

Court File No.: CV-22-00691990-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT
ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF DCL CORPORATION

FIRST REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.

DECEMBER 27, 2022

TABLE OF CONTENTS

1.0	INTRODUCTION	1
2.0	TERMS OF REFERENCE AND DISCLAIMER	4
3.0	UPDATES SINCE THE INITIAL ORDER.....	5
4.0	UPDATED CASH FLOW FORECAST	9
5.0	AMENDED AND RESTATED INITIAL ORDER	11
6.0	COURT-ORDERED CHARGES	14
7.0	ACTIVITIES OF THE MONITOR SINCE THE FILING DATE.....	19
8.0	CONCLUSIONS AND RECOMMENDATIONS	20

APPENDICES

Appendix “A” – Pre-Filing Report (without appendices)

Appendix “B” – Updated Cash Flow Forecast

1.0 INTRODUCTION

- 1.1 On December 20, 2022 (the “**Filing Date**” or “**Petition Date**”), DCL Corporation (“**DCL Canada**” or the “**Applicant**”) obtained an initial order (the “**Initial Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The proceedings commenced thereby are referred to herein as the “**CCAA Proceedings**”.
- 1.2 DCL Canada is a subsidiary of its U.S. parent, H.I.G. Colors Inc. (“**Colors**”), a direct wholly-owned subsidiary of the ultimate corporate parent, H.I.G. Colors Holdings, Inc. (“**Holdings**” and, together with Colors and its direct and indirect subsidiaries, including the Applicant and its subsidiaries, the “**DCL Group**”).
- 1.3 The CCAA Proceedings were commenced as part of a larger coordinated restructuring of the DCL Group. On the Petition Date, Holdings and certain of its U.S.-based subsidiaries (collectively, “**DCL US**” or the “**Chapter 11 Debtors**”) ¹ each filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**U.S. Bankruptcy Court**”, and such proceedings, the “**Chapter 11 Proceedings**”, and together with the CCAA Proceedings, the “**Restructuring Proceedings**”). On December 22, 2022, the U.S. Bankruptcy Court granted a number of “first day orders” in the Chapter 11 Proceedings.
- 1.4 Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as proposed monitor, filed the Pre-Filing Report of the Proposed Monitor dated December 20, 2022 (the “**Pre-Filing**”).

¹ The Chapter 11 Debtors are: Holdings, Colors, DCL Holdings (USA), Inc., DCL Corporation (USA) LLC (“**DCL USA LLC**”), DCL Corporation (BP), LLC, and Dominion Colour Corporation (USA).

Report”). The Pre-Filing Report and other Court-filed documents in the CCAA Proceedings are available on the Monitor’s case website at: www.alvarezandmarsal.com/DCLCanada (the “**Case Website**”).² A copy of the Pre-Filing Report (without appendices) is also attached hereto as **Appendix “A”**.

1.5 The Initial Order, among other things:

- (i) appointed A&M as monitor of the Applicant (in such capacity, the “**Monitor**”);
- (ii) granted a stay of proceedings in respect of the Applicant until and including December 30, 2022 (the “**Stay Period**”) and extended the stay of proceedings to include the DCL USA LLC Inventory (as defined in the Pre-Filing Report) which is situated in Canada; and
- (iii) granted the Administration Charge, the DIP Charge and the Directors’ Charge (each as defined in the Initial Order).

1.6 The purpose of this first report (this “**First Report**”) is to provide the Court with information, and where applicable, the Monitor’s views, on:

- (i) updates regarding the CCAA Proceedings since the granting of the Initial Order, including with respect to the Stalking Horse APA and the Final DIP Credit Agreement (each as defined below);
- (ii) the Applicant’s updated cash flow forecast;

² Materials filed in connection with the Chapter 11 Proceedings are available at: <https://cases.ra.kroll.com/DCL>

- (iii) the relief sought by the Applicant pursuant to the proposed amended and restated Initial Order (the “**Amended and Restated Initial Order**”), including with respect to:
 - (a) approving the Final DIP Credit Agreement;
 - (b) approving the Intercompany Agreements and granting the Intercompany Charge (each as defined below), and sealing the unredacted copies of the Intercompany Agreements attached to the Second Davido Affidavit (as defined below);
 - (c) authorizing the Applicant to make certain pre-filing payments to Critical Suppliers (as defined below);
 - (d) approving the Applicant’s engagement of TM Capital Corp. (“**TM Capital**”) as investment banker;
 - (e) extending the Stay Period until and including March 17, 2023; and
 - (f) increasing the quantum of the Administration Charge, the DIP Charge and the Directors’ Charge, and extending the DIP Charge over the DCL USA LLC Inventory;
- (iv) the activities of the Monitor since the Filing Date; and
- (v) the Monitor’s conclusions and recommendations in connection with the foregoing.

2.0 TERMS OF REFERENCE AND DISCLAIMER

2.1 In preparing this First Report, A&M, in its capacity as Monitor, has been provided with and has relied upon unaudited financial information and the books and records prepared by DCL Canada and the DCL Group (including information prepared by the Applicant's and the Chapter 11 Debtors' chief restructuring officer ("CRO") and restructuring advisor, Ankura LLC ("Ankura")) and has held discussions with management, the CRO, Ankura and the DCL Group's Canadian and U.S. restructuring legal counsel (collectively, the "Information"). Except as otherwise described in this First Report, in respect of DCL Canada's cash flow forecast:

- (i) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("CASs") pursuant to the *Chartered Professional Accountants Canada Handbook* (the "CPA Handbook") and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
- (ii) some of the information referred to in this First Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the CPA Handbook, has not been performed.

2.2 Future oriented financial information referred to in this First Report was prepared based on DCL Canada's and the Chapter 11 Debtors' estimates and assumptions. Readers are

cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results may vary from the projections, even if the assumptions materialize, and the variations could be significant.

2.3 This First Report should be read in conjunction with the affidavit of Mr. Scott Davido, sworn December 20, 2022 (the “**Initial Davido Affidavit**”) and the affidavit of Mr. Scott Davido, sworn December 23, 2022 (the “**Second Davido Affidavit**”), each filed in support of the Applicant’s application for relief under the CCAA. Capitalized terms used but not defined in this First Report shall have the meanings given to such terms in the Initial Davido Affidavit and the Second Davido Affidavit, as applicable.

2.4 Unless otherwise stated, all monetary amounts contained in this First Report are expressed in U.S. dollars (“**USD**”).

3.0 UPDATES SINCE THE INITIAL ORDER

Stalking Horse APA

3.1 The objective of the Restructuring Proceedings is to stabilize and maintain the DCL Group’s business and to commence a court-supervised marketing process for the business and assets of the DCL Group. The Monitor understands that the DCL Group views the entering into of a stalking horse agreement as beneficial to such marketing process and stabilizing to its business and for its employees. In furtherance thereof, and as required pursuant to the DIP Facility (as defined below), on December 21, 2022, the Chapter 11 Debtors and the Applicant, as sellers (the “**Sellers**”), and a nominee of the term loan lenders to DCL Canada and DCL US (the “**Term Loan Lenders**”), as purchaser (the “**Purchaser**”), entered into an asset purchase agreement (the “**Stalking Horse APA**”),

which is intended to serve as the “stalking horse” agreement in the process contemplated by the revised bidding procedures filed by DCL US in the Chapter 11 Proceedings (the “**Revised Bidding Procedures**”).

3.2 The Stalking Horse APA and the Revised Bidding Procedures remain subject to approval of the Court and the U.S. Bankruptcy Court in the Restructuring Proceedings. Copies of the Stalking Horse APA and the Revised Bidding Procedures are attached as Exhibit “E” and “F”, respectively, to the Second Davido Affidavit. The Monitor understands that the Applicant intends to return to Court for additional relief, including the approval of the Stalking Horse APA, as a stalking horse agreement, and the granting of an order approving the Revised Bidding Procedures (the “**Bidding Procedures Order**”), in mid-January 2023. The Monitor will file a report with the Court in advance of such hearing setting forth its views on the terms of the Stalking Horse APA and the Revised Bidding Procedures.

3.3 Although the Monitor is in the process of reviewing the terms of the Stalking Horse APA, the Monitor notes that the Stalking Horse APA contemplates, among other things:

- (i) the potential acquisition of substantially all of the assets of DCL US and DCL Canada for consideration that includes, in part, a “credit bid” of a portion of the prepetition term loan held by the Term Loan Lenders and the repayment in full of the obligations outstanding under the DIP Facility and the ABL Credit Facility; and
- (ii) various wind-down reserve amounts, the applicability of which will depend on the locations and assets that may be designated by the Purchaser as excluded from the sale transaction, if any. The Monitor notes that the Stalking Horse APA provides the Sellers with the ability, in consultation with the Monitor, to review and adjust

such wind-down reserve amounts; provided that, the Purchaser may elect to terminate the Stalking Horse APA within the ten-day period that follows receipt of any such adjustment notice from the Sellers. The Monitor intends to work with the Sellers to review and finalize the wind-down reserve amounts in the Stalking Horse APA.

DIP Facility

- 3.4 On December 22, 2022, the Applicant and DCL US also finalized and executed the final senior secured, super-priority debtor-in-possession credit agreement (the “**Final DIP Credit Agreement**”, and the facility provided thereunder, the “**DIP Facility**”).^{3,4}
- 3.5 Pursuant to the Amended and Restated Initial Order, the Applicant seeks approval of the Final DIP Credit Agreement.
- 3.6 The revisions reflected in the Final DIP Credit Agreement are described in the Second Davido Affidavit and primarily address matters relating to the execution of the Stalking Horse APA. In addition, the Final DIP Credit Agreement adjusted the DIP Milestones, which establish the key milestone dates for the Restructuring Proceedings. The revised DIP Milestones can be summarized as follows:

³ This Section of this First Report should be read in conjunction with the discussion of the DIP Facility included in Section 6 of the Pre-Filing Report. The Monitor reviewed a substantially final form draft of the credit agreement in preparing the Pre-Filing Report, but such form was prepared prior to the execution of the Stalking Horse APA.

⁴ The Monitor notes that the Applicant’s European subsidiaries also entered into the Final DIP Credit Agreement as guarantors; however, DCL NL’s signature page to the Final DIP Credit Agreement appears to have been inadvertently omitted from the compiled Final DIP Credit Agreement attached to the Second Davido Affidavit.

DIP Milestones ⁵	<ul style="list-style-type: none">• On or before February 7, 2023, each Bankruptcy Court shall have entered one or more orders, each in form and substance acceptable to Agent, approving the DIP Asset Purchase Agreement and the Bidding Procedures Order and providing, among other things, that qualifying bids shall be due by no later than March 10, 2023.• On or before March 9, 2023, the Loan Parties shall have filed a motion (the “Canadian Sale Motion”) seeking approval of the Sale Transaction and entry of the Sale Order, pursuant to and in accordance with the CCAA, which Canadian Sale Motion (including all deadlines contained therein) shall be satisfactory to Agent.• On or before March 14, 2023, Loan Parties shall have commenced the auction (if there is more than one qualifying bid) for the Sale Transaction, and, in accordance with the Bidding Procedures Order applicable thereto, shall have selected the winning bid(s) for the Sale Transaction at the conclusion of such auction.• On or before March 16, 2023, each Bankruptcy Court shall have entered the Sale Order with respect to the results of the auction, and with the proceeds to be applied to the obligations under the DIP ABL Credit Facility sufficient to repay such obligations in full in cash.• On or before March 17, 2023, Loan Parties shall have consummated the Sale Transaction, pursuant to the DIP Asset Purchase Agreement entered into among Loan Parties and the winning bidder(s) at the auction.• On or before March 17, 2023, the Loan Parties shall make Payment in Full (as defined in the Final US Financing Order) of all Obligations under the DIP ABL Credit Facility and the Pre-Petition ABL Credit Facility (to the extent still outstanding). <p><i>The above is a summary and not a comprehensive list</i></p>
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3.7 Further to the discussion in the Pre-Filing Report, the Monitor continues to be of the view that the revised DIP Milestones, which the Monitor understands have been brought forward due to the execution of the Stalking Horse APA, are on balance reasonable in the circumstances. The Monitor intends to work with the Applicant and the DIP Agent to ensure that proper service of materials for the Canadian sale approval hearing is made and, if necessary, will provide a further update to the Court at the relevant time.

⁵ Capitalized terms used in this table but not otherwise defined have the meaning attributed to them in the Final DIP Credit Agreement.

3.8 Accordingly, the Monitor supports the Applicant’s request for approval of the Final DIP Credit Agreement.

4.0 UPDATED CASH FLOW FORECAST

4.1 After entering into the Stalking Horse APA and revising the DIP Milestones, DCL Canada prepared an updated cash flow forecast (the “**Updated Cash Flow Forecast**”) for the 13-week period from December 17, 2022 to March 17, 2023 (the “**Cash Flow Period**”). A copy of the Updated Cash Flow Forecast, together with a summary of assumptions, is attached hereto as **Appendix “B”**. A summary of the Updated Cash Flow Forecast is set out in the following table:

Updated Cash Flow Forecast	USD\$000’s
Receipts	
Third-party Collections	957
Intercompany Transfers	17,369
	<u>18,326</u>
Disbursements	
Payroll & Benefits	(3,909)
Vendor Payments	(12,745)
Rent, Utilities, Insurance	(768)
Freight, Duties & Other	(2,944)
Professional Fees	(2,666)
DIP Interest & Fees	(49)
Other	(163)
KEIP	(40)
	<u>(23,284)</u>
Net Cash Flow	<u>(4,958)</u>
Cash Balance, Opening	326
Net Cash Flow	(4,958)
DIP Facility Draws	6,544
DIP Facility Repayment	(6,544)
Exit Financing / Sale Proceeds (placeholder) ⁶	4,632
Ending Cash Balance	<u>--</u>

⁶ See discussion note in Section 4.2(iii) herein.

4.2 The Monitor notes the following with respect to the Updated Cash Flow Forecast:

- (i) as further described in the Pre-Filing Report, the Intercompany Transfers of \$17.4 million are forecast payments made by DCL USA LLC to DCL Canada for: (a) Inventory Sales to DCL USA LLC; (b) the net provision of Shared Services; (c) amounts owing by DCL Canada's Dutch subsidiary, DCL NL, to a single supplier, which amounts are paid by DCL Canada but funded by DCL USA LLC; and (d) for any additional funding required to support the Applicant during the CCAA Proceedings to be made by way of Intercompany Loans (each as defined in the Pre-Filing Report). As described in greater detail below, it is proposed that amounts advanced as Intercompany Loans will be provided the benefit of the Intercompany Charge in the CCAA Proceedings;
- (ii) during the Cash Flow Period, net cash flows (excluding Intercompany Transfers and the "Exit Financing / Sale Proceeds" line item described below) are projected to be negative approximately \$22.3 million, which is projected to be sufficiently funded by: (a) cash-on-hand; (b) draws on the DIP Facility, with a peak outstanding amount of approximately \$3.5 million during the pendency of the CCAA Proceedings; and (c) Intercompany Transfers of approximately \$17.4 million; and
- (iii) the "Exit Financing / Sale Proceeds" line item of approximately \$4.6 million is a placeholder balance only. As required by the DIP Agent, the DCL Group included this placeholder in the DIP Budget to reflect a hypothetical sale transaction closing on or before March 17, 2023, the proceeds of which would be used to repay obligations outstanding under the DIP Facility at that time. This placeholder

amount is not indicative or representative of the total proceeds that may be generated by any actual sale transaction involving the DCL Group (including the Applicant), nor does it contemplate a proper allocation of such proceeds as between DCL Canada and DCL US.

5.0 AMENDED AND RESTATED INITIAL ORDER

Intercompany Agreements

- 5.1 A comprehensive overview of the ordinary course intercompany transactions that occur within the DCL Group was included in the Pre-Filing Report. As described therein, a requirement of the DIP Facility was for DCL Canada and DCL USA LLC to formalize certain intercompany arrangements pursuant to two intercompany agreements, being the US/Canada intercompany agreement between the Applicant and DCL USA LLC and the European intercompany agreement between the Applicant, DCL USA LLC and the European subsidiaries, DCL UK and DCL NL (collectively, the “**Intercompany Agreements**”). The Intercompany Agreements provide for the Operating Intercompany Transactions (as defined and described in the Pre-Filing Report) to continue in the normal course during the Restructuring Proceedings.
- 5.2 As part of the Amended and Restated Initial Order, in connection with these intercompany arrangements, the Applicant is seeking the approval of the Court to enter into the Intercompany Agreements and the granting of the Intercompany Charge (discussed in greater detail below). In addition, the Applicant is seeking the granting of a limited sealing order to protect certain pricing information included in the Intercompany Agreements. The

Monitor supports the granting of such relief as reasonable in the circumstances given the commercially sensitive nature of such pricing information to the Applicant.

Pre-Filing Payments to Critical Suppliers

- 5.3 DCL Canada intends to pay for goods and services supplied as contemplated in the Updated Cash Flow Forecast. As part of the Amended and Restated Initial Order, DCL Canada is requesting the Court's authorization to, with the consent of the Monitor, pay certain critical suppliers (the "**Critical Suppliers**") for goods or services supplied to DCL Canada prior to the Filing Date if, in the opinion of the Applicant, following consultation with the Monitor, such payment is necessary to maintain the uninterrupted operations of the Applicant's business on trade terms that are satisfactory to the Applicant.
- 5.4 The Monitor considered the following to assess the reasonableness of the above requested relief:
- (i) the intended outcome of these CCAA Proceedings is to complete the sale transaction contemplated by the Stalking Horse APA, or a similar transaction that may result from the process to be conducted pursuant to the Revised Bidding Procedures. As such, to minimize disruption to the Applicant's business, which could potentially impact a going concern outcome, the Monitor is of the view that the payment of certain pre-filing amounts is reasonable in the circumstances;
 - (ii) the DIP Budget (including the Updated Cash Flow Forecast), as approved by the DIP Agent, provides for the payment of certain pre-filing payments to Critical Suppliers; and

- (iii) the Monitor's consent will be required before any such proposed payment may be made.

Engagement of TM Capital

- 5.5 Colors has engaged TM Capital for itself and other members of the DCL Group to act as investment banker and sale advisor pursuant to an engagement letter dated September 6, 2022 (the "**TM Capital Engagement Letter**"). As described in the Pre-Filing Report, TM Capital was assisting the DCL Group with the Pre-Filing Sale Process and will now be continuing those marketing efforts in connection with the process contemplated by the Revised Bidding Procedures.
- 5.6 The TM Capital Engagement Letter was described in the Initial Davido Affidavit and was attached thereto as Exhibit "M". As described in the Initial Davido Affidavit, the fees associated with the engagement of TM Capital are comprised of monthly retainer payments and a transaction fee to be calculated based on a percentage of total consideration.
- 5.7 Pursuant to the Amended and Restated Initial Order, the Applicant is seeking the approval of the TM Capital Engagement Letter, including that the Applicant be authorized and directed to pay its pro-rata share of the fees and expenses therein, including the monthly retainer payments and any transaction fees, as such amounts are determined in consultation with the Monitor. The Monitor understands that TM Capital's fees will be paid by DCL USA LLC, and with an appropriate allocation of such fees to DCL Canada, with such allocation to be made in consultation with the Monitor. The Monitor is of the view that the fees provided for in the TM Capital Engagement Letter are reasonable in the circumstances given, among other things, the fees and expenses found in similar engagements on

comparable cross-border restructuring transactions and that the Applicant will only be responsible for its pro-rata share of such fees.

Extension of the Stay Period

5.8 Pursuant to the Initial Order, the Stay Period is set to expire on December 30, 2022. The Applicant is seeking an extension of the Stay Period until and including March 17, 2023.

5.9 The Monitor supports the Applicant's motion to extend the Stay Period for the following reasons:

- (i) it will provide the Applicant with the stability to continue to operate in the ordinary course;
- (ii) the Applicant is projected to have sufficient liquidity through to the end of the proposed extended Stay Period; and
- (iii) the Applicant continues to act in good faith and with due diligence.

6.0 COURT-ORDERED CHARGES

6.1 The Initial Order granted the Administration Charge, the DIP Charge and the Directors' Charge over the Applicant's property and assets (the "**Property**") (other than certain excluded collateral as set out below) (collectively, the "**Charges**").

6.2 As described in the Pre-Filing Report, DCL Canada advised at the time of the CCAA application that it intended to seek increases to certain Charges at the comeback hearing as each Charge under the Initial Order was limited to the extent reasonably necessary for the initial 10-day Stay Period.

Administration Charge

- 6.3 The Initial Order provides for the Administration Charge over the Property (other than the cash collateral held by HSBC Bank Canada (the “**HSBC Cash Collateral**”)) in an amount not to exceed \$175,000 in favour of the Monitor, counsel to the Monitor and Canadian counsel to DCL Canada. The Applicant is seeking to increase the Administration Charge to \$1.1 million.
- 6.4 The Monitor assisted the Applicant in the calculation of the Administration Charge and is of the view that the increased amount of the charge is reasonable and appropriate in the circumstances, having regard to the nature of the proceedings, potential work involved at peak times, and the size of charges approved in similar CCAA proceedings.

DIP Charge

- 6.5 The Initial Order provides for the DIP Charge over the Property (other than the Excluded Collateral⁷) as security for the outstanding obligations of the Applicant under the DIP Facility, in an amount not to exceed \$4 million.
- 6.6 In the Amended and Restated Initial Order, the Applicant is seeking: (i) to allow the DIP Charge to increase to the full amount of any obligations of the DCL Group under the DIP Facility; and (ii) to extend the DIP Charge over the DCL USA LLC Inventory to secure the obligations of DCL USA LLC under the DIP Facility.⁸ The Monitor understands that, pursuant to the interim order entered by the U.S. Bankruptcy Court on December 22, 2022 (the “**US Interim DIP Order**”), which, among other things, approved the DIP Facility in

⁷ As described in the Initial Davido Affidavit, Excluded Collateral is comprised of (i) the real property of the Applicant; (ii) the HSBC Cash Collateral; and (iii) the De Lage Landen Collateral.

⁸ As at November 30, 2022, the value of the DCL USA LLC Inventory was approximately \$17.9 million.

the Chapter 11 Proceedings on an interim basis, the U.S. Bankruptcy Court requested that the Court provide aid and assistance in extending the charge in favour of the DIP Agent over the DCL USA LLC Inventory located in Canada to secure the obligations of DCL USA LLC under the DIP Facility.⁹ A copy of the US Interim DIP Order is attached as Exhibit “C” to the Second Davido Affidavit.

- 6.7 The Monitor is of the view that the Applicant’s request is appropriate and reasonable in the circumstances.

Directors’ Charge

- 6.8 The Initial Order provides that DCL Canada will indemnify its directors and officers against obligations and liabilities that they may incur in their capacity as directors and officers of the Applicant from the commencement of the CCAA Proceedings, except to the extent that any obligation or liability was incurred as a result of gross negligence or wilful misconduct. The Initial Order provides for the Directors’ Charge over the Property (other than the HSBC Cash Collateral), in the amount of CAD\$1 million, in favour of the Applicant’s directors and officers for that indemnity. The Applicant is seeking to increase the Directors’ Charge to CAD\$1.7 million.
- 6.9 DCL Canada’s directors and officers will only be entitled to the benefit of the Directors’ Charge to the extent they do not have coverage under DCL Canada’s directors’ and officers’ insurance policy or to the extent such coverage is insufficient to pay any indemnified amounts.

⁹ See paragraph 5.17 of the US Interim DIP Order.

6.10 The Monitor assisted the Applicant in the calculation of the proposed increase in the Directors' Charge, taking into consideration the amount of the Applicant's payroll, vacation pay, statutory employee obligations and sales tax liabilities. The primary components of the proposed CAD\$1.7 million charge are approximately: (i) CAD\$600,000 for employee salary and wages, taking into consideration the Applicant's payroll cycles; (ii) CAD\$300,000 for accrued vacation pay; (iii) CAD\$700,000 for ongoing sales tax remittance obligations; and (iv) CAD\$100,000 for other statutory employee obligations. The Monitor is of the view that the increased amount of the Directors' Charge is appropriate and reasonable in the circumstances.

Intercompany Charge

6.11 As described in the Pre-Filing Report, the Applicant is seeking a Court-ordered charge over the Property (other than the HSBC Cash Collateral) (the "**Intercompany Charge**") in favour of DCL USA LLC in the aggregate amount of any Intercompany Loan.

6.12 In the Monitor's view, the Intercompany Charge is required and reasonable in the circumstances, given the intention of the DCL Group to continue ordinary course Operating Intercompany Transactions during the Restructuring Proceedings and the anticipated need for DCL USA LLC to provide funding to DCL Canada during the pendency of the CCAA Proceedings.

6.13 The Monitor also understands that, pursuant to the US Interim DIP Order, to the extent the Applicant has an intercompany claim against any Chapter 11 Debtor on account of money, goods or services provided by the Applicant to such Chapter 11 Debtor after the Petition Date, such intercompany claim shall be entitled to an administrative expense priority under

the Bankruptcy Code in the Chapter 11 Proceedings (the “U.S. Administrative Claim”).¹⁰ The U.S. Administrative Claim is intended to provide the Applicant with additional protection in event that amounts are owing by the Chapter 11 Debtors to the Applicant relating to the Inventory Sales or the provision of net Shared Services.

Priority of Charges

6.14 The priorities of the Charges, the ABL Pre-Filing Security and the Term Loan Security on the ABL Priority Collateral, as between them, are proposed to be as follows:

Proposed Charges & Priorities		
1. Administration Charge		\$1.1 million
2. DIP Charge		<i>as described above</i>
3. ABL Pre-Filing Security	<i>as described in the Pre-Filing Report</i>	
4. Term Loan Security	<i>as described in the Pre-Filing Report</i>	
5. Intercompany Charge (if any)		<i>as described above</i>
6. Directors' Charge		CAD\$1.7 million

6.15 The priorities of the Charges, the ABL Pre-Filing Security and the Term Loan Security on the Term Loan Priority Collateral, as between them, are proposed to be as follows:

Proposed Charges & Priorities		
1. Administration Charge		\$1.1 million
2. Term Loan Security	<i>as described in the Pre-Filing Report</i>	
3. DIP Charge		<i>as described above</i>
4. ABL Pre-Filing Security	<i>as described in the Pre-Filing Report</i>	
5. Intercompany Charge (if any)		<i>as described above</i>
6. Directors' Charge		CAD\$1.7 million

¹⁰ See paragraph 2.6(b) of the US Interim DIP Order.

7.0 ACTIVITIES OF THE MONITOR SINCE THE FILING DATE

7.1 Since the Filing Date, the activities of the Monitor have included the following:

- (i) engaging in discussions with the DCL Group and its legal counsel and financial advisors regarding the Restructuring Proceedings and the Stalking Horse APA;
- (ii) assisting DCL Canada with communications to employees, suppliers, Critical Suppliers, and other parties;
- (iii) assisting DCL Canada in implementing an appropriate accounting cut-off to ensure proper determination of pre- and post-filing obligations and liabilities;
- (iv) activating the Case Website and coordinating the uploading of Court-filed documents thereon;
- (v) completing and coordinating the noticing requirements pursuant to paragraph 44 of the Initial Order, including:
 - (a) arranging for publication of notice of the CCAA Proceedings, in the prescribed form, in *The Globe and Mail (National Edition)* on December 30, 2022 and January 3, 2023;
 - (b) posting the Initial Order to the Case Website on December 20, 2022; and
 - (c) arranging for notices of the CCAA Proceedings to all known creditors having a claim against the Applicant of more than CAD\$1,000;

- (vi) activating the Monitor's toll-free number and email account for the CCAA Proceedings, and responding to creditor and other inquiries received through those contact points;
- (vii) completing the statutory filings pursuant to Section 23 of the CCAA, including filing the requisite forms (Form 1 and Form 2) with the Office of the Superintendent of Bankruptcy (Canada); and
- (viii) with the assistance of its legal counsel, preparing this First Report.

8.0 CONCLUSIONS AND RECOMMENDATIONS

8.1 For the reasons set out in this First Report, the Monitor respectfully recommends that the Court grant the Amended and Restated Initial Order containing the relief requested by the Applicant.

All of which is respectfully submitted to this Court this 27th day of December, 2022.

**ALVAREZ & MARSAL CANADA INC.,
solely in its capacity as Monitor of
DCL Corporation and not in its personal or corporate capacity**

Per: 

Josh Nevsky
Senior Vice-President

Per: 

Stephen Ferguson
Senior Vice-President

APPENDIX "A"
PRE-FILING REPORT

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT
ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF DCL CORPORATION

PRE-FILING REPORT OF THE PROPOSED MONITOR
ALVAREZ & MARSAL CANADA INC.

DECEMBER 20, 2022

TABLE OF CONTENTS

1.0	INTRODUCTION	1
2.0	TERMS OF REFERENCE AND DISCLAIMER	3
3.0	A&M’S QUALIFICATIONS TO ACT AS MONITOR.....	5
4.0	BACKGROUND INFORMATION	6
5.0	EVENTS LEADING TO THE CCAA PROCEEDINGS.....	12
6.0	DIP FACILITY.....	14
7.0	CASH MANAGEMENT SYSTEM	19
8.0	CASH FLOW FORECAST	20
9.0	INTERCOMPANY TRANSACTIONS	24
10.0	STAY OF PROCEEDINGS	33
11.0	CHIEF RESTRUCTURING OFFICER	34
12.0	COURT ORDERED CHARGES SOUGHT IN THE INITIAL ORDER	35
13.0	CONCLUSIONS AND RECOMMENDATIONS	39

APPENDICES

Appendix “A” – Cash Flow Forecast

Appendix “B” – Management’s Representation Letter Regarding the Cash Flow Forecast

Appendix “C” – Professional Qualifications of Scott Davido

Appendix “D” – CRO Engagement Letter

1.0 INTRODUCTION

- 1.1 Alvarez & Marsal Canada Inc. (“**A&M**” or the “**Proposed Monitor**”) understands that DCL Corporation (“**DCL Canada**” or the “**Applicant**”), intends to make an application to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for an order (the “**Initial Order**”) granting, among other things, a stay of proceedings pursuant to *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and appointing A&M as Monitor of the Applicant (in such capacity, the “**Monitor**”). The proceedings to be commenced by the Applicant under the CCAA are referred to herein as the “**CCAA Proceedings**”.
- 1.2 DCL Canada is a subsidiary of its U.S. parent, H.I.G. Colors Inc. (“**Colors**”), a direct wholly-owned subsidiary of the ultimate corporate parent, H.I.G. Colors Holdings, Inc. (“**Holdings**” and, together with Colors and its direct and indirect subsidiaries, including the Applicant and its subsidiaries, the “**DCL Group**”). DCL Canada is incorporated under the laws of Ontario and its head office is located in Toronto, Ontario.
- 1.3 The CCAA Proceedings are being commenced as part of a larger coordinated restructuring of the DCL Group. A&M understands that Holdings and certain of its U.S.-based subsidiaries (collectively, “**DCL US**” or the “**Chapter 11 Debtors**”) ¹ intend to file voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “**U.S. Bankruptcy Court**”, and such proceedings, the “**Chapter 11 Proceedings**”, and together with the CCAA Proceedings, the “**Restructuring Proceedings**”). A corporate chart setting out the legal

¹ The Chapter 11 Debtors are: Holdings, Colors, DCL Holdings (USA), Inc. (“**DCL Holdings**”), DCL Corporation (USA) LLC (“**DCL USA LLC**”), DCL Corporation (BP), LLC (“**DCL BP**”), and Dominion Colour Corporation (USA).

structure of the DCL Group, is attached as Exhibit “B” to the Davido Affidavit (as defined below).

- 1.4 The objective of the Restructuring Proceedings is to stabilize and maintain the DCL Group’s business and to commence a court-supervised marketing process for the business and assets of the DCL Group. The Proposed Monitor understands that, at a later date, to be coordinated with the Chapter 11 Proceedings, the Applicant intends to seek an order approving certain bidding procedures for the business and assets of the DCL Group (the “**Bidding Procedures**”).
- 1.5 The purpose of this pre-filing report (the “**Report**”) is to provide the Court with information, and where applicable, the Proposed Monitor’s views, on:
- (i) A&M’s qualifications to act as Monitor;
 - (ii) background information with respect to DCL Canada;
 - (iii) events leading to the CCAA Proceedings;
 - (iv) the proposed debtor-in-possession financing facility (the “**DIP Facility**”);
 - (v) DCL Canada’s cash management system;
 - (vi) DCL Canada’s weekly cash flow forecast;
 - (vii) intercompany transactions and arrangements among DCL Canada and other members of the DCL Group, and the proposed treatment of intercompany transfers during the Restructuring Proceedings;

- (viii) the relief sought by the Applicant as part of the proposed Initial Order, including with respect to:
 - (a) the approval of the appointment of Mr. Scott Davido as the chief restructuring officer (“**CRO**”);
 - (b) the stay of proceedings and extending the stay of proceedings to include the DCL USA LLC Inventory (as defined below) which is situated in Canada;
 - (c) the approval of the Intercompany Agreements (as defined below); and
 - (d) the priority Court-ordered charges over the property and assets of the Applicant (collectively, the “**Property**”); and
- (ix) the Proposed Monitor’s conclusions and recommendations in connection with the foregoing.

2.0 TERMS OF REFERENCE AND DISCLAIMER

2.1 In preparing this Report, A&M, prior to or in its capacity as the Proposed Monitor, has been provided with and has relied upon unaudited financial information and the books and records prepared by DCL Canada and the DCL Group (including information prepared by the Chapter 11 Debtors’ restructuring advisor, Ankura LLC (“**Ankura**”)) and has held discussions with management, Ankura and the DCL Group’s Canadian and U.S. restructuring legal counsel (collectively, the “**Information**”). Except as otherwise described in this Report, in respect of DCL Canada’s cash flow forecast:

- (i) the Proposed Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Proposed Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“CASs”) pursuant to the *Chartered Professional Accountants Canada Handbook* (the “CPA Handbook”) and, accordingly, the Proposed Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
 - (ii) some of the information referred to in this Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the CPA Handbook, has not been performed.
- 2.2 Future oriented financial information referred to in this Report was prepared based on DCL Canada’s and the DCL Group’s estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results may vary from the projections, even if the assumptions materialize, and the variations could be significant.
- 2.3 This Report should be read in conjunction with the affidavit of Mr. Scott Davido, sworn December 20, 2022 (the “**Davido Affidavit**”), and filed in support of the Applicant’s application for relief under the CCAA. Capitalized terms used but not defined in this Report shall have the meanings given to such terms in the Davido Affidavit.
- 2.4 Unless otherwise stated, all monetary amounts contained in this Report are expressed in U.S. dollars (“**USD**”).

3.0 A&M'S QUALIFICATIONS TO ACT AS MONITOR

- 3.1 Alvarez & Marsal Canada Inc. was engaged to act as a consultant to DCL Canada on September 29, 2022, and as such, the Proposed Monitor is familiar with the business and operations of the Applicant, its personnel, and the key issues and stakeholders in the proposed CCAA Proceedings. A&M is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA.
- 3.2 A&M is related to Alvarez & Marsal Holdings, LLC, which is an independent international professional services firm, providing, among other things, bankruptcy, insolvency and restructuring services. The senior A&M personnel with carriage of this matter include experienced insolvency and restructuring practitioners who are Chartered Professional Accountants, Chartered Insolvency and Restructuring Professionals, and Licensed Insolvency Trustees, and whom have previously acted in CCAA matters of a similar nature.
- 3.3 The Proposed Monitor has retained Osler, Hoskin & Harcourt LLP (“**Osler**”) to act as its independent legal counsel.
- 3.4 A&M has consented to act as Monitor of the Applicant should the Court grant the Applicant’s request to commence the CCAA Proceedings pursuant to the Initial Order.

4.0 BACKGROUND INFORMATION

Overview

- 4.1 A more extensive background of DCL Canada's business and operations is set out in the Davido Affidavit. Certain key points are summarized below.
- 4.2 The DCL Group, through its subsidiaries and affiliates, including DCL Canada, is an integrated global manufacturer and reseller of colour pigments and dispersions for the coatings, plastics, and ink industries.
- 4.3 DCL Canada maintains its head office in Toronto, Ontario (the "**DCL Head Office**") and operates out of three facilities in Ontario:
- (i) a 67,000 square foot manufacturing and warehousing facility producing organics and basic dye products in Toronto, Ontario (the "**New Toronto Plant**");
 - (ii) a 54,000 square foot manufacturing facility producing organics and CYMO (Chrome Yellow & Molybdenum Orange) and an adjacent 58,000 square foot distribution centre in Ajax, Ontario (together, the "**Ajax Plant**"); and
 - (iii) a 15,000 square foot manufacturing facility producing dispersions and an adjacent office and manufacturing facility in Mississauga, Ontario (collectively the "**Mississauga Plant**").

DCL Canada owns the real property on which the New Toronto Plant and Ajax Plant are located and leases the DCL Head Office and the Mississauga Plant.

- 4.4 DCL Canada's operations are comprised of procurement, manufacturing, distribution and administrative support functions. As discussed in further detail below, DCL USA LLC owns all customer sales contracts and customer lists and maintains all customer relationships with the exception of a relatively small group of customers serviced out of the Mississauga Plant. Accordingly, substantially all DCL Canada's revenues are generated from Inventory Sales (as defined below) to DCL USA LLC.
- 4.5 During the fiscal year ended March 31, 2022 and year-to-date through September 30, 2022, DCL Canada reported revenues of \$116.8 million and \$35.1 million, respectively, and net income of \$11.3 million and net loss of \$3.3 million, respectively.²

Employees

- 4.6 DCL Canada currently employs approximately 206 people in Canada, including 46 at the DCL Head Office, 80 at the Ajax Plant, 62 at the New Toronto Plant and 18 at the Mississauga Plant. Certain employees at the Ajax Plant and the New Toronto Plant are unionized.
- 4.7 Payroll for employees of DCL Canada is processed in Canada through a third-party payroll processor (ADP, LLC) and paid through DCL Canada's Cash Management System (as defined below).

² DCL Canada's financial results do not take into account the go-forward impact of the Intercompany Balance Sheet Transactions described in Section 9.0 Intercompany Transactions, and are subject to further adjustment based on the DCL Group's Transfer Pricing Policy (as defined below).

4.8 DCL Canada sponsors five registered pension plans:

- (i) two are defined benefit plans, one for salaried employees (the “**Salaried DB Plan**”) and one for hourly employees (the “**Hourly DB Plan**”). The Salaried DB Plan is comprised of 95 members, including 59 retirees, and the Hourly DB Plan is comprised of 113 members, including 40 retirees. Both the Salaried DB Plan and the Hourly DB Plan were in a surplus position as of the date of the last actuarial valuation report, being December 31, 2021;
- (ii) two are defined contribution plans, one for salaried employees (the “**Salaried DC Plan**”) and one for hourly employees (the “**Hourly DC Plan**”), comprised of 89 members and 51 members, respectively; and
- (iii) one legacy defined contribution plan for Monteith employees who work at the Mississauga Plant with a total of 17 members, including 1 retiree. No contributions are currently being made to this legacy plan and an application has been made to transfer the assets to the Salaried DC Plan and Hourly DC Plan, as applicable.

4.9 DCL Canada also sponsors a group benefits plan which provides medical, dental, vision, life, accidental death and dismemberment, business travel insurance, short-term disability and long-term disability for certain of its employees and their dependents.

4.10 The Proposed Monitor understands that, during the CCAA Proceedings, DCL Canada intends to continue funding all employee related costs and benefits in the normal course, and that DCL Canada is current in all of its funding obligations in respect of such costs and benefits.

Prepetition Secured Credit Facilities

4.11 The DCL Group maintains two secured credit facilities, each of which are joint facilities that include DCL US and DCL Canada entities as borrowers. As at the date of this Report, the DCL Group had approximately \$132.2 million in outstanding funded secured debt:

<i>(USD in millions)</i>	Total Outstanding
Prepetition ABL Facility	\$41.7
Prepetition Term Loan	\$90.5
Total Prepetition Secured Debt Outstanding	\$132.2

4.12 Each of the credit facilities is described in detail in the Davido Affidavit. Key terms and components of the facilities include the following:

Prepetition Secured Credit Facilities (Capitalized terms have the meaning ascribed thereto in this Report or in the applicable credit document, as applicable)	
Prepetition ABL Facility	
Agreement	<ul style="list-style-type: none"> Credit agreement dated as of April 25, 2018 (as amended)
Borrowers	<ul style="list-style-type: none"> DCL Canada, as Canadian Borrower DCL USA LLC and DCL BP, as U.S. Borrowers
Guarantors	<ul style="list-style-type: none"> Guarantors include Colors, DCL Holdings and Dominion Colour Corporation (USA)
Lender Parties	<ul style="list-style-type: none"> Wells Fargo Bank, National Association, as Agent (the “Prepetition ABL Agent”) and Lead Arranger Lenders from time-to-time party thereto
Maximum Credit Amount	<ul style="list-style-type: none"> \$55 million Maximum Credit Amount is the total maximum aggregate amount available under the US and Canadian revolving loan facilities, subject to applicable borrowing bases³
Interest	<ul style="list-style-type: none"> US Revolving Loans: <ul style="list-style-type: none"> (A) the US Base Rate plus the Applicable Margin; or (B) the LIBOR Rate plus the Applicable Margin Canadian Revolving Loans: <ul style="list-style-type: none"> (A) denominated in Canadian Dollars:

³ As further described in the Davido Affidavit, the terms of the Prepetition Term Loan restrict the borrowers thereunder, including the Applicant, from incurring indebtedness under the Prepetition ABL Facility above a prescribed amount. The Proposed Monitor understands that the Applicant has received waiver letters regarding such cap from the Prepetition Term Loan Agent (as defined below), but such waivers were limited in time and have expired.

	<ul style="list-style-type: none"> (1) the Canadian Base Rate plus the Applicable Margin; or (2) the Canadian BA Rate plus the Applicable Margin; and <p>(B) denominated in US Dollars:</p> <ul style="list-style-type: none"> (1) the US Base Rate plus the Applicable Margin; or (2) the LIBOR Rate plus the Applicable Margin <ul style="list-style-type: none"> • Swingline Loans at the applicable Base Rate plus the Applicable Margin • Additional default interest of 2.0%
Maturity Date	<ul style="list-style-type: none"> • April 25, 2023
Security & Intercreditor Arrangements	<ul style="list-style-type: none"> • On a first-priority basis by liens on the ABL Priority Collateral, including accounts, inventory, and cash, other than Excluded Collateral (which includes real property) • Other than with respect to Excluded Collateral, on a second-priority basis by liens on the Term Loan Priority Collateral, which includes all collateral that does not constitute ABL Priority Collateral, including tangible personal property and intellectual property
Prepetition Term Loan	
Agreement	<ul style="list-style-type: none"> • Credit agreement dated as of April 6, 2018 (as amended)
Borrowers	<ul style="list-style-type: none"> • DCL Canada, as the Canadian Borrower • DCL Holdings, as the U.S. Borrower • Colors (added pursuant to the Fourth Amendment (as defined below))
Guarantors	<ul style="list-style-type: none"> • Canadian Loan Guarantors include Colors, U.S. Borrower, DCC USA LLC, DCL BP and Dominion Colours Corporation (USA) • U.S. Loan Guarantors include Colors, DCC USA LLC, DCL BP and Dominion Colour Corporation (USA)
Lender Parties	<ul style="list-style-type: none"> • Delaware Trust Company, as Administrative Agent and Collateral Agent (as successor to Virtus Group, LP) (the “Prepetition Term Loan Agent”) • Lenders from time-to-time party thereto
Commitment	<ul style="list-style-type: none"> • \$99 million initial commitment and delayed draw commitment of \$25 million (which was never utilized), with additional \$67 million pursuant to the Fourth Amendment
Interest	<ul style="list-style-type: none"> • ABR Loans: Alternate Base Rate plus Applicable Loan Margin (between 6.25% to 7.25%) • Eurodollar Loans: Adjusted LIBOR Rate for the relevant Interest Period in effect plus Applicable Loan Margin (between 7.25% to 8.25%) • Additional default interest of 2.0%
Maturity Date	<ul style="list-style-type: none"> • April 6, 2024
Security & Intercreditor Arrangements	<ul style="list-style-type: none"> • On a first-priority basis by liens on the Term Loan Priority Collateral • On a second-priority basis by liens on the ABL Priority Collateral

Unsecured Creditor Profile

4.13 Based on the Applicant’s consolidated books and records, as at December 9, 2022, amounts payable to unsecured trade creditors were approximately \$11.9 million, owing primarily to

third-party suppliers of chemicals and pigments used in the manufacturing process and suppliers of freight, logistics, brokerage, marketing and other general services.

- 4.14 In September 2016, the Colors corporate group acquired the shares of DCL Canada from KNRV Investments Inc. (“**KNRV**”) pursuant to a share purchase agreement that contemplated an earnout payment to KNRV (the “**Earnout Payment**”). The Proposed Monitor understands that, as of November 18, 2022, the amount of the Earnout Payment of CAD\$9.822 million has been agreed to with KNRV. The Applicant has not made any payments to KNRV in respect of the Earnout Payment.
- 4.15 Pursuant to the sponsor subordinated promissory note dated April 26, 2019, as amended and restated on July 31, 2021, DCL Canada and DCL Holdings are indebted to H.I.G. Dominion, LLC, in the total amount, as of March 31, 2022, of \$9.8 million.
- 4.16 As further described in the Davido Affidavit, the Proposed Monitor understands that various environmental obligations associated with the property, plant and equipment exist at the Ajax Plant and the New Toronto Plant. DCL Canada has advised the Proposed Monitor that air testing has confirmed there is no threat to the public health. Following its appointment as Monitor, the Proposed Monitor intends to review and report on these obligations as necessary.

Security Review

- 4.17 As the same parties to the Prepetition ABL Facility are providing the DCL Group with the DIP Facility, the Proposed Monitor requested that Osler conduct a review of the security granted by the Applicant in respect of the Prepetition ABL Facility. Osler has provided the Proposed Monitor with a written opinion that provides that, in Osler’s view, subject to

standard assumptions, qualifications and limitations customary in rendering security opinions of this nature, the security granted by the Applicant in respect of the Prepetition ABL Facility constitutes valid and enforceable⁴ security perfected by registration in the Province of Ontario.

5.0 EVENTS LEADING TO THE CCAA PROCEEDINGS

- 5.1 As further described in the Davido Affidavit, on a consolidated basis, the DCL Group is incurring considerable operating losses and is facing significant liquidity constraints due to a combination of factors, including sharp increases in input and manufacturing costs resulting from inflationary factors, ongoing supply chain issues materially impacting its manufacturing operations, and challenges with retaining and recruiting employees (including certain critical executive roles).
- 5.2 The Applicant is also currently in default of various obligations under the Prepetition ABL Facility, and as noted above, a significant obligation with respect to the Earnout Payment is also due, and the Applicant does not have the financial resources to pay such amount at this time.
- 5.3 As a result of the DCL Group's outstanding secured debt and the magnitude of the above financial and liquidity issues, the Proposed Monitor understands that the DCL Group began exploring alternatives to deleverage its balance sheet or otherwise restructure its business.
- 5.4 In September 2022, certain entities within the DCL Group engaged TM Capital Corp. ("**TM Capital**") to assist with a sale process for the DCL Group, including DCL Canada

⁴ The opinion assumes enforceability in instances where the governing law of the applicable credit document is not the Province of Ontario.

(the “**Pre-Filing Sale Process**”). TM Capital canvassed a select list of parties who had been identified as the most likely acquirers of the DCL Group (“**Potential Bidders**”). During the period between September and December of 2022, certain of these Potential Bidders performed diligence on the DCL Group’s business and in early December 2022, certain parties submitted non-binding indications of interest to acquire the DCL Group. Notwithstanding the interest received during the Pre-Filing Sale Process, the DCL Group determined that it did not have sufficient liquidity to consummate a transaction with any of the Potential Bidders.

5.5 As part of the Restructuring Proceedings, the Proposed Monitor understands that DCL Canada and the Chapter 11 Debtors, with assistance from TM Capital, intend to commence a going concern marketing process for the business and assets of the DCL Group, and that DCL Canada and the Chapter 11 Debtors intend to serve motions in the Chapter 11 Proceedings and the CCAA Proceedings, respectively, seeking approval of the Bidding Procedures within approximately five to six weeks from the commencement of the Restructuring Proceedings.

5.6 During the interim period, the DCL Group will continue to seek to identify Potential Bidders, including a potential stalking horse bidder. The Proposed Monitor understands that, should a stalking horse bidder be selected by the Applicant and the Chapter 11 Debtors, each will bring a motion seeking approval of the stalking horse agreement by the applicable court, to be heard at the hearing to approve the Bidding Procedures. The Proposed Monitor intends to file a report with the Court in connection with such motion by the Applicant at the appropriate time.

6.0 DIP FACILITY

6.1 As described in the Davido Affidavit, the DCL Group, including DCL Canada, requires financing during the Restructuring Proceedings to provide the liquidity necessary to maintain their business as a going concern, preserve value of their assets for their stakeholders and to pursue and implement any transactions resulting from the process contemplated by the Bidding Procedures.

6.2 In order to obtain access to such liquidity, the DCL Group negotiated the terms of the DIP Facility. The DIP Facility and the process undertaken by the DCL Group to secure the DIP Facility are described in greater detail in the Davido Affidavit. Key terms and components of the DIP Facility include the following:⁵

DIP Facility (Capitalized terms have the meaning ascribed thereto in this Report or in the DIP Credit Agreement, as applicable)	
Agreement	<ul style="list-style-type: none"> Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement substantially in the form attached to the Davido Affidavit (the “DIP Credit Agreement”)
Borrowers	<ul style="list-style-type: none"> DCL USA LLC and DCL BP (as borrowers, the “US Borrowers”) DCL Canada (as borrower, the “Canadian Borrower”, and collectively with the US Borrowers, the “DIP Borrowers”)
Guarantors	<ul style="list-style-type: none"> Guarantors of the obligations under the DIP Facility include DCL Canada and the Chapter 11 Debtors
Lender Parties	<ul style="list-style-type: none"> Wells Fargo Bank, National Association, as administrative agent (the “DIP Agent”) Lenders from time-to-time party thereto (the “DIP Lenders”)
Commitment & Borrowing Base	<ul style="list-style-type: none"> \$55 million revolving facility, subject to a borrowing base calculation based on eligible accounts receivable and inventory, less certain reserves, for both the US Borrowers and the Canadian Borrower Canadian Borrower’s borrowings will be limited to \$5 million until the comeback hearing Letter of Credit Sublimit of \$2 million, subject to the applicable borrowing base
Interest	<ul style="list-style-type: none"> SOFRA Loan obligations and Letters of Credit: Adjusted Term SOFRA or Canadian BA Rate, plus 4.00% Base Rate obligations and Swingline Loans: US Base Rate or Canadian Base

⁵ The discussion included herein is based on the most recent draft of the DIP Credit Agreement (as defined below) provided to the Proposed Monitor for review and is subject to change based upon the final, agreed upon terms of the DIP Credit Agreement.

	<p>Rate, plus 3.00%</p> <ul style="list-style-type: none"> • Unused line fee of 0.50% • Additional default interest of 2.0%
Maturity Date	<p>The earlier of:</p> <ul style="list-style-type: none"> • March 31, 2023 • the date of implementation of a confirmed Chapter 11 or CCAA plan • the closing date of a sale of all or substantially all of the business and/or assets of the DIP Borrowers • the date of termination of revolver commitments during the continuance of an event of default under the DIP Facility, including among other things, conversion of the Chapter 11 Proceedings to Chapter 7 proceedings, appointment of a trustee under Chapter 11, dismissal of any of the Chapter 11 Proceedings, a termination of the CCAA Proceedings, conversion of the CCAA Proceedings into a receivership or bankruptcy under the BIA <p><i>The above is a summary and not a comprehensive list</i></p>
Cash Flow Covenant	<p>Tested weekly, on a rolling three-week basis, the DIP Borrowers shall not permit:</p> <ul style="list-style-type: none"> • total disbursements (excluding professional fees and expenses) to exceed the DIP Budget by more than 15% • total collections to be less than 80% of the DIP Budget • Excess Availability as of the reporting date to be more than 15% less than the DIP Budget • Loan balance as of the reporting date to be more than 15% of the DIP Budget
DIP Milestones	<ul style="list-style-type: none"> • Within 1 Business Day after the Petition Date, the Loan Parties shall have filed with each Bankruptcy Court a motion seeking entry of the Bid Procedures Order • On or before January 31, 2023, the Loan Parties shall have filed the DIP Asset Purchase Agreement with each Bankruptcy Court, duly authorized, executed and delivered by the parties thereto, providing for the Sale Transaction (such Sale Transaction to act as the stalking horse bid) • On or before February 7, 2023, each Bankruptcy Court shall enter the Bid Procedures Order which shall provide that bids shall be due by no later than March 10, 2023 • On or before March 15, 2023, the Loan Parties shall have commenced the auction, if one is necessary, and shall have selected the winning bid(s) • On or before March 17, 2023, each Bankruptcy Court shall have entered the Sale Order with respect to the results of the auction, and with the proceeds to be applied to the obligations under the DIP Facility sufficient to repay such obligations in full in cash • On or before March 31, 2023, the Loan Parties shall have consummated the Sale Transaction • On or before March 31, 2023, the Loan Parties shall make payment in full in cash of all Obligations under the DIP Facility and the Prepetition ABL Facility (to the extent still outstanding) <p><i>The above is a summary and not a comprehensive list</i></p>
DIP Collateral	<ul style="list-style-type: none"> • To be secured in Canada by the DIP Charge (as defined below)

6.3 The Proposed Monitor notes the following with respect to the DIP Facility:

- (i) the terms of the DIP Facility are the result of extensive negotiations as between the DCL Group, the DIP Agent and their respective advisors, and represents the best that the DCL Group could negotiate in the circumstances to seek a going concern outcome for its business;
- (ii) Ankura has advised the Proposed Monitor that in light of the significant amount of existing secured debt, the DCL Group was unable to obtain acceptable debtor-in-possession financing proposals other than those reflected in the DIP Facility;
- (iii) the DIP Facility is conditioned on the approval of the Court and the U.S. Bankruptcy Court. The Proposed Monitor understands that the Chapter 11 Debtors will seek approval of the DIP Facility from the U.S. Bankruptcy Court as part of the “First Day” hearings to be scheduled;
- (iv) although: (A) DCL Canada is not a joint and several obligor, and guarantor of, the obligations of its U.S. affiliates under the Prepetition ABL Facility, such joint and several liability of, and guarantee by, DCL Canada, is required by the DIP Facility; and (B) the DIP Facility contemplates a “creeping roll up” of the Chapter 11 Debtors’ obligations thereunder in the Chapter 11 Proceedings⁶, the Proposed Monitor notes that:

⁶ As the Applicant does not have obligations owing under the Prepetition ABL Facility at this time given the transfer of its indebtedness under the Prepetition ABL Facility discussed herein, the “roll-up” contemplated by the DIP Credit Agreement does not directly apply to the Applicant. However, the Proposed Monitor notes that, pursuant to the proposed DIP Facility, the Applicant will be joint and severally liable for, and guarantee, the rolled-up U.S. obligations under the DIP Facility.

- (a) under the DIP Credit Agreement, the borrowing capacity of the US Borrowers is restricted by the US Borrowers' borrowing base, which is based on a percentage of the value of eligible inventory and receivables of the US Borrowers (and does not include the inventory and receivables of DCL Canada);
- (b) the DIP Credit Agreement includes provisions⁷ that require that, upon the maturity of the DIP Facility or an event of default thereunder, the proceeds of the collateral of DCL Canada shall be applied to satisfy obligations of the US Borrowers only after the proceeds of substantially all of the ABL Priority Collateral of the US Borrowers has been applied to such obligations. Accordingly, the chance that assets (or proceeds therefrom) of DCL Canada will be needed to satisfy obligations of the US Borrowers under the DIP Facility is reduced as a result of such provisions of the DIP Credit Agreement noted above and the fact that loans to the US Borrowers under the DIP Facility will be made based only on the US Borrowers' eligible inventory and receivables;
- (c) as described in greater detail below, DCL Canada's previous indebtedness of approximately \$40 million under the Prepetition ABL Facility was restructured to make DCL USA LLC the primary borrower thereof prior to the commencement of the Restructuring Proceedings, and had such

⁷ See sections 2.4(b)(ii) and (iii) of the DIP Credit Agreement.

restructuring not taken place, then DCL Canada would have continued to be liable for such amount; and

- (d) the Proposed Monitor understands that: (A) DCL Canada being a joint and several borrower, and guarantor of the obligations of its U.S. affiliates, under the DIP Facility, was a requirement of the DIP Agent and the DIP Lenders in providing the DIP Facility to the DCL Group; and (B) DCL USA LLC is expected to provide intercompany funding to DCL Canada for the CCAA Proceedings from amounts that DCL USA LLC borrows under the DIP Facility;
- (v) the DIP Facility is structured in a manner that is substantially similar to the Prepetition ABL Facility and provides DCL Canada with substantially the same borrowing availability, but not subject to the availability suppression in the Prepetition ABL Facility as detailed in the Davido Affidavit, and is being provided by the existing third-party lenders under the Prepetition ABL Facility;
- (vi) the DIP Facility, together with the proposed Intercompany Transfers (as defined below), is projected to provide DCL Canada with sufficient liquidity during the CCAA Proceedings to allow the Applicant to continue to operate in the normal course and implement the process contemplated by the Bidding Procedures; and
- (vii) in the Proposed Monitor's view, the DIP Milestones (as further defined in the DIP Credit Agreement and summarized above), including with respect to the commencement of the marketing process contemplated by the Bidding Procedures and the selection of a stalking horse bidder, and the pricing and other financial terms

of the DIP Facility, are reasonable in the circumstances. The Proposed Monitor notes that the DIP Milestones provide as little as two days between the proposed auction date and Canadian sale approval hearing date. The Proposed Monitor understands that the Applicant and the DIP Agent have discussed this matter and will work together to ensure that proper service of the Canadian sale approval hearing is made. If necessary, the Proposed Monitor will provide a further update to the Court at the relevant time.

7.0 CASH MANAGEMENT SYSTEM

- 7.1 As described in the Davido Affidavit, the Applicant's cash management system is operated through various accounts with HSBC Canada and Wells Fargo Canada (the "**Cash Management System**"). The Cash Management System is administered by the DCL Group's treasury department at DCL Head Office in Toronto.
- 7.2 DCL Canada utilizes 17 bank accounts, of which, 15 are held at HSBC Canada, and two are held at Wells Fargo Canada (collectively, the "**Bank Accounts**"). The Bank Accounts are in various currencies, including CAD, USD, GBP, EUR, and JPY. An overview of the Applicant's Bank Accounts is detailed in the Davido Affidavit.
- 7.3 The Applicant intends to continue using its existing Cash Management System in substantially the same manner as before the commencement of the CCAA Proceedings and is seeking approval of the Court to do so. Given the scale and nature of the Applicant's operations and the volume of transactions that are processed daily within the Cash Management System, the Proposed Monitor is of the view that the continued use of the

existing Cash Management System is required and appropriate during these CCAA Proceedings.

7.4 As part of its monitoring procedures, the Proposed Monitor will:

- (i) review receipts and disbursements processed through the Bank Accounts;
- (ii) review weekly receipts and disbursements summaries, compare the summaries to the corresponding cash flow forecasts and review variances with management; and
- (iii) review disbursements, as reasonably appropriate, for compliance with provisions of the proposed Initial Order.

8.0 CASH FLOW FORECAST

8.1 The Applicant has prepared a weekly cash flow forecast (the “**Cash Flow Forecast**”) for the 15-week period from December 17, 2022 to March 31, 2023 (the “**Cash Flow Period**”). A copy of the Cash Flow Forecast, together with a summary of assumptions (the “**Cash Flow Assumptions**”) and management’s report on the cash-flow statement required by section 10(2)(b) of the CCAA are attached hereto as **Appendices “A”** and **“B”**, respectively.

8.2 The following table provides a summary of the Cash Flow Forecast, including the period prior to the comeback hearing, being the two-week period ending December 30, 2022 (the “**Initial 2-Week Period**”).⁸

⁸ It is expected that the comeback hearing will be scheduled the week of December 26, 2022.

Cash Flow Forecast		USDS'000's		
	2-Week Period	13-Week Period	15-Week Total	
	<i>Dec-30</i>	<i>Mar-31</i>	<i>Mar-31</i>	
Receipts				
Third-party collections	185	842	1,027	
Intercompany Transfers	--	20,337	20,337	
	185	21,179	21,364	
Disbursements				
Payroll & Benefits	(613)	(3,909)	(4,522)	
Vendor Payments	(1,853)	(12,672)	(14,525)	
Rent, Utilities, Insurance	(89)	(768)	(857)	
Freight, Duties & Other	(306)	(3,073)	(3,379)	
Professional Fees	(442)	(2,307)	(2,749)	
DIP Interest & Fees	--	(49)	(49)	
Other	(25)	(163)	(188)	
KEIP	--	(40)	(40)	
	(3,328)	(22,981)	(26,309)	
Net Cash Flow	(3,143)	(1,802)	(4,945)	
Cash balance, opening	313	--	313	
Net Cash Flow	(3,143)	(1,802)	(4,945)	
Revolving Facility draws	2,830	(2,830)	--	
Exit Financing / Sale Proceeds (placeholder) ⁹	--	4,632	4,632	
Ending Cash Balance	--	--	--	

8.3 The Proposed Monitor notes the following with respect to the Cash Flow Forecast:

- (i) during the Initial 2-Week Period, net cash flows are projected to be negative \$3.1 million, projected to be sufficiently funded by cash-on-hand of approximately \$313,000 and draws on the DIP Facility of approximately \$2.8 million;
- (ii) during the entire Cash Flow Period, net cash flows (excluding Intercompany Transfers and the Exit Financing / Sale Proceeds (as defined below)) are projected

⁹ See discussion note in Section 8.3(iv) herein.

to be negative \$25.3 million, which is projected to be sufficiently funded by: (a) cash-on-hand; (b) draws on the DIP Facility which peak at approximately \$3.5 million; and (c) Intercompany Transfers of approximately \$20.3 million;

- (iii) as described in the Intercompany Transactions section below, Intercompany Transfers are payments made by DCL USA LLC to DCL Canada for: (a) Inventory Sales to DCL USA LLC; (b) the net provision of Shared Services (as defined below); and (c) for any additional funding required to support the Applicant during the CCAA Proceedings to be made by way of Intercompany Loans (as defined below). As described in further detail below, it is proposed that amounts advanced for Intercompany Loans, if any, will be provided the benefit of the Intercompany Charge (as defined below) in the CCAA Proceedings; and
- (iv) the “Exit Financing / Sale Proceeds” of \$4.6 million is a placeholder balance only. As required by the DIP Agent, the DCL Group included this placeholder in the DIP Budget to reflect a hypothetical sale transaction closing on or before March 31, 2023, the proceeds of which would be used to repay obligations outstanding under the DIP Facility at that time. This placeholder amount is not indicative or representative of the total proceeds that may be generated by any actual sale transaction involving the DCL Group and the Applicant, nor does it contemplate a proper allocation of such proceeds as between DCL Canada and DCL US.

8.4 Based on the Proposed Monitor's review,¹⁰ nothing has come to its attention that causes it to believe, in all material respects, that:

- (i) the Cash Flow Assumptions are not consistent with the purpose of the Cash Flow Forecast;
- (ii) as at the date of this Report, the Cash Flow Assumptions are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Cash Flow Forecast, given the Cash Flow Assumptions; or
- (iii) the Cash Flow Forecast does not reflect the Cash Flow Assumptions.

The Cash Flow Forecast has been prepared solely for the purpose described above, and readers are cautioned that it may not be appropriate for other purposes.

8.5 As part of the Restructuring Proceedings, and as required by the DIP Facility, the DCL Group has prepared a cash flow forecast for its consolidated operations (the "**DIP Budget**"). DCL Canada's Cash Flow Forecast makes up one component of the DIP Budget.

¹⁰ The Proposed Monitor has reviewed the Cash Flow Forecast to the standard required of a Court-appointed Monitor by section 23(1)(b) of the CCAA. Section 23(1)(b) requires a Monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the Court on the Monitor's findings. Pursuant to this standard, the Proposed Monitor's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to information supplied to it by the Applicant, Ankura and key members of DCL Canada's management. The Proposed Monitor reviewed information provided by management for the Cash Flow Assumptions. Since the Cash Flow Assumptions need not be supported, the Proposed Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast.

9.0 INTERCOMPANY TRANSACTIONS

9.1 This section of the Report provides a preliminary overview of:

- (i) certain intercompany balance sheet transactions that occurred within the DCL Group, as detailed below (the “**Intercompany Balance Sheet Transactions**”);
- (ii) the ordinary course intercompany transactions that DCL Canada is party to with other members within the DCL Group; and
- (iii) the proposed intercompany arrangements during the Restructuring Proceedings.

Intercompany Balance Sheet Transactions

9.2 Over the last two fiscal years, the DCL Group effected the Intercompany Balance Sheet Transactions, resulting in certain balance sheet accounts being transferred between members of the DCL Group, including DCL Canada. The Proposed Monitor notes that it is continuing its review of the Intercompany Balance Sheet Transactions that relate to DCL Canada and will report to the Court when such review is complete. Accordingly, the overview provided below is preliminary and could be subject to updates when additional information is obtained and reviewed by the Proposed Monitor.

9.3 The primary purpose of the Intercompany Balance Sheet Transactions was to re-align the DCL Group’s entity-level financial statements following: (i) the DCL Group’s 2021 acquisition of the Bushy Park manufacturing facility in South Carolina, which substantially increased the DCL Group’s U.S.-based operations and manufacturing capacity, and increased sales of DCL US by approximately \$67 million over the last twelve months; and

(ii) an operational restructuring that was implemented to centralize all of the DCL Group's sales and commercialization processes through DCL US.

9.4 The Intercompany Balance Sheet Transactions as they relate to DCL Canada are summarized below:

Sale of DCL Canada's Customer Contracts and Working Capital Assets

9.5 Pursuant to an Order Book Purchase and Sale Agreement dated December 15, 2021, with an effective date of August 1, 2021 (the "**Working Capital Sale Effective Date**"), DCL Canada sold its non-Canadian customer sales contracts to DCL USA LLC (the "**Customer Contracts Sale**"). The Proposed Monitor understands that the purchase price for the Customer Contracts Sale was determined based on the fair market value of the underlying intangible assets, pursuant to a valuation by the DCL Group's tax advisor, Grant Thornton LLP, an independent international accounting firm (the "**DCL Group Tax Advisor**").

9.6 Consideration for the Customer Contracts Sale was provided by DCL USA LLC as part of the restructuring of the Prepetition Term Loan (as described below) in December 2021.

9.7 The Proposed Monitor understands that, following the Working Capital Sale Effective Date, Inventory Sales were made by DCL Canada to DCL USA LLC at arm's length prices as determined by the parties, in consultation with the DCL Group's Tax Advisor and consistent with the DCL Group's Transfer Pricing Policy.

9.8 However, the Proposed Monitor notes that, as a result of certain constraints within the DCL Group's financial reporting system, these Inventory Sales were not recorded in the DCL Group's books and records until July 1, 2022. Notwithstanding these system constraints,

the DCL Group made certain adjustments to the tax returns of the Applicant and DCL USA LLC for fiscal year end March 31, 2022, as if there were no system issues and the Inventory Sales had been recorded as of the Working Capital Sale Effective Date. These adjustments were made in consultation with the DCL Group Tax Advisor at pricing consistent with the DCL Group's Transfer Pricing Policy.

9.9 The Proposed Monitor also understands that on July 1, 2022, DCL Canada sold the following to DCL USA LLC: (i) all existing third-party accounts receivable of the Applicant relating to its customer contracts transferred to DCL USA LLC¹¹ (the “**July 2022 Receivables**”); (ii) all existing finished goods inventory manufactured for DCL USA LLC's third-party customers (the “**July 2022 Inventory**”); and (iii) substantially all of the Applicant's sales contracts with Canadian customers (other than a small group of sales contracts relating to the Monteith business) (the “**Non-Monteith Canadian Contracts**”).

9.10 The Proposed Monitor understands that these transactions were recorded in the books and records of the Applicant as follows:

- (i) the transfer of the July 2022 Receivables was recorded at book value;
- (ii) the transfer of the July 2022 Inventory was recorded at book value; however, the Proposed Monitor understands that the DCL Group intends to make a retroactive adjustment to reflect an arm's length purchase price, to be consistent with the DCL Group's Transfer Pricing Policy; and

¹¹ The accounts receivable transferred on the Applicant's and DCL USA LLC's books and records included both accounts receivable related to the Non-Monteith Canadian Contracts transferred on July 1, 2022 and also accounts receivables relating to the non-Canadian contracts transferred to DCL USA LLC on August 1, 2021, the latter due to systems issues that prevented the recording of the accounts receivables transfers until July 1, 2022.

(iii) the transfer of the Non-Monteith Canadian Contracts has not yet been recorded; however, the Proposed Monitor understands that the DCL Group intends to record a retroactive entry after a fair market valuation has been completed by the DCL Group Tax Advisor.

9.11 The books and records of the Applicant as at September 30, 2022 (i.e., after the July 1, 2022 transactions described above, but prior to the ABL Restructuring (as defined and described below)), showed an intercompany receivable owing from DCL USA LLC of approximately \$40.9 million. However, as noted above, these intercompany transactions remain subject to further review and adjustment, including in respect of the July 1, 2022 transactions.

9.12 The Proposed Monitor understands that, during the period leading up to the Restructuring Proceedings and following discussions with the Prepetition ABL Agent and in cooperation therewith, in order to align the DCL Group's indebtedness outstanding under the Prepetition ABL Facility with the entity that owns the working capital assets that support those borrowings, the total balance owing under the Prepetition ABL Facility by DCL Canada of approximately \$40 million was restructured to make DCL USA LLC the primary borrower of such amount. To affect this restructuring, DCL USA LLC drew approximately \$40 million on the Prepetition ABL Facility and made an immediate payment to the Applicant, who in turn used the \$40 million to repay all of its obligations owing under the Prepetition ABL Facility, reducing its obligations thereunder to \$0. As a result of the foregoing transaction (the "**ABL Restructuring**"), the net intercompany balance owing to the Applicant by DCL USA LLC was reduced by \$40 million. Accordingly, all else being

equal and subject to the anticipated adjustments noted above, the net intercompany balance owing to the Applicant by DCL USA LLC would be approximately \$0.9 million.

Pre-Petition Term Loan Amendment and Related Transactions

- 9.13 In connection with the above Customer Contracts Sale and as documented in a fourth amendment to the Prepetition Term Loan dated December 16, 2021 (the “**Fourth Amendment**”), Colors (a U.S. entity) was added as a borrower under the Prepetition Term Loan in order to facilitate the internal restructuring of same.
- 9.14 The Davido Affidavit describes the series of intercompany transactions in more detail, however, in summary, the net effect was a transfer of \$67 million of the Prepetition Term Loan that was owed directly by DCL Canada prior to the Fourth Amendment, to Colors. Following the series of transactions, DCL Canada continues to have an outstanding direct Prepetition Term Loan obligation of approximately \$11.6 million.

Operating Intercompany Transactions & Shared Services

- 9.15 As part of its ordinary course operations, DCL Canada is party to a number of intercompany transactions within the DCL Group (the “**Operating Intercompany Transactions**”), consisting primarily of the following:
- (i) as a result of the Customer Contracts Sale and the subsequent sale of the Canadian non-Monteith customer sales contracts to DCL USA LLC, DCL Canada sells substantially all of its goods manufactured at the Ajax Plant and the New Toronto Plant to DCL USA LLC, which DCL USA LLC then sells to its third-party customers (the “**Inventory Sales**”);

- (ii) DCL Canada provides DCL US and other affiliates with essential corporate functions, supply chain, human resources, global procurement, information technology, finance, sales and marketing, regulatory and research & development (collectively, “**Shared Services**”), primarily from its head office in Toronto, Ontario¹²; and
- (iii) on a regular basis, cash transfers are made between DCL Canada, DCL US and their other affiliates to fund operating disbursements and to settle open balances as among the parties (the “**Intercompany Transfers**”).

The costs and fees associated with the Operating Intercompany Transactions are charged through the intercompany accounts.

9.16 The DCL Group utilizes a transfer pricing policy (the “**Transfer Pricing Policy**”) to record the Operating Intercompany Transactions on a “cost plus” basis. The Proposed Monitor understands that from time-to-time the DCL Group engages the DCL Group Tax Advisor to conduct a transfer pricing analysis of the Operating Intercompany Transactions. The Proposed Monitor reviewed the latest of such draft reports (dated November 8, 2022) and notes that the DCL Group Tax Advisor concluded the Operating Intercompany Transactions are being recorded on a basis consistent with industry standards and arm’s-length principles.

¹² DCL Canada is also the recipient of shared services from DCL USA LLC. Accordingly, amounts owing by DCL USA LLC to the DCL Canada in respect of Shared Services represent the net amount owing after deducting the value of the shared services provided by DCL USA LLC to DCL Canada.

9.17 The ongoing finished goods inventory sales by the Applicant to DCL USA LLC are reflected by way of book entries in the records of DCL USA LLC and the Applicant. Generally, these accounts are reconciled monthly, and are subject to adjustments from time to time pursuant to the DCL Group's Transfer Pricing Policy established in consultation with the DCL Group Tax Advisor. The transfer pricing adjustments are reflected in the pricing schedules to the US/Canada Intercompany Agreement (as defined and described below) and any adjustments are to be reflected retroactively on the Applicant's books and records.

Proposed Intercompany Arrangements During the Restructuring Proceedings

9.18 As further described in the Davido Affidavit, in connection with the Restructuring Proceedings and as required under the DIP Credit Agreement, DCL Canada and DCL USA LLC formalized and entered into: (i) an intercompany agreement between DCL Canada and DCL USA LLC (the "**US/Canada Intercompany Agreement**"); and (ii) an intercompany agreement between DCL Canada, DCL USA LLC and DCL Canada's European subsidiaries¹³ (the "**European Intercompany Agreement**", and together with the US/Canada Intercompany Agreement, the "**Intercompany Agreements**"). The European Subsidiaries are not debtors in the CCAA Proceedings nor the Chapter 11 Proceedings. Substantially final form copies of the Intercompany Agreements are attached to the Davido Affidavit as Exhibit "C" and "D", respectively. The copies of the Intercompany Agreements are redacted to remove commercially sensitive pricing information. The Proposed Monitor has received unredacted copies of the Intercompany

¹³ DCL Corporation (NL) B.V., located in the Netherlands ("**DCL NL**") and DCL Corporation (Europe) Limited located in the U.K. (together with the DCL NL, the "**European Subsidiaries**").

Agreements and understands that the Applicant has agreed to make unredacted versions available to the Court upon request.

US/Canada Intercompany Agreement

- 9.19 The proposed US/Canada Intercompany Agreement provides for the Operating Intercompany Transactions to continue in the normal course during the Restructuring Proceedings, including that DCL USA LLC will continue to make Intercompany Transfers to DCL Canada for the provision of Inventory Sales and net Shared Services.
- 9.20 To the extent that, during the Restructuring Proceedings, the value of Intercompany Transfers paid by DCL USA LLC exceeds: (i) the value of Inventory Sales and net Shared Services provided by DCL Canada; and (ii) the amount pre-funded by DCL USA LLC to DCL Canada for the payment of certain invoices on behalf of DCL NL (the “**DCL NL Supplier Invoices**”), such excess amount will be recorded as an intercompany loan (“**Intercompany Loan**”). As part of the proposed Initial Order, the Applicant is seeking the Court’s approval of a charge in favour of DCL USA LLC as security for the Intercompany Loans (the “**Intercompany Charge**”).
- 9.21 To the extent that the value of Intercompany Transfers paid by DCL USA LLC is less than the value of the Inventory Sales and the net Shared Services provided by DCL Canada during the Restructuring Proceedings and the amount of the DCL NL Supplier Invoices required to be pre-funded (i.e., if the Applicant is in a receivable position with DCL USA LLC), such amount will be recorded through the intercompany accounts as a DCL Canada receivable (“**DCL Canada Receivable**”). The Proposed Monitor understands that the Chapter 11 Debtors intend to seek approval from the U.S. Bankruptcy Court of an

administrative claim (the “**U.S. Administrative Claim**”) in the Chapter 11 Proceedings for any such DCL Canada Receivable amount incurred during the pendency of the Restructuring Proceedings.

9.22 The Proposed Monitor notes that the Intercompany Charge and the U.S. Administrative Claim will be subordinate to certain other charges or liens, including those securing the DIP Facility, the Prepetition ABL Facility and the Prepetition Term Loan.

9.23 Pursuant to the US/Canada Intercompany Agreement, the DCL Group will continue to utilize the Transfer Pricing Policy and record Inventory Sales and the provision of Shared Services at arm’s length prices as determined in consultation with the DCL Group Tax Advisor. Schedules “B” and “C” of the US/Canada Intercompany Agreement provide that from time to time the DCL Canada and DCL USA LLC will review the Transfer Pricing Policy and make any necessary adjustments to the prices, with corresponding retroactive adjustments to the intercompany accounts, including the Intercompany Loan or DCL Canada Receivable balances.

9.24 The Proposed Monitor will monitor the Operating Intercompany Transactions and the Intercompany Transfers that occur during the CCAA Proceedings and will provide regular updates to the Court, including details of any Intercompany Loans and any DCL Canada Receivable balances.

European Intercompany Agreement

9.25 The proposed European Intercompany Agreement sets out the arrangements between DCL Canada, DCL USA LLC and the European Subsidiaries, and is described in greater detail in the Davido Affidavit.

9.26 As it relates to the Applicant only, during the Restructuring Proceedings, DCL Canada will continue to: (i) provide Shared Services to the European Subsidiaries, the cost of which will be charged to the European Subsidiaries but will be paid for by DCL USA LLC; and (ii) pay the DCL NL Supplier Invoices, for which amounts will be advanced by DCL USA LLC prior to the Applicant making the supplier payment.

9.27 Similar to the US/Canada Intercompany Agreement, all intercompany transactions will be recorded through the intercompany accounts based on arm's length prices as determined in consultation with the DCL Group Tax Advisor, as calculated and adjusted in accordance with the schedules to the European Intercompany Agreement.

10.0 STAY OF PROCEEDINGS

10.1 The proposed Initial Order contemplates the granting of an initial 10-day stay of proceedings in respect of the Applicant, its business and the Property. The proposed stay of proceedings will provide the breathing space required for the Applicant to stabilize its business and preserve value for its stakeholders. Moreover, it will prevent the termination of key contracts and the commencement of enforcement steps, which would be detrimental to the Applicant's restructuring efforts.

10.2 Further, pursuant to the proposed Initial Order, the Applicant is seeking an extension of the stay of proceedings to provide that no action can be taken against the inventory owned by DCL USA LLC situated in Canada (the "**DCL USA LLC Inventory**"). As at November 30, 2022, the value of the DCL USA LLC Inventory was approximately \$17.9 million.

10.3 As described in the Davido Affidavit, the DCL USA LLC Inventory forms an integral component of the DCL Group's operations, including forming a considerable portion of the inventory collateral included in the DCL US borrowing base of the DIP Facility.

10.4 The proposed extension of the limited stay of proceedings to the DCL USA LLC Inventory is a requirement of the DIP Facility and will assist in the uninterrupted operations during the Restructuring Proceedings. Accordingly, the Proposed Monitor supports the Applicant's request for the proposed extension of the stay of proceedings in respects of the DCL USA LLC Inventory.

11.0 CHIEF RESTRUCTURING OFFICER

11.1 The proposed Initial Order seeks the approval of the appointment of Mr. Scott Davido, a Senior Managing Director from Ankura, as CRO. The Proposed Monitor understands that Mr. Davido is an experienced restructuring professional having served many similar roles in prior large restructurings, including those with cross border elements. A summary of Mr. Davido's professional qualifications is attached hereto as **Appendix "C"**.

11.2 The engagement letter dated November 16, 2022 and attached hereto as **Appendix "D"** (the "**CRO Engagement Letter**") sets forth the terms of Mr. Davido's appointment as CRO of the DCL Group and provides that the CRO will be responsible for the following: (i) providing oversight and guidance to enhance and preserve the DCL Group's available liquidity; (ii) working with the DCL Group's management and external advisors to execute current and future financial restructuring; (iii) serving as the DCL Group's designee by engaging with internal and external stakeholders such as creditors, landlords and other restructuring-related interested parties; and (iv) leading the DCL Group's management and

advisors in informing and advising the DCL Group's board of directors or their designees on restructuring options and recommendations.

11.3 The Proposed Monitor notes that: (i) the CRO Engagement Letter sets out a chargeable rate of \$1,195 per hour for the CRO's services; (ii) the CRO is limited to charging up to 40 hours in any calendar week; (iii) to avoid duplication, Ankura shall not be entitled to charge for any services rendered by Mr. Davido, whether as CRO or otherwise, under any agreement other than the CRO Engagement Letter; and (iv) Ankura shall be entitled to reimbursement of reasonable out-of-pocket and direct expenses incurred in connection with services provided under the CRO Engagement Letter. The Proposed Monitor understands that DCL USA LLC is expected to pay for service fees and expenses under the CRO Engagement Letter and such fees and expenses will be accounted for as part of the shared services being provided by DCL USA LLC under the US/Canada Intercompany Agreement.

12.0 COURT ORDERED CHARGES SOUGHT IN THE INITIAL ORDER

12.1 The proposed Initial Order seeks the granting of the Administration Charge, DIP Charge, Intercompany Charge and Directors' Charge (each as defined below) over the Property (other than certain specified excluded collateral as set out below) (collectively, the "Charges").

12.2 The priorities of the Charges, the ABL Pre-Filing Security and the Term Loan Security on the ABL Priority Collateral, as between them, are proposed to be as follows:

Proposed Charges & Priorities	\$000's
1. Administration Charge	\$175,000
2. DIP Charge	<i>as described below</i>
3. ABL Pre-Filing Security	<i>as described below</i>
4. Term Loan Security	<i>as described below</i>
5. Intercompany Charge (if any)	<i>as described below</i>
6. Directors' Charge	CAD\$1,000,000

12.3 The priorities of the Charges, the ABL Pre-Filing Security and the Term Loan Security on the Term Loan Priority Collateral, as between them, are proposed to be as follows:

Proposed Charges & Priorities	\$000's
1. Administration Charge	\$175,000
2. Term Loan Security	<i>as described below</i>
3. DIP Charge	<i>as described below</i>
4. ABL Pre-Filing Security	<i>as described below</i>
5. Intercompany Charge (if any)	<i>as described below</i>
6. Directors' Charge	CAD\$1,000,000

12.4 The proposed Initial Order provides that the Charges are to rank behind all other existing security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise if a holder thereof is not served with notice of the application for the CCAA Proceedings.

Administration Charge

12.5 The proposed Initial Order provides for a charge over the Property other than the cash collateral held by HSBC (the "HSBC Cash Collateral") in an amount not to exceed \$175,000 in favour of the Monitor, counsel to the Monitor and Canadian counsel to DCL

Canada (the “**Administration Charge**”). The Proposed Monitor understands that the Applicant intends to seek an increase in the amount of the Administration Charge to \$1.1 million at the comeback hearing.

- 12.6 The Proposed Monitor assisted the Applicant in the calculation of the Administration Charge and is of the view that the amount of the charge for the initial 10-day period is reasonable and appropriate in the circumstances, having regard to the nature of the proceedings, potential work involved at peak times and the size of charges approved in similar CCAA proceedings.

DIP Charge

- 12.7 The proposed Initial Order provides for a charge on the Property (other than the Excluded Collateral¹⁴) as security for the outstanding obligations of the Applicant under the DIP Facility (the “**DIP Charge**”).
- 12.8 It is a condition of the DIP Facility that the DIP Charge be granted by the Court. The Proposed Monitor’s observations with respect to the DIP Facility are set out in Section 6.0 above. The Proposed Monitor is of the view that the DIP Charge is reasonable and appropriate in the circumstances.

¹⁴ As described in the Davido Affidavit, Excluded Collateral is comprised of (i) the real property of the Applicant; (ii) the HSBC Cash Collateral; and (iii) the De Lage Landen Collateral.

Directors' Charge

- 12.9 The proposed Initial Order provides that DCL Canada will indemnify their directors and officers against obligations and liabilities that they may incur in their capacity as directors and officers of the Applicant from the commencement of the CCAA Proceedings, except to the extent that any obligation or liability was incurred as a result of gross negligence or wilful misconduct, and provides for a charge on the Property (other than the HSBC Cash Collateral) in the amount of CAD\$1 million in favour of the Applicant's directors and officers as security for any such obligations or liabilities arising after the commencement of these CCAA Proceedings (the "**Directors' Charge**"). The Proposed Monitor understands that the Applicant intends to seek an increase in the amount of the Directors' Charge to CAD\$1.7 million at the comeback hearing.
- 12.10 DCL Canada's directors and officers will only be entitled to the benefit of the Directors' Charge to the extent they do not have coverage under DCL Canada's directors' and officers' insurance policy or to the extent such coverage is insufficient to pay an indemnified amount.
- 12.11 The Proposed Monitor assisted the Applicant in the calculation of the Directors' Charge, taking into consideration the amount of the Applicant's payroll, vacation pay and federal and provincial sales tax liabilities during the initial 10-day stay period. The Proposed Monitor is of the view that the Directors' Charge is required and reasonable in the circumstances.

Intercompany Charge

12.12 As described above, the proposed Initial Order provides for the Intercompany Charge on the Property (other than the HSBC Cash Collateral) in favour of DCL USA LLC in the aggregate amount of any Intercompany Loan. In the Proposed Monitor's view, the Intercompany Charge is required and reasonable in the circumstances given the intention of the DCL Group to continue ordinary course Operating Intercompany Transactions during the Restructuring Proceedings and the anticipated need for DCL USA LLC to provide funding to DCL Canada during the pendency of the CCAA Proceedings.

12.13 As discussed above, the Proposed Monitor understands that pursuant to the U.S. Administrative Claim, the Chapter 11 Debtors intend to provide the Applicant with protections in event that amounts are owing by the Chapter 11 Debtors to the Applicant relating to the Inventory Sales or the provision of net Shared Services.

13.0 CONCLUSIONS AND RECOMMENDATIONS

13.1 For the reasons set out in this Report, if the Court is satisfied that the Applicant is a company to which the CCAA applies, the Proposed Monitor is of the view that the relief requested by the Applicant in the proposed Initial Order is reasonable, appropriate and necessary having regard to the current circumstances of the Applicant. As such, the Proposed Monitor supports the Applicant's application for CCAA protection and

respectfully recommends that the Court grant the Initial Order containing the relief requested by the Applicant.

All of which is respectfully submitted to this Court this 20th day of December, 2022.

**ALVAREZ & MARSAL CANADA INC.,
solely in its capacity as Proposed Monitor of
DCL Corporation and not in its personal or corporate capacity**

Per: 

Josh Nevsky
Senior Vice-President

Per: 

Stephen Ferguson
Senior Vice-President

APPENDIX "B"

UPDATED CASH FLOW FORECAST

DCL Corporation
Cash Flow Forecast
(Unaudited, \$ in 000s US Dollars)

Canada DIP Budget

Pre / Post-Petition Week Number	Notes	Post	Post	Post	Post	Post	Post	Post	Post	Post	Post	Post	Post	Post	Post
		1 12/17 12/23	2 12/24 12/30	3 12/31 1/6	4 1/7 1/13	5 1/14 1/20	6 1/21 1/27	7 1/28 2/3	8 2/4 2/10	9 2/11 2/17	10 2/18 2/24	11 2/25 3/3	12 3/4 3/10	13 3/11 3/17	Post-Pet. 13-Week Total
Receipts:															
Sales Receipts	1	67	118	129	52	152	148	61	109	90	30	-	-	-	957
Intercompany Transfers	2	-	-	989	1,978	1,707	1,883	1,785	2,128	1,653	1,609	1,458	1,895	283	17,369
Exit Financing / Sale Proceeds	3	-	-	-	-	-	-	-	-	-	-	-	-	4,632	4,632
Total Receipts		67	118	1,118	2,030	1,859	2,030	1,846	2,238	1,743	1,639	1,458	1,895	4,914	22,957
Canada Operating Disbursements & Capex															
Payroll & Benefits	4	(134)	(479)	(234)	(479)	(134)	(479)	(134)	(479)	(134)	(479)	(134)	(479)	(134)	(3,909)
Vendor Payments	5	(788)	(1,038)	(1,038)	(788)	(1,188)	(1,188)	(1,188)	(1,188)	(1,188)	(788)	(788)	(788)	(788)	(12,745)
Utilities	6	-	(2)	(53)	(56)	(42)	-	(53)	(57)	(44)	-	(53)	(57)	(44)	(463)
Rent	7	-	-	(15)	-	-	-	(15)	-	-	-	(15)	-	-	(45)
Insurance	8	-	(87)	-	-	-	(87)	-	-	-	(87)	-	-	-	(261)
Freight, Duties & Other	9	(59)	(247)	(189)	(311)	(206)	(247)	(189)	(311)	(206)	(273)	(189)	(311)	(206)	(2,944)
Canada Operating Disbursements		(981)	(1,852)	(1,529)	(1,634)	(1,570)	(2,000)	(1,579)	(2,035)	(1,572)	(1,626)	(1,179)	(1,635)	(1,172)	(20,365)
Non-Operating Disbursements															
Professional Fees	10	(442)	-	(305)	(383)	(277)	-	(254)	(191)	(159)	-	(249)	(248)	(158)	(2,666)
DIP Interest Payment / Fees	11	-	-	(14)	-	-	(18)	-	-	-	-	(18)	-	-	(49)
Other Non-Operating Outflows		(13)	(13)	(13)	(13)	(13)	(13)	(13)	(13)	(13)	(13)	(13)	(13)	(13)	(163)
KEIP		-	-	-	-	-	-	-	-	-	-	-	-	(40)	(40)
Total - Non-Op. Disbursements		(455)	(13)	(332)	(396)	(289)	(30)	(267)	(203)	(171)	(13)	(279)	(261)	(211)	(2,917)
Net Cash Flow		(1,368)	(1,747)	(743)	-	-	-	-	-	-	-	-	-	3,532	(326)
Cash Roll forward:															
Beginning Balance		326	-	-	-	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	326
(+) Inflows		67	118	1,118	2,030	1,859	2,030	1,846	2,238	1,743	1,639	1,458	1,895	4,914	22,957
(-) Disbursements		(1,436)	(1,865)	(1,861)	(2,030)	(1,859)	(2,030)	(1,846)	(2,238)	(1,743)	(1,639)	(1,458)	(1,895)	(1,383)	(23,283)
(+/-) DIP Facility Draws / (Sweeps)		1,042	1,747	743	-	-	-	-	-	-	-	-	-	(3,532)	-
Ending Balance		-	-	-	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	-	(0)
DIP Facility Summary:															
Beginning Balance		-	1,042	2,789	3,532	3,532	3,532	3,532	3,532	3,532	3,532	3,532	3,532	3,532	-
(+) Draw		1,436	1,865	1,861	-	-	-	-	-	-	-	-	-	1,383	6,544
(-) Paydown		(394)	(118)	(1,118)	-	-	-	-	-	-	-	-	-	(4,914)	(6,544)
Ending Balance		1,042	2,789	3,532	3,532	3,532	3,532	3,532	3,532	3,532	3,532	3,532	3,532	-	-

Cash Flow Assumptions

DCL Corporation Cash Flow Forecast for the period ending March 17, 2023

Disclaimer

In preparing this cash flow forecast (the “Forecast”), DCL Corporation (the “Applicant” or “DCL Canada”) has relied upon unaudited financial information and has not attempted to further verify the accuracy or completeness of such information. The Forecast includes assumptions discussed below with respect to the requirements and impact of a filing under the Companies’ Creditors Arrangement Act (“CCAA”). Since the Forecast is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved will vary from the Forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized.

The Forecast is presented in thousands of U.S. dollars. Receipts and disbursements denominated in Canadian currency have been converted into U.S. dollars at an exchange rate of US\$1.00:C\$0.74.

Notes

1) Sales Receipts

Sales Receipts are forecast based on Monteith’s accounts receivable during the period, adjusted for certain collection timing assumptions.

2) Intercompany Transfers

Intercompany Transfers includes inflows from DCL USA LLC, either: (a) as payment for Inventory Sales to DCL USA LLC or for the provision of Shared Services; or (b) as additional funding to support DCL Canada by way of Intercompany Loans.

3) Exit Financing / Sale Proceeds

Exit Financing / Sale Proceeds of \$4.6 million is a placeholder balance only. At the requirement of the DIP Lender, the DCL Group included this placeholder in the DIP Budget to reflect a hypothetical sale transaction and that such proceeds would be used to repay obligations outstanding under the DIP Facility at that time. This placeholder is not representative of any actual sale transaction, nor does it contemplate a proper allocation of valuation between DCL Canada and DCL US.

4) Payroll & Benefits

Payroll and Benefits are forecast based on current manufacturing run-rates and include salaries, wages and benefits.

5) Vendor Payments

Vendor Payments include trade, non-trade and capital expenditure and maintenance vendors, forecast based on purchasing requirements, adjusted for certain timing assumptions.

6) Utilities

Utilities forecast based on current manufacturing run rates, adjusted for certain timing assumptions.

7) Rent

Rent includes disbursements for the DCL Head Office and the Mississauga Plant.

8) Insurance

Insurance includes the Applicant's monthly premium payments.

9) Freight, Duties & Other

Freight, Duties and Other include disbursements for freight, customs and excise duties, commissions related to Monteith and other fixed overhead expenses.

10) Professional Fees

Disbursements include the Applicant's Canadian counsel, the Monitor and its legal counsel, the DIP Lenders' Canadian counsel and financial advisor, and the Term Loan Lenders' Canadian counsel.

11) DIP Interest Payment / Fees

DIP Interest Payments are forecast based on projected drawings under the DIP Facility by the Applicant only.

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**
**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
DCL CORPORATION**

Court File No.: CV-22-00691990-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**
Proceeding commenced at Toronto

FIRST REPORT OF THE MONITOR

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