA Financing Facility on an unsecured basis out of an abundance of caution. Amounts funded and outstanding under the SCOA Financing Facility as of the Petition Date will remain outstanding and be reinstated under the Plan, if confirmed and effective.

## **PART I**

### **I. COMPANY AND BUSINESS OVERVIEW**

#### **A. Background and History of the Debtor; Nature of the Debtor's Business**

18. Presperse, founded in 1981 by the late Alan B. Black, is a supplier of specialty raw materials for the cosmetics and personal care industry, both in the United States and internationally.

19. The Debtor's sole equity holder, SCOA, made an initial investment in the Debtor in 2007 and acquired a 20% stake in Presperse at that time.<sup>6</sup> In 2010, SCOA together with its parent at the time, SGMA, acquired the remaining interests in the Debtor. As of March 2017, the Debtor was a wholly-owned subsidiary of SCOA.

20. The Debtor sells over 400 products used by over 300 corporate customers. The Debtor's products are utilized as ingredients for formulations in color cosmetics, extended product application, delivery of active ingredients, novel texturizing agents, anti-aging actives, skin cleansing systems, and organic certified extracts.

21. Key market segments for the Company include skin, color and sun. The Company sources raw materials through distribution partnerships with other raw material manufacturers as

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<sup>6</sup> In 1981, Presperse Inc.—a predecessor entity to the Debtor in this Chapter 11 Case, Presperse Corporation—was incorporated in New Jersey and was a privately owned family business that, as of 2007, was owned by Jeanette Black and Stuart Axelrod. In 2007, Presperse Inc. (a) created Presperse LLC, a Delaware limited liability corporation, and (b) transferred all of its assets and liabilities to Presperse LLC. At approximately the same time, SCOA purchased a 20% interest in Presperse LLC. Later, in August 2010, Debtor Presperse Corporation was incorporated in the State of Delaware. At approximately the same time, the 20% interest in Presperse LLC held by SCOA and the remaining 80% interest in Presperse LLC held by Presperse Inc. were transferred to Presperse Corporation, making Presperse Corporation the sole member of Presperse LLC. The shares of Presperse Corporation at the time of its incorporation in 2010 were wholly owned by SCOA and Summit Global Management of America, Inc. ("SGMA"), a Delaware corporation, which at the time was the parent company of SCOA. Presperse LLC was merged into Presperse Corporation, effective April 1, 2011. On or about March 31, 2017, SGMA merged into SCOA, at which time Debtor Presperse Corporation, became a wholly-owned subsidiary of SCOA. The purpose of these various merger transactions was to facilitate the initial 20% investment, and later 100% investment, by SCOA (and SCOA-affiliated entities) in the Presperse business.

well as through strategic international warehousing locations. Presperse provides specialty raw materials to some of the most well-known companies in the cosmetics and beauty industry, as well as R&D companies involved in development of new formulations for the cosmetics industry.

22. The Debtor conducts its operations from an 11,435 square foot leased premises located at 19 Schoolhouse Road, Somerset, New Jersey.<sup>7</sup>

23. Since its inception, the Debtor has operated and continues to operate as a standalone business with its own board of directors and independent management team of which I am a part as CFO.

24. The Debtor is led by its President and CEO, Joy Atkinson. The Debtor has approximately 50 employees. Approximately 30 of the Debtor's employees work out of the Debtor's New Jersey office or remotely in New Jersey. The remaining employees work remotely from multiple other states. All employees are salaried.

25. The Debtor seeks authority, through the Wage Motion,<sup>8</sup> to continue to pay and provide its employees their salaries and other benefits in the ordinary course. The relief sought in the Wages Motion will have no economic effect on the amounts that are to be contributed to the Talc Personal Injury Trust by Presperse or SCOA.

26. The Debtor's annual revenues for the fiscal year 2023 (ending March 31, 2024) were approximately \$49.4 million, with an annual net loss for its most recent fiscal year 2023 of

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<sup>7</sup> In 2011, Presperse Corporation d/b/a Presperse International Corp. was registered as a Foreign Corporation in the State of New Jersey.

<sup>8</sup> "*Wage Motion*" means the Debtor's Motion for Interim and Final Orders Pursuant to 11 U.S.C. §§ 105(a), 363(b) and 507(a)(4) and (a)(5) (I) Authorizing the Debtor to Pay Prepetition Wages and Salaries and Related Obligations and Taxes and (II) Directing All Banks to Honor Checks and Transfers for Payment of Prepetition Employee Obligations.



approximately \$4.9 million, including litigation costs of \$5.4 million and settlement payments of \$2.2 million.

27. The most recent annual loss, anticipated future losses, and the Debtor's current financial distress, is primarily and directly caused by the multitude of talc lawsuits naming the Debtor as a defendant, among many others.

28. The Debtor was first named as a defendant in talc personal injury lawsuits in 2015.

29. Subsequently, from 2015 to 2021, the Debtor was named as a defendant in a small number of additional talc personal injury lawsuits.

30. However, beginning in late 2021 and 2022, the number of talc lawsuits naming Presperse (and, since mid-2023, also naming Presperse's parent, SCOA), increased dramatically, rising to over 275 such cases pending as of the Petition Date.

31. Out of an abundance of caution and because of the overwhelming costs of defense, the Debtor discontinued the sale of talc products in the summer of 2023, and its last sale of talc was on August 15, 2023. The talc products sold in the recent past (prior to discontinuation) comprised less than 4% of the Debtor's annual revenues. The Debtor maintains an otherwise profitable business that sources, distributes and sells hundreds of non-talc products.

32. As noted, Presperse has faced and continues to face significant potential liability resulting from an increasing number of lawsuits alleging personal injuries caused by exposure to talc allegedly contaminated with asbestos that was sold and/or distributed by Presperse. Presperse believes that the Talc Personal Injury Claims are entirely without merit and that all talc sold historically by Presperse was safe.

33. As of the Petition Date, all of the pending lawsuits asserting Talc Personal Injury Claims allege mesothelioma or other diseases alleged to arise from asbestos exposure.

34. The Debtor's decision to commence the Chapter 11 Case was prompted by the growing number of filed Talc Personal Injury Claims, coupled with: (i) increased settlement demands with respect to pending Talc Personal Injury Claims; (ii) the anticipated projected future Talc Personal Injury Claims; and (iii) based on investigation to date, the limited availability of insurance coverage (if any) for the defense and/or resolution of Talc Personal Injury Claims.

35. As described in further detail in Section II below, Presperse has been faced with increasing substantial litigation costs.<sup>9</sup> With the growing number of Talc Personal Injury Claims and increasing settlement demands, Presperse lacks the financial wherewithal to defend itself against the mounting Talc Personal Injury Claims asserted against Presperse in the tort system.

36. In addition, and as further discussed below, the Debtor also engaged in prepetition discussions with the pre-petition Talc Claimants' Committee and the pre-petition Future Claimants' Representative (as defined below), which led the Debtor, SCOA and these parties to reach agreement on the Term Sheet providing for the commencement of this Chapter 11 Case and the pursuit of confirmation of the Plan embodying a consensual resolution (described further below and in the Plan and Disclosure Statement) as between the Debtor, SCOA, the pre-petition Talc Claimants' Committee, and the pre-petition Future Claimants' Representative. The Debtor believes that this is the optimal path for resolving the Talc Personal Injury Claims in a fair and efficient manner that will maximize value for all stakeholders.

#### **B. Talc Sold by the Debtor**

37. As discussed above, a small percentage of the Debtor's annual revenues—less than 4%—related to sales of talc products.

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<sup>9</sup> As further described below, certain litigation costs and settlements have been funded by SCOA through the SCOA Financing Facility. Presperse has an obligation to reimburse SCOA for these expenses pursuant to the SCOA Financing Facility.

38. Historically, the talc products distributed by the Debtor have been used for certain consumer applications, including certain cosmetic products. Although, as indicated, Presperse no longer sells any talc products, the Talc Personal Injury Claims primarily allege injury from exposure to asbestos allegedly contained in cosmetic products containing talc supplied by Presperse.

39. Presperse historically was a “pass through” talc distributor. As a pass-through distributor, Presperse obtained specifications from cosmetic manufacturers, provided those specifications to its supplier, who in turn provided their own specifications for cosmetic manufacturers to approve. These specifications include physical qualities, as well as any specified testing requirements. Once a cosmetic manufacturer approved of the supplier specifications, Presperse would then distribute cosmetic grade talc from the supplier to the cosmetic manufacturer. The talc was most frequently distributed to Presperse’s customers in the same packaging in which it was received by Presperse.

40. Manufacturers tested the talc, based upon customer approved specifications for the presence of asbestos. Manufacturer’s test results were passed onto Presperse and ultimately to Presperse’s customers. The test results were certified by Certificates of Analysis. Said Certificates of Analysis set forth that talc received by Presperse did not contain asbestos.

**C. Leased Headquarters**

41. Presperse operates out of its headquarters building pursuant to a lease agreement (the “Lease Agreement”) dated August 23, 2012 entered into between Presperse and landlord 19 Schoolhouse Rock, LLC. This lease is for laboratory/warehouse and office space in Somerset, NJ and currently expires on May 31, 2025.

42. All taxes, utilities, and related/similar costs with respect to its headquarters building are paid through this lease, with monthly base rent of \$12,100 and approximately \$8,100 in charges

such as operating expense, taxes and electricity. Presperse remains current and expects to continue to remain current post-petition on payments due under the Lease Agreement as of the Petition Date.

**D. Shared Services**

43. As is common with corporate enterprises, in the ordinary course of business, the Debtor participates in shared service arrangements (the “Shared Services”) with certain non-debtor affiliates (the “Service Providers”) including SCOA and other affiliated entities. These Shared Services are essential to the Debtor’s operations and enable the Debtor to access critical services at reasonable costs. Provision of these Shared Services with respect to SCOA and other affiliates is governed by certain shared services agreements, which formalize the pre-existing shared services relationship between Presperse and SCOA, and Presperse and other affiliates.

44. Pursuant to these Shared Services agreements, Presperse pays approximately \$200,000 per month to SCOA and other non-debtor affiliates for certain general business services that SCOA and its affiliates offer to their subsidiaries to enable Presperse to maintain streamlined and cost-effective operations for its business.

45. As further described in the Cash Management Motion,<sup>10</sup> the Debtor receives Shared Services in the following areas, which serve various corporate and administrative functions:

- ***Financial and General Business Services*** – general finance, tax, treasury, internal audit, insurance, corporate assessment and accounting services;
- ***Human Resources Services*** – benefits and compensation planning and employee resources regarding worker’s compensation, salary, and benefits;
- ***Legal Services*** – legal support in areas such as litigation management and analysis, compliance and labor and employment; and

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<sup>10</sup> The “Cash Management Motion” means the *Debtor’s Motion for Interim and Final Orders (I) Authorizing the Debtor to Continue and Maintain Its Existing Cash Management System, Bank Accounts and Business Forms, (II) Modifying the Investment Guidelines, and (III) Granting Related Relief*, filed concurrently herewith.

- ***Other General and Administrative Services***— financial and management services, human resources services, and filing and paying certain applicable taxes.

46. Presperse is invoiced monthly, quarterly and/or annually for the Shared Services. Prior to the Petition Date, amounts for the Shared Services were paid directly by Presperse to SCOA or other relevant affiliates. From and after the Petition Date, Presperse intends to pay SCOA and other affiliated providers pre-petition, if any, and post-petition Shared Services amounts in the ordinary course of business—including through funding provided for such expenses under the SCOA Financing Facility—after receiving an invoice for the Shared Services.

47. The Shared Services and general intercompany relationship between the Debtor and the other non-debtor affiliates are further described in the Cash Management Motion, the Trade Debt Motion and the references below (at paragraphs 60-64) describing Presperse’s outstanding Trade Debt.

#### **E. Summary of Prepetition Debt and Intercompany Relationships**

##### ***1. Prior SCOA Credit Facility***

48. Beginning in March 2011, Presperse was party to a Credit Facility Agreement, dated as of March 31, 2011 (as amended by Credit Facility Agreement Amendments, dated as of October 31, 2011, March 31, 2012, January 31, 2013, April 30, 2013, April 30, 2014, April 30, 2015, April 30, 2016, April 1, 2017, March 31, 2018, July 31, 2019, April 1, 2020, April 1, 2021, and February 10, 2022, and May 5, 2023 collectively the “Prior SCOA Credit Facility”).

49. The Prior SCOA Credit Facility was established as a renewable, unsecured revolving credit facility. The borrowing limit under the Prior SCOA Credit Facility was originally set at \$8,000,000, with such limit varying over the years. The Prior SCOA Credit Facility was amended in February 2022 to extend such facility until July 31, 2023 and with a maximum credit facility principal borrowing amount of \$8,000,000.

**2. *The SCOA Financing Facility***

50. On October 31, 2023, the Prior SCOA Credit Facility was replaced and superseded by the SCOA Financing Facility entered into between Presperse, as borrower, and SCOA, as lender.

51. Upon the entry into the SCOA Financing Facility, the prior cash sweep arrangement in place under the Prior SCOA Credit Facility was halted. Instead, the SCOA Financing Facility provides for loans in amounts to be requested from time to time by Presperse, as borrower, from SCOA, as lender, in an aggregate principal amount of \$8,000,000 in outstanding loans, with all loans due by July 31, 2024. The SCOA Financing Facility was further amended on May 29, 2024 to extend the facility through July 31, 2025, and again amended on June 26, 2024 to increase the amount Presperse was authorized to borrow thereunder to the aggregate principal amount of \$15,000,000.

52. Like the Prior SCOA Credit Facility, the SCOA Financing Facility is utilized to fund ordinary course operations, settlement amounts with holders of Talc Personal Injury Claims, and the funding of the fees and costs of bankruptcy professionals for Presperse and the Talc Representatives.

53. The loans funded under the SCOA Financing Facility accrue interest at CME Term SOFR which is the Secured Overnight Financing Rate (the “SOFR”) quoted by the CME Group on the corresponding term on the two (2) Banking Days prior to the drawing date, or, as the case may be, an alternative rate equivalent to Term SOFR plus an Applicable Margin of 1.15% per

annum (subject to adjustment to the extent SCOA adjusts its lending rates for all of its borrowers).<sup>11</sup>

54. As of the Petition Date, the approximate amount outstanding under the SCOA Financing Facility is \$10,249,820 (the “Prepetition SCOA Facility Principal Amount”), plus accrued interest of \$43,241.13, for a total amount outstanding of \$10,293,061.13 (the “Prepetition SCOA Facility Amount”). This amount is the largest non-contingent, undisputed and liquidated unsecured claim against the Debtor as of the Petition Date.

55. As noted above, the Debtor seeks Court approval as part of the First Day Pleadings to continue to have access (if necessary) on a post-petition basis to the financing provided by SCOA pursuant to the SCOA Financing Facility.

56. Specifically, the Debtor determined that its ability to continue operations uninterrupted, including through access to its pre-existing SCOA Financing Facility, is essential. While the Debtor expects to maintain adequate cash flow to satisfy both its ordinary course and chapter 11 administrative expenses (including professional fees), having post-petition access to the SCOA Financing Facility will provide the Debtor with an additional cushion to weather weekly fluctuations in either cash receipts or expenditures that could occur due to unexpected market conditions or as a result of the filing of this Chapter 11 Case.

57. Accordingly, as more fully set forth in the DIP Motion<sup>12</sup> filed contemporaneously herewith, the Debtor is seeking approval to access (i) up to \$2,000,000 of the remaining availability under the SCOA Financing Facility as a post-petition unsecured DIP loan facility upon entry of an

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<sup>11</sup> The interest rate varies based on the individual outstanding loans borrowed by the Debtor under the SCOA Financing Facility. However, as of September 6, 2024, this interest rate for the latest loan borrowed under the SCOA Financing Facility on such date was approximately 5.83%.

<sup>12</sup> The “DIP Motion” is the *Debtor’s Motion for Entry of an Order (I) Authorizing the Debtor to Continue to Operate and Perform Under the Unsecured SCOA Financing Facility, (II) Obtain Unsecured Post-Petition Financing Pursuant to Section 364 of the Bankruptcy Code, and (III) Granting Related Relief.*

interim order approving the relief sought herein (the “Interim DIP Order”), and (ii) \$4,750,180 of the remaining availability (inclusive of the \$2,000,000 authorized on an interim basis) under the SCOA Financing Facility upon entry of a final order by the Court approving the relief sought herein on a final basis (the “Final DIP Order”; collectively, the “DIP Orders”).

58. The Debtor believes that the SCOA Financing Facility affords the Debtor with financing on terms that are unquestionably more favorable to the Debtor than are otherwise available from any other source, and allowing continued access to the remaining approximately \$4.750 million of availability should be approved. Upon confirmation of the Plan, the SCOA Financing Facility, including the pre-petition amounts outstanding thereunder, and post-petition loans (if any) funded thereunder, is expected to be reinstated.

59. The Debtor expects that between cash flow from continued ordinary course operations and the liquidity provided under the SCOA Financing Facility (should there be any need to borrow thereunder in the event of a shortfall in the Debtor’s projected cash flows), the Chapter 11 Case will be adequately funded and the Debtor will be positioned to maximize the value of its estate for the benefit of its stakeholders.

### **3. Trade Debt**

60. In the ordinary course of its operations, Presperse incurs trade debt with numerous suppliers and vendors in connection with the sourcing and distributing of hundreds of Presperse products sold to and utilized by its customers. Presperse is substantially current with respect to its unsecured trade debt. A majority of these suppliers and vendors conduct business with the Debtor on a purchase order-by-purchase order basis and are paid on prearranged terms.

61. As of the Petition Date, the Debtor estimates that approximately \$4,750,000 of supplier and trade debt is due and outstanding, nearly 95% of which constitute claims under 11 U.S.C. § 503(b)(9) and/or goods in transit.



62. In the ordinary course of business, Presperse sources and purchases a number of its products from entities affiliated with SCOA. These products are sold to Presperse under arms' length supply/purchase agreements and/or through arms' length purchase orders. The Debtor understands that Presperse pays similar amounts for such orders as other non-debtor customers of such affiliates. Approximately \$2,100,000 of the supplier and trade debt that is referenced in paragraph 61 above is due and owing to these affiliates. The Debtor intends on continuing such purchases in the ordinary course on a post-petition basis.

63. As discussed in further detail in the Trade Debt Motion,<sup>13</sup> certain of these unsecured claims owed to trade vendors/suppliers are entitled to statutory priority, including under section 503(b)(9) of the Bankruptcy Code, or may give rise to liens in favor of shippers, warehousemen, or mechanics in the event they go unpaid.

64. Regardless of whether such claims are afforded priority under the Bankruptcy Code, the Debtor anticipates—consistent with anticipated Plan treatment—that all such vendor and service provider claims will be paid or otherwise satisfied in full in the ordinary course, and the Debtor seeks relief to effectuate such ordinary course payment through the Trade Debt Motion.

## **II. LITIGATION AND EVENTS LEADING TO THE CHAPTER 11 FILING**

65. As discussed above, Presperse (and more recently, Presperse's parent, SCOA) is named as a defendant in hundreds of actions brought in courts around the country by plaintiffs asserting Talc Personal Injury Claims.

66. Presperse (and SCOA) believes this litigation is completely without merit and that the talc product historically sold by Presperse (and which Presperse stopped selling in 2023) was

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<sup>13</sup> The "*Trade Debt Motion*" is the Debtor's Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105(a), 363(b) and 503(b)(9) and Fed. R. Bankr. P. 4001, 6003, and 6004 Authorizing the Debtor to Pay Prepetition Claims of General Unsecured Creditors in the Ordinary Course of Business and Granting Related Relief.

safe. However, as a result of the growing volume of litigation resulting in the increasing incurrence of defense costs and increasing *ad hoc* settlement amounts, coupled with the limited availability of insurance coverage (if any) for the defense and/or resolution of Talc Personal Injury Claims (based on investigation to date), the Debtor determined that the commencement of the Chapter 11 Case and the implementation of the Term Sheet agreed to as set forth below was the best option to protect the Debtor's estates and preserve value for all stakeholders. Presperse lacks the financial wherewithal to remain in the tort system, and the proposed recoveries for Talc Personal Injury Claims under the proposed Plan, if confirmed, significantly exceed the alternative, which would be the liquidation of Presperse, whether through Chapter 7 or a state law proceeding.

**A. Unsustainable Explosion in Talc Litigation**

67. The overwhelming majority of plaintiffs have asserted claims alleging mesothelioma or other diseases arising as a result of exposure to asbestos-contaminated talc in cosmetic products. Certain Talc Personal Injury Claims also concurrently allege non-talc exposure to asbestos that the Debtor believes is unrelated to products sold and distributed by Presperse.

68. Prior to 2021, Presperse was named in 8 lawsuits alleging talc-related personal injuries. Of those, 7 were dismissed and 1 settled for a *de minimis* amount.

69. However, beginning in 2021 and 2022, plaintiffs began filing Talc Personal Injury Claims naming Presperse, among other defendants, at a substantially increased and alarming pace, rising to approximately 275 lawsuits pending as of the Petition Date.

70. In the wake of certain recent high-profile verdicts in talc-related personal injury cases and the increased media focus on talc litigation, notwithstanding the limited amount of talc sold by Presperse historically, the number of future Talc Personal Injury Claims are projected to only further increase. No cases alleging Talc Personal Injury Claims against Presperse have gone to trial because Presperse settled the claim or was voluntarily dismissed from the case.

71. Presperse, and in some cases, Presperse and SCOA (as SCOA has been named in a number of cases, together with Presperse, in part based on SCOA's equity ownership in Presperse), have historically settled Talc Personal Injury Claims and obtained releases for Presperse, SCOA and certain other non-debtor affiliates of Presperse. However, the Talc Personal Injury Channeling Injunction, as proposed in the Plan, does not enjoin claims against any party except Presperse and SCOA (and their Representatives, in their capacity as such) as and to the extent set forth in the Plan.

72. Presperse maintains that the talc it distributed was safe, that the Talc Personal Injury Claims are entirely without medical or scientific merit, and that exposure to the talc sold by Presperse has not caused any personal injuries. Presperse was always committed to the quality and safety of the talc it sourced. Nevertheless, the substantial increase in alleged Talc Personal Injury Claims asserted in the last few years, combined with the current state of the tort system in this country, has led to continued and ever-increasing litigation costs that Presperse simply could not sustain.

**B. Prepetition Negotiations with Talc Representatives and Entry into the Term Sheet**

73. As a result of the mushrooming level of asserted Talc Personal Injury Claims and the unsustainable litigation and growing settlement costs, Presperse retained bankruptcy counsel (Duane Morris) and a financial advisor (Getzler Henrich) in late 2022 to begin evaluating strategic options to resolve Presperse's talc-related personal injury liabilities.

74. At the same time, Presperse began exploring, among other options, the viability of using bankruptcy to address the present and future Talc Personal Injury Claims by channeling the claims to a trust created under sections 105 and 524(g) of the Bankruptcy Code that would be structured to ensure fair and equitable treatment of present and future claimants.

75. In January 2023, Presperse entered into a Confidentiality Agreement with the following firms representing, on a pre-petition basis, certain of the talc plaintiffs: Simon Greenstone Panatier, PC; Belluck & Fox LLP; and Waters Kraus LLP (collectively, the “Talc Claimants’ Committee”)<sup>14</sup> to facilitate pre-petition negotiations regarding the possibility of a pre-negotiated chapter 11 524(g) plan of reorganization. The Talc Claimants’ Committee retained Robinson & Cole LLP as legal counsel and GlassRatner Advisory & Capital Group LLC d/b/a B. Riley Advisory Services (“B. Riley”) as financial advisor, and Legal Analysis Systems, Inc. to provide advice in connection with these negotiations. The Talc Claimants’ Committee’s professionals were engaged at Presperse’s expense.

76. The Talc Claimants’ Committee’s professionals initiated an extensive months-long diligence process into Presperse’s business and the pending talc litigation. Presperse worked constructively with the Talc Claimants’ Committee throughout this process and has provided the Talc Claimants’ Committee with access to a data room and responses to numerous information requests. The Debtor’s advisors also attended multiple meetings with the Talc Claimants’ Committee’s advisors to discuss a potential resolution of the Talc Personal Injury Claims.

77. In early March 2023, Presperse, with the advice and consent of the Talc Claimants’ Committee, sought to engage an independent third-party to represent future talc-related personal injury claimants. Heather Barlow of Value Extraction Services, LLC as the pre-petition future claimants’ representative (the “Future Claimants’ Representative”) to represent the interests of individuals who may assert Talc Personal Injury Claims in the future, but whose talc-related diseases have not yet manifested and are unknown (the “Future Claims”).

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<sup>14</sup> The Talc Claimants’ Committee subsequently was augmented to include Dean Omar Branham Shirley, LLP; Maune Raichle Hartley French & Mudd, LLC; Simmons Hanly Conroy LLC; and Weitz & Luxenberg, P.C.

78. The Future Claimants' Representative retained Young, Conaway, Stargatt & Taylor, LLP as counsel, Ankura Consulting Group, LLC as consultant, and jointly retained, together with the Talc Claimants' Committee, B. Riley as financial advisor. As with the Talc Claimants' Committee, the Future Claimants' Representative and its advisors engaged in an extensive diligence process and constructive discussions with Presperse and SCOA surrounding the viability of a global chapter 11 plan settlement that would resolve all pending and future Talc Personal Injury Claims.<sup>15</sup>

79. As part of this diligence process, the Debtor produced (or uploaded to a data room) thousands of documents and informal discovery with the goal of negotiating a resolution of the Talc Personal Injury Claims among these parties during the summer of 2023.

80. However, the parties were unable to reach agreement at that time and negotiations broke off in August 2023 and the parties went back to litigating in the tort system.

81. With the ensuing additional cases filed from and after September 2023 through early 2024 and the growing financial distress of Presperse—including the serious contemplation by Presperse of liquidation due to the unsustainable costs associated with resolving talc-related claims in the tort system—Presperse reached out again to the Talc Claimants' Committee in February 2024, and the Future Claimants' Representative in March 2024, to re-open the settlement negotiations.

82. Ultimately, following weeks of further settlement discussions from mid-February 2024 through late March 2024 between and among the parties, Presperse, SCOA, the Talc

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<sup>15</sup> The Debtor intends, through a separate motion, to seek the appointment of Ms. Barlow as the post-petition Future Claimants' Representative. Based on Ms. Barlow's experience and the knowledge she acquired during the pre-petition diligence process related to Presperse and the Talc Personal Injury Claims, the Debtor believes this appointment is beneficial to the Debtor's creditors and estate and should be approved.

Claimants' Committee and Future Claimants' Representative, on March 30, 2024, executed a Term Sheet regarding a Chapter 11 Plan of Reorganization, which Plan, among other things, will provide as follows:

- **Cash Contribution to Fund a Trust Established under Sections 105 and 524(g) for Talc Personal Injury Claims:** Talc Personal Injury Trust, funded by (a) a cash contribution by or on behalf of the Debtor and SCOA in the amount of \$49,000,000, less the total amount funded and outstanding with respect to pre-petition and post-petition bankruptcy fees and costs (i) incurred by Presperse (including with respect its and the professionals of the Talc Claimants' Committee and the Future Claimants' Representative) and (ii) pre-petition and post-petition bankruptcy fees and costs funded by SCOA with respect to SCOA's bankruptcy counsel, beginning as of February 15, 2024, to be made on the Effective Date (the "Cash Contribution"); and (b) a promissory note issued by Presperse and SCOA in the original principal sum of \$1,000,000 bearing interest at 4% per annum with a 6-month maturity (subject to pre-payment without penalty, with principal and interest payments to be paid on a monthly basis and the note to be secured by a lien on 50.1% of the stock of the Reorganized Debtor).
- **Talc Personal Injury Channeling Injunction:** the issuance, on the Plan's Effective Date and on condition of the delivery of the trust funding, of a permanent injunction channeling all Talc Personal Injury Claims (including Demands), whether asserted against the Debtor, SCOA, or their Representatives (in their capacity as such), to the Talc Personal Injury Trust in accordance with 11 U.S.C. §§ 105 and 524(g) of the Bankruptcy Code. The Talc Personal Injury Trust will assume sole responsibility for processing and resolving all Talc Personal Injury Claims (including indirect Talc Personal Injury Claims and Demands), in accordance with the Plan and the Plan-related documents.

83. The Debtor believes that the prepetition Term Sheet and fully negotiated Plan embodying the terms of such settlement will provide for the swift and smooth resolution of this Chapter 11 Case. The settlement agreed to in the Term Sheet has enabled the Debtor to commence the Chapter 11 Case with a pre-negotiated, fully consensual Plan that, if confirmed, will resolve Presperse's liability for the Talc Personal Injury Claims.

84. Additionally, and in light of a significant portion of the Cash Contribution being funded to Presperse under the Plan by SCOA, Presperse believes that there will be substantially

more assets available to pay Talc Personal Injury Claims under the Plan than would be the case if there were no Plan and Presperse was forced to pay allowed Talc Personal Injury Claims solely from its own assets.

85. I believe that substantially more assets will be available to holders of Talc Personal Injury Claims under the Plan because, among other reasons, SCOA has agreed to contribute substantial amounts of cash which would not be contributed otherwise to the Debtor as set forth in the Plan on behalf of SCOA, in exchange for being a Protected Party (as defined in the Plan).

86. Moreover, without the settlements and distribution procedures agreed to and contained in the Plan (and the related Trust Documents), (i) Presperse would undoubtedly be forced to liquidate, thereby causing the loss of jobs for all approximately 50 Presperse employees, (ii) present Holders of Talc Personal Injury Claims would likely receive little to no recovery on account of their claims, and (iii) those future holders of Demands that may not manifest an injury for years to come would receive nothing.

## **PART II**

87. In furtherance of the objective of preserving value for all stakeholders, the Debtor has sought approval of the First Day Pleadings and related orders (the “Proposed Orders”), and respectfully requests that the Court enter the Proposed Orders granting the relief sought in the First Day Pleadings. For the avoidance of doubt, the Debtor seeks authority, but not direction, to pay amounts or satisfy obligations with respect to the relief requested in the First Day Pleadings.

### **I. ADMINISTRATIVE MOTIONS**

- **Complex Case Designation:** *Application for Designation as Complex Chapter 11 Bankruptcy Case*
- **Claims Agent Application:** *Application for Entry of an Order Authorizing the Employment and Retention of Kroll Restructuring Administration LLC as Claims, Noticing, and Solicitation Agent*

- **Top Creditor List/Notice Procedures Motion:** *Debtor's Motion for Entry of an Order (A) Authorizing the Filing of a List of the Law Firms Representing the Largest Number of Talc Plaintiffs Asserts Claims Against the Debtor, (II) Authorizing the Listing of Addresses of Counsel for Talc Claimants in Creditor Matrix in Lieu of Claimants' Addresses, (III) Approving Notice Procedures for Such Claimants, and (IV) Granting Related Relief*

## II. OPERATIONAL MOTIONS

- **Cash Management Motion:** *Debtor's Motion for Interim and Final Orders (I) Authorizing the Debtor to Continue and Maintain Its Existing Cash Management System, Bank Accounts and Business Forms, (II) Modifying the Investment Guidelines, and (III) Granting Related Relief*
- **Wages Motion:** *Debtor's Motion for Interim and Final Orders Pursuant to 11 U.S.C. §§ 105(a), 363(b) and 507(a)(4) and (a)(5) (I) Authorizing the Debtor to Pay Prepetition Wages and Salaries and Related Obligations and Taxes and (II) Directing All Banks to Honor Checks and Transfers for Payment of Prepetition Employee Obligations*
- **General Unsecured Claim Payment Authorization Motion:** *Debtor's Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105(a), 363(b) and 503(b)(9) and Fed. R. Bankr. P. 4001, 6003, and 6004 Authorizing the Debtor to Pay Prepetition Claims of General Unsecured Creditors in the Ordinary Course of Business and Granting Related Relief*

## III. FINANCE AND OTHER MOTIONS

- **DIP Motion:** *Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to Continue To Operate And Perform Under The Unsecured SCOA Financing Facility, (II) Obtain Unsecured Post-Petition Financing Pursuant to Section 364 of the Bankruptcy Code, and (III) Granting Related Relief*

88. I am familiar with the content and substance of the First Day Pleadings. I have reviewed each of the First Day Pleadings, Proposed Orders, and exhibits thereto (or have otherwise had their contents explained to me), and the facts set forth therein are true and correct to the best of my knowledge, information, and belief, and each such factual statement is incorporated herein by reference.

89. Moreover, I believe that the relief sought in each of the First Day Pleadings (a) is vital to enabling the Debtor to make the transition to, and operate in, chapter 11 with minimal



interruptions and disruptions to its business or loss of productivity or value including loss of employment, and (b) constitutes a critical element in the Debtor being able to successfully maximize value for the benefit of its estate.

90. Failure to grant the relief requested in any of the First Day Pleadings may result in immediate and irreparable harm to the Debtor, its business, and the Debtor's estate. Accordingly, for the reasons set forth herein and in each of the respective First Day Pleadings, the Court should grant the relief requested in the First Day Pleadings.

### **CONCLUSION**

91. The Debtor's ultimate goal in the Chapter 11 Case is to confirm the Plan providing for the establishment of the Talc Personal Injury Trust pursuant to sections 105 and 524(g), allowing for the settlement contributions, trust funding, and other mechanisms set out in detail in the pre-negotiated, consensual Plan that will address all current and future Talc Personal Injury Claims asserted against Presperse, while simultaneously preserving value and allowing the Debtor to emerge from chapter 11 free of talc-related liabilities.

92. In the near term, however, to minimize any loss of value during this Chapter 11 Case, the Debtor's immediate objective is to maintain a business-as-usual atmosphere during the early stages of the Chapter 11 Case, with as little interruption or disruption to the Debtor's operations as possible. I believe that if the Court grants the relief requested in each of the First Day Pleadings, the prospect for achieving these objectives and confirmation of the Plan will be substantially enhanced.

93. I hereby certify that the foregoing statements are true and correct to the best of my knowledge, information and belief.

*[Remainder of page intentionally left blank]*

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 9th day of September 2024.

/s/ Mehul Shah

Mehul Shah  
Chief Financial Officer  
Presperse Corporation