

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

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C.,
1985, C. B-3, AS AMENDED**

Court No.: 31-3268936
Estate No.: 31-3268936

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF IOVATE
HEALTH SCIENCES INTERNATIONAL INC.**

Court No.: 31-3268942
Estate No.: 31-3268942

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF IOVATE
HEALTH SCIENCES U.S.A. INC.**

Court No.: 31-3268971
Estate No.: 31-3268971

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
NORTHERN INNOVATIONS HOLDING CORP.**

**FACTUM OF
IOVATE HEALTH SCIENCES INTERNATIONAL INC., IOVATE HEALTH SCIENCES U.S.A.
INC., AND NORTHERN INNOVATIONS HOLDING CORP.
(Returnable September 9, 2025)**

September 8, 2025

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TO: THE SERVICE LIST

1. This factum is filed by Iovate Health Sciences International Inc. ("**Iovate International**"), Iovate Health Sciences U.S.A. Inc. ("**Iovate USA**") and Northern Innovations Holding Corp. ("**Northern Innovations**") and together with Iovate International and Iovate USA, the "**Iovate Entities**") in support of its motion for an order, *inter alia*:

- (a) approving an administrative consolidation of the proposal proceedings commenced by Iovate International, Iovate USA and Northern Innovations (collectively, the "**Proposal Proceedings**") under one title of proceeding;
- (b) granting a charge on the assets, undertakings and properties of the Iovate Entities to a maximum amount of \$750,000 (the "**Administrative Professionals Charge**") to secure payment of the fees and disbursements of KSV Restructuring Inc., in its capacity as proposal trustee of the Iovate Entities (the "**Proposal Trustee**"), counsel to the Proposal Trustee, and Canadian and U.S. counsel to the Iovate Entities (collectively, the "**Administrative Professionals**"), provided that the Administrative Professionals Charge shall rank behind Encumbrances (as defined below) in favour of any Persons (as defined below) that have not been served with notice of this motion;
- (c) authorizing and empowering Iovate International to act as a foreign representative of the Proposal Proceedings (the "**Foreign Representative**") for the purpose of having the Proposal Proceedings recognized in a jurisdiction outside of Canada;
- (d) authorizing and empowering Iovate International, as Foreign Representative, to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended (the "**United**

States Bankruptcy Code") and any other provision of the *United States Bankruptcy Code*; and

- (e) such further and other relief as counsel may request and that this Honourable Court may deem appropriate.¹

PART II – SUMMARY OF FACTS

2. The Iovate Entities are part of a group of companies (the "**Iovate Group**") engaged in the development, production and sale of health and nutrition products in Canada, the United States, and elsewhere.² The Iovate Group's key brands include MuscleTech™, Hydroxycut™, Six Star®, and Purely Inspired®, which are sold in over 90 countries worldwide.³

3. The Iovate Group manufactures and distributes its products through third-party co-manufacturers and a network of international distribution partners. Its products are shipped from facilities in Canada, the United States, Belgium, and Australia, and sold through retail, online, and distributor channels globally.⁴

4. The Iovate Group leases its head office at 381 North Service Road West, Oakville, Ontario (the "**Oakville Head Office**"), which serves as the base of its executive management.⁵

5. Iovate International was continued under the *Business Corporations Act*, RSO 1990, c B.16 (the "**OBCA**") on April 13, 2021. It serves as the principal Canadian operating entity of the

¹ Affidavit of Wesley Parris, dated September 6, 2025 (the "**Parris Affidavit**") at para 3.

² Parris Affidavit at para 4.

³ Parris Affidavit at para 11.

⁴ Parris Affidavit at para 15.

⁵ Parris Affidavit at para 6.

Iovate Group.⁶ Iovate International employs approximately 165 people in Canada and 2 people in the United Kingdom.⁷

6. Iovate USA, incorporated under the laws of Delaware, conducts the Iovate Group's U.S. operations and wholly owns certain Delaware limited liability companies. Iovate USA maintains customer relationships in the United States and is responsible for overseeing third-party logistics operations relating to the storage, fulfillment, and distribution of the Iovate Group's products in that market.⁸ Iovate USA employs approximately 11 people in the United States.⁹

7. Northern Innovations, incorporated under the OBCA on April 1, 2021, holds the Iovate Group's intellectual property portfolio, including trademarks and patents associated with each of the Iovate Group's key brands, and licenses the rights to use those trademarks to Iovate International and Iovate USA.¹⁰ It does not have any employees.¹¹

8. The Iovate Group are in default under their syndicated credit agreement, with approximately USD \$115,785,488 owing to their lenders (the "**Lenders**") as of August 31, 2025.¹²

9. Iovate International and Iovate USA are jointly and severally liable under a judgement in favour of Orgain, Inc. ("**Orgain**") in the amount of USD \$12.5 million (the "**Judgement**"), which Orgain has sought to enforce through garnishments against major customers.¹³ In particular, on June 27, 2025, Orgain obtained a writ of garnishment against Walmart Inc. The garnishment, which

⁶ Parris Affidavit at para 8 and Exhibit "B".

⁷ Parris Affidavit at para 16.

⁸ Parris Affidavit at para 10 and Exhibit "C".

⁹ Parris Affidavit at para 17.

¹⁰ Parris Affidavit at paras 12-13 and Exhibit "D".

¹¹ Parris Affidavit at para 18.

¹² Parris Affidavit at para 25.

¹³ Parris Affidavit at paras 26 and 28 and Exhibit "E".

was subsequently served on Walmart Inc. by Orgain, has caused Walmart Inc. to withhold payment of approximately \$8 million which is required by the Iovate Entities for working capital.¹⁴

10. On August 25, 2025, Iovate International and Iovate USA were unsuccessful in obtaining an order of the Circuit Court of Benton County, Arkansas (the "**Arkansas Court**") quashing Orgain's writ of garnishment issued to Walmart Inc.¹⁵

11. On August 27, 2025, the Lenders issued demand letters requiring immediate repayment and delivered notices of intention to enforce security, citing prejudice to their collateral as a result of Orgain's enforcement efforts.¹⁶

12. In the circumstances, the Iovate Entities determined that it was necessary to commence the Proposal Proceedings under the *BIA* to obtain a stay of proceedings against the Iovate Entities and their property in order stabilize operations and pursue an orderly restructuring under Court supervision and to seek recognition thereof in the United States.¹⁷

13. On September 5, 2025, the Iovate Entities each filed a Notice of Intention to File a Proposal ("**NOI**") pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"). KSV Restructuring Inc. was appointed as the Proposal Trustee in each of the Proposal Proceedings.¹⁸

14. The Proposal Proceedings provided the Iovate Entities with a stay of proceedings that is necessary to preserve the Iovate Entities' enterprise value, protect their relationships with key customers, and to pursue a restructuring for the benefit of all creditors and other stakeholders.

¹⁴ Parris Affidavit at paras 30-31.

¹⁵ Parris Affidavit at para 32.

¹⁶ Parris Affidavit at paras 33 and 35.

¹⁷ Parris Affidavit at para 36.

¹⁸ Parris Affidavit at para 2.

PART III – ISSUES

15. The issues to be determined on this motion are whether the Court should:
- (a) administratively consolidate the Proposal Proceedings of the Iovate Entities;
 - (b) grant the Administrative Professionals Charge in favour of the Administrative Professionals; and
 - (c) authorize Iovate International to act as Foreign Representative of the Proposal Proceedings and authorize it to apply to the *United States Bankruptcy Court* for relief pursuant to Chapter 15 and any other provision of the *United States Bankruptcy Code*.

PART IV – LAW AND ARGUMENT

Consolidation of the NOI Proceedings

16. The Iovate Entities seek an order administratively consolidating the Proposal Proceedings under a joint title of proceedings to avoid multiplicity of proceedings and the associated costs.¹⁹

17. Proceedings under the *BIA* are subject to the general principle that the litigation process should secure the just, most expeditious and least expensive determination of every proceeding on its merits.²⁰ Although there is no express provision under the *BIA* that provides for consolidation of proceedings, joining closely related bankruptcy proceedings is a practical application of this general principle. Procedural or administrative consolidation does not involve the substantive merger or consolidation of the bankruptcy estates, merely their procedural treatment together by

¹⁹ Parris Affidavit at paras 37-38.

²⁰ [*Bankruptcy and Insolvency General Rules, CRC, c 368*](#), s 3; [*Rules of Civil Procedure, RRO 1990, Reg 194*](#), rule 1.04(1); [*Electro Sonic Inc \(Re\)*](#), 2014 ONSC 942 at [para 4](#) [*Electro*].

the court.²¹ Courts have granted similar orders to the one being requested herein pursuant to this rationale.²²

18. Administrative consolidation of the Proposal Proceedings is appropriate in the circumstances. The Iovate Entities are highly integrated and their Proposal Proceedings are largely driven by the same facts. All senior management is based at the Oakville Head Office, from which the Group's domestic and international operations are directed, including finance, supply chain, product management, and administrative functions. The Iovate Entities also have the same senior secured creditors.²³

19. The Proposal Trustee supports the consolidation of the Proposal Proceedings and there is no prejudice to any creditor if administrative consolidation is approved.

Granting the Administrative Charge

20. In order to protect the fees and expenses of the Administrative Professionals with respect and incidental to the Proposal Proceedings, the Iovate Entities seek a charge in the maximum amount of \$750,000 on the assets, undertakings and properties of the Iovate Entities (the "**Property**"), ranking in priority to all security interests, trusts, liens, charges and encumbrances (collectively, "**Encumbrances**") in favour of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**"), provided that the Administrative Professionals Charge shall rank behind Encumbrances in favour of any Persons that have not been served with notice of this motion.

21. Section 64.2 of the *BIA* confers on the court the statutory jurisdiction to grant a

²¹ *Electro* at [para 4](#).

²² *Electro* at [paras 4-6](#); *Mustang GP Ltd (Re)*, 2015 ONSC 6562 at [para 25](#); *Eureka 93 Inc et al (Re)*, 2020 ONSC 1482 at [para 13](#).

²³ Parris Affidavit at para 37.

professionals charge. Specifically, section 64.2 provides as follows:

64.2 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

(a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;

(b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

64.2 (2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.²⁴

22. Courts have considered the following non-exhaustive factors in determining whether an administrative charge is appropriate:

(a) the size and complexity of the business being restructured;

(b) the proposed role of the beneficiaries of the charge;

(c) whether there is any unwarranted duplication of roles;

(d) whether the quantum of the proposed charge appears to be fair and reasonable;

(e) the position of the secured creditors is likely to be affected by the charge; and

²⁴ *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s 64.2.

(f) the position of the proposal trustee.²⁵

23. The application of those factors to the facts of this case support granting the Administrative Professionals Charge.

24. The Iovate Entities require the expertise and involvement of Administrative Professionals to advance the Iovate Entities' complex restructuring process for the benefit of their creditors and stakeholders. The Administrative Professionals have already engaged in a significant amount of work in connection with the initial phase of the Proposal Proceedings and in connection with this motion. This includes, among other things, providing restructuring and insolvency advice, preparing the cash flow forecast, preparing, reviewing and commenting on the materials for this motion, and preparing for recognition of the Proposal Proceedings under Chapter 15 of the *United States Bankruptcy Code*. The Administrative Professionals will continue to play a key role in advancing the restructuring, and there is no unwarranted duplication of roles.

25. The amount of the Administrative Professionals Charge, being \$750,000, was determined in consultation with the Proposal Trustee and the Lenders. It is reasonable and proportionate to professional fee projections and is not inordinate having regard to the assets and liabilities of the Iovate Entities.

26. The Administrative Professionals Charge is supported by the Lenders. The Lenders have notice of the Administrative Professionals Charge and were served with the motion materials for this motion. The Iovate Entities do not seek to have the Administrative Professionals Charge prime the security held by secured creditors (if any) who have not received notice of this motion. The

²⁵ *Canwest Publishing Inc*, 2010 ONSC 222 at [para 54](#); *Springer Aerospace Holdings Limited*, 2022 ONSC 6581 at [paras 18-19](#); *Laurentian University of Sudbury*, 2021 ONSC 3545 at [paras 49-50](#); and *Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114 (ONSC) at [para 40](#).

Proposal Trustee also supports the granting of the Administrative Professionals Charge.

27. Accordingly, the Administrative Charge is appropriate and reasonable, meets the applicable criteria, and should be approved by the Court. Each of the professionals whose fees are to be secured by the Administration Professionals Charge has played and will continue to play a critical role in the Proposal Proceedings.

Authorizing Iovate International to act as Foreign Representative and seek recognition under Chapter 15 of the United States Bankruptcy Code

28. Pursuant to section 279 of the *BIA*, the Court may authorize any person or body to act as a representative in respect of any proceedings under the *BIA* for the purpose of having them recognized in a jurisdiction outside of Canada.²⁶

29. Cross-border recognition of insolvency proceedings is a useful tool for corporate groups which have assets on both sides of the Canada-United States border. Courts have consistently recognized the benefits of cooperation between courts to enable multinational enterprises to restructure on a cross-border basis and have granted orders permitting foreign representatives to seek recognition of Canadian insolvency proceedings under the United States Bankruptcy Code.²⁷

30. In *Electro Sonic Inc. (Re)*, this Court appointed the proposal trustee as foreign representative of the proposal proceedings of the debtor companies for the purpose of having the proposal proceedings recognized in a jurisdiction outside of Canada. The proposal trustee was also authorized to apply to the United States for relief pursuant to Chapter 15 of United States

²⁶ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 279.

²⁷ *Electro* at [para 13](#). See also *PT Holdco Inc. (Re)*, 2016 ONSC 495 at [paras 44-45](#); *Nortel Networks Corporation (Re)*, 2009 CanLII 726 (ONSC) at [paras 43-44](#).

Bankruptcy Code.²⁸

31. Iovate International is an appropriate entity to act as Foreign Representative in respect of the Proposal Proceedings because it is one of the entities that has filed a notice of intention to make a proposal and it serves as the principal Canadian operating entity of the Iovate Group.

32. In order to enforce the stay of proceedings resulting from the commencement of the Proposal Proceedings in the United States, and to facilitate the contemplated restructuring of the Iovate Entities, it is necessary to seek recognition of the Proposal Proceedings by the United States Bankruptcy Court.

33. There is a material risk that parties in the United States will, absent a recognition of the stay of proceedings, take actions that will harm the Iovate Entities' restructuring efforts.²⁹ Furthermore, absent recognition of the stay, continued enforcement efforts by Orgain of the Amended Judgement are expected to materially disrupt the Iovate Entities' cash flow, impair their relationships with key customers, and jeopardize the stability of their business operations.³⁰

34. Authorizing Iovate International to act as Foreign Representative and to seek recognition of the Proposal Proceedings in the United States is consistent with established principles of comity and cooperation between courts in cross-border insolvencies and is expected to facilitate the restructuring of the Iovate Entities on a cross-border basis.

²⁸ *Electro* at [para 13](#).

²⁹ Parris Affidavit at para 39.

³⁰ Parris Affidavit at para 40.

PART IV – ORDERS REQUESTED

35. For the above reasons, the Iovate Entities request the order sought at paragraph 1 of this factum.

36. I hereby certify that I am satisfied as to the authenticity of every authority cited in this factum.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of September, 2025.



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SCHEDULE “A”

AUTHORITIES

1. [*Canwest Global Communications Corp. \(Re\)*, 2009 CanLII 55114 \(ONSC\)](#)
2. [*Canwest Publishing Inc.*, 2010 ONSC 222](#)
3. [*Electro Sonic Inc. \(Re\)*, 2014 ONSC 942 \(Commercial List\)](#)
4. [*Eureka 93 Inc. et al. \(Re\)*, 2020 ONSC 1482](#)
5. [*Laurentian University of Sudbury*, 2021 ONSC 3545](#)
6. [*Mustang GP Ltd. \(Re\)*, 2015 ONSC 6562](#)
7. [*Nortel Networks Corporation \(Re\)*, 50 CBR \(5th\) 77 \(ONSC\)](#)
8. [*PT Holdco Inc. \(Re\)*, 2016 ONSC 495](#)
9. [*Springer Aerospace Holdings Limited*, 2022 ONSC 6581](#)

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

Who may make a proposal

Section 50(1)

Subject to subsection (1.1), a proposal may be made by

- (a) an insolvent person;
- (b) a receiver, within the meaning of subsection 243(2), but only in relation to an insolvent person;
- (c) a liquidator of an insolvent person's property;
- (d) a bankrupt; and
- (e) a trustee of the estate of a bankrupt.

Notice of intention

Section 50.4(1)

Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person's locality, stating

- (a) the insolvent person's intention to make a proposal,
- (b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and
- (c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor's books, and attaching thereto a copy of the consent referred to in paragraph (b).

Court may order security or charge to cover certain costs

Section 64.2(1)

On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

- (a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;
- (b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is

satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

Priority

Section 64.2(2)

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

Authorization of foreign representative

Section 279

The court may authorize any person or body to act as a representative in respect of any proceedings under this Act for the purpose of having them recognized in a jurisdiction outside Canada.

Bankruptcy and Insolvency General Rules, CRC, c. 368

Section 3

Where these Rules do not provide for a matter in respect of which rules are required, the practice shall be determined by the court, and in the case of proceedings in the Superior Court, by the rules of procedure of that court.

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

Rule 1.04(1)

These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

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