

**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
OLD MM GP INC.**

Applicant

**MOTION RECORD OF THE COURT-APPOINTED MONITOR
(Returnable October 31, 2024)**

October 24, 2024

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solely in its capacity as the Court-appointed
Monitor and not in its personal or corporate
capacity

TO: THE SERVICE LIST

**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 OLD MM GP INC.**

Applicant

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1	Notice of Motion
2	Sixth Report of the Monitor dated October 24, 2024
A	Fifth Report of the Monitor dated August 13, 2024 (without appendices)
3	Draft Order (Stay Extension and Approval of Monitor's Activities)

TAB 1

**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
OLD MM GP INC.**

Applicant

**NOTICE OF MOTION
(Returnable October 31, 2024)**

Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as the Court-appointed monitor (in such capacity, the “**Monitor**”) of Old MM GP Inc. (f/k/a Mastermind GP Inc.) and Old MM LP (f/k/a Mastermind LP) (together, the “**Debtor Companies**”), will make a motion before the Honourable Justice Steele of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on October 31, 2024 at 12:00 p.m. or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- ☐ In writing under subrule 37.12.1(1).
- ☐ In writing as an opposed motion under subrule 37.12.1(4).
- ☐ In person.
- ☐ By telephone conference.
- ☒ By video conference.

At a Zoom link to be provided by the Court in advance of the motion.

THE MOTION IS FOR:

1. An order (the “**Order**”) substantially in the form of the draft order attached at Tab 3 of the Monitor’s Motion Record pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**” and the within proceedings, these “**CCAA Proceedings**”), *inter alia*:

- (a) abridging the time for, and validating service of, this Notice of Motion and supporting materials such that the motion is properly returnable on October 31, 2024 and dispensing with further service thereof;
- (b) extending the Stay Period (as defined below) to the earlier of March 31, 2025 and the termination of the CCAA Proceedings;
- (c) approving the Sixth Report of the Monitor dated October 24, 2024 (the “**Sixth Report**”), and the activities of the Monitor described therein; and

2. Such further and other relief as counsel may request and the Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Background to, and Initial Stages in, these CCAA Proceedings

3. On November 23, 2023 (the “**Filing Date**”), the Debtor Companies were granted protection under the CCAA pursuant to an Initial Order (the “**Initial Order**”) of this Court.

4. The Debtor Companies resolved to commence these CCAA proceedings to provide the stability and breathing room necessary to facilitate a value maximizing going concern sale transaction, while also implementing a liquidation and closure of a sub-set of retail stores.

5. Among other things, the Initial Order:
 - (a) appointed A&M as the Monitor;
 - (b) stayed, until November 30, 2023, all proceedings and remedies taken or that might be taken in respect of the Debtor Companies, the Monitor or the Debtor Companies' directors and officers, or affecting the Business or the Property (each as defined in the Initial Order), except with the written consent of the Debtor Companies and the Monitor, or with leave of the Court (the "**Stay Period**"); and
 - (c) extended the Stay Period and other protections and authorizations to Old MM LP.
6. On November 30, 2023, Old MM GP Inc. sought and obtained the following additional orders:
 - (a) an amended and restated Initial Order (the "**ARIO**"), which, among other things:
 - (i) approved the Forbearance Agreement dated December 1, 2023 (the "**Forbearance Agreement**"), among, *inter alios*, Old MM GP Inc. and Old MM LP, as credit parties, and Canadian Imperial Bank of Commerce ("**CIBC**"), as agent for certain lenders, and granted a corresponding DIP Charge over the Property (each as defined in the ARIO); and
 - (ii) extended the Stay Period to January 26, 2024;
 - (b) an order (the "**Liquidation Sale Approval Order**"), which, among other things:
 - (i) approved the Consulting Agreement and Sale Guidelines (each as defined in the Liquidation Sale Approval Order); and

- (ii) authorized Old MM LP, with the assistance of Gordon Brothers Canada ULC, to commence a liquidation sale at 18 store locations (the “**Liquidation Sale**”).

The Sale of Old MM LP’s Assets and Business

7. With a view to consummating a value maximizing going concern sale transaction, Old MM LP negotiated and entered into an asset purchase agreement dated December 1, 2023 (the “**APA**”) with Unity Acquisitions Inc. (“**Unity**”).

8. To effectuate the transactions contemplated under the APA (collectively, the “**Transaction**”), Old MM GP Inc. sought and, on December 13, 2023, obtained an order, which among other things:

- (a) approved the APA between Old MM LP, as vendor, and Unity or its permitted assignee, Mastermind Toys Inc., as purchaser (the “**Purchaser**”); and
- (b) vested all of Old MM LP’s rights, title and interest in and to the Purchased Assets (as defined in the APA) in the Purchaser free and clear of all claims and encumbrances other than the Permitted Encumbrances (as defined in the APA).

9. In accordance with the APA, Old MM GP Inc. sought and, on January 12, 2024, obtained an order (the “**Assignment Order**”) assigning, conveying and transferring to the Purchaser the rights and obligations of the Debtor Companies under the Assigned Contracts (as defined in the Assignment Order). On that same date and in anticipation of the closing of the Transaction and the completion of the Liquidation Sale, Old MM GP Inc. also sought and obtained an order, among other things:

- (a) expanding the Monitor's powers;
- (b) extending the Stay Period to April 30, 2024; and
- (c) authorizing and directing Old MM LP to make certain distributions to CIBC, including to satisfy all obligations under the Forbearance Agreement (collectively, the "**CIBC Distribution**").

10. The Liquidation Sale was completed on January 14, 2024, and the Transaction closed on January 15, 2024. Notwithstanding the CIBC Distribution, the Transaction resulted in excess proceeds (the "**Excess Proceeds**").

The Claims Procedure¹

11. To facilitate the distribution of the Excess Proceeds and the termination of these CCAA proceedings, the Monitor sought and, on March 8, 2024, obtained an order (the "**Claims Procedure Order**"), among other things:

- (a) establishing a procedure for the identification, quantification and resolution of claims against the Debtor Companies and their present and former directors and officers (the "**Claims Procedure**"); and
- (b) extending the Stay Period to and including October 31, 2024.

12. The Claims Procedure was intended to provide a fair, comprehensive and expeditious means of identifying, quantifying and resolving Claims against the Debtor Companies and their

¹ Capitalized terms used in this section and not otherwise defined have the meaning ascribed to them in the Claims Procedure Order.

present and former directors and officers. Since its approval, the Monitor has implemented and completed the Claims Procedure in accordance with the terms of the Claims Procedure Order.

13. The Monitor reviewed all Proofs of Claim received on or before the Claims Bar Date and the Restructuring Period Claims Bar Date (each as defined in the Claims Procedure Order), and as applicable, either accepted, revised or disallowed the classification, nature, and/or amount of each Claim. Ultimately, 300 Claims were finally determined and accepted by the Monitor as against Old MM LP on an unsecured basis in accordance with the Claims Procedure Order.

Termination and Distribution²

14. Having completed the Claims Procedure, the Monitor sought and on August 22, 2024, obtained, an order (the “**Termination and Distribution Order**”), among other things:

- (a) approving the distribution methodology (the “**Distribution Methodology**”) described in the Fifth Report of the Monitor dated August 13, 2024, and authorizing and directing the Monitor, for and on behalf of the Debtor Companies, to make the distributions contemplated by the Distribution Methodology (collectively, the “**Distributions**”);
- (b) authorizing the Debtor Companies to make assignments in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) prior to the CCAA Termination Time (as defined in the Termination and Distribution Order), naming A&M as the licensed insolvency trustee (in such capacity, the “**Trustee**”);

² Capitalized terms used in this section and not otherwise defined have the meaning ascribed to them in the Termination and Distribution Order.

- (c) authorizing the Trustee to administer the Debtor Companies' estates as if such estates were in respect of a single bankrupt for the purposes of carrying out its duties and responsibilities as Trustee under the BIA;
- (d) authorizing the Monitor to establish a cash reserve (the "**Administrative Reserve**") for certain obligations, to the extent not previously paid;
- (e) approving the Reports (as defined in the Termination and Distribution Order) as well as the activities of the Monitor described therein; and
- (f) authorizing the termination of these CCAA proceedings.

15. As at October 17, 2024, the Monitor administered the Distributions on behalf of the Debtor Companies in accordance with the Distribution Methodology and the Termination and Distribution Order (the "**Initial Distribution**"). Net of the Administrative Reserve, approximately \$1.9 million of Excess Proceeds was distributed to 300 Claimants.

Sales Tax Returns

16. The Debtor Companies, with the assistance of the Monitor, continue to have discussions with the Canada Revenue Agency ("**CRA**") in respect of certain outstanding input tax credit refunds that remain outstanding. As of the date of the Sixth Report, the Debtor Companies are expecting an input tax credit refund of approximately \$65,000 (the "**Pending ITC Refund**"). If or when received, the \$65,000 refund will be added to the Excess Proceeds pool and be distributed to Claimants in a potential subsequent distribution.

17. Based on the Initial Distribution, the Monitor intends to cause the Debtor Companies to file a final sales tax return. Once filed, the Monitor anticipates that the Debtor Companies will be eligible to receive a further input tax credit of approximately \$130,000 (“**Final ITC Refund**”).

18. Pending collection of the Pending ITC Refund and the Final ITC Refund, the Monitor, on behalf of the Debtor Companies, intends to make a second distribution (the “**Second Distribution**”) in accordance with the Termination and Distribution Order. Whether a Second Distribution can be made, as well as the ultimate timing and quantum of the Second Distribution is uncertain at this time but will be completed as soon as reasonably practicable.

Extension of Stay Period

19. The Stay Period under the Claims Procedure Order is set to expire on October 31, 2024. Pursuant to the proposed Order, the Monitor is seeking to extend the Stay Period to the earlier of March 31, 2025, and the termination of the CCAA Proceedings. The extension of the Stay Period is necessary and appropriate in the circumstances to allow the Monitor to complete the Second Distribution (if applicable) and resolve all necessary remaining issues prior to terminating these CCAA proceedings.

20. The anticipated costs through the extended Stay Period are expected to be modest and consist primarily of professional fees of the Monitor, and the Monitor’s Counsel, and will be funded by the Administrative Reserve established pursuant to the Termination and Distribution Order.

21. The Debtor Companies have been acting, and continue to act, in good faith and with due diligence in these CCAA Proceedings. The proposed extension of the Stay Period is appropriate and necessary in the circumstances.

Approval of the Sixth Report and Activities

22. As described in the Sixth Report, the Monitor has undertaken numerous activities in the administration of the CCAA Proceedings. As such, the proposed Order also seeks approval of the Sixth Report and the activities of the Monitor described therein.

Other Grounds

23. The provisions of the CCAA and the inherent and equitable jurisdiction of the Court.

24. Rules 1.04, 1.05, 2.01, 2.03, 3.02, 16, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended.

25. Such further and other grounds as counsel may advise and the Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

26. The Sixth Report and the appendix attached thereto.

27. Such further and other material as counsel may advise and the Court may permit.

October 24, 2024

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solely in its capacity as the Court-appointed
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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF OLD MM GP INC.**

Applicant

***ONTARIO*
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Returnable October 31, 2024)**

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in its capacity as the Court-appointed Monitor and
not in its personal or corporate capacity

TAB 2

**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 OLD MM GP INC.**

**SIXTH REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.**

OCTOBER 24, 2024

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APPENDICES

Appendix A – Fifth Report dated August 13, 2024 (without appendices)

1.0 INTRODUCTION

- 1.1 On November 23, 2023, Old MM GP Inc. (f/k/a Mastermind GP Inc.) (the “**Applicant**”) was granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an initial order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). Among other things, the Initial Order appointed Alvarez & Marsal Canada Inc. (“**A&M**”) as monitor (in such capacity, the “**Monitor**”) in these CCAA proceedings (the “**CCAA Proceedings**”).
- 1.2 The Initial Order also extended the stay of proceedings and other protections and authorizations to Old MM LP (f/k/a Mastermind LP) (together with Old MM GP Inc., the “**Debtor Companies**” and each, a “**Debtor Company**”). Old MM GP Inc. is the general partner of Old MM LP.
- 1.3 The Debtor Companies commenced the CCAA Proceedings to provide the stability and flexibility necessary to allow them to pursue a value maximizing going concern sale transaction, while also implementing a liquidation and closure of a sub-set of store locations. In furtherance of these objectives and as explained in the Prior Reports (as defined below), Old MM LP entered into an asset purchase agreement dated December 1, 2023 (the “**APA**”) with Unity Acquisitions Inc. or its permitted assignee, Mastermind Toys Inc., as purchaser (the “**Purchaser**”), for the sale of its assets and business.
- 1.4 On December 13, 2023, the Applicant obtained an order (the “**Approval and Vesting Order**”), among other things:

- (i) approving the APA and the going concern transaction contemplated thereunder (the “**Transaction**”); and
- (ii) upon the delivery of a certificate to Old MM LP and the Purchaser or their respective counsel (the “**Monitor’s Certificate**”), vesting all of Old MM LP’s right, title and interest in and to the Purchased Assets (as defined in the APA) in the Purchaser free and clear of all claims and encumbrances other than the Permitted Encumbrances (as defined in the APA).

1.5 On January 12, 2024, the Applicant obtained the following additional relief to effectuate the Transaction and advance the CCAA Proceedings:

- (i) an order pursuant to section 11.3 of the CCAA (the “**Assignment Order**”), among other things, assigning, conveying and transferring to the Purchaser the rights and obligations of the Debtor Companies under the Assigned Contracts (as defined in the Assignment Order);
- (ii) an order (the “**Ancillary Order**”), which, among other things:
 - (a) granted the Monitor expanded powers and certain additional protections;
 - (b) declared that Old MM LP meets the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and that Old MM LP’s former employees are eligible to receive payments under and in accordance with the *Wage Earner Protection Program Act*, S.C. 2006, c. 47 s. 1, as amended;

- (c) extended the Stay Period to and including April 30, 2024;
- (d) amended the title of the CCAA Proceedings upon the Debtor Companies' official name changes following the closing of the Transaction;
- (e) authorized and directed the Monitor to distribute to Canadian Imperial Bank of Commerce ("**CIBC**") any amounts required to satisfy the obligations owing under the CIBC Credit Agreement and the Forbearance Agreement (as defined in the ARIO) upon the delivery of the Monitor's Certificate in accordance with the Approval and Vesting Order and the APA (the "**CIBC Distribution**"); and
- (f) terminated and released the DIP Charge and the KERP Charge (each as defined in the ARIO) upon Old MM LP making the CIBC Distribution.

1.6 On March 8, 2024, the Monitor, exercising its expanded powers under the Ancillary Order, sought and obtained an order (the "**Claims Procedure Order**"), which, among other things:

- (i) established a procedure (the "**Claims Procedure**") for the identification, quantification and resolution of claims against the Debtor Companies and their present and former directors and officers; and
- (ii) extended the Stay Period until and including October 31, 2024.

1.7 On August 22, 2024, the Court issued an order (the "**Termination and Distribution Order**"), which, among other things:

- (i) authorized and directed the Monitor, for and on behalf of the Debtor Companies, to establish the Administrative Reserve (as defined in the Termination and Distribution Order);
- (ii) approved the Distribution Methodology (as defined in the Termination and Distribution Order) and authorized and directed the Monitor, for and on behalf of the Debtor Companies, to make the distributions contemplated by the Distribution Methodology (collectively, the “**Distributions**” and each, a “**Distribution**”);
- (iii) authorized: (I) each of the Debtor Companies to make an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) prior to the CCAA Termination Time (as defined below), naming A&M as the licensed insolvency trustee of such Debtor Company (in such capacity, the “**Trustee**”); and (II) the Monitor to execute and file such documents in the name of each of the Debtor Companies and take all such steps as are necessary to make each of the Debtor Companies’ assignments in bankruptcy pursuant to the BIA;
- (iv) authorized the Trustee to administer the Debtor Companies’ bankruptcy estates as if such estates were in respect of a single bankrupt for the purposes of carrying out its duties and responsibilities as trustee under the BIA;
- (v) terminating the CCAA Proceedings upon the Monitor’s service of an executed certificate (the “**Termination Certificate**”) in substantially the form attached as Schedule “A” to the Termination and Distribution Order (the “**CCAA Termination Time**”);

- (vi) releasing and discharging the Charges (as defined in the Initial Order) effective as of the CCAA Termination Time;
- (vii) discharging and releasing A&M as Monitor in the CCAA Proceedings effective as of the CCAA Termination Time;
- (viii) granting certain releases in favour of the Released Parties (as defined in the Termination and Distribution Order);
- (ix) approving the Prior Reports and the activities of the Monitor described therein; and
- (x) approving the fees and disbursements of the Monitor and the Monitor's counsel, Bennett Jones LLP ("**Bennett Jones**"), including the Fee Estimate.

1.8 In connection with the CCAA Proceedings, the Monitor has previously served and filed with this Court five reports (collectively, the "**Prior Reports**"), including the Fifth Report dated August 13, 2024 (the "**Fifth Report**") which is attached hereto without appendices as **Appendix "A"**. A&M also filed the Pre-Filing Report of the Proposed Monitor dated November 22, 2023 (the "**Pre-Filing Report**"). The Prior Reports, Pre-Filing Report and other Court-filed documents in the CCAA Proceedings are available on the Monitor's case website at: www.alvarezandmarsal.com/Mastermind (the "**Case Website**").

2.0 PURPOSE OF THIS REPORT

2.1 The purpose of this Sixth Report is to provide the Court with information regarding the following:

- (i) the Monitor's activities since the date of the Fifth Report;

- (ii) an update on the Distributions made to date and the status of the Administrative Reserve;
- (iii) the Monitor's motion for an order (the "**Order**"), which, among other things:
 - (a) extends the Stay Period (as defined in the Initial Order) until the earlier of March 31, 2025 and the termination of the CCAA Proceedings (the "**Stay Extension**"); and
 - (b) approves the activities of the Monitor since the date of the Fifth Report; and
- (iv) the Monitor's conclusions and recommendations in connection with the foregoing, as applicable.

3.0 TERMS OF REFERENCE AND DISCLAIMER

3.1 In preparing this Sixth Report, A&M, in its capacity as Monitor, has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by the Debtor Companies and has held discussions with the former management of the Debtor Companies and their legal counsel (collectively, the "**Information**"). The Monitor notes that:

- (i) it 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 Sixth 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.

3.2 This Sixth Report is being provided to the Court in support of the relief being sought by the Monitor in its motion for the proposed Order. Capitalized terms used and not defined in this Sixth Report have the meanings given to them in the Prior Reports, the Claims Procedure Order or the Termination and Distribution Order, as applicable.

3.3 Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

4.0 UPDATES SINCE THE DATE OF THE FIFTH REPORT

Return of Priority Payable Buyer Contribution

4.1 As discussed in the Fifth Report, the Monitor has disbursed approximately \$1.9 million from the Priority Payables Buyer Contribution to the Purchaser. As of the date of this Sixth Report, the Monitor continues to hold a reserve of \$20,000 to satisfy banking fees and certain limited Priority Payables that may remain outstanding. Any excess amounts in the Priority Payables Buyer Contribution will be returned to the Purchaser.

Sales Tax Returns

- 4.2 The Debtor Companies, with the assistance of the Monitor, continue to have discussions with the Canada Revenue Agency (“**CRA**”) in respect of certain input tax credit refunds that remain outstanding. As of the date of this Sixth Report, the Debtor Companies are expecting an input tax credit refund of approximately \$65,000 (the “**Pending ITC Refund**”). If or when received, the \$65,000 refund will be added to the excess proceeds received from the Transaction (“**Excess Proceeds**”) and be distributed to Claimants in a potential subsequent distribution (as described below).

Administrative Reserve

- 4.3 Pursuant to the Termination and Distribution Order, the Monitor established the Administrative Reserve in the amount of \$100,000 to be used by the Debtor Companies for the following:
- (i) payment of remaining post-filing obligations, if any;
 - (ii) winding-down the CCAA Proceedings;
 - (iii) any outstanding claim secured by the D&O charge; and
 - (iv) the fees and disbursements of the Trustee and the Trustee’s counsel to be incurred in connection with the intended assignments of the Debtor Companies into bankruptcy pursuant to the BIA.

Initial Distribution

- 4.4 On October 17, 2024, the Monitor administered the Distributions on behalf of the Debtor Companies in accordance with the Distribution Methodology and the Termination and Distribution Order (the “**Initial Distribution**”).
- 4.5 Net of the Administrative Reserve, approximately \$1.9 million of Excess Proceeds was distributed to 300 Claimants resulting in an initial recovery of approximately 5.93%. The below table provides a detailed breakdown of the Initial Distribution.

Summary of Initial Distribution CAD \$000's	
Excess Proceeds (as at October 17, 2024)	\$ 2,009
Less: Administrative Reserve	(100)
CCAA Cash Pool	\$ 1,909
Vendor Claims (266 Claimants)	\$ 26,021
Landlord Claims (19 Claimants)	4,378
Government Claims (1 Claimant)	1,625
Employee Claims (14 Claimants)	176
Total Proven Claims	\$ 32,200
<i>Initial Distribution Recovery</i>	<i>5.93%</i>

- 4.6 Based on the Initial Distribution, the Monitor intends to cause the Debtor Companies to file a final sales tax return. Once filed, the Monitor anticipates that the Debtor Companies will be eligible to receive a further input tax credit of approximately \$130,000 (“**Final ITC Refund**”).
- 4.7 Pending collection of the Pending ITC Refund and the Final ITC Refund, the Monitor, on behalf of the Debtor Companies, intends to make a second distribution (the “**Second Distribution**”). The ultimate timing and quantum of the Second Distribution is currently uncertain but would be completed as soon as reasonably practicable.

5.0 ACTIVITIES TO COMPLETE

5.1 The expected remaining activities of the Debtor Companies and the Monitor to be completed prior the termination of the CCAA Proceedings and discharge of the Monitor are as follows:

- (i) continuing to engage with the CRA in connection with the Pending ITC Refund;
- (ii) filing tax claims in respect of the Distributions made and collecting any tax refunds related thereto;
- (iii) administering the release/return of cash deposits and/or cash collateral and the direction of same to the Purchaser;
- (iv) making the Debtor Companies' assignments in bankruptcy pursuant to the BIA;
- (v) completing certain statutory and administrative duties and filings; and
- (vi) filing the Termination Certificate.

6.0 EXTENSION OF THE STAY PERIOD

6.1 The Claims Procedure Order extended the Stay Period until and including October 31, 2024. Pursuant to the proposed Order, the Monitor is seeking a further extension of the Stay Period until the earlier of March 31, 2025 and the termination of the CCAA Proceedings.

6.2 In the Monitor's view, the Debtor Companies have acted in good faith and with due diligence to, among other things, implement and complete the Transaction. Further, under

the Monitor's direction, the Debtor Companies have continued to act in good faith and with due diligence since the closing of the Transaction to address post-closing matters and to facilitate the Claims Procedure and the Initial Distribution.

- 6.3 The proposed Stay Extension will maintain the status quo and provide the breathing room and stability necessary to, among other things: (i) complete the Second Distribution (if applicable); and (ii) allow the Monitor to otherwise administer the Debtor Companies' estates and wind-down.
- 6.4 Given the Administrative Reserve and the fact that the Debtor Companies have no or limited ongoing expenses, the Debtor Companies are forecast to have sufficient liquidity throughout the Stay Period.
- 6.5 Taken together, the Monitor is of the view that the proposed Stay Extension is reasonable and appropriate in the circumstances.
- 6.6 The Monitor is not aware of any creditor that would be materially prejudiced by the proposed extension.

7.0 ACTIVITIES OF THE MONITOR SINCE THE FIFTH REPORT

- 7.1 Since the date of the Fifth Report, the primary activities of the Monitor have included the following:
- (i) attending the August 22, 2024, Court hearing for the granting of the Termination and Distribution Order and posting non-confidential materials filed with the Court to the Case Website;

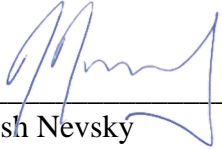
- (ii) continuing to assist the Debtor Companies with communications to various stakeholders;
- (iii) assisting the Debtor Companies with filing the remaining tax returns;
- (iv) assisting the Debtor Companies in respect of communications with the CRA regarding the status of the input tax credit refunds;
- (v) administering the Initial Distribution; and
- (vi) with the assistance of Bennett Jones, preparing this Sixth Report.

8.0 CONCLUSIONS AND RECOMMENDATIONS

- 8.1 For the reasons set out in this Sixth Report, the Monitor respectfully recommends that the Court grant the proposed Order.

All of which is respectfully submitted to the Court this 24th day of October, 2024.

**Alvarez & Marsal Canada Inc., in its capacity as
Monitor of Old MM GP Inc. and Old MM LP,
and not in its personal or corporate capacity**

Per: 

Josh Nevsky
Senior Vice-President

TAB A

APPENDIX A
Fifth Report of the Monitor dated August 13, 2024
(without appendices)

See attached.

**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 OLD MM GP INC.**

**FIFTH REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.**

AUGUST 13, 2024

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APPENDICES

Appendix A – Pre-Filing Report of the Proposed Monitor (Without Appendices)

Appendix B – First Report of the Monitor (Without Appendices)

Appendix C – Second Report of the Monitor (Without Appendices)

Appendix D – Third Report of the Monitor (Without Appendices)

Appendix E – Fourth Report of the Monitor (Without Appendices)

Appendix F – Claims Procedure Order

Appendix G – Notice Letter

Appendix H – Fee Affidavit of Josh Nevsky

Appendix I – Fee Affidavit of Sean Zweig

1.0 INTRODUCTION

- 1.1 On November 23, 2023, Old MM GP Inc. (f/k/a Mastermind GP Inc.) (the “**Applicant**”) was granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an initial order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). Among other things, the Initial Order appointed Alvarez & Marsal Canada Inc. (“**A&M**”) as monitor (in such capacity, the “**Monitor**”) in these CCAA proceedings (the “**CCAA Proceedings**”).
- 1.2 The Initial Order also extended the stay of proceedings and other protections and authorizations to Old MM LP (f/k/a Mastermind LP) (together with Old MM GP Inc., the “**Debtor Companies**” and each, a “**Debtor Company**”). Old MM GP Inc. is the general partner of Old MM LP.
- 1.3 The Debtor Companies commenced the CCAA Proceedings to provide the stability and flexibility necessary to allow them to pursue a value maximizing going concern sale transaction, while also implementing a liquidation and closure of a sub-set of store locations. In furtherance of these objectives and as explained in the Prior Reports (as defined below), Old MM LP entered into an asset purchase agreement dated as of December 1, 2023 (the “**APA**”) with Unity Acquisitions Inc. or its permitted assignee, Mastermind Toys Inc., as purchaser (the “**Purchaser**”), for the sale of its assets and business, and with the assistance of Gordon Brothers Canada ULC, implemented a liquidation sale at 18 store locations (the “**Liquidation Sale**”).
- 1.4 On December 13, 2023, the Applicant obtained an order (the “**Approval and Vesting Order**”), among other things:

- (i) approving the APA and the going concern transaction contemplated thereunder (the “**Transaction**”); and
- (ii) upon the delivery of a certificate to Old MM LP and the Purchaser or their respective counsel (the “**Monitor’s Certificate**”), vesting all of Old MM LP’s right, title and interest in and to the Purchased Assets (as defined in the APA) in the Purchaser free and clear of all claims and encumbrances other than the Permitted Encumbrances (as defined in the APA).

1.5 On January 12, 2024, the Applicant obtained the following additional relief to effectuate the Transaction and advance the CCAA Proceedings:

- (i) an order pursuant to section 11.3 of the CCAA (the “**Assignment Order**”), among other things, assigning, conveying and transferring to the Purchaser the rights and obligations of the Debtor Companies under the Assigned Contracts (as defined in the Assignment Order);
- (ii) an order (the “**Ancillary Order**”), which, among other things:
 - (a) granted the Monitor expanded powers and certain additional protections;
 - (b) declared that Old MM LP meets the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and that Old MM LP’s former employees are eligible to receive payments under and in accordance with the *Wage Earner Protection Program Act*, S.C. 2006, c. 47 s. 1, as amended (the “**WEPP Act**”);

- (c) extended the Stay Period (as defined in the ARIO) to and including April 30, 2024;
- (d) amended the title of the CCAA Proceedings upon the Debtor Companies' official name changes following the closing of the Transaction;
- (e) authorized and directed the Monitor to distribute to CIBC any amounts required to satisfy the obligations owing under the CIBC Credit Agreement and the Forbearance Agreement (as defined in the ARIO) upon the delivery of the Monitor's Certificate in accordance with the Approval and Vesting Order and the APA (the "**CIBC Distribution**"); and
- (f) terminated and released the DIP Charge and the KERP Charge (each as defined in the ARIO) upon Old MM LP making the CIBC Distribution.

1.6 On March 8, 2024, the Monitor, exercising its expanded powers under the Ancillary Order, sought and obtained an Order (the "**Claims Procedure Order**"), which, among other things:

- (i) established a procedure (the "**Claims Procedure**") for the identification, quantification and resolution of claims against the Debtor Companies and their present and former directors and officers; and
- (ii) extended the Stay Period until and including October 31, 2024.

1.7 Additional details regarding the Debtor Companies and the circumstances leading to, and the steps taken in, the CCAA Proceedings are set out in the Pre-Filing Report of the

Proposed Monitor dated November 22, 2023 (the “**Pre-Filing Report**”), the First Report of the Monitor dated November 29, 2023 (the “**First Report**”), the Second Report of the Monitor dated December 10, 2023 (the “**Second Report**”), the Third Report of the Monitor dated January 8, 2023 (the “**Third Report**”) and the Fourth Report of the Monitor dated February 28, 2024 (the “**Fourth Report**” and collectively with the Pre-Filing Report, the First Report, the Second Report and the Third Report, the “**Prior Reports**”). The Prior Reports and other Court-filed documents in the CCAA Proceedings are available on the Monitor’s case website at: www.alvarezandmarsal.com/Mastermind (the “**Case Website**”). For ease of reference, copies of each of the Prior Reports (without appendices) are attached as **Appendices “A” to “E”**.

2.0 PURPOSE OF THIS REPORT

2.1 The purpose of this Fifth Report is to provide the Court with information regarding the following:

- (i) an update with respect to the CCAA Proceedings since the date of the Fourth Report;
- (ii) an update on the Claims Procedure, which is now substantially complete;
- (iii) the Monitor’s motion for an order (the “**Termination and Distribution Order**”), among other things:
 - (a) authorizing and directing the Monitor, for and on behalf of the Debtor Companies, to establish the Administrative Reserve (as defined below);

- (b) approving the Distribution Methodology (as defined below) and authorizing and directing the Monitor, for and on behalf of the Debtor Companies, to make the distributions contemplated by the Distribution Methodology (collectively, the “**Distributions**” and each, a “**Distribution**”);
- (c) authorizing: (I) each of the Debtor Companies to make an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) prior to the CCAA Termination Time (as defined below), naming A&M as the licensed insolvency trustee of such Debtor Company (in such capacity, the “**Trustee**”); and (II) the Monitor to execute and file such documents in the name of each of the Debtor Companies and take all such steps as are necessary to make each of the Debtor Companies’ assignments in bankruptcy pursuant to the BIA;
- (d) authorizing the Trustee to administer the bankruptcy estates as if such estates were in respect of a single bankrupt for the purposes of carrying out its duties and responsibilities as trustee under the BIA (the “**Bankruptcy Proceedings**”);
- (e) terminating the CCAA proceedings upon the Monitor’s service of an executed certificate (the “**Termination Certificate**”) in substantially the form attached as Schedule “A” to the proposed Termination and Distribution Order (the “**CCAA Termination Time**”);
- (f) releasing and discharging the Charges (as defined below) effective as of the CCAA Termination Time;

- (g) discharging and releasing A&M as Monitor in the CCAA Proceedings effective as of the CCAA Termination Time;
 - (h) granting certain releases (the “**Releases**”) in favour of the Released Parties (as defined below);
 - (i) approving the Prior Reports, this Fifth Report and the activities of the Monitor described therein and herein; and
 - (j) approving the fees and disbursements of the Monitor and the Monitor’s counsel, Bennett Jones LLP (“**Bennett Jones**”), referred to in this Fifth Report and the Fee Affidavits (as defined below), including the Fee Estimate (as defined below);
- (iv) the activities of the Monitor since the date of the Fourth Report; and
- (v) the Monitor’s conclusions and recommendations in connection with the foregoing, as applicable.

3.0 TERMS OF REFERENCE AND DISCLAIMER

3.1 In preparing this Fifth Report, A&M, in its capacity as Monitor, has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by the Debtor Companies and has held discussions with the former management of the Debtor Companies and their legal counsel (collectively, the “**Information**”). The Monitor notes that:

- (i) it 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 Fifth 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.

3.2 This Fifth Report is being provided to the Court in support of the relief being sought by the Monitor in its motion for the proposed Termination and Distribution Order. Capitalized terms used and not defined in this Fifth Report have the meanings given to them in the Prior Reports, the Claims Procedure Order or the proposed Termination and Distribution Order, as applicable.

3.3 Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

4.0 UPDATES SINCE THE DATE OF THE FOURTH REPORT

Amounts Paid on Closing

Excess Proceeds

4.1 As described in the Third Report, the Transaction was anticipated to result in Excess Proceeds to be held by the Monitor for the benefit of the creditors in the CCAA Proceedings, after accounting for any wind-down costs required in the administration of the CCAA Proceedings. The Transaction closed on January 25, 2024 and resulted in, among other things:

- (i) Excess Proceeds of approximately \$2.3 million;
- (ii) the transfer of substantially all of the assets and operations of the Debtor Companies to the Purchaser;
- (iii) the preservation of approximately 590 jobs;
- (iv) the continuation of the “Mastermind Toys” business through the Purchaser;
- (v) the continued operation of 48 Mastermind Toys retail stores and the Debtor Companies’ former head office/distribution centre, and the preservation of the corresponding leases and relationships with landlords; and
- (vi) the repayment in full of all of the obligations that were owing by the Debtor Companies to CIBC.

- 4.2 As of the date of this Fifth Report, the Monitor is holding approximately \$2 million in Excess Proceeds. The Monitor proposes that the Excess Proceeds, less the Administrative Reserve (the “**Cash Pool**”), be distributed to claimants with Proven Claims (as defined below) in accordance with the proposed Termination and Distribution Order.

Priority Payables Amount

- 4.3 Pursuant to the APA, the Purchaser also paid to Old MM LP the Priority Payables Buyer Contribution (as defined in the APA) in the amount of \$2.4 million on the closing of the Transaction.
- 4.4 As described in the Third Report and the Fourth Report, Old MM LP was to use the Priority Payables Buyer Contribution to pay all remaining Priority Payables (as defined in the APA) that were outstanding prior to the Closing Date.
- 4.5 As of the date of this Fifth Report, the Monitor has disbursed approximately \$1.9 million from the Priority Payables Buyer Contribution.
- 4.6 On July 2, 2024, the remaining balance of the Priority Payables Buyer Contribution, being \$447,135.90, was returned to the Purchaser pursuant to the APA, less a holdback of \$20,000 to pay certain outstanding Priority Payables.

5.0 UPDATE ON THE CLAIMS PROCEDURE

Overview

- 5.1 To facilitate the distribution of the Excess Proceeds and the termination of the CCAA Proceedings, the Monitor sought and, on March 8, 2024, obtained the Claims Procedure

Order approving the Claims Procedure. A copy of the Claims Procedure Order is attached as **Appendix “F”**.

- 5.2 The Claims Procedure was described in detail in the Fourth Report. It was intended to provide a fair, comprehensive and expeditious means of identifying, quantifying and resolving Claims against the Debtor Companies and their present and former directors and officers. Since its approval, the Monitor has implemented and completed the Claims Procedure in accordance with the terms of the Claims Procedure Order.
- 5.3 As required under the Claims Procedure Order, notice of the Claims Procedure was provided to potential Claimants in the following ways, among others:
- (i) delivery of the Claims Package by the Monitor, on behalf of the Debtor Companies, to each of the Known Claimants, which Claims Packages included, in the case of Listed Claimants, populated Claim Statements setting out the classification, nature and amount of each such Listed Claimant’s Listed Claim;
 - (ii) publication of the Notice Letter in *The Globe and Mail* (National Edition), a copy of which is attached as **Appendix “G”**;
 - (iii) publication of the Claims Procedure Order, the Monitor’s Motion Record in respect of the Claims Procedure Order, and the Claims Package on the Case Website; and
 - (iv) delivery by the Monitor of a copy of the Claims Package to any person claiming to be a Claimant and requesting such material in writing.

5.4 Pursuant to the Claims Procedure Order, every Claimant asserting any Claim against the Debtor Companies (or either of them) and/or the Debtor Companies' present and former directors and officers (or any of them), other than a Listed Claimant in respect of a Listed Claim, was required to deliver a Proof of Claim to the Monitor by no later than:

- (i) in the case of a Prefiling Claim or Director/Officer Claim, 5:00 p.m. (Eastern Prevailing Time) on April 19, 2024 (the "**Claims Bar Date**"); or
- (ii) in the case of a Restructuring Period Claim, the later of: (a) the Claims Bar Date; and (b) 5:00 p.m. (Eastern Prevailing Time) on the date that is ten (10) Business Days after the Monitor sends a Claims Package with respect to a Restructuring Period Claim (the "**Restructuring Period Claims Bar Date**").

5.5 Any Listed Claimant who wished to dispute its Listed Claim was similarly required to deliver a Notice of Dispute of Claim Statement to the Monitor no later than the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable.

5.6 Both the Claims Bar Date and the Restructuring Period Claims Bar Date have elapsed. Pursuant to the Claims Procedure Order, the Monitor reviewed all Proofs of Claim received on or before the Claims Bar Date and the Restructuring Period Claims Bar Date, and as applicable, either accepted, revised or disallowed the classification, nature, and/or amount of each Claim.

5.7 Any Claimant whose Claim was revised or disallowed was provided with a Notice of Revision or Disallowance (each, a "**NORD**" and collectively, "**NORDs**"), together with the reasons for such revision or disallowance. Any Claimant that wished to dispute a

NORD was required to send written notice to the Monitor by completing a Notice of Dispute of Revision or Disallowance by no later than 5:00 p.m. (Eastern Prevailing Time) on the date that was fourteen (14) Calendar Days after the date the Monitor sent the NORD to the applicable Claimant. Any Claimant that failed to submit a Notice of Dispute of Revision or Disallowance within such period was deemed to have accepted the classification, amount and nature of the Claim as set out in the NORD for voting and distribution purposes and is now barred from asserting or pursuing the Claim in an amount that exceeds the amount set out in the NORD.

5.8 Pursuant to the Claims Procedure Order and subject to its terms, any person that did not deliver a Proof of Claim to the Monitor:

- (i) is not entitled to receive any distribution in respect of such Claim;
- (ii) is not entitled to any further notice in the CCAA Proceedings (unless it is otherwise on the Service List); and
- (iii) is barred from making or enforcing such Claim, which Claim is extinguished.

Summary of Known Claimants

5.9 The Monitor distributed Claims Packages to 293 Known Claimants, totalling approximately \$30.5 million. No Director/Officer Claims were distributed by the Monitor as the Monitor was not aware of any Claimant with a Director/Officer Claim. A summary of the known Claims in respect of which Claims Packages were delivered is provided in the table below.

Summary of Known Claims		
<i>CAD \$000's</i>		
Claim Type	#	Amount¹
Prefiling Claims	261	\$26,325
Restructuring Period Claims	32	4,139
Director/Officer Claims	-	-
Total	293	\$30,465

Status of Review and Assessment of Claims

5.10 The following is a summary of the Claims as at the date of this Fifth Report:

- (i) 300 Claims, totalling approximately \$32.2 million, were finally determined and accepted by the Monitor as against Old MM LP in accordance with the Claims Procedure on an unsecured and non-priority basis (collectively, the “**Proven Claims**” and each, a “**Proven Claim**”);²
- (ii) 234 of the Proven Claims, totalling approximately \$13.7 million, were accepted by the Monitor without revision;
- (iii) 66 of the Proven Claims, totalling approximately \$18.5 million, were accepted by the Monitor with Claim amounts different from those set out in the Claim Packages initially sent or Proofs of Claim received (collectively, the “**Revised Claims**”). 7 of the 66 Revised Claims were from creditors who were unaccounted for in the

¹ Claims in a foreign currency are converted to Canadian Dollars at the Bank of Canada daily average exchange rate in effect on November 23, 2023 in accordance with the Claims Procedure Order.

² In certain limited instances, Claimants asserted a Claim against the Applicant notwithstanding that the Claim was, in the Monitor’s view, a Claim against Old MM LP. Following its review of the Debtor Companies’ books and records and recognizing that Old MM LP was the sole operating company among the Debtor Companies, it appears to the Monitor that all such Claims were inadvertently asserted against the Applicant. To avoid additional costs, the Monitor has accepted such Claims as against Old MM LP without issuing NORDs in these limited circumstances. As the Excess Proceeds are the property of Old MM LP, the acceptance of such Claims is to the benefit of the applicable Claimants.

Debtor Companies' books and records (collectively, the “**New Claimants**”). The New Claimants' Claims amount to approximately \$940,000; and

- (iv) 15 Claims were subject to a NORD. The NORDs represent approximately \$10.1 million of the Revised Claims as well as \$1.4 million in disallowed Claims. In addition to revising Claim amounts, certain NORDs also revised the type of Claims that were submitted by Claimants as contemplated under the Claims Procedure Order.

Status of Claim Review								
CAD \$000's								
Claim Type	Known Claims		Unrevised Claims		Revised Claims		Proven Claims	
	#	Amount	#	Amount	#	Amount	#	Amount
Prefiling Claims	261	\$ 26,325	213	\$ 12,033	55	\$ 15,616	268	\$ 27,649
Restructuring Period Claims	32	4,139	21	1,624	11	2,927	32	4,551
Director / Officer Claims	-	-	-	-	-	-	-	-
Total Claims	293	\$ 30,465	234	\$ 13,657	66	\$ 18,543	300	\$ 32,200

Illustrative Estimated Creditor Recoveries

- 5.11 The Monitor has prepared the following illustrative recovery based on information available as at the date of this Fifth Report (the “**Illustrative Recovery Analysis**”):

Illustrative Recovery Analysis	
CAD \$000's	
Excess Proceeds (as at August 12, 2024)	\$ 2,003
Less: Administrative Reserve	125
Cash Pool	\$ 1,878
Total Proven Claims	\$ 32,200
Illustrative Recovery	5.8%

- 5.12 As per the Illustrative Recovery Analysis above, the Monitor continues to hold the balance of the Excess Proceeds, which will be reduced by an estimated \$125,000 (the

“Administrative Reserve”). The Administrative Reserve is intended to account for the following, in each case, to the extent not previously paid:

- (i) the professional fees and disbursements of the Monitor, the Monitor’s counsel, and the Debtor Companies’ counsel incurred or to be incurred in connection with the CCAA Proceedings, including any outstanding claim secured by the Administration Charge (as defined in the ARIO) and the Fee Estimate;
- (ii) any outstanding claim secured by the D&O Charge (as defined in the ARIO);
- (iii) any expenses incurred or to be incurred by the Debtor Companies (or either of them) that relates to the period after the Filing Date;
- (iv) the fees and disbursements of the Trustee and the Trustee’s counsel to be incurred in connection with the intended assignments of the Debtor Companies into bankruptcy pursuant to the BIA; and
- (v) any other contingent amounts the Monitor deems appropriate in the circumstances to ensure the availability of sufficient funding to undertake and complete the orderly wind-down of the Debtor Companies and all ancillary activities in connection therewith.

5.13 Based on the Illustrative Recovery Analysis, the Monitor estimates that after accounting for the Administrative Reserve, the Cash Pool will be approximately \$1.88 million, and that each Claimant with a Proven Claim will receive a recovery of approximately 5.8% of such Proven Claim. The Monitor cautions that the estimated illustrative recovery may change.

6.0 PROPOSED TERMINATION AND DISTRIBUTION ORDER

- 6.1 The principal purposes of the CCAA Proceedings, including the consummation of the Transaction and the completion of the Liquidation Sale for the benefit of the Debtor Companies and their creditors have been realized. As a result, the Monitor now seeks the proposed Termination and Distribution Order to facilitate the termination of the CCAA Proceedings, the orderly wind-up of the Debtor Companies and the distribution of the Cash Pool to the unsecured creditors of Old MM LP entitled to such funds.
- 6.2 Pursuant to the proposed Termination and Distribution Order, the CCAA Proceedings and the Stay Period will be terminated upon service of the Termination Certificate certifying that the Distributions have been made and all matters to be attended to in connection with the CCAA Proceedings have been completed to the satisfaction of the Monitor. At such time, A&M will be released and discharged as Monitor and the Administration Charge and D&O Charge (together, the “**Charges**”) will be terminated, released and discharged.
- 6.3 As at the CCAA Termination Time, among other things:
- (i) all matters to be attended to in connection with the CCAA Proceedings, including the establishment of the Administrative Reserve, the payment of the Priority Payables and the making of the Distributions, will have been completed;
 - (ii) all of the amounts secured by the Administration Charge and necessary to complete the wind-down of the CCAA Proceedings and administer the Bankruptcy Proceedings will have been funded;

- (iii) all of the Monitor's obligations under the WEPP Act will have been complied with;
and
- (iv) any claims secured by the D&O Charge will have been satisfied, barred and/or released.

6.4 Certain of the salient features of the proposed Termination and Distribution Order intended to effect the termination of the CCAA Proceedings, the orderly wind-up of the Debtor Companies and the distribution of the Cash Pool are discussed below.

Distribution Methodology and Distributions

6.5 Having completed the Liquidation Sale, closed the Transaction, satisfied all obligations to CIBC and under the KERP, and implemented the Claims Procedure, all of the Debtor Companies' assets have been monetized and all of the Claims against the Debtor Companies and their present and former directors and officers have been quantified, resolved or barred. Accordingly, the Monitor now seeks approval of the Distribution Methodology and the Distributions contemplated thereby.

6.6 The proposed Termination and Distribution Order, among other things, authorizes, directs and empowers the Monitor, for and on behalf of the Debtor Companies, to make one or more Distributions in accordance with the following methodology (the "**Distribution Methodology**"):

- (i) the Distributions shall be made on the basis that each Proven Claim that has been finally determined in accordance with the Claims Procedure Order is an unsecured,

non-priority Claim against Old MM LP, ranking *pari passu* with all of the other Proven Claims;

- (ii) each Claimant holding a Proven Claim that has been finally determined in accordance with the Claims Procedure Order shall be entitled to receive a Distribution from the Monitor, for and on behalf of Old MM LP, equal to such Claimant's *pro rata* amount of the Cash Pool, which *pro rata* amount is estimated to provide a recovery of approximately 5.8% of such Proven Claim;
- (iii) the Cash Pool shall be in the aggregate amount of approximately \$1.88 million and, for certainty, shall not include the Administration Reserve in the estimated amount of \$125,000;
- (iv) in accordance with the Claims Procedure Order, the Monitor may, for and on behalf of the Debtor Companies (or either of them), set-off (whether by way of legal, equitable or contractual set-off) against Distributions to be made to any Claimant, any claims of any nature whatsoever that such Debtor Company may have against such Claimant; and
- (v) notwithstanding (ii) above, the Monitor shall be entitled to comply with any obligations it may have under the WEPP Act in respect of any Employee's Proven Claim.

6.7 Pursuant to the proposed Termination and Distribution Order:

- (i) all Distributions will be made in Canadian dollars, regardless of the currency indicated in any Proof of Claim, calculated by the Monitor in accordance with paragraph 8 of the Claims Procedure Order;
- (ii) all Distributions will be made free and clear of any encumbrances by way of: (a) cheque sent by prepaid ordinary mail to the address set forth on each applicable Claimant's Proof of Claim or, in the discretion of the Monitor, the last known address of each applicable Claimant; (b) electronic funds transfer (including through the Debtor Companies' internal vendor systems); (c) direct deposit; or (d) wire transfer;
- (iii) the Monitor, the Debtor Companies and any other person facilitating the Distributions shall be entitled to deduct and withhold from any such Distribution to any Claimant such amounts as may be required to be deducted or withheld under any applicable law and to remit such amounts to the appropriate governmental authority or other person entitled thereto as may be required by such law; and
- (iv) any claims for an Undeliverable Distribution in respect of a Proven Claim not made before November 29, 2024, will be discharged and barred, and the cash amount held by the Monitor, for and on behalf of the Debtor Companies, in relation to such Proven Claim shall be added to the Bankruptcy Reserve.

6.8 The Monitor is of the view that the proposed Distribution Methodology and Distributions are appropriate in the circumstances, are consistent with prior orders granted by this Court, reflect the entitlement of the Debtor Companies' creditors to the Cash Pool, as determined

in accordance with the Claims Procedure Order, and will enable the efficient distribution of such funds and the termination of the CCAA Proceedings.

The Bankruptcy Proceedings

- 6.9 To facilitate the orderly and efficient wind-up of their estates, the proposed Termination and Distribution Order authorizes each of the Debtor Companies to make an assignment in bankruptcy pursuant to the BIA prior to the CCAA Termination Time, naming A&M as the Trustee. Additionally, the proposed Termination and Distribution Order authorizes the Trustee to administer the bankruptcy estates as if such estates were in respect of a single bankrupt for the purposes of carrying out its duties and responsibilities as trustee under the BIA.
- 6.10 The procedural consolidation of the Debtor Companies' bankruptcy estates contemplated under the proposed Termination and Distribution Order will reduce the costs of administering the Bankruptcy Proceedings. Administering the Bankruptcy Proceedings on a procedurally consolidated basis is therefore, in the Monitor's view, in the best interests of, and is not expected to prejudice, the Debtor Companies' creditors.

The Releases

- 6.11 The proposed Termination and Distribution Order releases: (i) the current and former directors, officers, employees, partners, managers, agents and advisors of the Debtor Companies; and (ii) the Monitor, the Monitor's counsel, the Debtor Companies' counsel and each of their respective present and former affiliates, officers, directors, partners,

employees, legal counsel, agents and advisors (collectively, the “**Released Parties**”, and each a “**Released Party**”), from the Released Claims.³

6.12 The Releases provided under the proposed Termination and Distribution Order do not waive, discharge, release, cancel or bar any claim that is not permitted to be released pursuant to subsection 5.1(2) of the CCAA or with respect to any act or omission determined by a court of competent jurisdiction to have constituted actual fraud, wilful misconduct or gross negligence.

6.13 In the Monitor’s view, the Releases proposed under the Termination and Distribution Order in favour of the Released Parties are appropriate in the circumstances given that, among other things:

- (i) each of the Released Parties was essential to, and has made significant contributions in, the CCAA Proceedings, including the successful implementation of the Transaction and the Liquidation Sale;
- (ii) the proposed Releases will limit any indemnification claims the Released Parties may have against the Debtor Companies, facilitate the release of the Charges (the

³ The “Released Claims” include any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of actions, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries and obligations of any nature or kind whatsoever that any person may have or be entitled to assert against the Released Parties (whether direct or indirect, known or unknown, absolute or contingent, accrued or unassured, liquidated or unliquidated, matured or unmatured, due or not yet due, foreseen or unforeseen, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the CCAA Termination Time or undertaken or completed in connection with or in respect of, relating to, or arising out of (x) the Debtor Companies, the business, operations, assets, property and affairs of the Debtor Companies, wherever or however conducted or governed, the administration and/or management of the Debtor Companies, the CCAA Proceedings or their respective conduct in the CCAA Proceedings or (y) the APA and/or any document, instrument, matter or transaction involving the Debtor Companies arising in connection with or pursuant to any of the foregoing.

Claims secured by which are Excluded Claims under the Claims Procedure Order) and recognize the significant time and effort expended by the Released Parties;

- (iii) the proposed Releases are not, in the Monitor's view, overly broad, are consistent with prior orders granted by this Court, and do not release any claims arising out of the fraud, gross negligence or wilful misconduct on the part of the applicable Released Party or that are not permitted to be released pursuant to subsection 5.1(2) of the CCAA;
- (iv) pursuant to the Claims Procedure Order, all Claims not filed in the Claims Procedure, including any such Director/Officer Claims, have already been barred and extinguished;
- (v) the proposed Releases will only be granted upon the CCAA Termination Time, at which point, all of the Distributions to the Debtor Companies' creditors entitled to their *pro rata* amount of the Cash Pool will have been made;
- (vi) the Monitor is not aware of any party that would be materially prejudiced by or that is opposed to the proposed Releases;
- (vii) notice of the Monitor's motion for the proposed Termination and Distribution Order will have been provided to the Service List; and
- (viii) the granting of the proposed Releases pursuant to the Termination and Distribution Order will avoid further attendances in the CCAA Proceedings and thereby reduce the amount required to establish the Administrative Reserve.

Remaining Activities to Complete

6.14 The Debtor Companies' and the Monitor's remaining activities to be completed prior to the CCAA Termination Time are expected to include the following:

- (i) establishing the Administrative Reserve;
- (ii) filing remaining tax returns and collecting any outstanding input tax credits;
- (iii) making the Distributions in accordance with the Distribution Methodology and the Termination and Distribution Order;
- (iv) filing tax claims in respect of the Distributions made and collecting any tax refunds related thereto;
- (v) administering the release/return of cash deposits and/or cash collateral and the direction of same to the Purchaser;
- (vi) making the Debtor Companies' assignments in bankruptcy pursuant to the BIA;
- (vii) completing certain statutory and administrative duties and filings; and
- (viii) filing the Termination Certificate.

7.0 APPROVAL OF THE MONITOR'S ACTIVITIES AND THE FEES AND DISBURSEMENTS OF THE MONITOR AND ITS COUNSEL

Approval of Activities

7.1 The proposed Termination and Distribution Order approves this Fifth Report, the Prior Reports and the activities of the Monitor set out herein and therein. Pursuant to the

proposed Termination and Distribution Order, only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

- 7.2 The Monitor respectfully submits that the activities set out in this Fifth Report and the Prior Reports have been diligently carried out in good faith and in accordance with the provisions of the CCAA and the Orders issued in the CCAA Proceedings and should therefore be approved.

Approval of Fees and Disbursements Incurred to Date

- 7.3 Pursuant to paragraphs 33 and 34 of the ARIQ: (i) the Monitor and its counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to the date of the Initial Order; and (ii) the Monitor and its counsel shall pass their accounts from time to time before the Court. To date, approval of the fees and disbursements of the Monitor and its counsel has not been sought in the CCAA Proceedings.
- 7.4 Attached hereto as **Appendix “H”** is the Affidavit of Josh Nevsky sworn August 12, 2024 (the “**Nevsky Affidavit**”), attesting to the fees and disbursements of the Monitor for the period November 19, 2023 to August 3, 2024 in the aggregate amount of \$775,696.76, comprised of fees of \$660,439.50, disbursements (primarily for publication of notices of the proceedings in *The Globe and Mail* (National Edition)) of \$26,052.90 and HST of \$89,204.36.

- 7.5 Attached hereto as **Appendix “I”** is the Affidavit of Sean Zweig of Bennett Jones, sworn August 12, 2024 (the “**Zweig Affidavit**”), attesting to the fees and disbursements of Bennett Jones, for the period November 20, 2023 to July 31, 2024 in the aggregate amount of \$498,827.84, comprised of fees of \$420,375.00, disbursements of \$21,104.54, and HST of \$57,348.30. The fees and disbursements set out in Bennett Jones’ invoices relate to advice sought by the Monitor and assistance provided in respect of the CCAA Proceedings. In the Monitor’s view, Bennett Jones’ fees and disbursements are properly chargeable, reasonable and appropriate.
- 7.6 In the Monitor’s view, the fees and disbursements of the Monitor and its legal counsel, as described in the Nevsky Affidavit and the Zweig Affidavit (together, the “**Fee Affidavits**”), respectively, as well as the Fee Estimate, are reasonable and appropriate in the circumstances having regard to the activities undertaken and to be undertaken by the Monitor in the CCAA Proceedings.

Approval of the Fee Estimate

- 7.7 Assuming there are no unforeseen developments, the Monitor estimates that it and its counsel will incur fees and disbursements in connection with the remaining activities described above of no more than \$70,000 (the “**Fee Estimate**”), excluding applicable taxes, for services that have been or will be provided by the Monitor and its counsel until the CCAA Termination Time. The Fee Estimate takes into consideration, among other things, the reasonable fees and disbursements required to prepare this Fifth Report, prepare for and attend the Monitor’s motion for the proposed Termination and Distribution Order and administer the Distributions.

8.0 ACTIVITIES OF THE MONITOR SINCE THE FOURTH REPORT

8.1 Since the date of the Fourth Report, the primary activities of the Monitor have included the following:

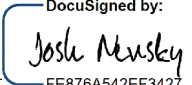
- (i) administering the Claims Procedure, including resolving Claims and responding to questions from vendors and other third parties regarding the Claims Procedure;
- (ii) making required payments on behalf of the Debtor Companies from the Excess Proceeds and Priority Payables Buyer Contribution;
- (iii) assisting the former management of the Debtor Companies with the preparation of materials requested by the CRA to complete its limited scope HST audit;
- (iv) engaging in discussions with former employees, Service Canada and the Monitor's counsel, Bennett Jones, on WEPP Act matters and the administration of same;
- (v) responding to inquiries from stakeholders, including addressing questions of parties who contacted the Monitor on the hotline number or email account established by the Monitor for the CCAA Proceedings;
- (vi) posting non-confidential materials filed with the Court to the Case Website; and
- (vii) with the assistance of Bennett Jones, preparing the proposed Termination and Distribution Order and this Fifth Report.

9.0 CONCLUSIONS AND RECOMMENDATIONS

9.1 For the reasons set out in this Fifth Report, the Monitor respectfully recommends that the Court grant the proposed Termination and Distribution Order.

All of which is respectfully submitted to the Court this 13th day of August, 2024.

**Alvarez & Marsal Canada Inc., in its capacity as
Monitor of Old MM GP Inc. and Old MM LP,
and not in its personal or corporate capacity**

Per:  _____
Josh Nevsky
Senior Vice-President

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

Court File No.: CV-23-00710259-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
OLD MM GP INC.**

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

FIFTH REPORT OF THE MONITOR

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personal or corporate capacity

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

Court File No.: CV-23-00710259-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
OLD MM GP INC.**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

SIXTH REPORT OF THE MONITOR

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solely in its capacity as Monitor and not in its
personal or corporate capacity

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE)	THURSDAY, THE 31 ST
)	
JUSTICE STEELE)	DAY OF OCTOBER, 2024

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 OLD MM GP INC.

(the “**Applicant**”)

**ORDER
(STAY EXTENSION AND APPROVAL OF MONITOR’S ACTIVITIES)**

THIS MOTION, made by Alvarez & Marsal Canada Inc., in its capacity as the Court-appointed monitor (in such capacity, the “**Monitor**”) of Old MM GP Inc. (f/k/a Mastermind GP Inc.) and Old MM LP (f/k/a Mastermind LP) (together, the “**Debtor Companies**”), pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order among other things: (a) extending the Stay Period (as defined in paragraph 14 of the Initial Order, granted November 23, 2023) until the earlier of March 31, 2025, and the termination of the CCAA Proceedings; and (b) approving the Sixth Report of the Monitor dated October 24, 2024 (the “**Sixth Report**”), was heard this day by judicial videoconference via Zoom.

ON READING the Notice of Motion of the Monitor and the Sixth Report, and on hearing the submissions of counsel for the Monitor, and such other counsel that were present, no one else appearing although duly served as appears from the affidavit of service, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period is hereby extended until the earlier of March 31, 2025, and the termination of the CCAA Proceedings.

APPROVAL OF THE MONITOR'S ACTIVITIES AND THE SIXTH REPORT

3. **THIS COURT ORDERS** that the Sixth Report is hereby approved, and the activities and conduct of the Monitor as described therein are hereby ratified and approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

GENERAL

4. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

5. **THIS COURT ORDERS** that the Monitor may apply to this Court to amend, vary or supplement this Order or for advice and directions concerning the discharge of its powers and duties under this Order or the interpretation or application of this Order.

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside Canada to give effect to this Order and to assist the Monitor, the Debtor Companies and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, and the Debtor Companies as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to

assist the Monitor and the Debtor Companies and their respective agents in carrying out the terms of this Order.

7. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Time) on the date of this Order without the need for entry or filing.

**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 OLD MM GP INC.**

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**ORDER
(STAY EXTENSION AND APPROVAL
OF MONITOR'S ACTIVITIES)**

BENNETT JONES LLP

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Lawyers for Alvarez & Marsal Canada Inc.,
solely in its capacity as the Court-appointed
Monitor and not in its personal or corporate
capacity

**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 OLD MM GP INC.**

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**MOTION RECORD OF THE COURT-APPOINTED
MONITOR
(Returnable October 31, 2024)**

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