

**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 COMARK HOLDINGS INC.,
BOOTLEGGER CLOTHING INC., CLEO FASHIONS INC.
AND RICKI'S FASHIONS INC.

APPLICANTS

**FACTUM OF THE APPLICANTS
(Transaction Approval, DIP Assignment, Sale Process and Stalking Horse Motion
returnable February 4, 2025)**

January 31, 2025

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PART I - NATURE OF THE APPLICATION

1. On January 7, 2025, Comark Holdings Inc. (“**Comark**”), and its subsidiaries, Ricki’s Fashions Inc. (“**Ricki’s**”), cleo fashions Inc. (“**cleo**”) and Bootlegger Clothing Inc. (“**Bootlegger**”) (together with Comark, the “**Applicants**” or the “**Comark Group**”), were granted protection under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “**CCAA**,” and the within proceedings the “**CCAA Proceedings**”) pursuant to an initial order (the “**Initial Order**”) of Ontario Superior Court of Justice (Commercial List) (the “**Court**”). Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed as monitor within the CCAA proceedings (the “**Monitor**”).

2. At the Comeback Hearing held on January 17, 2025 (the “**Comeback Hearing**”), the Court granted the Realization Process Approval Order, which, among other things, approved a consulting agreement between the Applicants and Tiger Asset Solutions Canada, ULC (the “**Consultant**”), for the purpose of conducting a liquidation sale (the “**Sale**”) of the Applicants’ merchandise and inventory. At the Comeback Hearing, the Applicants were also authorized, pursuant to the Amended and Restated Initial Order (the “**ARIO**”), to pursue offers for or avenues of restructuring, sale or reorganization of the Comark Group’s business or assets, in whole or in part (each, a “**Going Concern Transaction**”).

3. Since the Comeback Hearing, the Applicants have been working diligently to implement the Sale, while at the same time pursuing offers in relation to potential Going Concern Transactions. These efforts have been successful, and have resulted in several proposed transactions, which together constitute an integrated and comprehensive restructuring of the Applicants’ businesses (collectively, the “**Restructuring Transactions**”). The Restructuring Transactions are designed to maximize the value of the Applicants, enable a material portion of

the Applicants' business to continue on a going concern basis, and preserve employment and retail stores across Canada.

4. The Restructuring Transactions are composed of the following proposed transactions:

- (a) **Putman Transaction:** An asset purchase agreement (the "**Putman APA**") between cleo and Ricki's (together, the "**Targets**") and 10011110197 Ontario Inc., (the "**Putman Purchaser**"), whereby the Putman Purchaser will acquire certain assets and assume certain leases of Ricki's and cleo (the "**Putman Transaction**"). The Putman Transaction will permit elements of the Ricki's and cleo businesses to continue on a going concern basis moving forward.
- (b) **Stalking Horse Transaction:** A term sheet (the "**Stalking Horse Term Sheet**") between the Applicants and Warehouse One Clothing Ltd. ("**WarehouseOne**"), which sets out the terms by which WarehouseOne will act as stalking horse bidder as part of a sale process (the "**Sale Process**") to be conducted in respect of the business or assets of the Applicants not sold in the Putman Transaction, including Bootlegger (the "**Remaining Business**," and the contemplated transaction, the "**Stalking Horse Transaction**"). The Stalking Horse Transaction will ensure a going concern outcome for elements of the Bootlegger business.
- (c) **Debt Assignments:** Concurrently with the completion of the Putman Transaction,
 - (i) the proceeds of the Putman Transaction will be used to pay down the Outstanding Senior Secured Indebtedness (as defined below) owing to the Canadian Imperial Bank of Commerce ("**CIBC**"); and then (ii) CIBC, in its capacity as the Applicants' senior secured creditor and DIP Lender, will assign to the parent company of Comark, 9383921 Canada Inc. ("**ParentCo**"), all of the

Applicants' remaining Outstanding Senior Secured Indebtedness (the "Debt Assignments"), including CIBC's rights, interests, and obligations as DIP Lender (the "DIP Assignment and Assumption"). As set out in greater detail below, the "Outstanding Senior Secured Indebtedness" does not include amounts owing to CIBC in respect of the BCAP Facility.

5. In order to implement the Restructuring Transactions, the Applicants seek the following:
 - (a) an order (the "**Approval and Vesting and DIP Assignment Order**"), *inter alia*:
 - (i) approving the Putman APA and the Putman Transaction; (ii) assigning certain leases of Ricki's and cleo to the Putman Purchaser pursuant to s. 11.3 of the CCAA; and (iii) approving the DIP Assignment and Assumption; and
 - (b) an order (the "**Stalking Horse Sale Process Order**"), *inter alia*: (i) approving the form of process letter prepared by the Monitor setting out key milestones and bid requirements in respect of the sale of the Remaining Business (the "**Process Letter**"); (ii) authorizing the Sale Process as set out in the Process Letter; and (iii) authorizing the execution of the Stalking Horse Term Sheet, approving its use as stalking horse bid, and authorizing the Applicants to enter into a definitive agreement substantially on the terms set out in the Stalking Horse Term Sheet.
6. The proposed Restructuring Transactions comprise a comprehensive and integrated restructuring, which will ensure that the Applicants are able to maximize the value of their assets, while simultaneously enabling the Applicants' business to continue on a going concern basis, thereby preserving employment and retail stores across the country. The proposed orders are therefore in the best interests of the Applicants, along with their creditors, employees, and stakeholders generally, and should be approved by the Court.

PART II - SUMMARY OF FACTS

7. The facts are more fully set out in the Affidavit of Shamsh Kassam.¹

A. Background and Recent Activities

8. On January 7, 2025, the Court granted the Initial Order, *inter alia*: (i) appointing A&M as Monitor; (ii) granting a stay of proceedings in respect of the Applicants for an initial 10-day period (the “**Stay of Proceedings**”); (iii) authorizing the Applicants to borrow from CIBC, as interim lender, under the Applicants’ existing revolving facility; (iv) authorizing, but not requiring, the Applicants to pay certain pre-filing amounts; and (v) granting various court-ordered charges.²

9. At the Comeback Hearing, the Court granted the ARIO, *inter alia*: (i) extending the Stay of Proceedings to May 15, 2025; (ii) authorizing the Applicants to enter into the DIP Term Sheet with CIBC in the maximum principal amount of \$18 million and granting the DIP Lender’s Charge; and (iii) increasing the amount of certain charges authorized by the Initial Order. The ARIO also authorized the Applicants, with the support of the Monitor and the DIP Lender, to pursue Going Concern Transactions, subject to certain conditions. The authorization to pursue Going Concern Transactions was designed to allow the Applicants and the Monitor to immediately commence testing the market, to ascertain whether there may be one or more Going Concern Transactions that would generate more value for creditors and stakeholders than the Sale.³

10. At the Comeback Hearing, this Court also granted the Realization Process Approval Order, *inter alia*: (i) approving the Consulting Agreement; (ii) approving the proposed sale guidelines (the “**Sale Guidelines**”) for the orderly realization of the Inventory and FF&E at the Liquidating

¹ Affidavit of Shamsh Kassam, sworn January 30, 2025 [Third Kassam Affidavit]. Capitalized terms not otherwise defined have the same meaning as in the Third Kassam Affidavit. Dollar amounts are given in Canadian dollars unless otherwise specified.

² Third Kassam Affidavit at paras. 5-6.

³ Third Kassam Affidavit at paras. 8, 13.

Stores (as defined below); and (iii) authorizing the Applicants, with the assistance of the Consultant, to undertake the Sale in accordance with the terms of the Realization Process Approval Order, the Consulting Agreement and the Sale Guidelines. Under the terms of the Consulting Agreement, should the Applicants identify one or more Going Concern Transactions, the Applicants are entitled to remove any of the Applicants' Stores from the Sale.⁴

11. Since the Comeback Hearing, the Applicants have been working in good faith and with due diligence to, among other things: (i) undertake the Sale; and (ii) pursue potential Going Concern Transactions, in accordance with the terms of the ARIO. These efforts ultimately led to the Restructuring Transactions.⁵

B. The Putman Transaction

12. Shortly after the commencement of the CCAA proceedings, the Applicants received outreaches and expressions of interest from several parties potentially interested in acquiring certain of the Applicants' business and assets. These expressions of interest resulted both from the news coverage and industry awareness generated by the CCAA Proceedings, and direct outreach by the Monitor to potentially interested parties.⁶

13. The interested parties included the Putman Purchaser. In accordance with the authority granted under the ARIO, the Applicants, with the consent of the Monitor and the DIP Lender, commenced preliminary discussions with the Putman Purchaser regarding the purchase of some

⁴ Third Kassam Affidavit at paras. 9-10.

⁵ See Third Kassam Affidavit at para 11 for a detailed description of activities of the Applicants following the Comeback Hearing.

⁶ Second Report of the Monitor dated January 31, 2025, at para. 5.12(b)-(c) [Second Report].

or all of the Applicants' business or assets, with a focus on the potential acquisition of the retail business and assets belonging to Ricki's and cleo.⁷

14. During negotiations, both the Putman Purchaser and the Applicants made clear that their support was conditional on the transaction being consummated on an expedited basis. The need to swiftly consummate a transaction was driven in part by the ongoing liquidation of the Targets' inventory as part of the Sale. Any delay would necessarily extend the time by which the Applicants need to disclaim leases for the Liquidating Stores, and would expose the Applicants to other additional costs and expenses. As a result, the Putman Transaction was conditional on execution of the Putman Term Sheet on or before January 29, 2025.⁸

15. On January 29, 2025, after further negotiations (conducted with the assistance of the Monitor), Ricki's and cleo, with the consent of the Monitor and the DIP Lender, entered into the Putman Term Sheet with the Putman Purchaser. The Putman Term Sheet was the only executable expression of interest received for the assets of Ricki's and cleo.⁹

16. Under the terms of the Putman Term Sheet,¹⁰ the Putman Purchaser will pay a purchase price equal to \$0.64 for each \$1.00 of Target Merchandise plus any applicable sales or transfer taxes (the "**Purchase Price**").¹¹ In exchange, the Putman Purchaser will acquire, free of all encumbrances and on an "*as is, where is*" basis, the "**Purchased Assets**," which include, among other things: (i) the "Target Merchandise"; (ii) the "Target FF&E";¹² (iii) all intellectual and industrial property owned by the Targets; and (iv) certain of the Targets' retail real property leases

⁷ Third Kassam Affidavit at paras. 12, 14.

⁸ Third Kassam Affidavit at para. 15.

⁹ Third Kassam Affidavit at para. 16.

¹⁰ See Third Kassam Affidavit at para. 19 for a detailed summary of the key terms of the Putman Term Sheet.

¹¹ Third Kassam Affidavit at para 19(b), (c). See Third Kassam Affidavit at para. 19(a)(i) for a detailed description of the Target Merchandise.

¹² See Third Kassam Affidavit at para. 19(a)(ii) for a detailed description of the Target FF&E.

(the “**Assumed Leases**”).¹³ The Putman Purchaser will assume all liabilities payable in connection with the assignment of any Assumed Leases, including any cure costs for amounts of rent or otherwise, unless otherwise waived by the applicable landlord.¹⁴

17. Following the consummation of the proposed Putman Transaction, the Putman Purchaser will offer employment to certain of the Targets’ retail level employees on substantially the same employment terms and conditions that such employees have with each of their respective Target employer (the “**Transferring Employees**”).¹⁵ The Putman Purchaser will further enter into a transition services agreement or arrangements with the Applicants, pursuant to which the Putman Purchaser will agree to pay, reimburse, or cover certain costs occurring during a transitional period of not more than 120 days following the closing of the Putman Transaction.¹⁶

18. The closing of the Transactions is subject to a number of customary conditions precedent, including the granting by the Court of an Approval and Vesting and DIP Assignment Order in a form satisfactory to the Putman Purchaser.¹⁷

C. Sale of the Remaining Business

19. While negotiating the Putman Term Sheet, the Applicants and the Monitor were concurrently considering whether and how best to pursue a transaction involving the Remaining Business, including a transaction that could potentially preserve some or all of the Bootlegger business as a going concern. As part of this process, the Applicants reached out to ParentCo to determine whether it or one of its affiliates was interested in acquiring the Remaining Business,

¹³ Third Kassam Affidavit at para 19(a)(iv). Stores relating to Assumed Leases are “**Go-Forward Stores**,” while stores relating to leases that will not be assumed are “**Liquidating Stores**.”

¹⁴ Third Kassam Affidavit at para 19(e)

¹⁵ Third Kassam Affidavit at para. 19(d).

¹⁶ Third Kassam Affidavit at para. 19(f).

¹⁷ Third Kassam Affidavit at para. 21.

and whether it, or one of its affiliates, would be prepared to act as stalking horse bidder in respect of a sale process conducted in respect of the same. In response, ParentCo advised the Applicants that its affiliate, WarehouseOne, was interested in the opportunity.¹⁸

20. Following subsequent negotiations, WarehouseOne agreed to act as stalking horse bidder, and entered into the Stalking Horse Term Sheet with the Applicants on January 28, 2025. At the same time as is it was negotiating with WarehouseOne, the Applicants and the Monitor worked to develop the Sale Process, in order to solicit interest in the Remaining Business and determine whether a transaction more favourable than the Stalking Horse Transaction could be identified.¹⁹

(a) The Sale Process and Process Letter

21. The proposed Sale Process is set out in the Process Letter, which has been developed by the Monitor with input from the Applicants and is being distributed to parties known to the Applicants and/or the Monitor as having interest, or potentially having interest, in the Remaining Business. The Process Letter will provide potentially interest parties with: (i) an update on the Putman Term Sheet; (ii) a summary of the Stalking Horse Term Sheet; (iii) information with respect to the submission of a bid for the Remaining Business; and (iv) certain key milestones that have been established pursuant to the Process Letter.²⁰

22. The Process Letter provides for the Sale Process to be conducted on an expedited timeline which may be modified or extended by the Monitor in its discretion.

¹⁸ Third Kassam Affidavit at para. 30.

¹⁹ Third Kassam Affidavit at para. 31.

²⁰ Third Kassam Affidavit at para. 32.

23. Parties wishing to pursue a transaction must prepare and submit a non-binding expression of interest by no later than February 20, 2025,²¹ following which the “**Successful Bid**” will be selected on February 28, 2025. In order to be a qualified bidder in relation to the assets subject to the Stalking Horse Term Sheet, the purchase price must provide cash sufficient to pay in full upon closing: (i) the Stalking Horse Purchase Price (as defined in the Stalking Horse Term Sheet); (ii) an incremental overbid amount of \$100,000; and (iii) an administrative reserve to wind-down the CCAA proceedings in an amount to be discussed with the Monitor.²²

(b) The Stalking Horse Term Sheet

24. The Stalking Horse Term Sheet sets out the key terms, conditions, and timetable under which the Stalking Horse Purchaser will acquire the Bootlegger business and certain related assets (including Comark’s tax losses and other attributes) should the Stalking Horse Transaction ultimately be selected as the Successful Bid.²³

25. The Stalking Horse Purchaser has advised that it is not prepared to proceed with a transaction involving the Remaining Business on an “asset sale” only basis.²⁴ Accordingly, the Stalking Horse Term Sheet contemplates the Stalking Horse Purchaser purchasing a 100% interest in Bootlegger and/or one or more other members of the Comark Group, along with the Retained Assets,²⁵ including certain tax losses of the Comark group, by way of a reverse vesting transaction in accordance with an approval and reverse vesting order (“**ARVO**”).²⁶ In consideration, the Stalking Horse Purchaser will pay a purchase price comprised of: (i) a cash payment equal to

²¹ See Third Kassam Affidavit at para. 38 for a detailed description of the bid requirements for any EOI.

²² Third Kassam Affidavit at paras. 34-36.

²³ Third Kassam Affidavit at paras. 40-41. See Third Kassam Affidavit at para. 43 for a detailed summary of the Stalking Horse Transaction.

²⁴ Third Kassam Affidavit at para. 42.

²⁵ See Third Kassam Affidavit at para. 43(c) for a detailed summary of the Retained Assets. See Third Kassam Affidavit at para. 43(d) for a detailed summary of the “Excluded Assets,” which will not be acquired.

²⁶ Third Kassam Affidavit at paras. 41-42.

Outstanding Senior Secured Indebtedness outstanding as of the closing date of the Stalking Horse; and (ii) the retention of certain Retained Liabilities.²⁷ Except as otherwise agreed, the Stalking Horse Purchaser will retain all retail employees at the Going Concern Stores and certain divisional employees to be determined prior to the Stalking Horse Closing Date, while remaining Comark Group employees will be terminated.²⁸

26. The Stalking Horse Term Sheet provides that the Stalking Horse Transaction in subject to a number of conditions, including that an ARVO be granted by this Court in a form acceptable to the Stalking Horse Purchaser, confirming that all Excluded Liabilities have been expunged; and that all Excluded Liabilities and Excluded Assets have vested in a company to be incorporated and added to the CCAA proceedings as an applicant.²⁹

D. The Debt Assignments

27. CIBC, the Applicants' senior secured lender, is only prepared to support the Putman Transaction and the Stalking Horse Transaction if: (i) the proceeds of the Putman Transaction are used to pay down the Outstanding Senior Secured Indebtedness owing to CIBC by the Applicants;³⁰ and (ii) the remaining Outstanding Senior Secured Indebtedness is acquired by ParentCo concurrently with the closing of the Putman Transaction.³¹

28. To this end, CIBC, as Assignor, and ParentCo, as assignee, have agreed to the Debt Assignments, whereby the Outstanding Senior Secured Indebtedness, including the DIP Facility,

²⁷ Third Kassam Affidavit at para. 43 (a)-(b). See Third Kassam Affidavit at para. 43(e) for a detailed summary of the Retained Liabilities.

²⁸ Third Kassam Affidavit at para. 43(f).

²⁹ Third Kassam Affidavit at para. 43(h)(iii).

³⁰ “**Outstanding Senior Secured Indebtedness**” is comprised of the total remaining amounts owing to CIBC (or any assignee thereof) under the DIP Facility, the CIBC Revolving Loan Facility and the CIBC Term Loan Facility (each as defined in the Third Kassam Affidavit), including principal, interest and Lender Expenses (as defined in the DIP Term Sheet), but for greater certainty excludes any amounts owing under the BCAP Facility.

³¹ Second Report at para. 7.1.

will be assigned to ParentCo concurrently with the closing of the Putman Transaction.³² The cash proceeds of the Putman Transaction, which are expected to be approximately \$12.8 million, will be used to pay down the CIBC Revolving Loan Facility and the DIP Facility and the Term Loan Facility, in that order. The Outstanding Senior Secured Indebtedness (as reduced by the proceeds of the Putman Transaction) will be concurrently assigned to ParentCo, who will pay to CIBC an amount equal to the remaining Outstanding Senior Secured Indebtedness.³³

29. In connection with these assignments, CIBC's rights under the Outstanding Senior Secured Indebtedness will be irrevocably assigned to ParentCo,³⁴ including the benefits accorded to CIBC as DIP Lender pursuant to the DIP Charge. Following the assignments, CIBC will have been repaid in full (with the exception of the BCAP Facility), and ParentCo will stand in CIBC's place as the Applicants' DIP Lender and senior secured creditor.

PART III - THE ISSUES AND THE LAW

30. This Factum addresses the following issues:

- (a) the relief related to the Putman Transaction should be granted, including the approval of the Putman Transaction and the assignment of the Assumed Leases;
- (b) the relief related to the sale of the Remaining Business should be granted, including the approval of the Process Letter and the Stalking Horse Term Sheet; and
- (c) the DIP Assignment and Assumption should be approved.

³² Third Kassam Affidavit at paras. 46-47. The BCAP Facility, which is governed by the Pre-Filing Credit Agreement, will not be assigned to ParentCo, and will instead become unsecured.

³³ Third Kassam Affidavit at para. 51; Second Report at para. 4.2(b).

³⁴ Third Kassam Affidavit at paras. 49-50.

A. Relief Related to the Putman Transaction

(a) The Putman Transaction should be approved

31. It is well recognized that a CCAA court has jurisdiction to approve a sale of all or substantially all of a CCAA debtor's business and assets. Section 36 of the CCAA sets out the legal test for obtaining court approval, and requires the court to consider, among other things: (i) whether the sale process was reasonable in the circumstances; (ii) whether the Monitor approved of the sale process and filed a report supporting the sale; (iii) the extent to which creditors were consulted; (iv) the effect of the sale on creditors and stakeholders; and (v) whether the purchase price is fair and reasonable.³⁵

32. The factors outlined in s. 36(3) overlap to a large extent with the factors that were applied in approving sale transactions prior to the enactment of s. 36, and these factors remain relevant in determining whether a sale should be approved.³⁶ Under the prior *Soundair* test, it was necessary for the court to consider: (i) whether sufficient efforts had been made to obtain the best price and that the debtor had not acted improvidently; (ii) whether the interests of all parties had been considered; (iii) the integrity and efficacy of the process for obtaining offers; and (iv) whether there was any unfairness in working out the process.³⁷

33. The factors listed in s. 36(3) are not intended to be exhaustive, nor to be a formulaic checklist that must be followed in every case.³⁸ A formal, court-approved Sale Process is not

³⁵ CCAA, s. 36(3).

³⁶ *Target Canada Co. (Re)*, [2015 ONSC 2066](#) at para 15.

³⁷ *Canwest Publishing Inc./Publications Canwest Inc. (Re)*, [2010 ONSC 2870](#) at para. 13, citing *Royal Bank v. Soundair Corp.*, [\[1991\] O.J. No. 1137](#) (C.A.) at para. 16 [*Soundair*].

³⁸ *Target Canada Co. (Re)*, [2015 ONSC 2066](#), at para 15

required to meet the s. 36(3) criteria;³⁹ rather, the court is required to look at the transaction as a whole, and decide whether the sale is appropriate, fair, and reasonable in the circumstances.⁴⁰

34. The Applicants submit that both s. 36(3) factors and the *Soundair* criteria are satisfied in the circumstances, and that the Putman Transaction should be approved.

(i) The process leading to the Putman Term Sheet was fair and reasonable

35. Whether the process for achieving a sale transaction under the CCAA is fair and reasonable must be examined contextually, in light of the particular circumstances existing at the time.⁴¹ In determining whether to approve a proposed transaction, the court will not lightly second-guess or interfere with the commercial and business judgment of an applicant, especially where that business judgment is supported by the advice and consent of the monitor.⁴² Although it is common to sell assets under the CCAA by means of competitive bidding process, nothing in s. 36 mandates that such a process be conducted for every asset sold by a debtor company, and courts have acknowledged that other processes may be more appropriate in particular circumstances.⁴³

36. The process leading to the Putman Transaction was fair and reasonable in the circumstances. While the Putman Transaction is not the result of a formal Court-approved sale process, it is the result of a process undertaken by the Applicants and the Monitor in accordance

³⁹ See, i.e., *Target Canada Co. (Re)*, [2015 ONSC 1487](#), in where a transaction arising from an unsolicited bid for assets currently under a SISF was approved. See also *OEL Projects Ltd (Re)*, [2020 ABQB 365](#) at para. 29, in respect a sale conducted under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), in which the court held that no particular sale process was required, and that the court should be willing to approve sales in the absence of a court-approved sale process where the circumstances warrant doing so [*OEL Projects*].

⁴⁰ *Quest University Canada (Re)*, [2020 BCSC 1883](#) at para. 177.

⁴¹ See *White Birch Paper Holding Co. (Re)*, [2010 QCCS 4915](#), at para. 49: "The Court has to look at the transaction as a whole and essentially decide whether or not the sale is appropriate, fair and reasonable. In other words, the Court could grant the process for reasons others than those mentioned in Section 36 CCAA or refuse to grant it for reasons which are not mentioned in Section 36 CCAA."

⁴² *AbitibiBowater (Re)*, [2010 QCCS 1742](#) at paras. 70-72.

⁴³ See *Soundair*, at para. 44, citing *Salima Investments Ltd. v. Bank of Montreal*, [1985 ABCA 191](#), in which the court acknowledged that sale by tender is not necessarily the best way to sell a business as an ongoing concern, and that when another provident method is used, the court should not refuse to confirm the sale.

with the authorization granted pursuant to paragraph 12(f) of the ARIO, which was designed to allow the Applicants and the Monitor to immediately commence testing the market for potential Going Concern Transactions.⁴⁴ Acting in accordance with this authority, the Monitor conducted a reasonable solicitation process, during which interested parties executed NDAs and accessed the virtual data room in order to review financial and operational information. Following this process, the Putman Purchaser was the only party to submit an offer to acquire the Ricki's and cleo assets, and the Applicants (under the oversight of the Monitor and in consultation with the DIP Lender) therefore commenced the negotiation which ultimately led to the Putman Term Sheet.⁴⁵

37. By entering the Putman Transaction, which represents the best overall transaction in respect of the Targets' assets and constitutes an integral component of the Restructuring Transactions, the Applicants and the Monitor realized the precise benefit which paragraph 12(f) of the ARIO was designed to achieve. The expedited nature of the process adopted was reasonable and necessary in the circumstances, given the Applicants' liquidity constraints, the increasing amount of the Targets' merchandise that was being liquidated daily as part of the Sale, and the expiration of certain of the Applicants' leases.⁴⁶ In the circumstances, any alternative or additional marketing process would have been unlikely to have led to a higher-value transaction.⁴⁷

(ii) The purchase price is fair and reasonable

38. In order to establish that a purchase price is fair and reasonable, the debtor must show that sufficient efforts have been made to obtain the best price, and the debtor has not acted

⁴⁴ Third Kassam Affidavit at paras. 12-13; Second Report at para. 5.12(a)-(e).

⁴⁵ Second Report at paras. 5.12(a)-(e).

⁴⁶ For a case in which similar circumstances were found to justify proceeding in the absence of a court-approved sale process, see *OEL Project*, in which the Court approved an asset sale to a related party under the BIA without a formal SISP, on the basis that a formal sale process was not feasible due to "financial circumstances of the company [and] the lack of liquidity to fund the sale process," along with the fact that the expeditious nature of the transaction would avoid the further erosion of value of the debtor's assets (at paras. 27-29).

⁴⁷ Second Report at para. 5.12(f)-(g).

improvidently, based on the information available at the time the offer was accepted.⁴⁸ Significant deference is given to the debtor's business judgment, absent clear evidence that the purchase price of the transaction is unreasonably low.⁴⁹ The CCAA does not require that the purchase price of a debtor's assets must be established by an "auction-like" process,⁵⁰ and courts have found prices to have been reasonable in the absence of such a process, in particular where the price is supported by the Applicants, the Monitor and creditors with an economic interest in the proceedings.⁵¹

39. In this case, the Putman Term Sheet is the only executable going concern transaction or restructuring alternative that has been identified for the Ricki's and cleo assets under the process set out in the ARIO.⁵² The Monitor supports the proposed Putman Transaction, and believes that the Putman Transaction will generate a greater overall recovery, net of costs, than the liquidation of all of the Ricki's and cleo stores under the Sale.⁵³ Further, it is the Monitor's view that an alternative or additional marketing process would be unlikely to lead to a transaction that provides a result superior to the Putman Transaction.⁵⁴

(iii) The Putman Transaction will benefit creditors and stakeholders

40. In addition to the purchase price, the Putman Transaction provides other benefits to creditors and to stakeholders generally. The Putman Transaction ensures that Ricki's and cleo will continue to operate as a going concern business (though with a reduced footprint), which will both preserve employment for the Transferring Employees, and ensure that contracts with vendors, trade creditors and other counterparties will continue in the normal course for the benefit of all

⁴⁸ See for example *Terrace Bay Pulp Inc. (Re)*, [2012 ONSC 4247](#) at paras. 50-55 [*Terrace Bay*].

⁴⁹ *Soundair* at paras. 21 and 30-31; see also *Sanjel Corporation (Re)*, [2016 ABQB 257](#) at para. 56 and *Terrace Bay* at paras. 45 and 51-52.

⁵⁰ *Soundair* at para. 44

⁵¹ See, i.e., *Target Canada Co. (Re)*, [2015 ONSC 1487](#), at para. 20.

⁵² Third Kassam Affidavit at para. 27; Second Report at para. 5.6(b).

⁵³ Third Kassam Affidavit at para. 28; Second Report at para. 5.6(d).

⁵⁴ Second Report at para. 5.12(f)-(g).

parties. As a result, only limited matters relating to the Targets will remain to be dealt with during the administration and wind-down of the CCAA Proceedings.⁵⁵

41. The benefits of the Putman Transaction can further be observed from the fact that the Putman Transaction is supported by both CIBC and ParentCo, the most significant stakeholders in the CCAA Proceedings, as an integral component of the Restructuring Transactions.⁵⁶ The aggregate value of the Applicants' assets is insufficient to repay in full the obligations owed to CIBC and ParentCo, which accordingly have the remaining economic interest in the Applicants.⁵⁷

(iv) The Monitor was involved and supports the requested relief

42. The Monitor provided meaningful assistance to the Applicants throughout the process. Among other things, the Monitor: (i) contacted potential interested parties; (ii) engaged in discussions with interested parties; (iii) established an electronic data room to allow interested parties to perform due diligence; and (iv) engaged in accelerated negotiations with the Putman Purchaser.⁵⁸ The Monitor is supportive of Ricki's and cleo entering into the Putman Transaction.⁵⁹

(v) All other statutory requirements have been fulfilled

43. Finally, all of the other statutory requirements for obtaining relief under s. 36 of the CCAA have been satisfied: (i) all parties who have registered security interests in the Purchased Assets and who might be affected by the relief requested on this application have been notified in accordance with s. 36(2); (ii) as the Applicants and the Putman Purchaser are not related parties, the criteria found in s. 36(4) do not apply; and (iii) the requirements found in s. 36(7), which

⁵⁵ Third Kassam Affidavit at para. 28.

⁵⁶ Third Kassam Affidavit at para. 28(b).

⁵⁷ Second Report at para. 5.13(e).

⁵⁸ Second Report at paras. 5.1, 5.3-5.4, 5.13.

⁵⁹ Second Report at para. 5.13.

concern amounts owing by a debtor company to its employees and former employees for certain unpaid wages, are not at issue.

(b) The Assumed Leases should be assigned pursuant to section 11.3

44. A critical and necessary part of the proposed Putman Transaction is the assumption by the Putman Purchaser of the rights and obligations of the Assumed Leases for the Go-Forward Stores.⁶⁰ Section 11.3 of the CCAA gives the Court the jurisdiction and the discretion to make an order assigning the rights and obligations of a debtor company under an agreement to a third party.

45. The requirements set out in s. 11.3 have been fulfilled:

(a) **No Exception Applies:** Pursuant to s. 11.3(2), no assignment can be granted in respect of: (i) obligations that are not assignable by reason of their nature; (ii) an agreement entered into on or after the filing date; (iii) an eligible financial contract; or (iv) a collective agreement. None of these exceptions applies.

(b) **Assignment is Appropriate:** Pursuant to s. 11.3(3), the Court must consider, among other things: (i) whether the Monitor approves of the proposed assignments; (ii) whether the persons to whom the rights and obligations will be assigned will be able to perform such obligations; and (iii) whether it would be appropriate to assign the rights and obligations to that person. Each of these considerations is fulfilled. The Monitor and its counsel were involved in the development of the lease assignment process contemplated in the Approval and Vesting and DIP Assignment Order and the Monitor believes that the proposed assignment procedure is fair and

⁶⁰ Third Kassam Affidavit at para. 24.

reasonable in the circumstances.⁶¹ Further, the Putman Purchaser is an affiliate of 2625229 Ontario Inc., which operates as Putman Investments. Putman Investments owns and operates retail brands like *Toys “R” Us Canada*, *Babies “R” Us Canada*, *Sunrise Records*, *For Your Entertainment Ltd.*, *Northern Reflections Ltd.*, and *HMV*. The Putman Purchaser has confirmed that it has the ability to perform its obligations under the Assumed Leases.⁶² Finally, the requested assignments are an integral and necessary part of the Putman Transaction and the Restructuring Transactions as a whole, and the proposed process will provide for a fair and expeditious process for the assignment of Assumed Leases.⁶³

- (c) **Monetary Defaults Cured:** Pursuant to s. 11.3(4), the Court must be satisfied that all monetary defaults in relation to the agreement – other than those arising by reason only of the company’s insolvency, the commencement of proceedings under the CCAA or the company’s failure to perform a non-monetary obligation – will be remedied on or before a day fixed by the Court. This requirement is satisfied, as in order for a lease to become an Assumed Lease, either: (i) the Putman Purchaser must have provided written confirmation to the Monitor that it will satisfy the cure costs and other lease terms in respect of the Assumed Lease; or (ii) the Putman Purchaser and the applicable landlord must have provided written confirmation to the Monitor that they have reached consensual arrangements with respect to the Assumed Lease. If neither of the foregoing conditions are met, the lease will not be included in the list of Assumed Leases.⁶⁴

⁶¹ Second Report at para. 5.10.

⁶² Second Report at para. 5.5 and Appendix “1”.

⁶³ Third Kassam Affidavit at para. 26.

⁶⁴ Third Kassam Affidavit at para 25(c)-(e).

46. The proposed assignments are an important part of the Restructuring Transactions and should be approved by the Court. Each of the relevant landlords has been served with notice of this motion, and the Putman Purchaser will send written notice to each landlord setting out the terms pursuant to which the Putman Purchaser would be prepared to assume the applicable lease.⁶⁵

B. Relief Related to the Sale of the Remaining Business

(a) The Sale Process and the Process Letter Should be Approved

47. CCAA court's have the jurisdiction to approve a sale process in relation to a CCAA debtor's business and assets. The Court in *Nortel* identified a number of factors that should be considered in determining whether to authorize a sale process, including: (i) whether a sale transaction is warranted at the time; (ii) whether the sale will benefit the entire economic community; (iii) whether any of the debtors' creditors have a bona fide reasons to object to the sale; and (iv) whether there is a better viable alternative.⁶⁶ Although the *Nortel* criteria were articulated prior to the 2009 amendments to the CCAA, the Court in *Brainhunter* confirmed that the same criteria apply under the post-2009 CCAA.⁶⁷

48. The Applicants submit that each of the *Nortel* criteria are satisfied in respect of Sale Process, as set out in the Process Letter:

(a) The Sale Process is Warranted at this Time: Conducting the Sale Process is warranted and necessary at this time, as it will either help identify a superior transaction for the Remaining Business for the benefit of all stakeholders, or it will demonstrate that good faith efforts have been made by the Applicants to sell or

⁶⁵ Third Kassam Affidavit at para. 25(b).

⁶⁶ *Nortel Networks Corp. (Re)* (2009), [2009 CanLII 39492 \(ON SC\)](#) at paras. 48-49.

⁶⁷ *Brainhunter Inc. (Re)*, [2009 CanLII 72333 \(ON SC\)](#) at paras. 15-17.

otherwise dispose of the assets of the Remaining Business to persons who are not related parties (in the event that a superior transaction does not emerge through the Sale Process).⁶⁸ The Sale Process, as supported by the Stalking Horse Transaction, was developed by the Applicants and the Monitor, and is supported by the Monitor as appropriate in the circumstances.⁶⁹ Courts grant significant weight to the opinion of a monitor that a proposed sale process and associated stalking horse bid represent the most effective means of obtaining the best realization on a debtor's assets.⁷⁰

- (b) **The Sale Process Will Benefit the Entire Economic Community:** The Sale Process, as supported by the Stalking Horse Transaction, is an effective means of realizing the value of the Applicants' assets for the benefit of the entire economic community. Courts have frequently noted the inherent benefits of a Sale Process which incorporates a stalking horse bid. For example, in *Danier Leather*, the court found that the use of stalking horse bids maximizes the value of a business for the benefit of its stakeholders and enhances the fairness of the overall sale process.⁷¹ In particular, the court accepted that the stalking horse bid was in the interest of the entire economic community because it would establish a price floor as part of the public marketing process for the debtors' assets.⁷²
- (c) **The Applicants' Creditors do not have Any Reason to Object:** The Applicants do not believe that there is any *bona fide* reason for any creditors to object to the

⁶⁸ Third Kassam Affidavit at para 45.

⁶⁹ Third Kassam Affidavit at para 39; Second Report at para. 6.9(a).

⁷⁰ See i.e., *Validus Power Corp. (Re)*, [2023 ONSC 6367](#) at paras. 52-53 [*Validus*]; *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#) at para. 37 [*Danier Leather*].

⁷¹ *Danier Leather*, at para. 20.

⁷² *Danier Leather*, at para. 31. See also *Cannapie Group Inc v. Carmela Marzili*, [2022 ONSC 6379](#) at para. 8 [*Cannapie*]; *Fire & Flower Holdings Corp., et al. (Re)*, [2023 ONSC 4048](#) at paras. 28-29 [*Fire & Flower*].

Sale Process or the Stalking Horse Transaction. The proposed Sale Process is an open and transparent process, and the support of the Stalking Horse Bid, by establishing a floor price for the Remaining Business, will maximize recovery to the benefit of creditors generally.⁷³ The timelines set out in the Process Letter appropriately balance the need to adequately canvass the market with the Applicants' liquidity constraints, and the need to limit the degradation of the value of the Remaining Business.⁷⁴ Interested parties will be able to effectively participate in the Sale Process, thereby providing an opportunity to complete a transaction with greater value for the benefit of all stakeholders.⁷⁵

- (d) **There is No Better Viable Alternative:** No better alternative to the Sale Process exists at this time. In the absence of the Sale Process and the Stalking Horse Transaction, the entire Bootlegger business will be liquidated in accordance with the authority previously granted by this Court pursuant to the Realization Process Approval Order. The Sale Process and the Stalking Horse Transaction are supported by the Applicants' principal economic creditors, CIBC and ParentCo, and are an essential and integral component of the Restructuring Transactions.⁷⁶

(b) The Stalking Horse Purchase Agreement Should be Approved

49. It is well-accepted that a stalking horse transaction is a beneficial mechanism well-suited to supporting a sale process.⁷⁷ Sale processes supported by stalking horse transactions have been

⁷³ See *Danier Leather*, at paras. 31-33.

⁷⁴ Third Kassam Affidavit at paras. 37, 39.

⁷⁵ Third Kassam Affidavit at para 45.

⁷⁶ Second Report at paras. 6.9(c), (e).

⁷⁷ See, i.e., *Danier Leather*, at para 20.

approved by the court on many occasions,⁷⁸ including in circumstances where the definitive transaction agreements were still being finalized.⁷⁹

50. Sale processes incorporating stalking horse bids are commonly evaluated on the basis of the *Nortel* criteria, as discussed above. In addition, when appraising whether a debtor should be authorized to enter into a stalking horse agreement, the courts have considered: (i) the fairness, transparency and integrity of the proposed process; (ii) the commercial efficacy of the proposed process in light of the specific circumstances; and (iii) whether the sale process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale. The following additional factors have also been found to be relevant in evaluating a stalking horse agreement: (i) how the stalking horse agreement arose; (ii) the stability benefits of the stalking horse agreement; (iii) whether the timing supports approval; (iv) any support for or objections to the stalking horse agreement; (v) a consideration of the “true cost” of the stalking horse agreement; (vi) whether there is an alternative to the stalking horse agreement.⁸⁰

51. In *Validus*, the court held that while different courts have framed these considerations slightly differently, they are ultimately consistent with one another, and essentially ask whether the proposed process, including its stalking horse component, will likely result in the best recovery on the assets being sold pursuant to a fair and transparent process.⁸¹

52. The Applicants should be authorized to enter into the Stalking Horse Transaction based on both the *Nortel* criteria and the additional criteria outlined above:

⁷⁸ *Cannapiece*, at paras. 4-5; *Danier Leather*, at para. 36; *Fire & Flower*, at paras. 28-29; *Validus*, at para. 65.

⁷⁹ See, i.e., *Black Press Ltd. (Re)*, (January 25, 2024), B.C.S.C., No. S-240259 Vancouver Registry ([SISP Approval Order](#)) at para. 6; *Canadian Overseas Petroleum Limited (Re)*, (March 19, 2024), A.B.K.B., 2401-03404 ([SISP Approval Order](#)) at para. 6; *Urthecast International Corp. (Re)*, (October 16, 2020), B.C.S.C., No. S-208894 Vancouver Registry ([Sales Process Order](#)) at para. 4.

⁸⁰ *Validus*, at paras. 33-34.

⁸¹ *Validus*, at paras. 35-37.

- (a) **Development and Benefits:** The terms of the Stalking Horse Term Sheet were the culmination of negotiations with the Stalking Horse Purchaser,⁸² and will set a price floor on the Remaining Business, ensuring that the Sale Process will result in a successful going concern transaction for part of the Bootlegger business.⁸³
- (b) **Timing Considerations:** The timelines and terms of the proposed Sale Process are fair and reasonable in the circumstances and will provide sufficient time for interested parties to fully participate in the Sale Process and test the Stalking Horse Bid.⁸⁴ The Monitor is of the view that the proposed Sale Process strikes a reasonable balance between providing interested parties with an appropriate period to review transaction opportunities, while enabling the Applicants to complete an expedited transaction, given their financial and operation circumstances.⁸⁵
- (c) **Monitor Support:** The Monitor supports the Stalking Horse Transaction as an integral element of the Restructuring Transactions, which will both ensure a going concern outcome for elements of the Bootlegger business while allowing the Applicants and the Monitor to pursue other potential transactions.⁸⁶
- (d) **True Cost:** The “true cost” of the Stalking Horse Transaction is minimal, as there are no bid protections (such as break fees or expense reimbursements) in favour of WarehouseOne, which will foster a dynamic and competitive bid environment.

⁸² Third Kassam Affidavit at para. 40.

⁸³ Second Report at para. 6.9(c).

⁸⁴ Third Kassam Affidavit at para 37.

⁸⁵ Second Report at para. 6.9(b).

⁸⁶ Second Report at para. 6.9(c).

53. In light of the benefits outlined above, the Applicants should be authorized and empowered to finalize the Stalking Horse Transaction substantially in accordance with the economic terms set out in the Stalking Horse Term Sheet. The Applicants will return to this Court to seek approval of any Successful Bid(s) resulting from the Sale Process (including the Stalking Horse Bid).

C. The DIP Assignment and Assumption Should be Approved

54. The Applicants submit that the DIP Assignment and Assumption is in the best interests of the Applicants and their stakeholders and should be authorized by the Court.

55. The Debt Assignments, including the DIP Assignment and Assumption, are an integral component of the Restructuring Transactions, and are a condition precedent to CIBC's support of the Putman Transaction.⁸⁷ As CIBC's consent to the closing of the Putman Transaction is conditional on the concurrent completion of the Debt Assignments, the Putman Transaction will only take effect upon the closing of the Debt Assignments.⁸⁸ Similarly, it is a condition of the Stalking Horse Term Sheet that, concurrent with the closing of the Putman Transaction, ParentCo will have acquired the Outstanding Senior Secured Indebtedness and have paid to CIBC an amount equal to the Outstanding Senior Secured Indebtedness.⁸⁹ Failure to approve the DIP Assignment and Assumption would therefore put the entirety of the Restructuring Transactions at risk, to the detriment of creditors and stakeholders generally, including the Transferring Employees.

56. Further, the role of ParentCo as DIP Lender going forward is consistent with the interim financing requirements found in s. 11.2 of the CCAA. Section 11.2(4) of the CCAA lists the factors to be considered by the court in deciding whether to approve interim financing and grant an interim

⁸⁷ Second Report at para. 7.1.

⁸⁸ Second Report at para. 7.3.

⁸⁹ Third Kassam Affidavit at para. 46.

financing charge. The court in *Canwest Publishing* additionally emphasized the importance of meeting the criteria listed in s. 12(1) of the CCAA, namely whether: (i) secured creditors likely to be affected by the security or charge have been notified; (ii) whether the amount of the charge is appropriate; and (iii) whether the security or charge secures pre-filing obligations.⁹⁰

57. These factors favour the requested relief. The role of ParentCo going forward reflects a continuation of the existing DIP Facility and DIP Charge, which were approved by the Court as part of the ARIO and are required for the Applicants to continue operating while they pursue the Sale Process and complete the ongoing Sale. The Court has the jurisdiction to order to assignment of an existing DIP facility, including the benefits of a DIP charge,⁹¹ and the Applicants, with the oversight of the Monitor, are currently engaged in discussions with ParentCo to facilitate the orderly transfer of the DIP Lender's responsibilities in a manner which ensures that the Applicants will have continued access to funding under the DIP Facility.⁹²

PART IV - NATURE OF THE ORDER SOUGHT

58. The Applicants therefore request that this court grant an Approval and Vesting and DIP Assignment Order substantially in the form of the draft Order attached at Tab 3 of the Motion Record and a Stalking Horse Sale Process Order substantially in the form of the draft Order attached at Tab 4 of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31st day of January, 2025



Sierra Farr

⁹⁰ *Canwest Publishing Inc. / Publications Canwest Inc. (Re)*, [2010 ONSC 222](#), at para. 42.

⁹¹ See, i.e., *Boutique Jacob inc. (Re)*, [2011 QCCS 4147](#) at paras. 8, 10; *Azure Dynamics Corporation et. al. (Re)*, (January 28, 2013), B.C.S.C., No. S122223 Vancouver Registry ([Order](#)) at paras. 3, 5.

⁹² Second Report at para. 7.4.

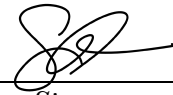
SCHEDULE “A”: LIST OF AUTHORITIES

1. *AbitibiBowater (Re)*, [2010 QCCS 1742](#)
2. *Azure Dynamics Corporation et. al. (Re)*, (January 28, 2013), B.C.S.C., No. S122223 Vancouver Registry ([Order](#))
3. *Black Press Ltd. (Re)*, (January 25, 2024), B.C.S.C., No. S-240259 Vancouver Registry ([SISP Approval Order](#))
4. *Boutique Jacob inc. (Re)*, [2011 QCCS 4147](#)
5. *Brainhunter Inc. (Re)*, [2009 CanLII 72333 \(ON SC\)](#)
6. *Canadian Overseas Petroleum Limited (Re)*, (March 19, 2024), A.B.K.B., 2401-03404 ([SISP Approval Order](#))
7. *Cannapiece Group Inc v. Carmela Marzili*, [2022 ONSC 6379](#)
8. *Canwest Publishing Inc. / Publications Canwest Inc. (Re)*, [2010 ONSC 222](#)
9. *Canwest Publishing Inc./Publications Canwest Inc. (Re)*, [2010 ONSC 2870](#)
10. *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#)
11. *Fire & Flower Holdings Corp., et al. (Re)*, [2023 ONSC 4048](#)
12. *Nortel Networks Corp. (Re)* (2009), [2009 CanLII 39492](#) (ON SC)
13. *OEL Projects Ltd (Re)*, [2020 ABQB 365](#)
14. *Royal Bank v. Soundair Corp.*, [\[1991\] O.J. No. 1137](#) (C.A.)
15. *Quest University Canada (Re)*, [2020 BCSC 1883](#)
16. *Salima Investments Ltd. v. Bank of Montreal*, [1985 ABCA 191](#)
17. *Sanjel Corporation (Re)*, [2016 ABQB 257](#)
18. *Target Canada Co. (Re)*, [2015 ONSC 1487](#)
19. *Target Canada Co. (Re)*, [2015 ONSC 2066](#)
20. *Terrace Bay Pulp Inc. (Re)*, [2012 ONSC 4247](#)
21. *Urthecast International Corp. (Re)*, (October 16, 2020), B.C.S.C., No. S-208894 Vancouver Registry ([Sales Process Order](#))
22. *Validus Power Corp. (Re)*, [2023 ONSC 6367](#)

23. *White Birch Paper Holding Co. (Re)*, [2010 QCCS 4915](#)

I certify that I am satisfied as to the authenticity of every authority.

Date January 31, 2025

A handwritten signature in black ink, appearing to be 'Sierra Farr', written over a horizontal line.

Signature
Sierra Farr

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS
COMPANIES’ CREDITORS ARRANGEMENT ACT

R.S.C., 1985, c. C-36, as amended

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company’s property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

- (4)** In deciding whether to make an order, the court is to consider, among other things,
- (a) the period during which the company is expected to be subject to proceedings under this Act;
 - (b) how the company’s business and financial affairs are to be managed during the proceedings;
 - (c) whether the company’s management has the confidence of its major creditors;
 - (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
 - (e) the nature and value of the company’s property;
 - (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
 - (g) the monitor’s report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

[...]

Assignment of agreements

11.3 (1) On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

Exceptions

(2) Subsection (1) does not apply in respect of rights and obligations that are not assignable by reason of their nature or that arise under

- (a) an agreement entered into on or after the day on which proceedings commence under this Act;
- (b) an eligible financial contract; or
- (c) a collective agreement.

Factors to be considered

(3) In deciding whether to make the order, the court is to consider, among other things,

- (a) whether the monitor approved the proposed assignment;
- (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
- (c) whether it would be appropriate to assign the rights and obligations to that person.

Restriction

(4) The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement — other than those arising by reason only of the company's insolvency, the commencement of proceedings under this Act or the company's failure to perform a non-monetary obligation — will be remedied on or before the day fixed by the court.

Copy of order

(5) The applicant is to send a copy of the order to every party to the agreement.

[...]

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or

provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

- (a) a director or officer of the company;
- (b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

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

Court File No: CV-20-00642013-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF COMARK HOLDINGS INC., BOOTLEGGER CLOTHING INC.,
CLEO FASHIONS INC. AND RICKI'S FASHIONS INC.

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

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(Transaction Approval)

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