



**First Report to Court of
KSV Restructuring Inc. as Receiver and
Manager of 2th, Inc. and Dr. Mislav Pavelic
Dentistry Professional Corporation**

December 29, 2023

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COURT FILE NO.: CV- 23-707066-00CL

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

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2TH, INC. and DR. MISLAV PAVELIC DENTISTRY PROFESSIONAL CORPORATION

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C.43, AS AMENDED**

**FIRST REPORT OF KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER**

DECEMBER 29, 2023

1.0 Introduction

1. This report (the “Report”) is filed by KSV Restructuring Inc. (“KSV”) in its capacity as receiver and manager (in such capacity, the “Receiver”) of the property, assets and undertakings (the “Property”) of each of 2th, Inc. (“2th”) and Dr. Mislav Pavelic Dentistry Professional Corporation (“Pavelic DPC”, and together with 2th, the “Company”) appointed pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) made on October 13, 2023 (the “Receivership Order”). A copy of the Receivership Order is provided at Appendix “A”.
2. The application to appoint KSV as Receiver was made by Bank of Montreal (“BMO”), the Company’s senior secured creditor. As of September 18, 2023, the Company owed BMO approximately \$2.6 million, with interest and costs continuing to accrue.
3. The primary purpose of the receivership proceeding is to maximize value for the Company’s stakeholders by conducting a sale process for Company’s business and Property (the “Sale Process”).

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Company;
 - b) detail the Receiver's attempts to have the Shareholders (as defined below) participate in a consensual auction process between themselves for the business and Property;
 - c) discuss the need to commence the Sale Process as a result of the Shareholders' refusal to agree to certain terms required by the Receiver for the auction summarized in (b) above;
 - d) summarize the Receiver's activities since its appointment; and
 - e) recommend that this Court issue an Order:
 - i. approving the Sale Process; and
 - ii. approving this Report and the Receiver's activities to the date of this Report.

1.2 Restrictions

1. In conducting its review and preparing this report, the Receiver has relied upon the Company's unaudited financial statements, books and records and discussions with Brian Holland and Mislav Pavelic, directors of 2th and the Company's two indirect shareholders (together, the "Shareholders").
2. The Receiver has not performed an audit or otherwise attempted to verify the accuracy or completeness of the financial information relied on in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the Company's financial information should perform its own diligence.
3. With the exception of the Court, the Receiver accepts no responsibility for any reliance placed by any third party on the Company's financial information presented herein.

1.3 Currency

1. All references in this Report to currency are to Canadian dollars, unless otherwise noted.

2.0 Background

1. Each of the Shareholders indirectly owns 50% of the Company. The Shareholders are also guarantors of the Company's indebtedness owing to BMO.
2. The Company's principal asset is a dental clinic which operates from leased premises located at 2-1500 Bathurst St., Toronto (the "Clinic"). The Clinic continues to operate in the ordinary course during these receivership proceedings. Dr. Pavelic is one of the dentists practicing at the Clinic.
3. 2th owns substantially all of the Clinic's physical assets whereas the Pavelic DPC owns the patient records and goodwill.
4. BMO is the Company's only secured creditor. The Company's unsecured creditors have been paid in the ordinary course since the date of the Receivership Order. The amount owing to the unsecured creditors as of the date of the Receivership Order was not significant and the cost to deal with those creditors would have exceeded paying those creditors in the ordinary course. BMO consented to the payment of those creditors and the Shareholders are aware that these creditors have been paid.
5. Additional information about the Company and its background is set out in the affidavit of Michaela Wolf, a Senior Account Manager in the Special Accounts Management Unit of BMO, sworn October 3, 2023 (the "Affidavit"). A copy of the Affidavit and other materials filed in this proceeding can be found on the Receiver's website at: <https://www.ksvadvisory.com/experience/case/2th>.

3.0 Sale Process

1. Prior to the proceedings, the Company retained Dentacloud Inc. ("Dentacloud") to market the Clinic and two other dental clinics for sale. Those efforts resulted in the sale of the other two dental clinics but not the Clinic. The proceeds of sale from the two other clinics were applied against the balance owing to BMO under the BMO facilities. The BMO facilities originally totalled approximately \$6.5 million.
2. In light of the fact that a sale process had already been undertaken for the Clinic during the months leading up to the appointment, and in order to minimize professional costs, the Receiver had discussions upon its appointment with each of the Shareholders regarding a closed auction process where they would agree to participate in an auction between the two of them for the Clinic and Property (the "Auction Process"). The Receiver advised the Shareholders that such a process would be more efficient and less costly than a broader sale process, which would otherwise potentially increase their exposure under their personal guarantees.
3. The Receiver drafted an Auction Process and asked each Shareholder to consent to it. The Receiver advised that absent both Shareholders consenting to the process, a sale process would need to be conducted. Despite several attempts by the Receiver to accommodate feedback from the Shareholders on the Auction Process, the Shareholders ultimately did not agree to the terms of the Auction Process, including the amount of the deposit to be paid and other terms.

4. Accordingly, the Receiver determined that it is necessary to conduct the Sale Process to realize on business and Property, a summary of which is provided below.

Milestone	Key Dates
Distribute teaser	Upon issuance of a Court Order approving the Sale Process ¹
Access to Virtual Data Room	Upon signing a confidentiality agreement
Bid Deadline	30 days after the teaser is issued
Review and negotiate bids	1-14 days after the bid deadline
Selection of Successful Bidder(s)	Immediately following the above
Court approval and closing(s)	As soon as possible

5. As part of the proposed Sale Process, the Receiver is preparing:
- a) a list of potentially interested parties (the “Potential Bidders”), including other dentists and consolidators of dental practices;
 - b) a teaser, which will be distributed to Potential Bidders together with a confidentiality agreement (a “CA”); and
 - c) a data room with information about the Company, including financial information, a copy of the premises lease, an equipment listing and information regarding the Company’s patient demographics. Potential Bidders are required to execute the CA in order to obtain access to the data room.
6. As part of the proposed Sale Process, the Receiver will also be:
- a) requesting that parties submit a binding offer meeting at least the requirements for a Qualified Bid (as described in Section 3.1 below) by the “Bid Deadline”; and
 - b) facilitating due diligence by, among other things, arranging meetings with the Company’s key employees.
7. In the circumstances, the Receiver believes that the teaser, information to be made available in the data room and key employee meetings are sufficient for the Potential Bidders to perform due diligence. The Receiver will facilitate additional reasonable information requests made by Potential Bidders.
8. As part of the proposed Sale Process, Potential Bidders will be provided with a template asset purchase agreement (the “Template Purchase Agreement”) and will be strongly recommended to submit offers in the form of the Template Purchase Agreement, with a blackline to the Template Purchase Agreement.

¹ The Receiver has requested and is awaiting information from the Shareholders in order to prepare the teaser.

9. A Potential Bidder that wishes to make a bid must deliver a written copy of its bid and other materials required by the proposed Sale Process by no later than 5:00 pm (EDT) on the Bid Deadline.
10. The Receiver intends to review the offers received and negotiate with a view to expeditiously selecting the successful bidder (the "Successful Bidder"), and to seek Court approval of the transaction with the Successful Bidder as soon as possible thereafter (discussed further in Section 3.2 below).
11. The Receiver shall have the right to extend any deadline in the proposed Sale Process by up to two weeks, provided that the overall timeline does not extend beyond March 8, 2024, being approximately two months from the anticipated date that the Sale Process is approved, with the consent of BMO as the only expected affected creditor.

3.1 Qualified Bids

1. To be a "Qualified Bid" under the proposed Sale Process, a bid must, among other things, meet the following requirements:
 - a) an offer must be substantially in the form of the Template Purchase Agreement, with any changes to the offer blacklined against the Template Purchase Agreement;
 - b) include a provision stating that the offer is irrevocably open for acceptance until 30 days after the Bid Deadline;
 - c) be accompanied by a cash deposit of not less than 15% of the proposed purchase price;
 - d) include an acknowledgement that the proposed transaction is to be completed on an "as is, where is" basis and that the purchaser has relied solely on its own independent review and investigation and that it has not relied on any representation by the Company, the Receiver or their respective agents, employees or advisors;
 - e) it must not contain any condition or contingency relating to due diligence or financing or any other material conditions precedent to the purchaser's obligation to complete the transaction (except for approval by the Court); and
 - f) it must include written evidence, satisfactory to the Receiver, that the purchaser has the requisite consents (if any are necessary) and the financial ability to complete the proposed acquisition.
2. The Receiver shall have the discretion to make amendments to the proposed Sale Process that it believes are required to facilitate the best possible outcome in the Sale Process, including the maximization of value for the benefit of stakeholders.

3.2 Multiple Qualified Bids

1. If more than one Qualified Bid is received by the Bid Deadline, the Receiver will request that such bidders submit additional offers until the Receiver selects the best offer, which may not necessarily be the highest offer, based on its reasonable business judgement.

3.3 Sale Process Recommendation

1. The Receiver recommends that the Court issue an order approving the Sale Process for the following reasons:
 - a) the Sale Process provides for a wide marketing of the Clinic and includes Potential Bidders that have contacted the Receiver and parties identified by the Receiver;
 - b) the duration of the Sale Process is sufficient to allow interested parties to perform diligence and submit offers;
 - c) the Sale Process provides flexibility for the Receiver to amend or extend timelines, as detailed in paragraph 11 of Section 3.0; and
 - d) the terms of the Sale Process are supported by BMO.

4.0 Receiver's Activities

1. The Receiver's activities since its appointment have included, among other things, the following:
 - a) dealing with the Shareholders regarding, among other things, the Clinic's operations, receipts and disbursements, ongoing payments and the format of a sale process;
 - b) developing the Auction Process, which was ultimately not agreed to by the Shareholders;
 - c) developing the Sale Process;
 - d) preparing a letter to the Company's employees providing notice of the Receivership Order and advising of their employment status during the receivership;
 - e) corresponding with the Company's insurance agent;
 - f) dealing with BMO and its counsel regarding the status of the receivership and the proposed Sale Process;
 - g) corresponding with Reconstruct LLP, the Receiver's counsel, regarding its review of BMO's security and the Sale Process;

- h) attending calls with Dentacloud regarding, among other things, its role prior to this process and a party it identified with a potential interest in acquiring the Company's business;
- i) reviewing cheques to be issued by the Company and corresponding with Mr. Holland in that regard;
- j) preparing a Notice and Statement of the Receiver pursuant to Subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*;
- k) attending in Court on November 29, 2023 to schedule a hearing to approve the Sale Process; and
- l) preparing this Report.

5.0 Conclusion

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(1)(e) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF
EACH OF 2TH, INC. AND DR. MISLAV PAVELIC DENTISTRY PROFESSIONAL
CORPORATION AND NOT IN ITS PERSONAL
OR IN ANY OTHER CAPACITY**

Appendix “A”

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

THE HONOURABLE MADAM

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FRIDAY, THE 13TH

JUSTICE STEELE

)

DAY OF OCTOBER, 2023

)

BANK OF MONTREAL

Applicant

- and -

**2TH, INC. and DR. MISLAV PAVELIC DENTISTRY PROFESSIONAL
CORPORATION**

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**ORDER
(appointing Receiver)**

THIS MOTION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing KSV Restructuring Inc. as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of each of 2th, Inc. and Dr. Mislav Pavelic Dentistry Professional Corporation (collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Application Record, including the Notice of Application and the Affidavit of Michaela Wolf sworn October 3, 2023 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, no one else appearing for any other person on the service list, although duly served as appears from the affidavit of service of Matilda Lici sworn October 3, 2023, and on reading the consent of KSV Restructuring Inc. to act as the Receiver,

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV Restructuring Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage dentists, dental hygienists, consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000 provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and

on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (r) to contact, make any necessary inquiries and obtain information pertaining to the Debtors from the Royal College of Dental Surgeons of Ontario, the Ministry of Health and Long-Term Care, the Ontario Dental Association and any insurance company; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their respective current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order, including, but not limited to the Royal College of Dental Surgeons of Ontario, the Ministry of Health and Long-Term Care, the Ontario Dental Association, and any insurance company (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and

continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any client records, including medical records (“**Client Records**”), books, documents, securities, contracts, orders, billing privileges, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that, should the Receiver deem it necessary to seek from any insurance company personal information regarding persons covered pursuant to benefit plans which might have had claims under such plans relating to the Debtors, such information shall be sought pursuant to a motion on notice to the insurance company. Such information shall only be released by the insurance company on the agreement of such insurance company or as provided in the Order so obtained.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate

access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. **THIS COURT ORDERS** that with respect to Client Records, the Receiver shall: (i) take all steps reasonably necessary to maintain the integrity of the confidential aspects of the Client Records; (ii) if necessary, appoint a dentist licensed and qualified to practice in the Province of Ontario to act as custodian (the “**Custodian**”) for the Client Records; (iii) not allow anyone other than the Receiver or the Custodian to have access to the Client Records, except to the extent that supervised access to the Client Records is required to be granted to any Person for any purposes required pursuant to the *Dentistry Act, 1991*, the *Regulated Health Professions Act, 1991*, or any other governing Ontario or Canadian statute that requires such Person, from time to time, to perform certain obligations.

9. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

10. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

11. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

12. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

13. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

14. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current

telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

15. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

16. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

17. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such

personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

18. **THIS COURT ORDERS** that, pursuant to section 42 of the Ontario Personal Health Information Protection Act (“PHIPA”), the Receiver shall only disclose personal health information to prospective purchasers or bidders who are potential successor(s) to the dentistry business of the Debtors (the “**Dental Practice**”) as Health Information Custodian(s) (as defined in the PHIPA) for the purposes of allowing the potential successor to assess and evaluate the operations of the Dental Practice. Each potential successor to whom such personal health information is disclosed is required in advance of such disclosure to review and sign an acknowledgment of this Order indicating that it agrees to keep the information confidential and secure and not to retain any of the information longer than is necessary for the purposes of the assessment or evaluation, and if such potential successor does not complete a Sale, such potential successor shall return all such information to the Receiver, or in the alternative shall destroy all such information and provide the Receiver with confirmation of such destruction. Such acknowledgment shall be deemed to be an agreement between the Receiver and the potential successor for the purposes of section 42 of the PHIPA.

19. **THIS COURT ORDERS** that the Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in complete custody or control of records of personal health information held by the Debtors for the purposes of PHIPA, unless it is actually in complete custody or control of such records of personal health information.

LIMITATION ON ENVIRONMENTAL LIABILITIES

20. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively,

"**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

21. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

22. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

24. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

25. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$200,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

26. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

27. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

28. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

29. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <https://www.ksvadvisory.com/experience/case-studies>.

30. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

31. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction

of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

RETENTION OF LAWYERS

32. **THIS COURT ORDERS** that the Receiver may retain solicitors to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation, those conferred by this Order. Such solicitors may include Aird & Berlis LLP, solicitors for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent solicitors in respect of any legal advice or services where a conflict exists, or may arise.

GENERAL

33. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

34. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

35. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

36. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

37. **THIS COURT ORDERS** that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

38. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

39. **THIS COURT ORDERS** that this Order is effective from the date it is made and is enforceable without any need for entry or filing.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver and manager (in such capacities, the "**Receiver**") of the assets, undertakings and properties of 2th, Inc. and Dr. Mislav Pavelic Dentistry Professional Corporation (the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 13th day of October, 2023 (the "**Order**") made in an action having Court file number CV-23-00707066-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

KSV Restructuring Inc., solely in its capacity
as Receiver of 2th, Inc. and Dr. Mislav Pavelic
Dentistry Professional Corporation, and not in its
personal capacity

Per: _____

Name:

Title:

BANK OF MONTREAL
Applicant

- and - **2TH, INC.**
Respondent

Court File No. CV-23-00707066-00CL

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

ORDER
(appointing Receiver)

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