

**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 HAKIM OPTICAL LABORATORY LIMITED,
LAWRENCE OPHTHALMIC LAB INC. AND HAKIM OPTICAL
WORLDWIDE LENSES INC.**

Applicants

**FACTUM OF THE APPLICANTS
(SISP Approval Order)**

August 25, 2025

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PART I: OVERVIEW

1. This Factum is filed in support of a motion by Hakim Optical Laboratory Limited (“**HOLL**”), Lawrence Ophthalmic Lab Inc. (“**Lawrence Lab**”), and Hakim Optical Worldwide Lenses Inc. (also known as Hakim Optical Lenses Worldwide Inc. and Hakim Optical Worldwide Lenese Inc. [sic]) (collectively, the “**Applicants**” or the “**Company**”) for an order (the “**SISP Approval Order**”), pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCAA**”), among other things:

- (a) approving a sale and investment solicitation process (the “**SISP**”) in which the Stalking Horse APA (as defined below) will serve as the “**Stalking Horse Bid**”, and authorizing the Applicants and KSV Restructuring Inc. (“**KSV**”), in its capacity as monitor of the Applicants (in such capacity, the “**Monitor**”), to implement the SISP pursuant to its terms;
- (b) authorizing and approving the Applicants’ execution of the stalking horse specified asset purchase agreement (the “**Stalking Horse APA**”), among the Applicants, as vendors, and Evelyn Aimis Holdings Inc. (“**Evelyn Aimis**”), and Chiaro Ottico Ltd. (the “**Stalking Horse Bidder**”), as purchaser, dated August 21, 2025, solely for the purpose of acting as the ‘stalking horse bid’ in connection with the SISP;
- (c) approving the Bid Protections (as defined below), and granting a Court-ordered charge as security for the Bid Protections (the “**Bid Protections Charge**”), such charge to rank in priority to all security interests, but subordinate to the Administration Charge and the DIP Lender’s Charge;
- (d) sealing an unredacted copy of the Stalking Horse APA filed as a confidential exhibit to the Affidavit of Douglas Robertson sworn August 21, 2025 (the “**Confidential**”

Exhibit") until further order of the Court;

- (e) granting an extension of the Stay of Proceedings (as defined below) to and including November 7, 2025 (the "**Stay Extension**"); and
- (f) approving (i) the Third Report of the Monitor dated August 25, 2025 (the "**Third Report**"), and the activities of the Monitor described therein, and (ii) the fees of the Monitor and its legal counsel referred to in the Third Report.

2. The SISP and the Stalking Horse APA are the result of extensive negotiations with 855 Ontario and the Stalking Horse Bidder that commenced before restructuring proceedings. The Applicants have signaled their intention to seek a SISP that includes a stalking horse bid since the outset of these CCAA proceedings, with the intention of commencing a sale process as soon as possible following the completion of these negotiations, subject to Court approval there.

3. The SISP Approval Order therefore represents a significant milestone in these proceedings. If the SISP Approval Order is granted, in addition to allowing these proceedings to move into their logical next phase, a large measure of stability would be granted to the Applicants' operations, as the Stalking Horse APA provides a degree of certainty that the restructuring process will result in a going-concern outcome for the benefit of all stakeholders.

PART II: FACTS

4. The facts underlying this motion are more fully set out in the Affidavit of Douglas Robertson sworn August 21, 2025 (the "**Robertson Affidavit**"), and the Third Report.¹ All capitalized terms used but not defined herein have the meanings ascribed to them in the Robertson

¹ Affidavit of Douglas Robertson sworn August 21, 2025 [**Robertson Affidavit**]; [**Master Bundle: A971-A1001**], Applicants' Motion Record dated August 21, 2025 at Tab 2 [**Motion Record**]. Third Report of the Monitor dated August 25, 2025 [**Third Report**] [**Master Bundle: E178-E360**].

Affidavit.

5. Prior to filing for creditor protection, the Applicants undertook various measures to reduce operating costs and to identify a long-term solution to their liquidity challenges, including: (i) undertaking an informal marketing process over a period of several years which broadly canvassed many of the participants in the retail optical industry in Canada and abroad seeking to identify parties interested in acquiring or investing in the Applicants' business, and (ii) refinancing their senior secured debt facility provided by Royal Bank of Canada ("**RBC**"), which resulted in 1001112855 Ontario Inc. ("**855 Ontario**") taking an assignment of RBC's interests in the Applicant's senior secured credit facility and security on January 21, 2025.² Also on this date, 855 Ontario extended interim bridge financing to the Applicants to sustain their remaining operations (the "**BF Credit Facility**").³

6. Despite the Applicants' out of court restructuring efforts, enforcement actions were initiated against the Applicants and their property by certain stakeholders, ultimately leading HOLL and Lawrence Lab to file Notices of Intention to Make a Proposal pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, on April 16, 2025, and April 22, 2025, respectively (the proceedings related thereto, the "**NOI Proceedings**").⁴

7. On May 15, 2025, the Applicants obtained certain relief under the CCAA pursuant to an initial order (the "**Initial Order**").⁵

8. The Initial Order, among other things: (i) authorized the continuation of the NOI

² *Ibid* at para 8, Motion Record at Tab 2 [[A/976](#)].

³ *Ibid*, Motion Record at Tab 2 [[A/976](#)].

⁴ *Ibid* at para 9, Motion Record at Tab 2 [[A/976](#)].

⁵ *Ibid* at para 10, Motion Record at Tab 2 [[A/977](#)].

Proceedings under the CCAA; (ii) authorized the continuation of the NOI Proceedings under the CCAA; (iii) appointed KSV as the Monitor; (iv) granted an initial stay of proceedings (the “**Stay of Proceedings**”) in favour of the Applicants and the Monitor, and in respect of any claims or proceedings against, or affecting, the Business or the Property (each as defined in the Initial Order), until and including June 30, 2025; (v) approved the Applicants’ ability to borrow under a debtor-in-possession credit facility (the “**DIP Facility**”), up to a principal amount of \$2.8 million, pursuant to a binding commitment letter dated May 8, 2025 (the “**DIP Agreement**”), among HOLL and Lawrence Lab, as borrowers, an affiliate of the Applicants, as guarantor, and 855 Ontario, as lender (in such capacity, the “**DIP Lender**”), to finance the Company’s working capital requirements and other general corporate purposes, post-filing expenses and costs incurred during these CCAA proceedings; and (iv) granted the Administration Charge and the DIP Lender’s Charge (each as defined in the Initial Order) over the Property.⁶

9. Throughout these CCAA proceedings, and in order to facilitate discussions with the Stalking Horse Bidder and the completion of the Stalking Horse APA, the Applicants have obtained the following stay extensions:

- (a) on June 27, 2025, the Applicants sought and obtained an amended and restated Initial Order (the “**ARIO**”), which, among other things, granted an extension of the Stay of Proceedings to and including July 14, 2025;
- (b) on July 14, 2025, the Applicants sought and obtained an additional stay extension to and until August 8, 2025; and
- (c) on August 8, 2025, the Applicants sought and obtained an order (the “**Stay Extension and DIP Amendment Order**”), which among other things, extended

⁶ *Ibid*, Motion Record at Tab 2 [[A/977](#)].

the Stay of Proceedings to and until August 29, 2025, and increased the maximum principal amount which may be drawn under the DIP Facility.⁷

A. The SISP

10. The proposed SISP allows the Applicants and the Monitor to solicit interest in, and opportunities for, the sale of all or part of the Applicants' right, title, and interest in and to all of their assets, or the sale of all of the shares of the Applicants by way of a share transaction, through one or more transactions, subject to the Court granting an approval and vesting order.⁸ The SISP contemplates that the sale of the Applicants' assets, or any portion thereof, will be conducted on an "as-is, where-is" basis.⁹

11. In accordance with the SISP, an interested party that has executed a non-disclosure agreement (each, an "NDA") and demonstrated to the Monitor that it has the financial wherewithal to consummate a successful transaction will be deemed a "Qualified Bidder", and permitted to participate in the SISP.¹⁰ The Monitor will make available a virtual data room and other diligence materials to Qualified Bidders.

12. A Qualified Bidder that wishes to make a bid in the SISP must deliver a written copy of its final bid by no later than 5:00 p.m. (Toronto Time) on October 3, 2025 (the "Qualified Bid Deadline"), with such bid conforming to the following requirements, among others:

- (a) it is received by the Qualified Bid Deadline and submitted by a Qualified Bidder;

⁷ *Ibid* at para 12, Motion Record at Tab 2 [[A/978](#)].

⁸ *Ibid* at paras 28- 29, Motion Record at Tab 2 [[A/988](#)].

⁹ *Ibid* at para 30, Motion Record at Tab 2 [[A/988](#)].

¹⁰ *Ibid* at para 36, Motion Record at Tab 2 [[A/990](#)].

- (b) it provides for payment in full, in cash on closing, of at least: (i) the Purchase Price (as defined below); (ii) the Expense Reimbursement and Break Fee; plus (iii) a minimum bid increment of \$100,000;
- (c) it includes a letter stating that the bid is irrevocable until there is a Successful Bid (as defined below), provided that if such Qualified Bidder is selected as the Successful Bidder (as defined below), its bid shall remain an irrevocable offer until the earlier of (i) the completion of the sale to the Successful Bidder and (ii) November 7, 2025;
- (d) it does not include any request for or entitlement to any expense reimbursement, termination fee, break fee or similar type of payment;
- (e) it provides details of any assumption of the Applicants' liabilities; and
- (f) it is accompanied by a cash deposit equal to 15% of the cash consideration payable pursuant to the submitted bid.¹¹

13. In consultation with the Applicants, the Monitor may, in its reasonable discretion, waive compliance with any one or more of the bid requirements, and deem any non-compliant bid to be a Qualified Bid in accordance with the SISP.¹²

14. If no Qualified Bids are submitted by the Qualified Bid Deadline other than the Stalking Horse Bid, the Stalking Horse Bid will be deemed to be the Successful Bid. If one or more Qualified Bids (other than the Stalking Horse Bid) has been received by the Monitor on or before the Qualified Bid Deadline, the Monitor will proceed with an auction to determine the successful bid(s) (the "**Auction**").¹³ At the end of such Auction, the Monitor, in consultation with the

¹¹ *Ibid* at para 37, Motion Record at Tab 2 [[A/990](#)].

¹² *Ibid* at para 38, Motion Record at Tab 2 [[A/990](#)].

¹³ *Ibid* at paras 40-43, Motion Record at Tab 2 [[A/993](#)].

Applicants, shall select the successful bid (the “**Successful Bid**”, with such bidder being the “**Successful Bidder**”).

B. The Stalking Horse APA

15. The Stalking Horse APA is structured as an asset purchase agreement. The Stalking Horse APA contemplates that the Stalking Horse Bidder will acquire the real property leases for all, or substantially all, of the seventy (70) active store locations (the “**Purchased Locations**”) and certain other related assets (including the Company’s inventory, accounts receivable and intellectual property) on an “as is, where is” basis for a purchase price of \$22,000,000, subject to certain adjustments (the “**Purchase Price**”).¹⁴ As such, if consummated, the Stalking Horse APA, is expected to ensure the preservation of the Business as a going concern and the continued employment of most if not all of the Applicants’ employees.

16. The acquisition of the specified assets is to be structured through a credit bid of the outstanding obligations owing to 855 Ontario under the DIP Facility and such portion of the obligations owing to 855 under the BF Credit Facility as is required to satisfy the Purchase Price. (the “**BF Credit Bid Allocation Amount**”).¹⁵ Accordingly, if the Stalking Horse APA is selected as the Successful Bid, the Applicants understand that 855 Ontario intends to assign all of its rights and obligations under the DIP Facility and its entitlement to the BF Credit Bid Allocation Amount (collectively, the “**Credit Bid Assigned Amount**”) to the Stalking Horse Bidder to facilitate the application of the credit bid in satisfaction of the Purchase Price on closing.¹⁶ If the Purchase Price ultimately exceeds the Credit Bid Assigned Amount on the closing date, the Stalking Horse Bidder

¹⁴ *Ibid* at para 18, Motion Record at Tab 2 [[A/980](#)].

¹⁵ *Ibid* at para 19, Motion Record at Tab 2 [[A/980](#)].

¹⁶ *Ibid*, Motion Record at Tab 2 [[A/980](#)].

will tender cash in an amount sufficient to satisfy the balance of the Purchase Price due at closing.¹⁷

17. If the Stalking Horse Bid is not selected as the Successful Bid in the SISP, the Stalking Horse APA provides that the Stalking Horse Bidder will be entitled to the payment of certain bid protections.¹⁸ The Bid Protections are comprised of (i) a break fee in the amount of \$600,000 (the “**Break Fee**”), and (ii) an expense reimbursement for all actual documented out-of-pocket reasonable costs and expenses incurred in connection with negotiating, preparing and executing the Stalking Horse APA, up to the maximum amount of \$600,000 (the “**Expense Reimbursement**”, and together with the Break Fee, the “**Bid Protections**”).¹⁹ The Bid Protections are proposed to be secured by the Bid Protections Charge over the Property (as defined in the ARIIO) in favour of the Stalking Horse Bidder.

C. The Stay Extension

18. The Stay of Proceedings granted under the Stay Extension and DIP Amendment Order, will expire on August 29, 2025. Pursuant to the proposed SISP Approval Order, the Applicants are seeking an extension of the Stay of Proceedings to and including November 7, 2025.²⁰

19. To determine their funding requirements during the proposed Stay Extension period, the Applicants, with the assistance of the Monitor, have prepared an updated cash flow forecast (the “**Revised Cash Flow Forecast**”).²¹ The Revised Cash Flow Forecast demonstrates that, with the benefit of the DIP Facility, the Applicants will have sufficient cash to fund the SISP and support their ordinary course Business operations and the costs of these CCAA proceedings through the

¹⁷ *Ibid* at para 20, Motion Record at Tab 2 [[A/981](#)].

¹⁸ *Ibid* at para 22 Motion Record at Tab 2 [[A/986](#)].

¹⁹ *Ibid*, Motion Record at Tab 2 [[A/986](#)].

²⁰ *Ibid* at para 46, Motion Record at Tab 2 [[A/996](#)].

²¹ *Ibid* at para 48, Motion Record at Tab 2 [[A/996](#)]. Third Report, *supra* note 1 s 3.0 [[E/186](#)].

end of the Stay Extension period.²²

D. The Monitor’s Fees, Activities and the Third Report

20. The SISP Approval Order seeks approval of the Third Report, and the fees of the Monitor, and its legal counsel, Chaitons LLP (“**Chaitons**”). As set out in the fee affidavits sworn by Mitch Vininsky and George Benchetrit, respectively, and attached to the Third Report (together, the “**Fee Affidavits**”), the total professional fees of the Monitor and Chaitons (excluding disbursements and HST), up to and including July 31, 2025, are \$191,178.25 and \$43,695.00, respectively.²³

PART III: ISSUES

21. The issues to be considered on this motion are whether this Court should:

- (a) approve the proposed SISP;
- (b) approve the Stalking Horse APA, including the Bid Protections and the Bid Protections Charge, for the purposes of serving as the Stalking Horse Bid in the SISP;
- (c) seal the Confidential Exhibit;
- (d) extend the Stay of Proceedings to and including November 7, 2025; and
- (e) approve the Monitor’s fees, activities and the Third Report.

PART IV: LAW AND ARGUMENT

A. The SISP Should be Approved

22. The remedial nature of the CCAA confers broad powers to the Court to facilitate

²² *Ibid*, Motion Record at Tab 2 [A/996]. Third Report, *supra* note 1 s 8.0 at para 2 [E/200].

²³ *Ibid* at para 23, Motion Record at Tab 2 [A/986]. Third Report, *ibid* s 7.0 [E/199].

restructurings, including the power to approve a sales and investment solicitation process in relation to a CCAA debtor and its business and assets, prior to, or in the absence of, a plan of compromise and arrangement.²⁴

23. This Court has held that when considering a sales solicitation process, including the use of a stalking horse bid, the Court should assess the following factors:

- (a) the fairness, transparency and integrity of the proposed process;
- (b) the commercial efficacy of the proposed process in light of the specific circumstances facing the debtor; and
- (c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets being offered for sale.²⁵

24. In the context of assessing whether a stalking horse bid should be approved in the context of a court supervised sale process, courts also consider the following non-exhaustive list of factors:

- (a) whether the sale process is warranted at this time;
- (b) whether the sale process will be of benefit to the debtors' stakeholders;
- (c) whether any creditors have a *bona fide* reason to object to a sale of the business; and
- (d) whether a better viable alternative is available.²⁶

²⁴ *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, at ss. 11 and 36. [CCAA]. *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (ONSC) at paras 47-48 [Nortel].

²⁵ *CCM Master Qualified Fund v. Bluetip Power Technologies*, 2012 ONSC 1750 at para 6 [CCM Master]; *Validus Power Corp. et al. and Macquarie Equipment Finance Limited*, 2023 ONSC 6367 at paras 33-35 [Validus]; *DCL Corporation (Re)*, 2023 ONSC 3686 at para 19 [DCL Corporation].

²⁶ *Nortel*, supra note 24 at para 49. *In The Matter of a Plan of Compromise or Arrangement of Fire & Flower Holdings Corp. et al.*, (June 21, 2023), Toronto, CV-23-00700581-00CL (Endorsement of Justice Osborne (SISP Approval Order)) [Fire & Flower]. See also, *Validus*, ibid at para 39. *Re Freshlocal Solutions Inc.*, 2022 BCSC 1616 at paras 24-32 [Freshlocal Solutions].

25. The Applicants submit that the forgoing factors support the approval of the proposed SISP because:

- (a) the proposed SISP was developed, in consultation with the Monitor, with a view to providing a flexible, efficient and fair process for canvassing the market for potential purchasers, and maximizing the value of the Applicants' assets, and the recovery to the Applicants' creditors, all within the timeframe permitted under the DIP Agreement, as amended;
- (b) the Applicants have signalled their intention to bring forward a sale process for approval since the outset of these proceedings, and the timing is therefore appropriate to bring forward the SISP for approval, along with the Stalking Horse APA;
- (c) the Monitor has advised that the SISP timeline is appropriate in the circumstances, having regard to, among other things, the liquidity available to the Applicants through the DIP Facility;
- (d) the DIP Lender, who is also the sole pre-filing secured creditor of the Applicants, supports the proposed SISP; and
- (e) if the SISP is not approved, the Applicants may not be able to access further financing under the DIP Facility, and no alternative sources of financing are immediately available to the Applicants.²⁷

B. The Stalking Horse APA Should be Approved

26. The proposed SISP Approval Order also seeks the approval of the Stalking Horse APA,

²⁷ Robertson Affidavit, *supra* note 1 at paras 19, 26, 28, 32, 44-45, Motion Record at Tab 2. Third Report, *supra* note 1 s 4.1 at para 8, s 4.8 [E/187].

solely for the purpose of approving it as the Stalking Horse Bid under the SISP.

27. It is well established that stalking horse bids are a “reasonable and useful element of a sale process” and a “legitimate means of maximizing recovery” therein. Indeed, stalking horse bids, including credit bid stalking horses, are commonly employed in insolvency proceedings to “maximize value of a business for the benefit of stakeholders and enhance the fairness of the sales process” by establishing a “baseline price and transactional structure for any superior bids.”²⁸

28. In addition to the factors applicable to the approval of a sale process outlined above, where a stalking horse bid is brought forward for approval, additional considerations apply. In *Re DCL Corporation*, this Court considered the criteria previously identified by the Supreme Court of British Columbia in *Freshlocal Solutions*, and found the following questions relevant to the assessment of a proposed stalking horse bid:

- (a) how did the stalking horse agreement arise;
- (b) what are the stability benefits;
- (c) does the timing support approval;
- (d) who supports or objects to the stalking horse agreement;
- (e) what is the true cost of the stalking horse agreement; and
- (f) whether there is an alternative.²⁹

29. Here, approval of the Stalking Horse APA, including the Bid Protections, is appropriate in the circumstances given that:

- (a) the Stalking Horse APA is the product of extensive negotiations among the Stalking

²⁸ *CCM Master*, supra note 25 at [para 7](#); *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#) at [para 20](#) [*Danier Leather*]. *Validus*, supra note 25 at [para 42](#); *Freshlocal*, supra note 26 at [paras 29-30](#).

²⁹ *Freshlocal*, *ibid* at [paras 24-32](#).

Horse Bidder, the Applicants and the Monitor over the past six months and therefore reflects a reasonable estimate of the value of the Business;

- (b) these negotiations have been disclosed since the outset of these CCAA proceedings.
No party has come forward expressing a desire to submit a competing stalking horse bid, and the Applicants are not aware of any party in opposition to the use of a stalking horse bid as part of the sale process;
- (c) the Stalking Horse APA provides a degree of certainty that these restructuring proceedings will result in a going-concern outcome, and therefore provides a large measure of stability to the Business. The completion of the negotiations of the Stalking Horse APA was welcomed by the Applicants' employees involved in those discussions;
- (d) because the negotiation of the Stalking Horse APA took longer than expected, it is essential that the SISP Approval Order, including the approval of the Stalking Horse APA and Bid Protections, be granted now so that these proceedings can move to their next phase, within the liquidity runway available to the Applicants under the DIP Facility;
- (e) the Monitor is supportive of the Stalking Horse APA for the purposes of acting as the Stalking Horse Bid in the SISP. The Applicants are not aware of any party in opposition;
- (f) the Bid Protections in the maximum aggregate amount of \$1.2 million (approximately 5.5% of the Purchase Price amount), represent the "true cost" of the Stalking Horse APA from the perspective of a competing bidder. Although the Bid Protections are on the high end of the amounts approved recently by Canadian

courts, the Monitor is of the view that the Bid Protections are reasonable in the context of the work involved in negotiating the Stalking Horse APA and the importance of providing the Applicants with the stability associated with a stalking horse bid to maximize value for stakeholders;

- (g) as stated, no other party, including the potentially interested parties involved in the pre-filing marketing process, have expressed any interest in submitting an alternative stalking horse bid. The Applicants are not aware of any party willing to do so;
- (h) the Applicants' ability to access further liquidity under the DIP Facility is linked to the approval of the Stalking Horse Bid. If the SISP Approval Order is not granted, the Applicants may have to seek alternative sources of financing, and there is no immediately available alternative source of financing; and
- (i) the DIP Lender has advised that it is supportive of the approval of the Stalking Horse APA for the purposes of acting as the Stalking Horse Bid in the SISP.³⁰

C. The Bid Protections and the Bid Protections Charge Should be Approved

30. In the context of stalking horse bids, courts frequently approve bid protections such as break fees and expense reimbursements, recognizing that:

- (a) in addition to compensating a stalking horse bidder for the time and resources expended and the risks taken in developing a Stalking Horse APA, bid protections also reflect the price of stability; and
- (b) bid protections are subject to the debtors' or Court-officer's, as the case may be,

³⁰ Robertson Affidavit, *supra* note 1 at paras 17, 25-27, Motion Record at Tab 2 [[A/981](#)]. Third Report, *supra* note 1 s 4 [[E/187](#)]. *Cannapiece Group Inc v. Marzili*, [2022 ONSC 6379](#) at [para 5](#) [*Cannapiece Group*].

business judgment, provided that they lie within a range of reasonable alternatives.³¹

31. The Applicants submit that it is appropriate to approve the Bid Protections and the Bid Protections Charge given, among other things, that:

- (a) the Monitor is of the view that the Bid Protections, which represent up to approximately 5.5% of the Purchase Price under the Stalking Horse APA, are reasonable in the circumstances and will not discourage interested parties from submitting offers in the SISP;
- (b) the Bid Protections are an integral term of the Stalking Horse APA, without which the Stalking Horse Bidder would not have agreed to act as the stalking horse bidder in the SISP;
- (c) this Court has approved bid protections in instances where the proposed stalking horse bid was submitted as a credit bid; and
- (d) the Bid Protections themselves are payable only out of closing proceeds from a alternative, superior, successful transaction, which would accrue to the benefit of the Applicants' stakeholders.³²

D. The Confidential Exhibit Should be Sealed

32. The Applicants are requesting that this Court seal the Confidential Exhibit, pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 (the "CJA"). Subsection 137(2) of the CJA confers on the Court the jurisdiction to order that any document filed in a civil proceeding before it be

³¹ *Cannapiece Group*, *ibid* at [para 5](#). *CCM Master*, *supra* note 25 at [para 13](#). *Validus*, *supra* note 25 at [para 111](#). *Danier Leather*, *supra* note 28 at [para 41](#).

³² Robertson Affidavit, *supra* note 1 at paras 22-23 [[A/986](#)]. Third Report, *supra* note 1 s 4.8 [[E/196](#)]. *Fire & Flower*, *supra* note 26 at [para 32](#). *Validus*, *supra* note 25 at [paras 115-116](#).

treated as confidential, sealed and not form part of the public record.³³

33. As determined by the Supreme Court, the Court has the discretion to grant a sealing order, where:

- (a) court openness poses a serious risk to an important public interest, including a commercial interest;
- (b) it is necessary to prevent this serious risk to the identified interest because reasonable alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.³⁴

34. This Court has previously sealed select portions of a Stalking Horse APA on the basis that the proposed redactions were minimal and proportionate, while achieving the “general commercial interest of preserving confidential information”.³⁵

35. The proposed redacted information in this case is personal and commercially sensitive including: (i) the identity of certain specified key employees; and (ii) the negotiated commercial and economic terms of certain real property leases related to the Purchased Locations owned by Evelyn Aimis.³⁶

36. The Applicants’ believe that the disclosure of the key employee names at this time would cause potential discord among the Applicants’ employees, which has the potential to disrupt operations.³⁷ Further, the proposed terms of the leases with Evelyn Aimis reflect the commercial

³³ *Courts of Justice Act*, [RSO 1990, c C. 43, s 137\(2\)](#).

³⁴ *Sherman Estate v Donovan*, [2021 SCC 25](#) at [para 38](#); *Sierra Club v Canada (Minister of Finance)*, [2002 SCC 41](#) at [para 53](#)

³⁵ *DCL Corporation*, *supra* note 25 at [paras 38-47](#).

³⁶ Robertson Affidavit, *supra* note 1 at para 53, Motion Record at Tab 2 [[A/998](#)].

³⁷ *Ibid*, Motion Record at Tab 2 [[A/998](#)].

agreement between Evelyn Aimis and the Stalking Horse Bidder in the context of the Stalking Horse APA, the DIP Facility and the BF Credit Facility. These terms do not reflect those that may be offered to other bidders for these specific locations, and as such, are commercially sensitive information.³⁸

37. To mitigate any potential negative effects, the proposed redactions to the Stalking Horse APA are minimal, limited to what is necessary to protect privacy and prevent commercial harm. The proposed lease terms with Evelyn Aimis will also be made available to Qualified Bidders that have executed an NDA pursuant to the SISP.³⁹

38. Accordingly, the Applicants submit that the salutary effects of preserving confidential information, facilitating the maximization of value of the Applicants' assets, and maintaining the integrity of the SISP outweigh any potential negative effects arising from the sealing of the Confidential Exhibit.⁴⁰

39. The Monitor supports the sealing of the Confidential Exhibit.⁴¹

E. The Stay Extension Should be Approved

40. Subsection 11.02(2) of the CCAA authorizes this Court to grant an extension of the Stay of Proceedings for "any period the court considers necessary."⁴² To grant such an extension, this Court must be satisfied that circumstances exist that make the order appropriate and that the Applicants have acted, and are acting, in good faith and with due diligence.⁴³

³⁸ *Ibid* at para 53, Motion Record at Tab 2 [[A/998](#)].

³⁹ Third Report, *supra* note 1 s 4.9 at para 4 [[E/198](#)].

⁴⁰ *Ibid* at para 54, Motion Record at Tab 2 [[A/998](#)].

⁴¹ *Ibid*, Motion Record at Tab 2 [[A/998](#)]. Third Report, *supra* note 1 s 4.9 [[E/197](#)].

⁴² [CCAA](#), *supra* note 24 ss [11.02\(2\)](#). *Nordstrom Canada Retail, Inc.*, [2023 ONSC 1631](#) at [para 7](#) [*Nordstrom*].

⁴³ [CCAA](#), *ibid* ss [11.02\(2\)-\(3\)](#); *Nordstrom*, *ibid*.

41. The jurisdiction of courts to stay proceedings under section 11.02 “should be construed broadly to accomplish the legislative purposes of the CCAA”.⁴⁴ Accordingly, a stay of proceedings will be appropriate where it provides a debtor with breathing room while it seeks to restore solvency and continue as a going concern or arrange a “sale of assets in order to maximize recovery for stakeholders”.⁴⁵

42. Having regard to the foregoing, the Applicants submit that the proposed extension of the Stay of Proceedings is appropriate in the circumstances given that:

- (a) since the issuance of the Stay Extension and DIP Amendment Order, the Applicants, with the assistance of the Monitor, have acted in good faith and with due diligence to maintain ordinary course operations while negotiating the terms of the Stalking Horse APA and the SISP;
- (b) the proposed Stay Extension will allow the Applicants and the Monitor to conduct the SISP and, provide the Applicants with the requisite time to seek approval of the transaction contemplated under the Stalking Horse APA or one or more other value-maximizing transactions that may materialize in the SISP at a subsequent motion;
- (c) the Revised Cash Flow Forecast demonstrates that the Applicants will, subject to typical assumptions, be able to fund the SISP and support their ordinary course business operations and the costs of these CCAA proceedings through the end of the Stay Extension period;
- (d) the Applicants are not aware of any creditor that is expected to suffer material prejudice as a result of the proposed Stay Extension; and

⁴⁴ *Canwest Global Communications Corp.*, [2011 ONSC 2215](#) at [paras 24-25](#) [*Canwest*].

⁴⁵ *Canwest*, *ibid* at [para 24](#). *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#) at [paras 14-15](#) [*Century Services*]. *Target Canada Co. (Re)*, [2015 ONSC 303](#) at [para 8](#) [*Target*]. *Timminco Limited (Re)*, [2012 ONSC 2515](#) at [para 15](#) [*Timminco*].

- (e) the Monitor and the DIP Lender are supportive of the proposed extension, and the Monitor is of the view that it is reasonable and appropriate in the circumstances.⁴⁶

F. The Monitor's Fees, Activities and the Third Report Should be Approved

43. This Court has recognized that there are good policy and practical reasons to approve a monitor's activities and to provide a level of protection for monitors during a CCAA process.⁴⁷

44. In the present case, the Third Report, and the conduct and activities of the Monitor described therein should, be approved, given, among other things, that: (i) the Monitor has acted responsibly and carried out its activities in a manner consistent with the provisions of the CCAA and in compliance with the ARIO; and (ii) the SISP Approval Order contains the usual language that only the Monitor, in its personal capacity, is entitled to rely upon such approval.⁴⁸

45. Pursuant to the ARIO, the Monitor and its counsel are entitled to be paid their reasonable fees and disbursements, each at their standard rates and charges.⁴⁹ The ARIO also requires the Monitor and its counsel to pass their accounts.⁵⁰ Detailed invoices in respect of the fees of the Monitor and Chaitons are set out in the Fee Affidavits.⁵¹

46. The overarching test on a motion to pass accounts is to consider the "overriding principle of reasonableness", with the predominant consideration in such assessment being the overall value

⁴⁶ Robertson Affidavit, *supra* note 1 at paras 46-51, Motion Record at Tab 2 [A/996]. Third Report, *supra* note 1 ss 5.0, 8.0 [E/198].

⁴⁷ CCAA, *supra* note 24 s 11. *Re Target Canada Co*, 2015 ONSC 7574 at paras 1-2. *Laurentian University of Sudbury*, 2022 ONSC 5850 at para 17. *Laurentian University of Sudbury*, 2022 ONSC 2927 at para 13 [Laurentian].

⁴⁸ Robertson Affidavit, *supra* note 1 at para 57, Motion Record at Tab 2 [A/999]. Draft SISP Approval Order, Motion Record Tab 3 [A/1161]. Third Report, *supra* note 1 s 6.0 [E/199].

⁴⁹ *In the Matter of a Plan of Compromise or arrangement of Hakim Optical Laboratory Limited et al.*, (June 27, 2025), Toronto, CV-25-00743383-00CL (Amended and Restated Initial Order) at para 31.

⁵⁰ *Ibid* at para 32.

⁵¹ Third Report, *supra* note 1 s 7.0 [E/199, E/327, E/345].

contributed by the monitor and its counsel, as opposed to a docket-by-docket review.⁵²

47. The Applicants submit that the accounts of KSV and Chaitons are fair and reasonable in the circumstances. The Monitor and its counsel have provided valuable assistance and expertise to the Applicants and their stakeholders, both prior to and throughout these CCAA proceedings.⁵³ In particular, they played a critical role in finalizing the DIP Agreement, the Stalking Horse APA, and the SISP. Given the complexity of these matters, the expertise required, the time invested, and the depth of knowledge applied, the fees incurred are justified and reasonable in the circumstances.⁵⁴

PART V: RELIEF REQUESTED

48. The Applicants submit that the relief sought on the within motion is both necessary and appropriate in the circumstances and respectfully request that the proposed form of the SISP Approval Order be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 25TH DAY OF AUGUST, 2025

Bennett Jones LLP

BENNETT JONES LLP

⁵² *Laurentian*, *supra* note 46 at para 9. *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#) at [para 45](#). *Nortel Networks Inc.*, [2022 ONSC 6680](#) at [paras 10-11](#).

⁵³ Robertson Affidavit, *supra* note 1 at para 57, Motion Record at Tab 2 [[A/999](#)]. Third Report, *supra* note 1 ss 6.0-7.0 [[E/199](#)].

⁵⁴ Robertson Affidavit, *ibid*, Motion Record at Tab 2 [[A/999](#)]. Third Report, *ibid* [[E/199](#)].

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#).
2. *Cannapiece Group Inc v. Marzili*, [2022 ONSC 6379](#).
3. *Canwest Global Communications Corp.*, [2011 ONSC 2215](#).
4. *CCM Master Qualified Fund v. Bluetip Power Technologies*, [2012 ONSC 1750](#).
5. *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#).
6. *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#).
7. *DCL Corporation (Re)*, [2023 ONSC 3686](#).
8. *In The Matter of a Plan of Compromise or Arrangement of Fire & Flower Holdings Corp. et al.*, (June 21, 2023), Toronto, CV-23-00700581-00CL (Endorsement of Justice Osborne (SISP Approval Order)).
9. *In the Matter of a Plan of Compromise or arrangement of Hakim Optical Laboratory Limited et al.*, (June 27, 2025), Toronto, CV-25-00743383-00CL (Amended and Restated Initial Order).
10. *Laurentian University of Sudbury*, [2022 ONSC 2927](#).
11. *Laurentian University of Sudbury*, [2022 ONSC 5850](#).
12. *Nordstrom Canada Retail, Inc.*, [2023 ONSC 1631](#).
13. *Nortel Networks Corporation (Re)*, [2009 CanLII 39492 \(ONSC\)](#).
14. *Nortel Networks Inc.*, [2022 ONSC 6680](#).
15. *Re Freshlocal Solutions Inc.*, [2022 BCSC 1616](#).
16. *Re Target Canada Co*, [2015 ONSC 7574](#).
17. *Sherman Estate v Donovan*, [2021 SCC 25](#).
18. *Sierra Club v Canada (Minister of Finance)*, [2002 SCC 41](#).
19. *Target Canada Co. (Re)*, [2015 ONSC 303](#).
20. *Timminco Limited (Re)*, [2012 ONSC 2515](#).

21. *Validus Power Corp. et al. and Macquarie Equipment Finance Limited*, [2023 ONSC6367](#).

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

Dated: August 25, 2025

Linda Fraser-Richardson

Signature

SCHEDULE B – STATUTES RELIED ON

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

Section 11

General power of court

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.

Relief reasonably necessary

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (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.

Stays, etc. — other than initial application

(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.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Section 36

Restriction on disposition of business assets

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

Notice to creditors

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

Factors to be considered

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

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

Additional factors — related persons

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

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

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

(a) a director or officer of the company;

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

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

Assets may be disposed of free and clear

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

Restriction — employers

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

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

Courts of Justice Act, RSO 1990, c C. 43,

Section 137

Documents public

(1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Court lists public

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

Copies

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see.

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 HAKIM OPTICAL LABORATORY LIMITED,
LAWRENCE OPHTHALMIC LAB INC. AND HAKIM OPTICAL WORLDWIDE LENSES INC.

Court File No. CV-25-00743383-00CL

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

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(Returnable August 28, 2025)

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