



SUPERIOR COURT OF JUSTICE

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-23-00709610-00CL

DATE: Tuesday, November 14<sup>th</sup> 2023

NO. ON LIST: 1

**TITLE OF PROCEEDING: MAV Beauty Brands Inc., Marc Anthony Cosmetics Ltd., Marc Anthony US Holdings, Inc., Marc Anthony Cosmetics USA, Inc., MAC Pure Holdings, Inc., MAV Midco Holdings, LLC, Rempure, LLC, Onesta Hair Care, LLC, and The Mane Choice Hair Solution LLC.**

**BEFORE: JUSTICE CONWAY**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Contact Info</b>
TAYLOR, ASHLEY	The applicants – MAV Beauty Brands Inc., Marc Anthony Cosmetics Ltd., Marc Anthony US Holdings, Inc., Marc Anthony Cosmetics USA, Inc., MAC Pure Holdings, Inc., MAV Midco Holdings, LLC, Rempure, LLC, Onesta Hair Care, LLC, and The Mane Choice Hair Solution LLC	<a href="mailto:ataylor@stikeman.com">ataylor@stikeman.com</a>
YANG, PHILIP	The applicants	<a href="mailto:pyang@stikeman.com">pyang@stikeman.com</a>
HAMMAD, RANIA	The applicants	<a href="mailto:rhammad@stikeman.com">rhammad@stikeman.com</a>

**For Defendant, Respondent, Responding Party: Proposed Monitor**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Contact Info</b>
DESCOURS, CAROLINE	Proposed Monitor	<a href="mailto:cdescours@goodmans.ca">cdescours@goodmans.ca</a>
LINDE, JENNIFER	Proposed Monitor	<a href="mailto:jlinde@goodmans.ca">jlinde@goodmans.ca</a>
FERGUSON, STEVEN	Alvarez & Marsal Canada Inc., in its capacity as Proposed Monitor	<a href="mailto:sferguson@alvarezandmarsal.com">sferguson@alvarezandmarsal.com</a>
MANN, ESTHER	Alvarez & Marsal Canada Inc., in its capacity as Proposed Monitor	<a href="mailto:esther.mann@alvarezandmarsal.com">esther.mann@alvarezandmarsal.com</a>

**For Other, Self-Represented:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Contact Info</b>
WASSERMAN, MARC	Royal Bank of Canada, in its capacity as administrative agent of the DIP Lenders	<a href="mailto:mwasserman@osler.com">mwasserman@osler.com</a>
ROSENBLAT, DAVE	Royal Bank of Canada, in its capacity as administrative agent of the DIP Lenders	<a href="mailto:drosenblat@osler.com">drosenblat@osler.com</a>
MULLER, BEN	Royal Bank of Canada, in its capacity as administrative agent of the DIP Lenders	<a href="mailto:bmuller@osler.com">bmuller@osler.com</a>
LEVINE, NATALIE	Nexus Capital Management LP	<a href="mailto:nlevine@cassels.com">nlevine@cassels.com</a>
SASSI, MONIQUE	Nexus Capital Management LP	<a href="mailto:msassi@cassels.com">msassi@cassels.com</a>
POLIAK, MAYA	Ontario Securities Commission	<a href="mailto:maya@chaitons.com">maya@chaitons.com</a>

---

**ENDORSEMENT OF JUSTICE CONWAY:**

**All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the factum of the Applicants dated November 14, 2023.**

[1] The Applicants (the Companies) are a group of hair care and personal care companies with a diversified portfolio of four personal care brands. They seek an initial order under the CCAA.

[2] The evidence on the application is set out in the affidavit of Laurel MacKay-Lee, Chief Financial Officer of MAV Brands and the other Applicants sworn November 13, 2023 and the Pre-Filing Report of the Proposed Monitor dated November 13, 2023. All factual references in this Endorsement come from those materials. All references to currency in this endorsement are references to United States dollars, unless otherwise indicated.

[3] MAV Brands is the ultimate parent company of the other Companies. Its common shares trade on the Toronto Stock Exchange. There are three operating companies. MAV Cosmetics is the Applicants' primary operating company and was amalgamated in British Columbia. It is focussed on selling "Marc Anthony" and "Cake Beauty" branded hair and body care products. Renpure focuses on selling "Renpure" branded hair and body care products. The Mane Choice focuses on selling "The Mane Choice" branded hair and body care products. Renpure and The Mane Choice are Delaware companies.

[4] MAV Brands, MAV US Holdings, MAV Cosmetics USA, MAC Holdings, MAV Midco, and Onesta are non-operating companies. MAV Brands was incorporated in British Columbia and the others in Delaware.

[5] The Companies do not own or operate any manufacturing facilities. They contract and maintain direct relationships with a diversified network of independent third-party suppliers and manufacturers located primarily in North America to produce and test their products. The Companies do not own any real property. Their operations are conducted from their leased head office space in Vaughan, Ontario.

[6] The Companies employ approximately 72 people, all of whom are full time employees except for one contract employee. Approximately 67 of the employees are Canadian residents. None of the employees are subject to a collective bargaining agreement.

[7] As part of the Cash Management System, the Companies maintain multiple bank accounts, four in Canada and nine in the US.

[8] The Companies' total obligations and debt service costs exceed the actual cash flow that the Companies are generating annually from their operations. The annual principal and interest costs under the Credit Agreement between 2021 and 2022 were approximately \$15 million. At the same time, the Companies' Adjusted EBITDA declined from \$28.47 million in fiscal year 2020 to \$16.51 million in fiscal year 2021 to \$12.43 million in fiscal year 2022.

[9] In addition, the Companies' balance sheet has deteriorated. They went from having over \$426.43 million in assets as of December 31, 2020 to having just over \$110.22 million in assets as of September 30, 2023. As of that date, the liabilities of the Companies had an unaudited book value of approximately \$133.31 million and consisted of approximately \$15.52 million in current liabilities and \$117.78 million in non-current liabilities.

[10] The Companies' primary secured financing is through the Credit Agreement. The Lenders provided a Revolving Facility of \$20 million and a Term Facility of up to \$107.5 million to the Borrowers, MAV Cosmetics and MAC Holdings. Each of the Companies has guaranteed the full amount of the Borrowers' obligations under the Credit Agreement. As of November 13, 2023, the outstanding principal amount under the Credit Agreement is approximately \$122.67 million.

[11] In terms of unsecured debt, the Companies' obligations to employees for accrued vacation pay are \$75,000. As of September 30, 2023, amounts owed to unsecured trade creditors are approximately \$6.7 million. The Companies have monthly lease obligations of approximately \$70,000. There is outstanding litigation against the Companies of approximately \$1.799 million.

[12] The Companies have experienced continuing declines in operating performance as a result of, among other things, net product distribution losses with the Companies' retail customers and external pressures, including increased operating costs in light of rapidly accelerating interest rates, competition in the personal care industry generally, and the disruption to retail sales as a result of store closures and the Companies' slow response to adapt to shifts in end-consumer preferences toward e-commerce and online platforms during the COVID-19 pandemic.

[13] The Companies' revenue decreased 21% from \$114.90 million in fiscal year 2020 to \$90.69 million in fiscal year 2022, with net income decreasing from a net profit of approximately \$6.51 million in fiscal year 2020 to a net loss of approximately \$154.35 million (including significant impairment charges related to goodwill and intangibles of \$145.48 million) in fiscal year 2022. The Companies are significantly over-leveraged and have insufficient cash to meet their obligations. As at October 31, 2023, the Companies had approximately \$1.13 million in cash, excluding amounts drawn under the Revolving Facility, while having approximately \$15.52 million in current liabilities.

[14] The Companies took measures to address their financial situation by, among other things, reducing operating costs, extending the maturity date under the Credit Agreement, and engaging in the Strategic Review Process. Their financial advisor Piper Sandler considered a broad range of strategic alternatives for the Companies, including raising of additional debt or equity capital but ultimately pursued financial and strategic buyers for the sale of all or substantially all of MAV Brands' securities and or/its assets.

[15] Following completion of the Strategic Review Process, the Boards of Directors of the Companies determined that a filing under the CCAA and the Transaction contemplated by the Asset Purchase Agreement was in the best interests of the Companies and all of their stakeholders, and represents the best alternative available to the Applicants. The Applicants expect to seek approval of the Transaction and the Asset Purchase Agreement at the comeback motion.

[16] The Companies require interim financing to fund these proceedings. On November 13, 2023, the DIP Agreement was entered into among MAV Cosmetics and MAC Holdings, as borrowers, the other Companies as guarantors, RBC, as administrative agent, and Lenders under the Credit Agreement, as the DIP Lenders.

[17] The DIP Agreement is a non-revolving loan for up to \$3.9 million. The initial advance is for \$250,000. Each subsequent advance shall be in a principal amount of not less than \$250,000, and \$3,900,000 in the aggregate. Interest is payable on each advance at Adjusted Term SOFR for the SOFR Interest Period in effect for such advance plus 5.1% Accrued Interest on each advance. There is a \$100,000 exit fee on the Maturity Date. The DIP Lenders Charge will rank subordinate to the other Charges. The DIP Lenders Charge will not secure any obligations incurred prior to these CCAA Proceedings.

## **APPLICATION FOR AN INITIAL ORDER**

### **The CCAA Applies**

[18] The CCAA applies to a “debtor company” if the total claims against it or its affiliates exceed C\$5 million. The Applicants meet this test. Each of the Companies is a debtor company as it was incorporated in Canada or was incorporated elsewhere and has assets or does business in Canada. The total claims against them exceed C\$5 million. With respect to the insolvency requirement, and as noted, the Companies are or will soon be unable to meet their obligations generally as they become due without the DIP financing. This is borne out by the Cash Flow Forecast. Further, their current and long term liabilities exceed their current and long term assets. All of the Companies are principally liable for or have guaranteed the Credit Agreement, which is a secured obligation of over \$122 million.

### **The Stay of Proceedings is Appropriate**

[19] This court may grant a stay of proceedings of up to 10 days on an initial application, provided it is satisfied that: (i) such a stay is appropriate; and (ii) the Applicant has acted in good faith and with due diligence (s. 11.02(1), (3)). When exercising judicial discretion under the CCAA, the court must often be cognizant of the various interests at stake in the reorganization, which can extend beyond those of the debtor and creditors to include employees, directors, and even other parties doing business with the insolvent company.<sup>1</sup>

[20] Absent exceptional circumstances, the relief sought shall be limited to relief reasonably necessary for the ordinary course of continued operations and, whenever possible, the *status quo* should be maintained during the initial 10-day period.<sup>2</sup> This 10-day period “allows for a stabilization of operations and a negotiating window”.<sup>3</sup>

[21] I am satisfied that the Stay of Proceedings sought by the Applicants is reasonably necessary to maintain the *status quo* and to provide the breathing space that the Applicants require to continue their operations for the next 10 days, all for the benefit of their stakeholders.

### **The DIP Loan and the Charges**

[22] The Applicants require immediate DIP financing in light of their liquidity crisis and to see them through the restructuring process. The amount of financing required over the next 10 days is \$250,000. The DIP is being financed by the Lenders under the Credit Agreement, who are owed far in excess of the Applicants’ assets and there is therefore no prejudice to other stakeholders. No other source of financing is available to the Companies. The Proposed Monitor is supportive of the DIP Agreement and the corresponding DIP Charge. The notice requirements under s. 11(2) of the CCAA have been met. I am satisfied that the DIP Agreement and the DIP Charge should be approved.

---

<sup>1</sup> *Century Services Inc v Canada (AG)*, 2010 SCC 60 at para 21.

<sup>2</sup> *Lydian International Limited (Re)*, 2019 ONSC 7473 at para 22.

<sup>3</sup> *Lydian* at para 30.

[23] The Applicant seeks an Administration Charge of \$450,000 and a Directors' Charge of \$600,000. The Proposed Monitor believes that the amount of those charges is reasonable. The charges and their priority are unopposed. Both charges are acceptable to me.

### **Relief re Securities Filings**

[24] The Applicants seek an order permitting MAV Brands to incur no further expenses in relation to the Securities Filings and a declaration that none of the directors, officers, employees and other representatives of the Applicants or the Proposed Monitor shall have any personal liability for failure by the Applicants to make any Securities Filings that may be required by the Securities Provisions. These provisions are consistent with those that have previously been approved by this court and incorporated into the model order.

[25] I accept that it would not be practical and would be an unnecessary distraction and unwarranted expense for the Applicants to incur costs associated with its filing and disclosure obligations while they are working on restructuring. Further, detailed financial information and other information regarding the Companies will continue to be made publicly available through the materials filed in these CCAA proceedings and via the website established by the Proposed Monitor.

### **Additional Relief**

[26] The Proposed Monitor is acceptable to me and is appointed as Monitor.

[27] The use of the existing Cash Management System is acceptable to me.

[28] The order authorizes payment of certain pre-filing arrears to vendors and suppliers. According to the Pre-Filing Report, the products and/or services are important to the Applicants' ongoing operations and/or to the implementation of the Proposed Transaction. The payments are subject to both the DIP budget and the consent of the Monitor. This is acceptable to me.

### **Initial Order Granted; Comeback Hearing**

[29] I have signed the Initial Order. This order is effective from today's date and is enforceable without the need for entry and filing. I am satisfied that the relief granted in the order for the 10-day period is limited to relief that is "reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period", as required by s. 11.001 of the CCAA.

[30] **The comeback hearing is scheduled before Justice Cavanagh on November 24, 2023 at 10 a.m. for one hour (confirmed with the Commercial List office).** Thereafter, I will resume management of these CCAA proceedings.

[31] I direct that all materials for this hearing be uploaded to CaseLines forthwith.

A handwritten signature in blue ink, appearing to read "Conway J.", is located at the bottom left of the page.