Court File No. CV-24-00713245-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BALBOA INC., DSPLN INC., HAPPY GILMORE INC., INTERLUDE INC., MULTIVILLE INC., THE PINK FLAMINGO INC., HOMETOWN HOUSING INC., THE MULLIGAN INC., HORSES IN THE BACK INC., NEAT NESTS INC. AND JOINT CAPTAIN REAL ESTATE INC.

FACTUM OF THE MONITOR
(Interim Distribution Order, Claims Procedure Order, Toke Street AVO & Ancillary Matters Order)

July 27, 2026

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TO: SERVICE LIST

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PART I - NATURE OF THIS MOTION

1. This Factum is filed in support of a motion by AlixPartners Restructuring, Inc. (“**AlixPartners**”), in its capacity as court-appointed monitor[1] (in such capacity, the “**Monitor**”) of the Applicants, pursuant to the Second Amended and Restated Initial Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 28, 2024 (as further amended from time to time, including by Order dated December 6, 2024, the “**SARIO**”) and the Order (Expansion of Monitor’s Powers) of the Court dated June 25, 2024 (the “**Expanded Powers Order**”), seeking the following Orders:

(a) an Order (the “**Interim Distribution Order**”), *inter alia*,

(i) approving the Proposed Distributions (as defined and described in the Fifteenth Report of the Monitor dated July 21, 2026 (the “**Fifteenth Report**”)); and

(ii) authorizing and directing the Monitor, for and on behalf of the Applicants, to make one or more distributions from the Mortgaged Property Proceeds (as defined in the Fifteenth Report) to the Mortgagees (as defined in the Fifteenth Report), which distributions shall be applied by each Mortgagee first to the principal amount owing to such Mortgagee under their mortgage or charge and thereafter to interest, fees, penalties, charges, costs or similar

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[1] Effective June 1, 2026, AlixPartners was substituted in place of KSV Restructuring Inc. as Court Officer in these proceedings pursuant to an order dated June 3, 2026 issued by the Ontario Superior Court of Justice. The professionals involved in these proceedings from the outset remain unchanged.

amounts to the extent recoverable under, and in accordance with, the terms of such Mortgagee's mortgage or charge;

(b) an Order (the "**Claims Procedure Order**"), *inter alia*, establishing a procedure for the identification and resolution of the quantum of claims against the Applicants (the "**Claims Procedure**"), including proving that, subject to certain exceptions and solely for the purposes of the Claims Procedure and these CCAA proceedings (including any distributions or dividends on account of claims to be made in these CCAA proceedings), any claims in respect of a promissory note or similar instrument issued in favour of a claimant by any of the Applicants or a mortgage or charge granted to a claimant by any of the Applicants shall be limited to the principal amount owing under such promissory note or similar instrument or such mortgage or charge, as applicable, and no amounts owing or chargeable for interest, fees, penalties, charges, costs or similar amounts shall be eligible to be included in such claim;

(c) an Order (the "**Toke Street AVO**"), *inter alia*,

(i) approving the transaction (the "**430 Toke Transaction**") contemplated by an agreement between the Monitor, on behalf of the Applicant, Interlude Inc. ("**Interlude**") and John Wright and Kristina Wright (the "**Toke Purchasers**") dated January 19, 2026; and

(ii) following the Monitor's delivery of the Monitor's certificate substantially in the form attached as Schedule "A" to the Toke Street AVO, transferring and vesting in the Toke Purchasers all of Interlude's right, title and interest in and to the Toke Street Property (as defined below); and

(d) an Order (the "**Ancillary Matters Order**"), *inter alia*,

(i) extending the Stay Period (as defined in the SARIO, defined below) to and including January 29, 2027;

(ii) approving the Fifteenth Report and the Monitor's activities described therein; and

(iii) approving the fees and disbursements of the Monitor and its counsel, Cassels Brock & Blackwell LLP ("**Cassels**"), as set out in the Fifteenth Report and the Fee Affidavits (as defined below) appended to the Fifteenth Report.

2. Capitalized terms not defined herein have their meaning as set out in the Fifteenth Report.

PART II - SUMMARY OF FACTS

A. Background

3. On January 23, 2024, the Applicants obtained an Initial Order pursuant to the *Companies' Creditors Arrangement Act* ("**CCAA**") and the Monitor was appointed in the CCAA proceedings. The Initial Order was subsequently amended and restated by the SARIO.[2]

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[2] Fifteenth Report of the Monitor dated July 21, 2026 at 1.0 [*Fifteenth Report*].

4. The Applicants are a group of companies that were the principal owners of a portfolio of 407 residential properties located in tertiary Ontario markets (collectively, the "**Real Properties**").[3] The Applicants' acquisition and renovation of the Real Properties were financed through: (i) registered first and second mortgage loans (each, a "**Mortgage**"), provided predominantly by numerous individual real estate investors (each, a "**Mortgagee**"); and (ii) unsecured promissory notes issued in favour of The Lion's Share Group Inc. and various individual real estate investors.[4]

5. On June 25, 2024, the Court granted the Expanded Powers Order, which, among other things, authorized and empowered the Monitor to exercise any powers which may be properly exercised by a board of directors or any officers of the Applicants, including marketing and selling the Real Properties.[5]

6. On April 14, 2025, the Court granted an Order (the "**Orderly Liquidation Mechanics Order**") which, among other things, authorized the Monitor, on behalf of the Applicants, without further order of the Court, to sell the Liquidation Portfolio Properties with the consent of the applicable prescribed stakeholders for each Liquidation Portfolio Property.[6]

7. To date, through a series of transactions: (i) approved by Court-issued approval and vesting orders; or (ii) completed in accordance with, and pursuant to, the Orderly Liquidation Mechanics

[3] Fifteenth Report at 2.0.
[4] Fifteenth Report at 2.0.
[5] Fifteenth Report at 1.2
[6] Fifteenth Report at 1.2.

Order, the Monitor has completed transactions for 67 of the Liquidation Portfolio Properties and seven Liquidation Portfolio Properties remain unsold.[7]

B. The Interim Distribution Order

8. The Monitor is currently holding approximately $3.7 million in the bank account maintained by the Monitor in these CCAA proceedings, comprised of the net proceeds of sale of the Liquidation Portfolio Properties, less costs and disbursements of these proceedings.[8]

9. The Monitor has determined that it is an appropriate time to seek authorization to make, on behalf of the Applicants, one or more interim distribution to the Mortgagees holding registered Mortgages on the Liquidation Portfolio Properties in accordance with their registered priorities.[9]

10. The Monitor has prepared an analysis of the estimated proceeds available for distribution from the Liquidation Portfolio Property sales completed to date and forecasted sales of the Remaining Liquidation Properties (the "**Distribution Analysis**"), a copy of which is attached at Appendix "C" to the Fifteenth Report. Subject to underlying assumptions detailed therein, the Distribution Analysis contemplates that $2.97 million (the "**Mortgaged Property Proceeds**") will be available for distribution to the Mortgagees of the Liquidation Portfolio Properties, including the estimated sale proceeds for Liquidation Portfolio Properties not yet sold.[10]

11. Pursuant to the Interim Distribution Order, if approved, the Monitor will be authorized to make distributions to the applicable first Mortgagees on each Liquidation Portfolio Property (the

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[7] Fifteenth Report at 4.0.
[8] Fifteenth Report at 5.0.
[9] Fifteenth Report at 5.0.
[10] Fifteenth Report at 5.0.

"**Proposed Distributions**") up to the amounts set out in the Distribution Analysis in the manner described in the Fifteenth Report.[11]

C. The Claims Procedure Order

12. The Monitor has designed the proposed Claims Procedure to establish a comprehensive, fair and expeditious means of identifying and resolving the quantum of Claims against the Applicants, to enable the Monitor, on behalf of the Applicants, to return to Court to seek a distribution of the remaining sale proceeds following the sale of the remaining Liquidation Portfolio Properties. The Claims Procedure is specifically intended to determine the quantum of Claims against the Applicants (and not to determine entitlement to the proceeds of the Applicants' property).[12]

13. Details of the Claims Procedure are set out in the Claims Procedure Order and the Fifteenth Report.

14. Certain key aspects of the Claims Procedure are summarized below:

(a) the Claims Procedure is comprised of two components: (i) the general Claims Procedure by which Claimants will be permitted to file a Proof of Claim by the applicable Bar Date; and (ii) the negative notice Claims Procedure, by which the Monitor will provide a Statement of Negative Notice Claim to each Negative

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[11] Fifteenth Report at 5.0.
[12] Fifteenth Report at 6.0.

Notice Claimant that is shown on the Applicants' records as having a Claim against one or more of the Applicants;[13]

(b) the Monitor is soliciting two categories of Claims: (i) Pre-Filing Claims related to any indebtedness, liability or obligation that existed on the Filing Date; and (ii) Restructuring Period Claims arising after the Filing Date out of the restructuring, disclaimer, termination or breach by an Applicant of a contract, lease or other agreement;[14]

(c) the Claims Procedure does not apply to Excluded Claims, being (i) claims secured by the Administration Charge under the SARIO and (ii) Intercompany Claims;[15]

(d) the Claims Bar Date for any Person asserting a Pre-Filing Claim or disputing a Negative Notice Claim is on or before 5:00 p.m. on October 28, 2026;[16]

(e) the Restructuring Period Claims Bar Date with respect to a Restructuring Period Claim is the later of (i) the Claims Bar Date and (ii) thirty (30) days after the date on which the Monitor sends a Negative Notice Claims Package or General Claims Package, as applicable;[17]

(f) in respect of any Proof of Claim submitted by a Claimant, the Monitor will either accept, revise, or reject each Claim set out in each Proof of Claim;[18]

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[13] Fifteenth Report at 6.0 & 6.4.
[14] Fifteenth Report at 6.2.
[15] Fifteenth Report at 6.6.
[16] Fifteenth Report at 6.4.
[17] Fifteenth Report at 6.4.
[18] Fifteenth Report at 6.5.

(g) in respect of any Negative Notice Claimant that wishes to dispute their Claims as set out in a Statement of Negative Notice Claim, whether in respect of the amount or to assert any separate or distinct Claims that are not captured in whole or in part in the Statement of Negative Notice Claim, the Negative Notice Claimant shall have the opportunity to deliver a Notice of Dispute of Negative Notice Claim to the Monitor. Any Negative Notice Claimant that does not wish to dispute their Claim as set out in a Statement of Negative Notice Claim need not take any further action;[19]

(h) solely for the purposes of the Claims Procedure and the CCAA proceedings, any Claim in respect of a promissory note or similar instrument or a mortgage or charge will be limited to the principal amounts owing, and any amounts owing for interest, fees, penalties, charges, costs or similar amounts will not be eligible to include in a Claim;[20]

(i) with respect to any distribution to a Mortgagee on account of their Mortgage, such proceeds shall be applied first to principal, and thereafter shall be applied to any amounts owing for interest, fees, penalties, charges, costs or similar amounts, provided that any deficiency claim in the Clams Procedure shall be limited to any remaining amounts owing for principal;[21]

[19] Fifteenth Report at 6.0 & 6.5.
[20] Fifteenth Report at 6.3.
[21] Fifteenth Report at 6.3.

(j) any acceptance, admission or determination of a Claim (including a Negative Notice Claim) shall not in and of itself constitute or be a determination of any right or entitlement to a distribution or dividend in respect of any Claim (including a Negative Notice Claim) held by any of the Additional Stay Parties (as defined in the SARIO) or any entity owned or controlled by the Additional Stay Parties or any of them;[22] and

(k) the Monitor retains the discretion to determine whether a disputed Claim should be referred to the Court or Claims Officer for adjudication.[23]

D. The Toke Street AVO

15. The Toke Street AVO seeks the Court's approval of the 430 Toke Transaction in respect of the Liquidation Portfolio Property municipally known as 430 Toke Street, Timmins (the "**Toke Street Property**"). The relief is necessitated due to the Monitor being unable to obtain the requisite consents of the Mortgagees holding the Mortgage registered on title to the Toke Street Property in accordance with the Orderly Liquidation Mechanics Order.[24]

16. The 430 Toke Transaction arose through the Monitor, with the assistance of a listing agent, marketing the Toke Street Property in accordance with the Orderly Liquidation Mechanics Order.[25]

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[22] Fifteenth Report at 6.0.
[23] Fifteenth Report at 6.3.
[24] Fifteenth Report at 8.0 & 8.1.
[25] Fifteenth Report at 8.1.

17. The 430 Toke Transaction represents the best actionable transaction available in respect of the Toke Street Property and provides for the greatest recovery to stakeholders available in the circumstances.[26]

E. The Ancillary Matters Order

Approval of the Monitor's Reports, Activities, and Fees and Disbursements

18. The Monitor is seeking approval of the Fifteenth Report, and the activities of the Monitor described therein, as well as the fees and disbursements of the Monitor and its legal counsel, Cassels, for the period from January 1, 2026 to June 30, 2026.

19. In support of this motion, the Fifteenth Report attaches the Affidavit of David Sieradzki sworn July 21, 2026 and the Affidavit of Jeremy Bornstein sworn July 20, 2026 (together, the "**Fee Affidavits**"), which provide a comprehensive listing of accounts sought to be passed, including each account (redacted for matters of privilege or confidentiality) and summary tables identifying the individual professionals who have worked on this matter, their hourly billing rates and total number of hours worked, among other information.[27]

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

20. The issues to be determined on this Motion are whether this Court should:

(a) approve the Interim Distribution Order, among other things, granting the relief set out in Part IIB hereof;

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[26] Fifteenth Report at 8.1.
[27] Fifteenth Report at 11.0.

(b) approve the Claims Procedure Order, among other things, granting the relief set out in Part IICPart IIB hereof;

(c) approve the Toke Street AVO, among other things, granting the relief set out in Part IID hereof; and

(d) approve the Ancillary Matters Order, among other things, granting the relief set out in Part IIE hereof.

A. The Court Ought to Grant the Interim Distribution Order

21. The Court has authority under section 11 of the CCAA to approve distributions to creditors during a CCAA proceeding, including outside of a plan of compromise or arrangement.[28] This proposition applies regardless of whether the creditors receiving an interim distribution are secured or unsecured creditors.[29] Orders authorizing interim distributions are routinely granted by courts in CCAA proceedings.[30]

22. In approving an interim distribution, courts consider a number of factors including, among other things, whether: (i) the payee's security was valid and enforceable; (ii) the distribution would leave the estate with sufficient liquidity; and (iii) the amounts owed to the beneficiary of the distribution exceed the amount of the proposed distribution.[31]

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[28] *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, s. 11 [*CCAA*]; *Nortel Networks Corp., Re*, 2014 ONSC 4777 at paras 53-55 [*Nortel (2014)*]; *Re Timminco Ltd.*, 2014 ONSC 3393 at para 38 [*Timminco*].
[29] *Nortel (2014)* at paras 56-58 & 62; *Abitibibowater Inc. (Re)*, 2009 QCCS 6461 at para 71 [*Abitibibowater*]
[30] *Nortel (2014)* at paras 56-58; *Re Windsor Machine & Stamping Ltd*, 2009 CanLII 39772 (ONSC) at para 8; *Abitibibowater* at paras 70-75.
[31] *Abitibibowater* at paras 70-75.

23. An interim distribution is appropriate in the circumstances. As set out in the Distribution Analysis, the Monitor intends to make one or more distribution from the Mortgaged Property Proceeds to the Mortgagees holding registered Mortgages, subject to the Monitor reserving sufficient amounts to fund the continuing administration of the CCAA proceedings.[32]

24. In assessing eligibility and entitlement of the applicable Mortgagees to the Proposed Distribution, the Monitor has cross-referenced the name of the Mortgagee listed in the Applicants' books and records to the registered Mortgagee of the applicable Liquidation Portfolio Property.[33] This approach has been consistently applied throughout these CCAA proceedings and previously endorsed by this Court as reasonable in the circumstances, including in permitting Mortgagees to submit credit bids for Real Properties, and is appropriate in the circumstances due to the lack of funds available to obtain an independent legal opinion on the validity of each of the Mortgages registered on the Liquidation Portfolio Properties.[34]

25. The Monitor is also seeking relief in the proposed Interim Distribution Order declaring that the Monitor shall not incur any liability under any tax statute as a result of the Proposed Distributions. This Court has recognized that it has authority under Section 11 of the CCAA to grant the relief sought, and that such relief should be granted to protect insolvency professionals

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[32] Fifteenth Report at 5.0.
[33] Fifteenth Report at 5.0.
[34] *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al.* (August 30, 2024), ONSC (Commercial List), Court File No. CV-24-00713245-00CL (Endorsement of Cavanagh J.) at para 2; see also Seventh Report of the Monitor dated August 23, 2024 at 4.2, 4.4 & Appendix "C"; Fifteenth Report at 5.0.

carrying out court-approved distributions that have been found to be appropriate, having regard to the interests and relative priorities, rights and entitlements of all stakeholders.[35]

26. The Monitor submits that in the circumstances, the Proposed Distributions and the Distribution Analysis are fair, reasonable and appropriate and the Interim Distribution Order should be granted.[36]

B. The Court Ought to Approve the Claims Procedure Order

27. Section 11 of the CCAA authorizes the Court to make any order it considers appropriate in the circumstances, which includes the ability to approve a process to solicit and determine claims against a debtor company.[37] Furthermore, the Court's power under section 12 of the CCAA to "fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement" has been held to be sufficient authority for a CCAA Court to grant claims process orders and claims bar orders.[38]

28. The general practice in CCAA proceedings is for debtors to apply to the Court for approval of a process to solicit claims against the debtor company and/or its directors and officers and to establish a deadline for filing claims. This Court's practice of approving claims processes in CCAA

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[35] *One Bloor West Toronto Group (the One) Inc. (Re)*, 2026 ONSC 1854 at paras. 41 & 50-54; see also *In the Matter of Rothmans, Benson & Hedges Inc.* (March 6, 2025), ONSC (Commercial List), Court File No. CV-19-616779-00CL (CCAA Plan Administrator Appointment Order) at para. 19.
[36] Fifteenth Report at 5.0.
[37] CCAA, s. 11.
[38] *Re Toys "R" Us (Canada) Ltd.*, 2018 ONSC 609 at para 8 [*Toys "R" Us*]; *Timminco* at para 40.

restructurings is well accepted.[39] Pursuant to the Expanded Powers Order, the Monitor is authorized and empowered to conduct the Claims Procedure on behalf of the Applicants.[40]

29. A claims procedure enables a CCAA debtor to determine the validity and quantum of claims against the debtor in order to make a distribution to creditors. This determination is key to any CCAA proceeding, including a proceeding involving a liquidation of assets.[41]

30. A court approved claims procedure should be both flexible and expeditious to achieve the broad remedial objectives of the CCAA and to ensure that stakeholders are treated as advantageously and fairly as the circumstances permit in a restructuring process.[42] The proposed claims procedure should be fair and reasonable to all stakeholders, including those who will be directly affected by the acceptance of other claims.[43]

31. The proposed Claims Procedure satisfies all of these requirements, is fair and reasonable, and should be approved.

(a) *The Claims Procedure is fair*. The Monitor has designed the Claims Procedure to provide a comprehensive, fair and expeditious means for identifying, quantifying and resolving Claims against the Company. The combination of the negative notice and the general claims procedure, reasonable timelines for the Claims Procedure and flexible adjudication mechanisms ensures that the universe of Claims against

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[39] *Toys "R" Us* at para 8; see also *Re U.S. Steel Canada Inc.*, 2017 ONSC 1967 at paras 5-6; *Re ScoZinc Ltd.*, 2009 NSSC 136 at para 25 [*ScoZinc*].
[40] *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al.* (June 25, 2024), ONSC (Commercial List), Court File No. CV-24-00713245-00CL (Expanded Powers Order) at para 3 [*Expanded Powers Order*].
[41] *Re Walter Energy Canada Holdings Inc*., 2016 BCSC 1746 at para 81; *Timminco* at para 41.
[42] *ScoZinc* at para 23; *Re Laurentian University of Sudbury*, 2021 ONSC 3885 at paras 30-31 [*Laurentian*].
[43] *Laurentian* at para 32.

the Applicants will be comprehensively solicited and that the nature, quantum and validity of Claims are determined as fairly and expeditiously as possible.[44]

(b) *The negative notice Claims Procedure is appropriate*. The Claims Procedure provides for the Monitor to send a Negative Notice Claims Package, including a Statement of Negative Notice Claim, to each Negative Notice Claimant that is shown on the Applicants' records as having a Claim against one or more of the Applicants. Should a Negative Notice Claimant wish to dispute their assessed Negative Notice Claims, whether with respect to amount, characterization or to assert any separate or distinct Claims not captured in whole or in part in the Statement of Negative Notice Claim received, they are provided sufficient opportunity should they choose to do so. The negative notice process will simplify the Claims Procedure for Negative Notice Claimants and ensure that each Negative Notice Claimant asserts a Claim in the Claims Procedure.[45]

(c) *The Claims Procedure provides sufficient notice to potential Claimants*. Within ten Business Days following the granting of this Claims Procedure Order, the Monitor will send a Negative Notice Claims Package to each of the Negative Notice Claimants; send a General Claims Package to each of the potential Claimants; cause the Notice to Claimants (or a condensed version thereof) to be published in a national newspaper; and publish information about the Claims Procedure on its website. Thereafter, the Monitor will also deliver a copy of the General Claims

[44] Fifteenth Report at 6.0, 6.1 & 6.5.
[45] Fifteenth Report at 6.0, 6.4, 6.5 & 6.7.

Package to any Person claiming to be a Claimant upon request and with respect to any notices of disclaimer or resiliation delivered after the date of the Claims Procedure Order.[46]

(d) *Potential Claimants have sufficient time to submit a Proof of Claim or dispute a Negative Notice Claim*. The Claims Bar Date for Pre-Filing Claims and filing of Notice of Dispute of Negative Notice Claims is October 28, 2026. Potential Claimants with Pre-Filing Claims and Negative Notice Claimants will therefore have over two months to submit Proofs of Claim in respect of such claims or dispute their assessed Negative Notice Claims, respectively. Similarly, potential Claimants with Restructuring Period Claims will have a minimum period of twenty (20) days to file the applicable Proof of Claim form with the Monitor. The Monitor does not currently anticipate any Restructuring Period Claim arising after the issuance of the Claims Procedure Order which is not presently known to the Monitor. The Monitor believes that these periods are reasonable and provide sufficient time for a Claimant to evaluate and submit applicable Proofs of Claim or Notices of Dispute of Negative Notice Claim.[47]

(e) *The Claims Procedure will be independent*. The Monitor will undertake the Claims Procedure on behalf of the Applicants.[48]

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[46] Fifteenth Report at 6.1 & 6.7.
[47] Fifteenth Report at 6.1, 6.5 & 6.7.
[48] Fifteenth Report at 6.7.

(f) *Disputed Claims will be fairly and efficiently adjudicated*. If a dispute raised in a Notice of Dispute of Revision or Disallowance or Notice of Dispute of Negative Notice Claim is not settled within a satisfactory time period or manner, the Monitor shall have the discretion to refer the Claim to the Court or a Claims Officer for adjudication.[49]

(g) *The Claims Procedure will determine the quantum of Claims (and not entitlement)*. The purpose of the Claims Procedure is to determine the quantum of Claims that may exist against the Applicants; determination of entitlement will be addressed by separate order(s) of the Court. To this point, the Claims Procedure specifically contemplates that any acceptance, admission or determination of a Claim (including a Negative Notice Claim) shall not in and of itself constitute or be a determination of any right or entitlement to a distribution or dividend in respect of any Claim (including a Negative Notice Claim) held by any of the Additional Stay Parties or any entity owned or controlled by any of them.[50]

(h) *Limiting unsecured and/or priority Claims to amounts owing for principal will limit unnecessary expenses*. The Claims Procedure contemplates that, in respect of promissory notes and similar instruments or mortgages or charges, eligible amounts to be claimed will be limited to the principal amounts owing, and amounts owing for interest, fees, penalties, charges, costs or similar amounts will not be eligible to

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[49] Fifteenth Report at 6.5.
[50] Fifteenth Report at 6.0.

be included in Claims. The limitation of such claims is fair, reasonable and appropriate for the reasons set forth in section 6.3 of the Fifteenth Report.[51]

32. The proposed Claims Procedure satisfies the overarching purpose of claims processes generally, being "to streamline the resolution of the multitude of claims against an insolvent debtor in the most time sensitive and cost-efficient manner", and ought to be approved.[52]

C. The Court Ought to Grant the Toke Street AVO

33. In accordance with the Expanded Powers Order, the Monitor is authorized and empowered to exercise any powers which may properly be exercised by a board of directors or any officers of the Applicants, including selling any of the Properties.[53]

34. In addition, as noted above, the Orderly Liquidation Mechanics Order authorizes the Monitor, on behalf of the Applicants, to market and sell the Liquidation Portfolio Properties in accordance with the Orderly Liquidation Mechanics.[54]

35. Pursuant to section 36 of the CCAA, this Court may authorize a debtor company to sell or otherwise dispose of its assets outside of the ordinary course of business free and clear of any security, charge or other restriction.[55] In considering whether to approve a sale, section 36(3) of the CCAA requires the Court to consider: (i) whether the sale process was reasonable in the circumstances; (ii) whether the Monitor approved of the sale process and filed a report supporting

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[51] Fifteenth Report at 6.3 & 6.7.
[52] *Canwest Global Communications Corp*., 2011 ONSC 2215 at para 40; Fifteenth Report at 6.7.
[53] *Expanded Powers Order* at para 3.
[54] *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al.* (April 14, 2025), ONSC (Commercial List), Court File No. CV-24-00713245-00CL (Orderly Liquidation Mechanics Order) at para 6.
[55] *Consumers Packaging Inc., Re* (2001), 27 C.B.R. (4th) 197, 2001 CanLII 6708 (ONCA) at paras 5 & 9; *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 at paras 35-40 & 48 (ONSC); *PCAS Patient Care Automation Services Inc. (Re)*, 2012 ONSC 3367 at para 35.

the sale; (iii) the extent to which creditors were consulted; (iv) the effect of the sale on creditors and stakeholders; and (v) whether the purchase price is fair and reasonable.[56]

36. The section 36(3) factors largely overlap with the factors set out by the Ontario Court of Appeal in *Royal Bank of Canada v Soundair Corp.*:

(a) whether sufficient efforts had been made to obtain the best price and that the debtor had not acted improvidently;

(b) whether the interests of all parties had been considered;

(c) the integrity and efficacy of the process for obtaining offers; and

(d) whether there was any unfairness in working out the process.[57]

37. The Monitor submits that both the section 36(3) factors and the *Soundair* criteria are satisfied and weigh in favour of granting the Toke Street AVO.[58]

38. The Toke Street AVO is necessitated in the circumstances as a result of an "out-of-the-money" creditor failing to respond to the Monitor's requests for consent to the 430 Toke Transaction. [59]

39. The Toke Street Property was marketed by the Monitor, with the assistance of a listing agent, in accordance with the Orderly Liquidation Mechanics Order. The Toke Street Property was subject to a reasonable marketing process, which included the Toke Street Property being marketed

[56] *CCAA*, s. 36(3).
[57] 1991 CanLII 2727 (ONCA) at para 16 [*Soundair*].
[58] Fifteenth Report at 8.1.
[59] Fifteenth Report at 8.0.

and publicly listed for a reasonable period of time and multiple price adjustments to reflect market interest, all in accordance with the Orderly Liquidation Mechanics Order.

40. The 430 Toke Transaction reflects the market value for the Toke Street Property, represents a value maximizing transaction and, in the view of the Monitor and the listing agent, further marketing of the Toke Street Property would not be expected to result in a superior transaction.[60]

41. The Monitor has served its Motion Record on each mortgagee whose interest in the Toke Street Property would be discharged by the Toke Street AVO.

D. The Court Ought to Grant the Ancillary Matters Order

The Stay Period Should be Extended

42. The Monitor is seeking an extension of the Stay Period from July 31, 2026 to, and including, January 29, 2027.

43. Pursuant to section 11.02(2) of the CCAA, this Court is empowered to grant a stay extension, for any period it considers necessary, where satisfied that: (i) circumstances exist which make such an order appropriate; and (ii) the applicants have acted and are continuing to act in good faith and with due diligence.[61]

44. As endorsed by the Court in this proceeding and other CCAA proceedings, in the context of a "super monitor", the monitor is held to the good faith standard.[62]

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[60] Fifteenth Report at 8.1.
[61] CCAA, ss. 11.02(2)-(3).
[62] *Forme Development Group Inc. (Re)* (February 20, 2020), ONSC (Commercial List), Court File No. CV-18-608313-00CL (Endorsement of Hainey, J.); *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al.* (July 31, 2024), ONSC (Commercial List), Court File No. CV-24-00713245-00CL (Endorsement of Steele, J.).

45. Extending the Stay Period is necessary and appropriate in the circumstances to allow the Monitor time to, among other things, make the distributions contemplated in the Interim Distribution Order, conduct the Claims Procedure and finalize its administration of the estates of the Applicants, including identifying transactions for the remaining seven Liquidation Portfolio Properties. The extension of the Stay Period is not expected to materially prejudice any creditors. Further, the Cash Flow Forecast projects that there will be sufficient funding available to fund operations and the costs of these proceedings during the proposed extension period. The Distribution Analysis considers the ongoing costs-to-completion of these proceedings.[63]

46. The Monitor has acted in good faith and with due diligence in discharging its duties and obligations under the CCAA and submits that the Stay Period should be extended to January 29, 2027.

The Monitor's Activities and the Fifteenth Report Should be Approved

47. As has been noted by this Court, requests to approve a monitor's report are not unusual, and there are good policy and practical reasons for the court to do so, including:

(a) allowing the Monitor to move forward with the next steps in these CCAA proceedings;

(b) allowing the Monitor to bring its activities before the Court;

(c) allowing an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;

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[63] Fifteenth Report at 10.0.

(d) enabling the court to satisfy itself that a monitor's activities have been conducted in prudent and diligent manners;

(e) providing protection for the Monitor not otherwise provided by the CCAA; and

(f) protecting creditors from delay that may be caused by re-litigation of steps and potential indemnity claims by the Monitor.[64]

48. This Court has previously approved the Monitor's reports and activities in these CCAA proceedings, including most recently on January 28, 2026.

49. The Fifteenth Report and the actions, conduct and activities of the Monitor described therein should be approved, as the Monitor has acted reasonably and in good faith, and in compliance with the Orders of the Court, throughout these CCAA proceedings.

The Fees and Disbursements of the Monitor and Cassels Should be Approved

50. The Ancillary Matters Order also seeks to approve the fees and disbursements of the Monitor and its legal counsel, Cassels, incurred between January 1, 2026 to June 30, 2026.

51. In considering whether to approve fees and disbursements, the Court has regard to the "overriding principle of reasonableness," and does not engage in a docket-by-docket or line-by-line assessment of the accounts.[65] The guiding principle is whether the fees are fair, reasonable and proportionate given the value of the Applicant's assets and liabilities, as well as the complexity of the Applicant's business and the CCAA proceedings. As a non-exhaustive list of factors for

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[64] *Target Canada Co. (Re)*, 2015 ONSC 7574 at paras 2 & 22-23.
[65] *Nortel Networks Inc.*, 2022 ONSC 6680 at para 10.

consideration, the Ontario Court of Appeal has cited: (i) the time spent; (ii) the Monitor's knowledge, experience and skill; (iii) the responsibilities assumed; (iv) the complications and difficulties encountered; (v) the results achieved; and (vi) the cost of comparable services when performed in a prudent and economical manner.[66]

52. The Fee Affidavits provide detailed information on the fees and disbursements of the Monitor and of Cassels during the relevant period.[67]

53. The Monitor and its counsel have played a significant role in these CCAA proceedings, and the activities of the Monitor have been carried out in good faith and in accordance with the Orders issued by this Court in these CCAA proceedings.

54. The Monitor is of the view that the hourly rates charged by Cassels are consistent with the rates charged by large corporate law firms practicing in the area of corporate insolvency and restructuring in the Toronto market, that Cassels' billings reflect work performed consistent with the Monitor's instructions and that the overall fees charged by Cassels and the Monitor are reasonable and appropriate in the circumstances.[68]

PART IV - ORDERS REQUESTED

55. For the reasons set out above, the Monitor respectfully requests that this Court grant the: (i) Interim Distribution Order, (ii) Claims Procedure Order, (iii) Toke Street AVO and (iv) Ancillary Matters Order.

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[66] *Confectionately Yours Inc (Re)*, 2002 CanLII 45059 (ONCA) at paras 42-54*; Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at para 33.
[67] Fifteenth Report at 11.0 & Appendices "H" and "I".
[68] Fifteenth Report at 11.0.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th day of July, 2026.

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SCHEDULE "A"

LIST OF AUTHORITIES

1. *Abitibibowater Inc. (Re)*, 2009 QCCS 6461

2. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851

3. *Canwest Global Communications Corp*., 2011 ONSC 2215

4. *Confectionately Yours Inc (Re)*, 2002 CanLII 45059 (ONCA)

5. *Consumers Packaging Inc., Re* (2001), 27 C.B.R. (4th) 197, 2001 CanLII 6708 (ONCA)

6. *Forme Development Group Inc. (Re)* (February 20, 2020), ONSC (Commercial List), Court File No. CV-18-608313-00CL (Endorsement of Hainey J.)

7. *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al.* (June 25, 2024), ONSC (Commercial List), Court File No. CV-24-00713245-00CL (Expanded Powers Order)

8. *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al.* (July 31, 2024), ONSC (Commercial List), Court File No. CV-24-00713245-00CL (Endorsement of Steele, J.)

9. *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al.* (August 30, 2024), ONSC (Commercial List), Court File No. CV-24-00713245-00CL (Endorsement of Cavanagh J.)

10. *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al.* (April 14, 2025), ONSC (Commercial List), Court File No. CV-24-00713245-00CL (Orderly Liquidation Mechanics Order)

11. *In the Matter of Rothmans, Benson & Hedges Inc.* (March 6, 2025), ONSC (Commercial List), Court File No. CV-19-616779-00CL (CCAA Plan Administrator Appointment Order)

12. *Nortel Networks Corp., Re*, 2014 ONSC 4777

13. *Nortel Networks Corporation (Re)*, 2009 CanLII 39492

14. *Nortel Networks Inc.*, 2022 ONSC 6680

15. *One Bloor West Toronto Group (the One) Inc. (Re)*, 2026 ONSC 1854

16. *PCAS Patient Care Automation Services Inc. (Re)*, 2012 ONSC 3367

17. *Re Laurentian University of Sudbury*, 2021 ONSC 3885

18. *Re ScoZinc Ltd.*, 2009 NSSC 136

19. *Re Timminco Ltd.*, 2014 ONSC 3393

20. *Re Toys "R" Us (Canada) Ltd.*, 2018 ONSC 609

21. *Re U.S. Steel Canada Inc.*, 2017 ONSC 1967

22. *Re Walter Energy Canada Holdings Inc*., 2016 BCSC 1746

23. *Re Windsor Machine & Stamping Ltd*, 2009 CanLII 39772 (ONSC)

24. *Royal Bank of Canada v Soundair Corp.*, 1991 CanLII 2727 (ONCA)

25. *Target Canada Co. (Re)*, 2015 ONSC 7574

I, Alec Hoy, am satisfied as to the authenticity of every authority cited in this factum, in accordance with Rule 4.06.1(2.1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

Dated as of July 27, 2026

Alec Hoy

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

***Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36**

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Stays, etc. — other than initial application

11.02 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

[…]

Fixing deadlines

12 The court may fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement.

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

[…]

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

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

[…]

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 BALBOA INC., DSPLN INC., HAPPY GILMORE INC., INTERLUDE INC., MULTIVILLE INC., THE PINK FLAMINGO INC., HOMETOWN HOUSING INC., THE MULLIGAN INC., HORSES IN THE BACK INC., NEAT NESTS INC. AND JOINT CAPTAIN REAL ESTATE INC.

Court File No. CV-24-00713245-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

FACTUM
(Interim Distribution Order, Claims Procedure Order, Toke Street AVO & Ancillary Matters Order)

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