

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

NEWAGE, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 22-10819 (LSS)

(Joint Administration Requested)

**DECLARATION OF LAWRENCE PERKINS AS CHIEF
RESTRUCTURING OFFICER OF THE DEBTORS IN SUPPORT OF THE
DEBTORS' CHAPTER 11 PETITIONS AND REQUESTS FOR FIRST DAY RELIEF**

I, Lawrence Perkins, hereby declare, under penalty of perjury, as follows:

1. I submit this Declaration in my capacity as Chief Restructuring Officer (“**CRO**”) of NewAge, Inc. (“**NA Inc.**”), Ariix LLC (“**Ariix**”), Morinda Holdings, Inc. (“**Holdings**”), and Morinda, Inc. doing business as Noni by NewAge (“**Morinda**”) (collectively, the “**Debtors**”). I am over the age of eighteen and authorized to submit this Declaration, and if called on to testify, I could and would testify competently to the facts set forth in this Declaration.

2. I have served as CRO since April 26, 2022. As CRO, I have assumed many management responsibilities of the Debtors. As a result, I am generally familiar with the relevant books and records, as well as with most recent day-to-day operations, business and financial affairs, and restructuring efforts.

3. I also have personal experience and knowledge related to corporate turnaround and restructuring. I am the Chief Executive Officer and Founder of SierraConstellation Partners LLC (“**SCP**”), a national interim management and advisory firm. I have over 20 years of experience in the turnaround industry that has included investment banking and turnaround consulting for middle

¹ The last four (4) digits of each of the Debtors’ federal tax identification number are NewAge, Inc., (2263), Ariix LLC (9011), Morinda Holdings, Inc. (9756), and Morinda, Inc. (9188). The Debtors’ address is 7158 S. FLSmidth Dr., Suite 250, Midvale, Utah 84047.

market companies across the United States. Among other things, I have served as a chief restructuring officer, principal investor, turnaround advisor, strategic consultant, investment banker, financial executive, and crisis manager in many industries, including manufacturing, technology, automotive, consumer products, financial services, healthcare, retail, and telecommunications.

4. Except as otherwise indicated herein, all facts set forth in this Declaration are based on (i) my personal knowledge from, among other things, my discussions with relevant members of the Debtors' management team, professionals and advisors, and my review of relevant documents and information concerning the Debtors' operations, business and financial affairs, and restructuring efforts, or (ii) my opinions based on my experience and knowledge.

5. On the date of this Declaration, the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**"), with the United States Bankruptcy Court for the District of Delaware (the "**Court**"). The Debtors continue to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no trustee, examiner or official committee of unsecured creditors has been appointed in the Debtors' chapter 11 cases (the "**Chapter 11 Cases**").

6. I submit this Declaration to assist the Court, as well as creditors and other parties in interest, in understanding the circumstances that resulted in the commencement of these Chapter 11 Cases, and in support of the relief that the Debtors have requested from the Court in the form of various motions and applications filed on or about the date hereof and described herein (collectively, the "**First Day Motions**"). The relief requested in the First Day Motions is critical to the Debtors' efforts to maximize value for the benefit of their creditors and other stakeholders.

7. Part I of this Declaration provides a brief introduction about the Debtors and the Chapter 11 Cases. Part II of this Declaration explains the Debtors' corporate structure, history, business, prepetition capital structure, the developments that led to the Chapter 11 Cases, and the Debtors' goals in the Chapter 11 Cases. Part III provides an overview of the First Day Motions filed with the Court.

I. Introduction

8. The Debtors and their non-debtor affiliates (the “**NewAge Enterprise**” or the “**Enterprise**”) develop, sell, and distribute health and nutritional products, including through a robust direct sales distribution network across more than 50 countries, primarily in North America, Japan, China, and Europe. Products are predominantly sold through an extensive direct sales network, utilizing a team of over 400,000 brand partners (the “**Brand Partners**”). The Enterprise also includes an e-commerce sales platform and a store distribution business—one of the largest in Colorado—that provides beverages and snacks to grocers, big box retailers, and convenience stores.

9. NewAge Enterprise's health and nutritional products are in the following areas: (i) health and wellness; (ii) health appearance; and (iii) nutritional performance. Its largest brand is known as Tahitian Noni®, which includes products focused on reducing inflammation and strengthening the body's protection against viruses, primarily through a consumable beverage derived from the Noni plant, an antioxidant-rich, natural resource found in French Polynesia (the “**Noni Plant**”).

10. More recently, the Debtors faced several challenges, which, in cumulation, have necessitated the filing of the Chapter 11 Cases. The challenges include the global COVID-19 pandemic and supply chain issues, uncertainty related to business operations in China, issues in fully integrating numerous brands, changes in management, and expense related to an investigation

and defense of a potential violation of the Foreign Corrupt Practices Act (“FCPA”). The Debtors thus engaged the CRO and SCP to, among other things, address the issues raised by the challenges and assist in a potential restructuring of the enterprise or other strategic transactions.

II. Background

A. **Corporate Structure and History.**

11. The NewAge Enterprise is comprised of Debtor NA Inc., which has six wholly owned subsidiaries, including Debtors Holdings and Ariix. Additionally, those Debtors have wholly owned subsidiaries, including Debtor Morinda, which is owned by Holdings. A chart reflecting the organizational structure of the NewAge Enterprise, showing both the Debtors and non-debtor affiliates, is attached hereto as Exhibit A. The discussion below is focused on the Debtors.

12. As discussed above, the NewAge Enterprise develops, sells, and distributes health and nutritional products globally. For purposes of the Chapter 11 Cases, the Enterprise’s two primary lines of business are operated through the “**Morinda Business**” and the “**Ariix Business**,” both of which have similar products and business models that may be operated in the same markets. When NA Inc. acquired Ariix in 2020 it was anticipated that the Morinda and Ariix Businesses would integrate thus simplifying the corporate structure, but as of the Petition Date integration is ongoing, thus resulting in numerous non-debtor subsidiaries operating the Morinda Business and numerous non-debtor subsidiaries operating the Ariix Business, sometimes in the same market.

13. The NewAge Enterprise sells products primarily through direct sales made by non-employee Brand Partners. Brand Partners typically work with non-debtor affiliates organized and doing business in the place of residence of the Brand Partner (the “**Sales Affiliates**”), although some Brand Partners sell products in non-resident markets. These Sales Affiliates are thus

organized in domestic and foreign jurisdictions, primarily to address specific issues within the Enterprise.

14. The Debtors, all headquartered and operating in Midvale, Utah, are the central managerial hub of the NewAge Enterprise. They do not engage in direct sales themselves, but rather provide global services to the non-debtor affiliates, including the Sales Affiliates, such as financing, managerial administration, brand development and marketing, product procurement, and distribution. Importantly, the Debtors also provide services related to the management and training of Brand Partners, including stimulating Brand Partners to encourage additional sales. For example, the Debtors host marketing events for the Sales Affiliates' leadership teams and Brand Partners intended to assist in marketing and sales efforts.

i. Debtor NA Inc.

15. Debtor NA Inc. is a publicly traded corporation organized under the laws of the State of Delaware that trades on the NASDAQ under the symbol "NBEV".

16. NA Inc. was initially incorporated as American Brewing Company, Inc. under the laws of the State of Washington in April 2010. In mid-2016, American Brewing Company, Inc. changed its name to New Age Beverages Corporation. And then in July 2020, New Age Beverages Corporation changed its name to NewAge, Inc. In May 2021, NA Inc. reincorporated under the laws of the State of Delaware.

17. NA Inc. has six wholly-owned subsidiaries, two of which are Debtors Ariix and Holdings, and Holdings in turn wholly owns Debtor Morinda. The remaining four non-debtor subsidiaries, are: NABC, Inc.; NABC Properties, LLC; NewAge (China) Biological Technology Co. Ltd; and Morinda Access, Inc. See Exh. A. Non-debtors NABC, Inc. and NABAC Properties, LLC are commonly referred to collectively as the "**DSD Business**," which is a direct store

distribution business providing beverages, snacks and other products to grocers, big box retailers and convenience stores.

18. NA Inc. primarily acts as an entity coordinating the NewAge Enterprise for the purpose of access to capital, including through public equity markets and private financing. As of the Petition Date, the principal private financing is a loan with East West Bank (“EWB”).

19. NA Inc. also is a signor or guarantor on some, but not all, contracts related to the Enterprise.

ii. Debtors Holdings and Morinda

20. Holdings is a corporation organized under the laws of the State of Utah. It is primarily a holding company for assets related to the Morinda Business, including ownership of several wholly owned subsidiaries, including Debtor Morinda. Holdings maintains a 401K plan and is responsible for several retirement obligations.

21. Debtor Morinda is a corporation organized under the laws of the State of Utah. It is the primary operating entity of the Morinda Business, with numerous wholly owned subsidiaries, many of which are Sales Affiliates working with Brand Partners. *See* Exh. A.

iii. Debtor Ariix

22. In or about December 2020, Debtor Ariix became a wholly-owned subsidiary of NA Inc. Ariix is a limited liability company organized under the laws of the State of Utah.

23. Ariix has numerous wholly owned subsidiaries through which it operates the Ariix Business, many of which are Sales Affiliates working with Brand Partners. *See* Exh. A.

B. NewAge’s Business.

i. NewAge Products.

24. In 1996, Morinda became the first company to commercialize the global sale of products derived from the Noni Plant, and Tahitian Noni® juice is a flagship brand of the

Enterprise. Many products in the Morinda Business and Ariix Business lines are powered by the Noni Plant which is believed to boost immunity, naturally enhance energy, and support overall wellness.

25. Both lines of business also sell many other product lines, typically using plant-based ingredients, such as phytonutrients and micronutrients. Some of the Enterprise's more notable brands include Lucim™, TruAge, Slenderiiz®, Nutrifii™, and Zennoa®.

26. The Debtors manage the procurement of products that are sold as part of the NewAge Enterprise, most of which are produced by a third-party manufacturer. One non-debtor affiliate operates a facility in Tahiti that processes the Noni Plant that is used by the manufacturers to produce products.

ii. Sales and Marketing.

27. A key component of the NewAge Enterprise is a global direct sales model, which is the basis for a significant portion of its revenue.

28. Direct sales are made by non-employee Brand Partners. On the Petition Date, there were over 400,000 Brand Partners selling products in more than 50 countries, primarily in North America, Japan, China and Europe. These Brand Partners typically are working with a Sales Affiliate located in the country where they reside, but some Brand Partners sell in markets outside of their place of residence.

29. The Debtors manage these sales components by, among other things, developing products and providing marketing, executing promotions, and providing sales incentives to assist Brand Partners.

30. A smaller part of the Enterprise's revenue is derived from an e-commerce platform as well as the DSD Business—one of the largest in Colorado—that provides beverages and snacks to grocers, big box retailers, and convenience stores.

iii. Operations.

31. Globally, the NewAge Enterprise has approximately 830 employees. There are approximately 170 employees located in the United States, of which approximately 150 are employed by the Debtors.

32. The Debtors and their non-debtor affiliates operate together as a global enterprise, with the Debtors serving as the managerial hub, providing numerous services, such as financing, managerial administration, brand development and marketing, product procurement, distribution, and management and training of Brand Partners. As part of this global enterprise, the Debtors use a centralized cash management system (the “**Cash Management System**”) as discussed below.

33. The Debtors routinely engage in intercompany financial transactions with other Debtors and non-debtor affiliates (the “**Intercompany Transactions**”). Intercompany Transactions may arise from one Debtor entity’s payment of accounts payable owed by another Debtor or non-debtor entity or one Debtor entity’s receipt of accounts receivable payments due to another Debtor or non-debtor entity. Other intercompany balances recorded in the Debtors’ books and records can reflect accrued, unpaid intercompany fees relating to the Debtors’ business operations. At any given time, as a result of the Intercompany Transactions, there may be claims owing by, or owed from, one Debtor or non-debtor to another Debtor or non-debtor entity. These Intercompany Transactions are an essential component of the Debtors’ operations and centralized Cash Management System, discussed below.

a. Direct Sales Operations.

34. Except for managing certain non-debtor affiliates engaged in manufacturing of products² or formed for special purposes,³ most of the Debtors' operations are focused on and related to product sales at the Sales Affiliates' level.

35. The Debtors manage the procurement of products from third-party manufacturers that are delivered in cases. Typically, Debtors Morinda or Ariix sell and ship cases to Sales Affiliates at a "transfer price" which is intended to sell product at cost plus a mark-up for taxes associated with the sale. Upon receipt, Sales Affiliates book a payable to the Debtor-entity and the Debtor-entity books a receivable. When a product sale occurs, Sales Affiliates book the cost of the sale (*i.e.*, Brand Partner compensation) and revenue. After covering local overhead, Sales Affiliates pay the Debtor-entity payable that arose when the inventory was shipped. Debtor-entities book the receivable, which naturally is collected after some delay.

36. While Brand Partners are usually paid at the Sales Affiliate level, the Debtors manage a global compensation program for Brand Partners intended to inspire sales. Thus, the Debtors are tracking and managing on an ongoing basis compensation paid the Brand Partner network. For example, Brand Partners earn a percentage of sales made to customers they bring onto the platform and may earn commissions based on other Brand Partners' sales if they brought those Partners onto the platform.

² For example, in China, the Sales Affiliate performs its own manufacturing of products sold in the same country. Also as noted, above, there is a non-debtor affiliate that operates the facility in Tahiti that processes the Noni Plant that is used by third-party manufacturers to produce products.

³ Certain non-debtor affiliates hold intellectual property (for example, Ariix Malta Ltd holds Ariix's intellectual property) or were formed for the purposes of minimizing tax obligations on a global basis (for example, Ariix Ireland Ltd conducts all inventory purchasing on behalf of entities owned by Ariix).

37. The Debtors generally rely on the repatriation of profits from downstream Sales Affiliates to fund overhead and generate profits. As a result, they are reliant on the Intercompany Transactions to sustain operations.

38. The Debtors' management includes identifying new direct sales markets and starting up operations in markets deemed to be potential sources of revenue. Thus, after doing research into market conditions, Debtor-entities occasionally organize a new Sales Affiliate in a country that they think may one day be profitable. These start-ups typically require Intercompany Transactions. For example, profits from a profitable market, such as Japan, may be upstreamed and redirected through the centralized Cash Management System to another Sales Affiliate, such as South Africa, which has not yet achieved the necessary scale to sustain operations in its country. In these cases, Intercompany Transactions are noted in the relevant entities' books and records. Also, and possibly more common, is when a Debtor entity ships inventory to an up-start Sales Affiliate, the receivable for which it knows will not be paid until the Affiliate is profitable. Again, these Intercompany Transactions are noted in both entities' books and records, and if the new Sales Affiliate is ultimately profitable, the Debtors typically collect this receivable.

39. The Sales Affiliates may also upstream cash to a Debtor entity for certain types of fees, such as dividends, licensing fees and royalties. The reasons for these fees can be circumstance- or country-specific, such as to take advantage of tax issues, or to simplify and systemize cash flows from a Sales Affiliate.

b. Other Sales Operations.

40. While the great majority of the Debtors' operations are related to the direct sales operations discussed above, the NewAge Enterprise includes e-commerce sales and sales from distributions to retail stores.

41. Furthermore, the DSD Business operates a retail store distribution business, providing beverages and snacks to grocers, big box retailers, and convenience stores.

C. Capital Structure.

i. Secured Claims.

42. On March 9, 2022, NA Inc. entered into a Loan and Security Agreement with EWB (the “**Loan Agreement**”) which provides for a \$12.0 million revolving loan facility (the “**EWB Credit Facility**”). The EWB Credit Facility is secured by substantially all assets of NA Inc. and requires compliance with certain financial and restrictive covenants. As part of the Loan Agreement, EWB required NA Inc.’s subsidiary, Tahitian Noni Beverages (China) Co., Ltd. (“**TNBC**”), to (a) maintain its primary depository and operating accounts with East West Bank (China) Ltd. (the “**China Account**”), and (b) maintain the equivalent of at least \$13,200,000 USD in the China Account.⁴

43. After the Loan Agreement was entered, TNBC entered into that certain Tri-Party Pledge Agreement (the “**Tri-Party Pledge**”) as the pledgor, EWB as the pledgee, and NA, Inc. as the borrower. Pursuant to the Tri-Party Pledge, TNBC granted EWB a security interest its bank account held at EWB to secure the EWB Credit Facility.

44. On March 11, 2022, Debtors Holdings and Morinda, and non-debtor NewAge Worldwide, Inc., entered into that certain Unconditional Guaranty in favor of EWB, guaranteeing NA, Inc.’s payment under the Loan Agreement.

45. Also on March 11, 2022, Debtors Holdings, Morinda, and Ariix entered into that certain Pledge Agreement with EWB, pledging their equity interests in certain of their subsidiaries.

⁴ The Loan Agreement provided that if the amount in the China Account decreased to \$12,600,000 USD based on future exchange rates, NA, Inc. must cause TNBC to increase the amount.

46. Shortly after entering into the Loan Agreement, NA Inc. borrowed the entire \$12.0 million of funding under the EWB Credit Facility.

ii. Unsecured Claims.

47. General unsecured claims against each Debtor as of the Petition Date is summarized as follows:

a. NA Inc. had estimated debt in excess of \$1 million, consisting primarily of notes payable, accounts payables to trade creditors and professionals, and a lease liability.

b. Holdings had estimated debt in excess of \$18 million, consisting primarily of intercompany debt, payroll and employee benefits, and taxes payable.

c. Morinda had estimated debt in excess of \$34 million, consisting primarily of intercompany debt, accounts payable, commissions payable, payroll and employee benefits, and other current liabilities.

d. Ariix had estimated debt in excess of \$235 million, consisting primarily of intercompany debt, accounts payable, and notes payable.

iii. Equity.

48. As noted above, NA Inc.'s equity is publicly traded, and Debtors Holdings and Ariix are wholly owned by NA Inc. Debtor Morinda is wholly owned by Debtor Holdings.

49. As of August 10, 2022, there were 244 holders of record of NA Inc. common stock and 168,213,761 shares outstanding. Because NA Inc.'s common stock is held through several brokerage firms, the number of beneficial stockholders is far greater than the number of holders of record.

50. The largest equity holder of NA Inc. is Cooper Family Investments, LP, which owns approximately 7% of the equity. No other parties own more than 5% of NA Inc.'s stock.

D. The Need for Chapter 11 Relief.

51. As discussed above, NewAge has recently faced several challenges which in cumulation have negatively impacted its cash flow and necessitated the filing of the Chapter 11 Cases. The challenges include the global COVID-19 pandemic and supply chain issues, uncertainty related to business operations in China, issues in fully integrating new brands, changes in management, and expenses related to an investigation and defense of a potential violation of FCPA related to Ariix. The Debtors thus engaged the CRO and SCP to, among other things, address the issues raised by these challenges and assist in a potential restructuring of the enterprise or other strategic transactions.

52. It cannot be overstated to say that the Debtors' businesses have been significantly impacted by the global COVID-19 pandemic. The mandatory closures and "shelter-in-place" restrictions imposed by the pandemic negatively impacted business, in large part, because Brand Partners had a significant decrease in sales due to their inability to plan and/or attend in-person sales events. The pandemic also disrupted global supply chains which, in turn, adversely affected the Debtors' productivity and costs because their businesses are heavily dependent on efficient supply chains to produce and deliver products to customers throughout the world.

53. The Debtors' operations have also been negatively impacted by a difficult regulatory environment in China, which accounts for approximately 20% of business. For example, in 2019, several departments of the Chinese government initiated a review of healthy product and direct selling companies in China. During this review, the government instructed direct selling companies, such as the Debtors, not to hold large distributor meetings. China's review and authorization of direct sale licenses has also been suspended.

54. The NewAge Enterprise has also suffered from substantial turnover, including the separation from the founding CEO and subsequent dispute and regulatory investigations around

acts conducted during his tenure. An interim CEO was named in January of this year to stabilize the operations. In addition, there were multiple CFOs over the last 3 years that have further harmed the continuity of the executive suite through the integration phase of large-scale acquisitions as well as a challenging operating environment.

55. NA Inc.'s acquisition of Ariix in December 2020, which was intended to complement the Enterprise's operations to give it an advantage in a highly competitive industry, has given rise to at least two challenges. First, the Debtors have incurred expense and faced challenges integrating the new lines of business acquired. Second, after it acquired Ariix, the Debtors conducted an independent investigation of their international business practices, including engaging external counsel, accountants, and other advisors. The investigation identified potential FCPA violations and, in August 2021, a voluntary self-disclosure was made to the U.S. Department of Justice and U.S. Securities Exchange Commission. As of the Petition Date, reporting continues, and no penalties or fines have been imposed against the Debtors. In conducting its own investigation and cooperating with the governmental entities, however, the Debtors have incurred significant expenses.

56. Combined, the foregoing factors have reduced the Debtors' cash position and forced them to file these Chapter 11 Cases. The filing of these Chapter 11 Cases is done to preserve the NewAge Enterprise's workforce which is essential to maintaining its going concern value. Also, the Debtors plan to sell their assets as a going concern to maximize value for all creditors and stakeholders.

E. Prepetition Sale Process.

57. Prior to the Petition Date, NA Inc. engaged SCP, with me serving as CRO, to advise the Debtors with respect operational and financial challenges. Subsequently, as the Debtors' cash

position was fully analyzed and understood, the Debtors and SCP began exploring financial and strategic alternatives to maximize value, including consideration of a sale of assets.

58. As of May 26, 2022, NA Inc. on behalf of itself and direct and indirect subsidiaries retained Houlihan Lokey Capital, Inc. (“**Houlihan**”) as its financial advisor to provide financial advisory and investment banking services in connection with a financial restructuring or reorganization of, and/or one or more merger and/or acquisition transactions.

59. Houlihan contacted eighteen (18) parties in its buyer outreach initiative. Fifteen (15) parties signed non-disclosure agreements and were provided with diligence information and access to a data room to facilitate more detailed diligence.

60. Some of the parties Houlihan contacted expressed interest in assuming the stalking horse position and/or providing either pre-petition bridge or postpetition funding to the Debtors. However, further negotiations and involvements with these parties did not develop further due to issues including but not limited to inability to agree on non-disclosure agreement terms, priming lien concerns, liquidity-driven timing constraints, and inability to put forth an actionable proposal. Nevertheless, a number of these parties have expressed interest in participating in a potential sale process of the Chapter 11 Cases.

61. Also, soon after being retained, Houlihan strived to help NA, Inc. secure postpetition financing. Specifically, Houlihan reached out to eleven (11) additional parties (in addition to the eighteen (18) parties discussed above) to evaluate their willingness to provide financing during the Chapter 11 Cases—including parties traditionally providing financing in bankruptcies. Of these eleven (11) additional potential sources of postpetition financing, five (5) parties were sent non-disclosure agreements, and the Debtors executed a non-disclosure agreement with one party. Interest has been limited and discussions have generally not progressed due to the

general nature of the Debtors' business operations and collateral base (particularly the Debtors' limited hard assets in the United States), and the lack of a stalking horse bidder in place.

62. The Debtors and their advisors have also been working with EWB on possible solutions, including a debtor-in-possession financing or bridge financing; however, the parties have not reached any sort of agreement, nor has EWB offered to provide any additional funding.

F. Proposed Sale.

63. As part of the Debtors' marketing efforts to sell substantially all of their assets, they began negotiations with John Wadsworth, who has worked as an independent sales representative of the Enterprise since 1998—Mr. Wadsworth has never been a director or officer of any Debtor and has less than 0.4% of the outstanding shares of NA, Inc. Mr. Wadsworth is a principal of DIP Financing, LLC (the “**Stalking Horse**”).

64. Importantly, the Stalking Horse has agreed to enter into a Senior Secured Debtor-in-Possession Term Loan Agreement and extend \$16,000,000 in debtor-in-possession financing (the “**DIP Facility**”) as well as purchase the EWB Credit Facility to help the Debtors conserve value as they run a sale process in the Chapter 11 Cases. Moreover, the Stalking Horse intends to credit bid the full amount of the DIP Facility and EWB Credit Facility and serve as the stalking horse for the sale for substantially all of the Debtors' assets.

65. I believe the DIP Facility will provide the Debtors with the liquidity necessary to, among other things, make payroll and satisfy their other working capital and general corporate purposes, including funding essential payments to vendors and service providers. Absent authority to enter into and access the DIP Facility, even for a limited period of time, I believe the Debtors will be unable to continue operating their businesses, resulting in a deterioration of value and immediate and irreparable harm to the Debtors' estates. Further, the Debtors require sufficient funding to administer their Chapter 11 Cases.

66. The Stalking Horse has also entered into an Asset Purchase Agreement (the “**Stalking Horse Agreement**”). Under the Stalking Horse Agreement, the Stalking Horse will credit bid the full amount of the DIP Facility and EWB Credit Facility, which is subject to higher and better offers. As a condition to entering the Stalking Horse Agreement, the Stalking Horse also required certain reasonable bid protections, as are customary in these situations. Therefore, given the available options placed before the Debtors, I believe that entering the Stalking Horse Agreement is in the best interest of all parties in interest to these Chapter 11 Cases.

G. The Debtors’ Goals in Chapter 11.

67. The Debtors’ goals in these Chapter 11 Cases are to avail themselves of the protections and flexibility afforded by the bankruptcy process, so that they can preserve available assets to sell as a going concern for the benefit of creditors and other stakeholders. Although there will be no undue delay in the Chapter 11 Cases, the Debtors intend to take the full measure of the “breathing room” chapter 11 is intended to provide, so that they can execute on an orderly process—including the sale of assets for the benefit of creditors— without the threat of litigation or undue interference.

68. The Debtors intend to sell substantially all of their assets at an early stage in this case to preserve the assets’ value and avoid the unnecessary cost and expense of operating in these Chapter 11 Cases. Shortly after substantially all the assets are sold, the Debtors plan to propose a chapter 11 plan to distribute the sale proceeds to the appropriate parties.

III. First Day Motions

69. The Debtors filed the First Day Motions seeking relief related to the administration of the Chapter 11 Cases, their operations and their cash and financing needs, and to ensure a smooth entry into chapter 11. I am familiar with the contents of each First Day Motion (including the exhibits to such motions) and believe that the relief sought in each First Day Motion: (i) will

enable the Debtors to operate in chapter 11 with minimal disruptions; (ii) is critical to the Debtors' chapter 11 efforts; and (iii) best serves the interests of the Debtors' estates and creditors. Further, it is my belief that the relief sought in the First Day Motions is in each case narrowly tailored and necessary to achieve the goals identified above.

70. A list of the First Day Motions discussed in this Declaration is set forth below:
- i. *Motion of the Debtors for Entry of an Order (I) Directing Joint Administration and (II) Granting Related Relief* (the “**Joint Administration Motion**”);
 - ii. *Motion of the Debtors for Entry of an Order (I) Waiving the Requirement to File Equity Lists and Modifying the Manner for Giving Notice to Equity Security Holders, (II) Authorizing the Debtors to File (A) a Consolidated Master List of Creditors and (B) a Consolidated List of the Debtors' 30 Largest General Unsecured Creditors, and (III) Authorizing the Debtors to Redact Certain Personally Identifiable Information for Individual Creditors and Parties in Interest* (the “**Procedural Motion**”);
 - iii. *Debtors Application Seeking Authorization to Employ and Retain Stretto as Claims and Noticing Agent Effective as of the Petition Date* (the “**Claims Agent Application**”);
 - iv. *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Maintenance of Bank Accounts and Continued Use of Existing Business Forms and Checks, (II) Authorizing the Continued Use of Cash Management System and (III) Waiving Certain Investment and Deposit Guidelines* (the “**Cash Management Motion**”);
 - v. *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay (A) All Prepetition Employee Obligations and (B) Prepetition Withholding Obligations and Dues, and (II) Directing Banks to Honor Related Transfers* (the “**Employee Wages Motion**”);
 - vi. *Motion of the Debtors for Entry of Interim and Final Orders (I) Prohibiting Utility Providers from Altering, Refusing or Discontinuing Service, (II) Deeming Utility Providers Adequately Assured of Future Performance, and (III) Establishing Procedures for Determining Adequate Assurance of Payment* (the “**Utilities Motion**”);
 - vii. *Motion of the Debtors for Entry of an Order Authorizing (I) the Debtors to (A) Continue Prepetition Insurance Policies and (B) Pay All Prepetition Obligations in Respect Thereof, and (II) Banks to Honor and Process Related Checks and Transfers* (the “**Insurance Motion**”);

- viii. *Motion of the Debtors for Entry of Interim and Final Orders Authorizing the (I) Debtor to Pay Prepetition Taxes and Fees and Related Obligations and (II) Banks to Honor and Process Check and Transfer Requests Related Thereto (the “Tax Motion”); and*
- ix. *Motion of the Debtors for Interim and Final Orders Establishing Notice and Hearing Procedures for Trading In, or Certain Claims of Worthlessness With Respect to, Equity Securities in NewAge, Inc. (the “NOL Motion”).*

71. In addition, the First Day Motions include the *Motion of the Debtors for Entry of Orders (I) (A) Approving Bid Procedures for the Sale of Assets of the Debtors, (B) Approving Stalking Horse Agreement with Bid Protections, (C) Establishing Assumption and Assignment Procedures, (D) Establishing Notice Procedures, and (E) Granting Related Relief; and (II)(A) Authorizing the Sale of Assets of the Debtors Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related (the “Sale Motion”) and the Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Superpriority Claims, (IV) Modifying the Automatic Stay, and (V) Scheduling a Final Hearing (the “DIP Financing Motion”).* Separate Declarations will be filed with respect to the Sale and DIP Financing Motions.

72. The following is a list of specific facts relevant to certain First Day Motions, in addition to all of the foregoing facts:

A. The Joint Administration Motion.

73. Pursuant to the Joint Administration Motion, the Debtors seek the joint administration of their Chapter 11 Cases—four (4) in total—for procedural purposes only. Many of the motions, hearings, and other matters involved in the Chapter 11 Cases will affect all of the Debtors. Therefore, I believe that the joint administration of these Chapter 11 Cases will avoid the unnecessary time and expense of duplicative pleadings, hearings, and orders, thereby saving

considerable time and expense for the Debtors and resulting in substantial savings for their estates. Accordingly, I believe the Court should approve the joint administration of these Chapter 11 Cases.

B. The Procedural Motion.

74. Pursuant to the Procedural Motion, the Debtors seek entry of an order (i) waiving the requirements to file a list of equity holders (the “**Equity Lists**”) for holders of equity interests in NA, Inc. and providing the manner for giving notice to equity security holders, (ii) authorizing the Debtors to file (a) a consolidated list of creditors in lieu of filing separate lists for each Debtor and (b) a consolidated list of the Debtors’ 30 largest general unsecured creditors in lieu of filing separate lists for each Debtor, and (iii) authorizing the Debtors to redact certain personal identifiable information for the Debtors’ individual creditors and parties in interest.

75. All Debtors, other than NA, Inc., have disclosed their respective equity holders in the corporate ownership statements filed with their respective petitions. NA, Inc. has filed with its petition a list of holders of five percent or more of its outstanding common stock based on information ascertained from filings with the United States Securities and Exchange Commission. NA, Inc. is a public company with, as of the Petition Date, approximately 169 million shares of outstanding publicly held common stock. The stock is trading on the NASDAQ, and the ownership can change on a frequent basis, and beneficial ownership of the common stock is widely dispersed. The Debtors submit that preparing a list of NA, Inc.’s equity security holders with last known addresses and sending notice to all parties on that Equity List will be burdensome, expensive, time consuming, and serve little or no beneficial purpose. The Debtors propose that notice of the commencement of these Chapter 11 Cases be served on the list of registered holders and transfer agents of equity interests in NA, Inc., along with an Equity Transfer Procedures Notice. To the extent that it is determined that equity security holders are entitled to distributions from the Debtors’ estates, those parties will be provided with notice of the bar date and will then have an

opportunity to assert their interests. Thus, I believe that equity security holders will not be prejudiced by the relief requested in the Procedural Motion.

76. In addition, in the ordinary course of business, the Debtors maintain various computerized lists of the names and addresses of their respective creditors that are entitled to receive notices and other documents in these Chapter 11 Cases. The Debtors believe these lists may be consolidated and utilized efficiently to provide interested parties with notices and other similar documents, as contemplated by Local Rule 1007-2. Therefore, I believe that authorizing the Debtors to file a consolidated list of creditors, rather than filing a separate creditor matrix for each Debtor, is warranted.

77. A single, consolidated list of the Debtors' combined 30 largest general unsecured creditors in these Chapter 11 Cases is more reflective of the body of unsecured creditors that have the greatest stake in these Chapter 11 Cases rather than separate lists for each of the Debtors. Furthermore, the Debtors operate as a business enterprise and certain of the Debtors share many creditors. Therefore, the filing of a single, consolidated list of the 30 largest general unsecured creditors in these Chapter 11 Cases is not only appropriate under the circumstances but also necessary for the efficient and orderly administration of these Chapter 11 Cases.

78. Finally, it is also appropriate to authorize the Debtors to redact from any paper filed or to be filed with the Court in these Chapter 11 Cases the home addresses of the Debtors' individual creditors and parties in interest because such information could be used, among other things, to perpetrate identity theft or locate survivors of domestic violence or stalking who have otherwise taken steps to conceal their whereabouts. The Debtors propose to provide an unredacted version of the creditor matrix and any other applicable filings to the Court, the U.S. Trustee, counsel to any official committee of unsecured creditors appointed in these Chapter 11 Cases (if any), and other parties in interest upon reasonable request. Accordingly, I believe it is necessary

that any home addresses of the Debtors' individual creditors and parties in interest be redacted from any paper filed or to be filed with the Court, and I believe the Court should grant the relief requested in the Procedural Motion.

C. The Claims Agent Application.

79. Pursuant to the Claims Agent Application, the Debtors seek entry of an order authorizing and approving the appointment and retention of Stretto as the claims and noticing agent for the Debtors in their Chapter 11 Cases. Stretto is a bankruptcy administrator that specializes in providing comprehensive chapter 11 administrative services, including noticing, claims processing, balloting, and other related administrative aspects of these Chapter 11 Cases. Given the complexity of these cases and the number of claimants and other parties in interest involved, I believe that appointing Stretto as the claims and noticing agent in these Chapter 11 Cases is in the best interests of the Debtors' estates their stakeholders. Based on the foregoing, I believe that the relief requested in the Claims Agent Application should be approved.

D. The Cash Management Motion.

80. The Debtors' primary business involves direct sales of numerous health and nutritional related products in more than 50 countries, principally in North America, Japan, China, and Europe. The Debtors' corporate structure is set forth in the Organizational Chart attached hereto as **Exhibit A**.

81. Except for some e-commerce and retail operations, products are predominantly sold through an extensive direct sales network, utilizing a team of over 400,000 Brand Partners. The Brand Partners typically work with the Sales Affiliates doing business in the same country as the Brand Partners domicile, although some Brand Partners sell products in non-resident markets. A significant portion of the Debtors' income is derived from Brand Partner sales at the Sales Affiliate

level. Thus, uninterrupted payments to Brand Partners is essential to preserving the Debtors' going-concern value.

82. The Debtors and their non-debtor affiliates operate together as a global enterprise, with the Debtors serving as the managerial hub, providing numerous services, such as financing, managerial administration, brand development and marketing, product procurement, distribution, and management and training of Brand Partners. As part of this global enterprise, the Debtors use their centralized Cash Management System.

83. The Debtors' revenue is primarily generated through the inflows received from the Sales Affiliates. In turn, to sustain value, the Sales Affiliates and Brand Partners are reliant on the Debtors' outflows. Generally, the Debtors' weekly non-Debtor outflows range from \$15,000 to \$500,000 to Sales Affiliates, and can be as low as only a few dollars to Brand Partners. These amounts are accounted for in the Debtors' DIP budget.

84. Importantly, as a matter of course, the Debtors do not pay Sales Affiliates or Brand Partners until they have received inflows in excess of the outflows, and the aggregate amount of inflow materially exceeds the amount of outflow. Without these Intercompany Transactions, the Debtors would be seriously hampered in their ability to generate revenue which would be to the detriment of the Debtors and all stakeholders in these Chapter 11 Cases. The businesses would grind to a halt almost immediately. Finally, the Debtors carefully record and document each of these transactions, which will ensure they are able to track and account for any postpetition payments to Debtors and non-Debtors, alike.

85. Prior to the commencement of these Chapter 11 Cases, and in the ordinary course of business, the Debtors maintained a total of 27 bank accounts (the "**Bank Accounts**"). A chart reflecting the Bank Accounts, the depository that holds the accounts (the "**Banks**"), and a brief description of each account, is attached to the Cash Management Motion as **Exhibit C**. Summary

flowcharts of the Debtors' Cash Management System are attached to the Cash Management Motion as Exhibit D—Exhibit D-1 shows the Debtors' 16 primary accounts (the “**Primary Accounts**”); Exhibit D-2 shows the Debtors' 11 secondary accounts (the “**Secondary Accounts**”). The Primary Accounts are accounts involving the large majority of the Debtors' cash transactions. With one exception, the Secondary Accounts are legacy accounts involving limited transactions which the Debtors anticipate will ultimately be redirected to Primary Accounts to increase efficiency but it was not feasible to redirect transactions and close the Secondary Accounts prior to the Petition Date. The Debtors have determined that one of the Secondary Accounts, the Roth Capital Partners, LLC account, is not a necessary part of their Cash Management System and the Debtors intend to close it within forty-five (45) days of the Petition Date and transfer any funds that may be on deposit to one of the Primary Account.

86. The Debtors' centralized Cash Management System has been established to meet their specific needs, most importantly, their direct sales operations. In the ordinary course of business, the Debtors utilize the Cash Management System to efficiently collect, concentrate, and disburse funds generated by their operations as well as operations of the Sales Affiliates. The Cash Management System allows the Debtors to pool funds generated from business operations and to disburse funds in an organized and efficient manner that meets the needs of the business enterprise. Continued use of the Cash Management System would ensure the preservation and enhancement of the Debtors' going-concern value.

87. A large part of the Debtors' cash flow and profits is based on the funds upstreamed from Sales Affiliates as discussed in the First Day Declaration. As a result, the Debtors are reliant on the Intercompany Transactions to sustain operations.

88. Thus, the Intercompany Transactions are an essential component of the Debtors' operations and centralized Cash Management System. Any interruption of the Intercompany

Transactions would severely disrupt the Debtors' operations and result in great harm to the Debtors' estates and their stakeholders. Accordingly, the Debtors must continue the Intercompany Transactions in the ordinary course of business on a postpetition basis, in a manner substantially consistent with the Debtors' past practice.

89. To facilitate the efficiency of the business enterprise, oftentimes the Debtors' accounts are used as the clearinghouse through which revenues are accepted to pay the costs of sale, the net of which is the primary source of the Debtors' revenues. Accordingly, an integral part of the Debtors' Cash Management System is Intercompany Transactions that arise in the ordinary course of business that typically are booked by the Debtors in the relevant entities' books and records. There are multiple business reasons for the Intercompany Transactions, and most involve the following: (i) payments made by foreign Sales Affiliates to the Debtors for product received; (ii) payments from the Sales Affiliates to the Debtors, which also covers corporate overhead; (iii) facilitating compensation payments to foreign Brand Partners whose sales are a vital source of the Debtors' income; (iv) reconciling the cost of products delivered for sale, compensation paid as between Debtor and Sales Affiliates, and the receipt of sales revenues; and (v) transfers related to payments for intellectual property.⁵ The flow of funds not only provides for more efficient transactions, but in many cases, assists the Debtors in complying with various international laws.

90. Generally, in all countries where the Debtors' products are sold, a Sales Affiliate is shipped product for distribution. *See* **Ex. A**. The Debtors book a receivable against that entity for the costs associated with the products that a Debtor entity has procured and provided to the Sales Affiliate, and the Sales Affiliate books a payable to the Debtor entity and revenues for sales made

⁵ Historically, there have been occasions when the Debtors have loaned funds to non-debtor Sales Affiliates doing business in foreign markets when cash was needed to sustain operations. It is believed that these intercompany transactions were recorded in the Debtors' books and records. The Debtors will not continue this practice while these Chapter 11 Cases are pending without further Order from the Court.

in its country. As discussed above, non-employee Brand Partners sell the product in the country where they reside, and perhaps, in other countries, and are compensated by the entity organized in the country where they reside—even if sales were generated outside of their country and attributed to a different Sales Affiliate. Intercompany transactions are necessary to reconcile these situations.

91. A disruption in the Cash Management System would, among other things, delay payments to the Brand Partners, which even for a small period of time, would likely greatly impact the Debtors' value as a going concern because a significant number of Brand Partners would likely leave the sales network. Authorizing the current Cash Management System is essential to be sure that that these ordinary course payments, including intercompany transactions and payments Brand Partners, continue without interruption to maintain the Debtors' value for the benefit of all parties.

92. In the ordinary course of business, the Debtors print check information on blank safety paper check stock. In addition, the Debtors maintain pre-printed correspondence and business forms, including, but not limited to, letterhead, envelopes, promotional materials and other business forms (collectively, along with the Debtors' checks, the "**Business Forms**").

93. Requiring the Debtors to adopt a new, segmented cash management system during the Chapter 11 Cases would be expensive, burdensome and unnecessarily disruptive to the Debtors' operations. The Debtors' Cash Management System constitutes a customary and essential business practice that was created and implemented by the management of the Debtors in the exercise of their business judgment. The Cash Management System acts as a practical mechanism that allows the Debtors to collect the cash generated by their business operations and use that cash to pay creditors. Maintaining the Cash Management System will also decrease the burden on the Debtors and provides several other important benefits, including the ability to: (a) control and monitor corporate funds and spending, and (b) ensure cash availability for the Debtors, all through a centralized method of coordinating the collection and movement of funds.

These benefits will assist the Debtors in their efforts to maintain their operations during the Chapter 11 Cases.

94. Further, any disruption of the Cash Management System could have a negative effect on the Debtors' Chapter 11 Cases. New bank accounts would increase operating costs, and the delays that would result from opening new accounts, revising cash management procedures and redirecting revenues and payables would negatively impact the Debtors' ability to operate their businesses while pursuing these arrangements. The Debtors would also be subject to undue administrative burden and expense, given that they would need to execute new signatory cards and depository agreements, and create an entirely new manual system for issuing checks and paying postpetition obligations, all as would be required by the Guidelines. By contrast, maintaining the current Cash Management System will facilitate the Debtors' transition into chapter 11 by, among other things, minimizing delays in paying postpetition debts and eliminating administrative inefficiencies.

95. Further, all of the Debtors' Primary Accounts are with East West Bank or Bank of America, both of which have executed the Uniform Depository Agreement with the U.S. Trustee (the "**Depository Agreement**"). And the Debtors' other Bank Accounts are primarily with Bank of America, which also has executed the Depository Agreement. The only institutions holding Bank Accounts that have not executed the Depository Agreement are Roth Capital Partners, LLC and Utah Community Credit Union. As noted above, the Debtors intend to close the Roth Capital Partners, LLC account and anticipate being able to do so within forty-five (45) days of the Petition Date.

96. Shortly after the Petition Date, the Debtors will attempt to cause Utah Community Credit Union to execute the Depository Agreement.

97. The Debtors do not believe that granting them authority to maintain the Bank Accounts and utilize them pursuant to the Cash Management System will prejudice any party in interest or their estates because the Debtors have implemented appropriate mechanisms to ensure that unauthorized payments will not be made on account of prepetition obligations. Specifically, the Debtors will not pay any debts incurred before the Petition Date unless specifically authorized by the Court and will work closely with the Banks to ensure appropriate procedures are in place to prevent checks that were issued prepetition from being honored without the Court's approval.

E. The Employee Wages Motion.

98. As of the Petition Date, the Debtors employ approximately 320 employees (the "Employees"), all of whom work full-time in or near Arizona, California, Colorado, Florida, Idaho, Montana, Nevada, New Hampshire, South Carolina, Utah, Wisconsin, and Wyoming.⁶ None of the Employees are subject to a collective bargaining agreement or similar labor agreement.

99. The Employees perform a wide range of functions critical to the Debtors' operations and maintenance of their properties, including: (i) accounting, (ii) distribution, (iii) marketing, (iv) merchandise, (v) sales, and (vi) technology-related activities.

100. Many of these individuals are highly trained and have an essential working knowledge of the Debtors' businesses that cannot be replaced easily. Failure to maintain the continued, uninterrupted services of the Employees could disrupt the Debtors' reorganization efforts and jeopardize the value of their businesses as a going concern.

⁶ Prior to the Petition Date, the Debtors rightsized their operations by implementing workforce reductions necessary to ensure the viability of the Debtors and preserve jobs for the remaining Employees.

i. Wages and Payroll Obligations

a. Wages

101. All Employees are paid wages or salaries (collectively, “**Wages**”) on a bi-weekly basis. For the pay period prior to the Petition Date, the Debtors’ payroll for Wages (including the Debtors’ portion of the Payroll Taxes (as defined below)) was approximately \$760,000.00.⁷ Nearly all of the Employees are paid through electronic fund transfers, *i.e.*, direct deposit.

102. The Debtors’ last regular payroll covered the pay period from August 8, 2022 through August 21, 2022; the next payroll covers the pay period from August 22, 2022 through September 4, 2022, and the pay day is scheduled for September 9, 2022. As of the Petition Date, the Debtors estimate that outstanding prepetition Wages will be approximately \$532,000.00.

b. Obligations

103. The Debtors, as employers, are required by law to withhold federal, state, and local taxes the (“**Employee Taxes**”) from Wages for remittance to appropriate taxing authorities. In addition to the Employee Taxes, the Debtors are required to pay, from their own funds, social security and Medicare taxes and pay, based on a percentage of gross payroll and subject to state-imposed limits, additional amounts for state and federal unemployment insurance (collectively with the Employee Taxes, the “**Payroll Taxes**”), and remit the same to the appropriate authorities (the “**Taxing Authorities**”).

104. The Debtors use a third-party service provider, Automatic Data Processing, Inc. (“**ADP**”), to act as their payroll processor for the Payroll Taxes. ADP processes the Payroll Taxes owed to the various Taxing Authorities on behalf of the Debtors in accordance with the Internal Revenue Code and applicable state law. As of the Petition Date, the Debtors have funded the

⁷ The Debtors pay payroll one week in arrears.

Payroll Taxes to ADP for the current payment of Payroll Taxes and estimate that they do not owe any accrued but unremitted Payroll Taxes (the “**Withholding Obligations**”).

105. It is vital that the Debtors be authorized to make payments on Withholding Obligations to avoid subjecting the Debtors and their officers to federal or state liability, and to avoid harm to Employees and others.

ii. Employee Benefits

a. Paid Time Off

106. The Debtors provide the Employees with various forms of paid time off. Eligible Employees (employed full-time for three months) receive vacation time each year (“**Vacation Time**”),⁸ and the Debtors allocate such time based on the Employee’s years of service and the specific position of the Employee, as reflected in the below two charts:⁹

	1st Year	After 2nd Year	After 3rd Year	After 4th Year	After 5th Year
Non-Exempt / Exempt	10 days (3.08 hours / pay period)	15 days (4.62 hours / pay period)	16 days (4.92 hours / pay period)	18 days (5.45 hours / pay period)	20 days (6.16 hours / pay period)

	1st Year	2nd Year	3rd Year	4th Year	5th Year
Sr. Manager and Above	15 days (4.62 hours / pay period)	17 days (5.23 hours / pay period)	20 days (6.46 hours / pay period)	23 days (7.08 hours / pay period)	25 days (7.70 hours / pay period)

⁸ Vacation Time begins accruing the first pay date after hire.

⁹ Employees may roll over any unused PTO: “Non-exempt / Exempt” Employees are capped at 160 hours (20 days) while “Sr. Manager and Above” Employees are capped at 200 hours (25 days). Once the Employees reach the annual caps, no additional Vacation Time can be earned until previously accrued Vacation Time is taken.

107. The Debtors also provide up to twenty (20) hours of paid sick days (“**Sick Leave**”)¹⁰ each year to eligible full-time Employees,¹¹ which may be used for events such as an unexpected illness or injury, scheduled medical appointments or surgeries, or medical leaves. Relatedly, the Debtors provide paid bereavement leave (“**Bereavement Leave**”) and paid maternity/paternity/adoption leave (“**Parental Leave**”) to eligible full-time Employees. In addition, eligible full-time Employees earn 12 paid days off for federal holidays and certain other holidays assigned annually by the Debtors (the “**Paid Holidays**,” and collectively with the Vacation Time, Sick Leave, Bereavement Leave, and Parental Leave, the “**PTO**”).¹²

b. Employee Benefit Plans and Policies

108. The Debtors have established certain benefit plans and policies for eligible Employees that provide, among other benefits, (i) medical, (ii) dental, (iii) vision, (iv) life, and (v) disability insurance (the “**Employee Benefit Plans**”), which are described in more detail below. The Debtors’ benefits broker is Alliant Insurance Services, Inc. (“**Alliant**”).

109. Upon hire, Employees that work a minimum of thirty (30) hours a week are eligible for various health benefits, including medical, dental, vision, prescription drug coverage, and other programs (the “**Health Benefits**”). Most Employees elect benefits through SelectHealth (“**SelectHealth**”)—a group health benefits program that provides the Employees with access to competitive benefits programs. Additionally, SelectHealth provides medical and prescription drug coverage. The Debtors’ dental plan is administered through Guardian, and the Debtors’ vision

¹⁰ Eligible Employees accrue 20 hours of Sick Leave a year (0.769 hours per pay period). Sick Leave will roll over each year with a cap of 80 hours.

¹¹ Eligible Employees must be employed full-time for three months before they are eligible to take Sick Leave.

¹² The Debtors estimate that, as of the Petition Date, approximately \$450,000.00 of PTO has accrued (plus applicable payroll taxes) and may be payable upon termination.

plan is administered through SelectHealth. The Debtors' total cost for the Health Benefits in 2021 was approximately \$5,223,000.00.

110. In addition, the Debtors provide to eligible Employees basic life, short-term and long-term disability, and accidental death and dismemberment insurance (“**Additional Insurance Plans**”), which are administered through The Hartford. The Debtors' total cost for the Additional Insurance Plans is included in their payments for the Health Benefits. The Debtors' approximate monthly cost to maintain post-petition the Health Benefits and Additional Insurance Plans is \$450,000.00.

111. The Debtors also offer a wide variety of voluntary benefits for Employees, including flexible spending accounts (“**FSA**”), hospital confinement indemnity insurance, and cancer insurance (collectively, the “**Voluntary Benefits**”), which are all administered through Anthem with the exception of FSA being administered through Discovery Benefits. Any costs associated with the participation in any of the Voluntary Benefits is fully borne by the participating Employee.

c. Non-Insider Employee Bonus Programs

112. The Debtors have historically offered in the ordinary course of business non-insider Employees certain annual bonuses, retention bonuses, performance bonuses, and executive bonuses (collectively, the “**Non-Insider Bonus Programs**”). As of the Petition Date, the Debtors believe that two (2) Employees are entitled to the Non-Insider Bonus Programs, specifically, retention bonuses totaling \$25,000.00 each if these Employees remain employed by March 1, 2023.

113. The Debtors' maintenance of the Non-Insider Bonus Programs and payment of Non-Insider Bonus Programs are critical to maintaining Employee morale and loyalty. Failure to maintain the Non-Insider Bonus Programs will result in increased instability in the Debtors'

workforce, which will undermine the Debtors' ability to strengthen their financial and operational foundation, generate growth, and position themselves for long-term success.

114. The Debtors estimate that, as of the Petition Date, there are no other amounts outstanding under the Non-Insider Bonus Programs, but it would be in the best interests of creditors and the Debtors' estates for the Court to authorize the Debtors to continue, in their discretion, to pay amounts on account of the Non-Insider Bonus Programs if and when they come due in the ordinary course of business.

d. Non-Insider Severance Program

115. In the ordinary course of business, the Debtors maintain a severance program for the benefit of certain non-insider Employees (the "**Non-Insider Severance Program**"). Under the Non-Insider Severance Program, certain Employees may be eligible for payment of severance if their employment is terminated due to a workforce adjustment or any not-for-cause employer-initiated termination. Such severance payments (the "**Non-Insider Severance Benefits**") are determined with respect to the Employee's base salary and are paid either in weekly or bi-weekly installments. Under the Non-Insider Severance Program, the Debtors comply with the Consolidated Omnibus Budget Reconciliation Act (the "**COBRA**"); there are six (6) former employees receiving employer-paid COBRA, totaling approximately \$33,220.00.

116. The Debtors' maintenance of the Non-Insider Severance Program and payment of Non-Insider Severance Benefits are critical to maintaining Employee morale and loyalty. Failure to maintain the Non-Insider Severance Program will result in increased instability in the Debtors' workforce, which will undermine the Debtors' ability to strengthen their financial and operational foundation, generate growth, and position themselves for long-term success.

117. As of the Petition Date, the Debtors believe that seven former Employees are entitled to certain Non-Insider Severance Benefits, including the COBRA, totaling approximately

\$790,100.00. The Debtors estimate that, as of the Petition Date, there are no other amounts outstanding under the Non-Insider Severance Program, but it would be in the best interests of creditors and the Debtors' estates for the Court to authorize the Debtors to continue, in their discretion, to pay amounts on account of the Non-Insider Severance Program if and when they come due in the ordinary course of business.

e. Workers' Compensation Insurance

118. Under applicable law, the Debtors are required to maintain workers' compensation insurance programs to provide their Employees with workers' compensation insurance coverage for claims arising from or relating to their employment with the Debtors and to satisfy the Debtors' obligations arising under or relating to these programs (collectively, the "**Workers' Compensation Programs**"). The Workers' Compensation Programs cover all Employees and coverage is provided through a workers' compensation insurance policy with WCF Insurance.

119. It is critical that the Debtors be permitted to continue their Workers' Compensation Programs and pay their premiums for workers' compensation coverage, as not doing so would almost certainly be costlier. In addition, failure to maintain this insurance could result in the institution of administrative or legal proceedings against the Debtors and their officers and directors, and an inability of the Debtors to continue as a going concern. The Debtors believe that, as of the Petition Date, there are no open claims under the Workers' Compensation Programs, but that it would be in the best interests of the Debtors' estates and creditors for the Debtors to maintain and continue their prepetition practices with respect to the Workers' Compensation Programs, including, allowing workers' compensation claimants, to the extent they hold valid claims, to proceed with their claims under the Workers' Compensation Programs.

f. Retirement Plan

120. Employees are also eligible to enroll in the Morinda Holdings, Inc. Profit Sharing 401(k) Plan through the Reliance Trust Company (the “**Retirement Plan**”). Eligible Employees may elect to have a portion of their salary deposited directly into a 401(k) account on their behalf as a pre-tax contribution. The Debtors make a 100% matching contribution, with certain conditions. For example, Employee-salary deposits for each payroll period that exceed 3% of the Employee’s compensation for such period will not be matched. It is in the best interests of the Debtors’ estates and creditors for the Debtors to continue to honor their obligations with respect to the Retirement Plan in the ordinary course of business.

iii. **Reimbursable Expenses**

121. Prior to the Petition Date, and in the ordinary course of their business, the Debtors reimbursed Employees for certain expenses incurred on behalf of the Debtors in the scope of their employment, including travel, lodging, meals, and transportation (the “**Reimbursable Expenses**”). On average, the Debtors spend less than \$20,000.00 per month on Reimbursable Expenses. As of the Petition Date, the Debtors estimate that approximately \$15,400.00 in Reimbursable Expenses remain outstanding.

122. To avoid harming Employees who incurred the Reimbursable Expenses, the Debtors submit that it is in the best interests of the Debtors’ estates and creditors to allow the Debtors, in their discretion, to (i) continue reimbursing the Reimbursable Expenses in accordance with prepetition practices, (ii) modify their prepetition policies relating thereto as they deem appropriate, and (iii) pay all Reimbursable Expenses that (a) accrued prepetition, and (b) accrue postpetition but relate to the prepetition period.

iv. Independent Service Providers

123. In addition to the Employees, independent contractors (the “**Independent Service Providers**”) provide the Debtors with information technology, safety, and human resource services that are essential to the Debtors’ ongoing business operations. The Debtors estimate that \$50,000.00 are owed to the Independent Service Providers. If the Debtors are unable to pay the Independent Service Providers in the ordinary course in the Chapter 11 Cases, the Debtors will lose the services, continuity, and institutional knowledge of the Independent Service Providers, and the Debtors’ business operations will be severely and irreparably compromised.

F. The Utilities Motion.

124. To operate their businesses and manage their facilities, the Debtors require various utility services, including electricity, gas, internet, sewer, telephone, waste removal, water, and other similar services (the “**Utility Services**”) from a number of utility providers (the “**Utility Providers**”).

125. In the ordinary course of business, the Debtors regularly incur utility expenses for the Utility Services and have a long and established payment history with most or all of the Utility Providers. As of the Petition Date, the Debtors estimate that approximately \$52,500.00 is owed to Utility Providers.

126. Prior to the Petition Date, the Debtors spent an average of approximately \$23,600.00 each month for Utility Services. And no Utility Providers have securities or deposits from the Debtors.

127. Uninterrupted Utility Services are essential to the Debtors’ business operations during the pendency of the Chapter 11 Cases. Should any Utility Provider discontinue, alter, or refuse service, even for a brief period, the Debtors’ business operations could be severely

disrupted, and such disruption could negatively affect the Debtors' business relationships, revenue, and profits, and could jeopardize the Debtors' potential reorganization efforts.

128. Operating the Debtors' facilities necessitates the uninterrupted use of the Utility Services (including, electricity, telephone, and internet service) to ensure that the Debtors' offices, networks, telephones, and websites, *inter alia*, continue to operate. Indeed, any interruption of the Utility Services would effectively shut down the Debtors' business operations and would thereby negatively affect the Debtors' business relationships and effort to reorganize. It is therefore critical that the Utility Services continue uninterrupted.

129. The Debtors have made a good faith effort to identify each of the Utility Providers. The Utility Providers as well as the amounts of any deposits held by, or prepayments made to the Utility Providers, is set forth on **Exhibit 1** to Utility Motion.

130. The Debtors intend to establish an Adequate Assurance Account to deposit cash equal to the amount of at least fifty percent (50%) of the Debtors' average monthly costs of Utility Services for the trailing twelve (12) months. Based on this formula, the Debtors estimate that the total amount in the Adequate Assurance Account should equal approximately \$11,800.

131. The Debtors believe that the Adequate Assurance Deposits set forth on **Exhibit 1** to Utility Motion is fair and reasonable.

G. The Insurance Motion.

132. In connection with the operation of their business, the Debtors maintain insurance policies with various insurance companies (collectively, the "**Insurers**") providing coverage for, among other things, packaging, cargo, general liability, automobile, workers' compensation, umbrella liability, products liability, and D&O (collectively, the "**Insurance Policies**"). A list of the Insurance Policies, Insurers and the term of the Insurance Policies is attached to the Insurance

Motion as **Exhibit A**. The Insurance Policies are essential for the Debtors to continue to operate their business and protect their assets.

133. Under the Insurance Policies, the Debtors are required to pay premiums based on fixed rates set by the Insurers. The annual premiums for the Insurance Policies total approximately \$2.7 million, with premiums on certain of the Insurance Policies having been paid in full at the beginning of the policy term and premiums on other Insurance Policies paid in quarterly or yearly installments. The Debtors are current on their D&O Insurance Policies but have outstanding amounts due and owing on all other Insurance Policies. As of the Petition Date, the Debtors owe approximately \$1 million under the Insurance Policies. And shortly prior to the Petition Date, the Debtors paid the first installment of each of the Insurance Policies (excluding the D&O Insurance Policies) in the aggregate amount of \$300,314.45 in the ordinary course.

134. The Insurance Policies are necessary, as insurance coverage provided under the Insurance Policies is essential for preserving the value of the Debtors' assets and, in many cases, such coverage is required by the various contracts and state, federal, and international laws that govern the Debtors.

135. In addition, the Debtors may need to renew or replace certain of their Insurance Policies during the pendency of the Chapter 11 Cases. The nonpayment of any premiums, deductibles, or related fees under any of the Insurance Policies could result in one or more of the Insurers increasing future insurance premiums, declining to renew the Insurance Policies, or refusing to enter into new insurance agreements with the Debtors. If the Insurance Policies lapse without renewal, the Debtors may be exposed to substantial liability for first-party property claims and third-party liability claims, to the detriment of all parties in interest.

136. In connection with the Insurance Policies, the Debtors obtain brokerage services from Lockton Companies, Inc. (the "**Broker**"). The Broker assists the Debtors in obtaining

comprehensive insurance for the Debtors' operations by, among other things, assisting the Debtors with the procurement and negotiation of the Insurance Policies and enabling the Debtors to obtain those policies on advantageous terms at competitive rates. The Broker derives its commissions from the Insurers, not from the Debtors. Accordingly, there are no amounts due and owing to the Broker.

H. The Tax Motion.

137. In the ordinary course of business, the Debtors incur, collect, and remit a variety of taxes and fees, including the Business and Franchise Taxes and Fees (defined below), and Other Taxes and Fees (defined below) (the "**Taxes and Fees**"), to the applicable authorities (the "**Authorities**"), which include various federal, state, and local taxing and other governmental authorities and/or certain municipal or governmental subdivisions, or agencies of those governmental authorities.

138. In addition to the taxes discussed herein, the Debtors are required by law to remit certain employee-related taxes to the appropriate Authorities. The Debtors periodically remit the employee-related Taxes and Fees to the Authorities in accordance with the applicable law.

139. The Debtors estimate that approximately \$320,000.00 in Taxes and Fees have accrued on account of certain Taxes and Fees, which amounts remain unpaid as of the Petition Date.

140. The Debtors are required to pay various corporate income taxes, state franchise taxes, and privilege fees (collectively, the "**Business and Franchise Taxes and Fees**") in order to continue conducting their businesses within a particular jurisdiction. The Debtors have historically paid Business and Franchise Taxes and Fees to the IRS and in the states of Arizona, California, Delaware, New Jersey, New York, Oklahoma, Texas, Utah, and Wisconsin. The Debtors' ability

to conduct businesses in different jurisdictions may be impaired if the Business and Franchise Taxes and Fees are not paid timely.

141. The Debtors also incur, collect, and remit various other federal, state, and local taxes, charges, fines, penalties, and fees in the ordinary course of business (including any amounts required to be withheld, incurred, or collected under applicable law) (collectively, “**Other Taxes and Fees**”). The Other Taxes and Fees include, without limitation, property taxes and transit taxes. The Debtors are required to remit these Other Taxes and Fees to various Authorities on a periodic basis.

142. Any failure to pay the Taxes and Fees could impair the Debtors’ ability to continue their business operations. Moreover, any unexpected or inopportune interruption of the Debtors’ operations during the course of the Chapter 11 Cases could diminish the estates value and frustrate the Debtors’ chapter 11 efforts. Therefore, to comply with their fiduciary duties, the Debtors believe they must pay the Taxes and Fees in the ordinary course of business.

143. As part of the Debtors’ operations, they may also be required to collect “trust fund” taxes from third parties to hold in trust for the benefit of the Authorities. In some states, the Authorities may even hold corporate officers personally liable for unpaid taxes in certain circumstances. To the extent that any such “trust fund” taxes remain unpaid by the Debtors, their directors and officers could be subject to lawsuits or criminal prosecution during the pendency of the Chapter 11 Cases. Such potential lawsuits would prove extremely disruptive for the Debtors, for the named officers and directors whose attention to the chapter 11 process is required, and for the Court, as the Court might be asked to entertain various requests for injunctions with respect to the potential state court actions against such individuals. Even the possibility of any such lawsuit or criminal prosecution would distract the Debtors and their directors and officers and impede their respective efforts in the Chapter 11 Cases. Furthermore, the Authorities may conduct additional

audits of the Debtors if the Taxes and Fees are not timely paid. Payment of the Taxes and Fees will, therefore, avoid a loss of focus on the part of the Debtors' directors, officers, and other employees resulting from the risk of personal liability and/or audits.

I. The NOL Motion.

144. The Debtors have generated, and are currently generating, a significant amount of tax attributes for U.S. federal and state income tax purposes, such as net operating losses ("NOLs"), capital losses, unrealized built-in losses, and certain other tax and business credits and attributes (the "Tax Attributes").

145. As of the Petition Date, the Debtors believe they have approximately \$138 million of NOLs, as well as other valuable Tax Attributes. While the value of the NOLs may be limited under various scenarios, the Debtors wish to preserve any value that may be available for the benefit of their estates.

146. Although the value of the Debtors' Tax Attributes are contingent upon the amount of the Debtors' taxable income that may be offset by the Tax Attributes before they expire (certain tax attributes such as NOLs do not expire under current law), the Tax Attributes could translate into potential future tax savings for the Debtors in either the short term or the long term, depending on statutory limitations on the utilization of tax attributes due to recent changes of control. Thus, there is significant value in these Tax Attributes.

147. However, unrestricted trading of NewAge equity securities or deductions for worthless stock with no advance warning jeopardizes the Tax Attributes and could impair the value of the Debtors' estates. If no restrictions on trading or claiming worthless stock deductions are imposed by the Court, such trading or deductions could severely limit or even eliminate the Debtors' ability to utilize their Tax Attributes, which could lead to significant negative consequences for the Debtors, their estates, creditors and other stakeholders. Thus, the Debtors

believe that the relief sought in the NOL Motion will play an integral role in the Debtors' success both during and after the Chapter 11 Cases, and there is an immediate need to establish the notice and hearing provisions regarding trading in equity securities in NewAge and parties claiming that such equity securities are worthless.

J. Summary of First Day Motions.

148. In summary, the Debtors have narrowly tailored the First Day Motions to meet the goals of: (i) continuing limited operations in chapter 11 to support the Sale Process, with as little disruption as possible; (ii) maintaining the confidence and support of their key stakeholders during the Chapter 11 Cases; and (iii) establishing procedures for the efficient administration of the Chapter 11 Cases.

149. I have reviewed and discussed with counsel to the Debtors, together with the other professionals, financial advisers, and management, the relief request in each of the First Day Motions (including the exhibits thereto), and I believe, based on my current understanding of facts, circumstances and books and records, that the statement set forth herein are true and correct to the best of my knowledge, and in reliance on corporate officers, business records, counsel, professionals and advisors. I incorporate by reference the factual statements set forth in each of the First Day Motions as though set forth herein.

150. It is my belief that the relief sought in each of the First Day Motions is necessary to the success of the Debtors' chapter 11 efforts and the maximization of the value of the Debtors' estate. It is my further belief that, with respect to those First Day Motions requesting the authority to pay specific prepetition claims or continue selected prepetition programs, the relief requested is essential to the Debtors' chapter 11 efforts and necessary to avoid immediate and irreparable harm to the Debtors' estate. The success of the Chapter 11 Cases depends upon the Debtors' ability to

maintain limited operations in the ordinary course postpetition, so that it can maximize the value of their estates.

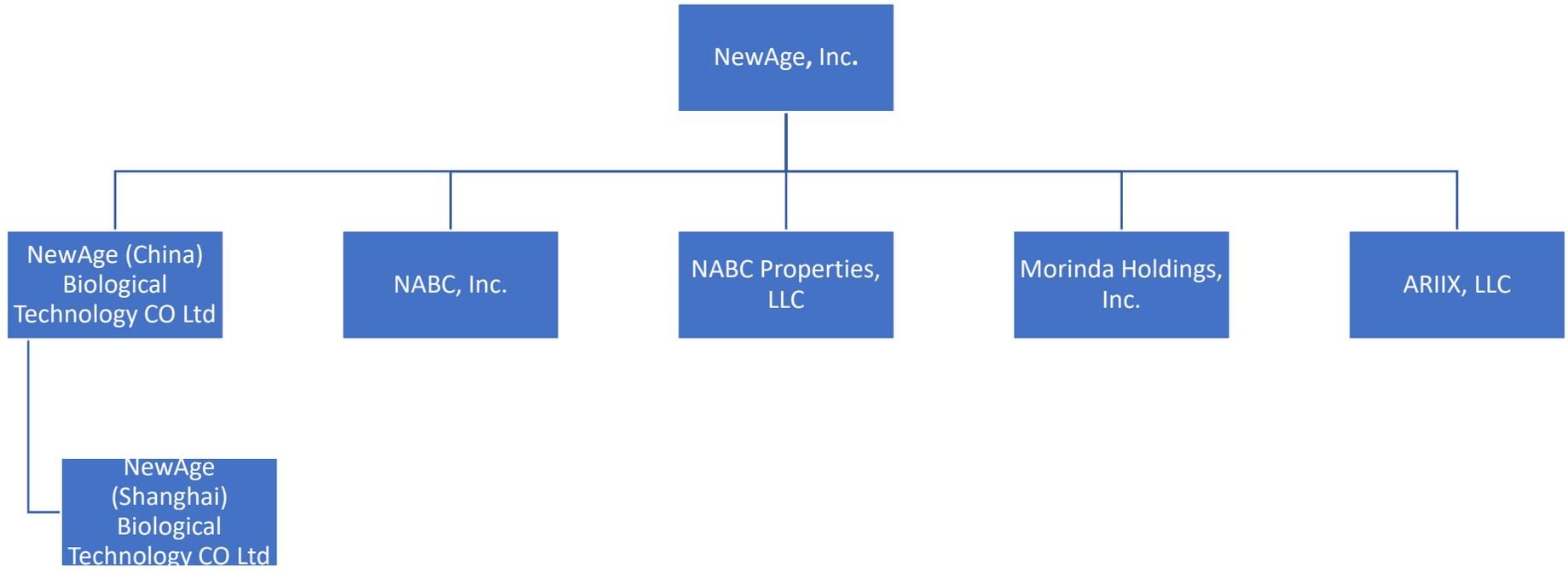
Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed: August 30, 2022

/s/ Lawrence Perkins
Lawrence Perkins
Chief Restructuring Officer

EXHIBIT A

Organizational Chart



Morinda Holdings,
Inc.

Morinda Inc.
dba Noni by
NewAge

Morinda Exotic
Juices, Inc.

Pure Fruit
Technologies
LLC

Morinda
International
Asia, Inc

Morinda
Korea Inc.

Morinda
Agricultural
Products, Inc

Tropical
Resources, Inc.

Mangostana
LLC

NewAge Bem-
estar Limitida

Tahitian Noni
Beverages
China Co Ltd

NewAge Live
Healthy PTY Ltd
(South Africa)

