

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ECN FINANCIAL INC.

Applicant

- and -

**2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518 ONTARIO INC., FAMILY
HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS LTD.,
2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475
ONTARIO INC.**

Respondents

**MOTION RECORD
returnable January 23, 2020
(Motion re Mahmood Deposit)**

DATE: January 16, 2020

GOLDMAN SLOAN NASH & HABER LLP
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Lawyers for the Receiver, KSV Kofman Inc.

TO: THE SERVICE LIST

AND TO: PAROIAN SKIPPER LAWYERS

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AND TO: DANI DIENA

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AND TO: REMAX WEST REALTY INC.

96 Rexdale Blvd

Toronto, ON M9W 1N7

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ECN FINANCIAL INC.

Applicant

- and -

**2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518 ONTARIO INC., FAMILY
HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS LTD.,
2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475
ONTARIO INC.**

Respondents

**NOTICE OF MOTION
returnable January 23, 2020
(Motion re Mahmood Deposit)**

KSV Kofman Inc. (“KSV”) in its capacity as the Court-appointed receiver (in such capacity, the “Receiver”) of the property, assets and undertaking of Rando Drugs Ltd. (“Rando”) and the other Respondents (collectively, the “Company”), will make a motion to a judge of the Commercial List of the Superior Court of Justice at 330 University Avenue, Toronto, ON M5G 1R7 on **Thursday, January 23, 2020** at 10:00 a.m. or as soon thereafter as the motion can be heard.

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

___ in writing under subrule 37.12.1(1) because it is made without notice;

___ in writing as an opposed motion under subrule 37.12.1(4); or

X orally.

THE MOTION IS FOR AN ORDER:

- (a) directing the release of the deposit funds being held by Remax West Realty Inc. (“**Remax**”) in the amount of \$400,000 (plus any accrued interest) (the “**Mahmood Deposit**”) to the Receiver and Almas Mahmood (“**Mahmood**”) or as she may direct in the following amounts:
- (i) to the Receiver: \$20,000 plus HST in respect of its costs; and
 - (ii) the balance to Mahmood (the “**Returned Funds**”);
- (b) directing that upon the receipt of Returned Funds, Mahmood will take all steps necessary to file a notice of abandonment, without costs, of its application currently pending before the Ontario Superior Court of Justice in Windsor bearing Court File No.: CV-19-27827 (the “**Mahmood Application**”) and the Receiver and Remax shall consent to the filing of such notice;
- (c) directing that, concurrently with the abandonment of the Mahmood Application, the Receiver will take all steps necessary to file a notice of discontinuance of the statement of claim, without costs, of Rando Drugs Ltd. against Mahmood and Remax (the “**Defendants**”) bearing Court File No.: CV-19-00621535-0000 (the “**Rando Statement of Claim**”) and Mahmood and Remax shall consent to the filing of such notice;
- (d) directing that the Receiver, and its counsel, are entitled to its costs of this matter including reviewing all applicable material, bringing this motion and dismissing the actions referred above in an amount of \$20,000 plus HST; and
- (e) such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) pursuant to an Order of the Honourable Justice Hainey made December 4, 2019 (the “**Receivership Order**”), KSV was appointed Receiver of the property, assets and undertaking of Rando and the other Respondents;
- (b) shortly after its appointment, Goldman Sloan Nash & Haber LLP (“**GSNH**”), the Receiver’s counsel, was advised by Paroian Skipper Lawyers, (“**Paroian**”), Mahmood’s

counsel, that Rando is litigating in Windsor, Ontario with Mahmood in the Ontario Superior Court of Justice (the “**Windsor Court**”), Court File No.: CV-19-27827, in relation to the sale of Rando’s four pharmacies (the “**Mahmood Transaction**”) pursuant to an agreement of purchase and sale between Rando and Mahmood dated June 25, 2018, as amended (the “**APS**”), which was not completed;

- (c) Parioan provided GSNH and the Receiver with copies of the court materials that were filed in the Windsor Court and advised that a motion was scheduled to be heard on December 12, 2019 for the relief sought by Mahmood, including the return of the Mahmood Deposit paid in the Mahmood Transaction;
- (d) the Receiver advised Parioan that pursuant to the Receivership Order, the Company’s proceedings with Mahmood are stayed, however, the Receiver would review the materials and advise of its position;
- (e) a summary of the situation outlined in the court materials filed by Mahmood in the Windsor Court is set out in the First Report of the Receiver, dated January 16, 2020 (the “**First Report**”);
- (f) the Receiver and its counsel have reviewed the materials filed in connection with the Mahmood Application and the Rando Statement of Claim and based on the review it appears that Mahmood is entitled to the return of the Mahmood Deposit, principally because the conditions in the APS were not satisfied;
- (g) in order to settle this matter, Mahmood and the Receiver have agreed, subject to Court approval:
 - (i) to return the Mahmood Deposit to Mahmood, less \$20,000 (plus HST) to be paid to the Receiver as reimbursement of its costs for dealing with this matter; and
 - (ii) to consent to the abandonment of the Mahmood Application and the discontinuance of the Rando Statement of Claim; and
- (h) such further and other grounds as counsel may advise and this Court may permit.

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

- (a) The First Report, to be filed; and
- (b) Such further and other evidence as counsel may advise and this Honourable Court may permit.

DATE: January 16, 2020

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Lawyer for Almas Mahmood

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AND TO: REMAX WEST REALTY INC.

96 Rexdale Blvd

Toronto, ON M9W 1N7

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF s. 243 (1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

BETWEEN:

ECN FINANCIAL INC.

Applicant

- and -

2345760 ONTARIO INC., RANDO DRUGS LTD, 2275518 ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC. (formerly known as M. BLACHER DRUGS LTD.), 2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475 ONTARIO INC.

Respondents

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ECN FINANCIAL INC. and 2345760 ONTARIO INC., et al.

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced TORONTO**

**NOTICE OF MOTION
returnable January 23, 2020
(Motion re Mahmood Deposit)**

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Lawyers for the Receiver, KSV Kofman Inc.

TAB 2



**First Report of
KSV Kofman Inc.
as Receiver of the assets, property and
undertaking of Rando Drugs Ltd.
and Related Companies**

January 16, 2020

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COURT FILE NO.: CV-19-00632106-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ECN FINANCIAL INC.

APPLICANT

- AND -

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518 ONTARIO INC., FAMILY
HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS LTD.,
2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475
ONTARIO INC.

RESPONDENTS

FIRST REPORT OF
KSV KOFMAN INC.
AS RECEIVER OF THE ASSETS, PROPERTY AND UNDERTAKING OF
RANDO DRUGS LTD. AND RELATED COMPANIES

JANUARY 16, 2020

1.0 Introduction

1. This report (the "Report") is filed by KSV Kofman Inc. ("KSV") in its capacity as receiver (the "Receiver") of the property, assets and undertaking of 2345760 Ontario Inc ("2345"), Rando Drugs Ltd. ("Rando"), 2275518 Ontario Inc. ("2275"), M. Blacher Drugs Ltd¹. ("Blacher"), 2501380 Ontario Inc. ("2501"), 2527218 Ontario Inc. ("2527218"), Dumopharm Inc. ("Dumopharm") and 2527475 Ontario Inc. ("2527475") (collectively, the "Company").
2. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on December 4, 2019 (the "Receivership Order"), KSV was appointed Receiver. A copy of the Receivership Order is attached as Appendix "A".
3. The principal purpose of the receivership proceedings is to allow the Company's business to continue to operate on a going-concern basis while the Receiver works to complete a sale of the business on a going-concern basis.

¹ Now known as Family Health Pharmacy West Inc. This should not be confused with Family Health Pharmacy West, which is an unincorporated division of Rando.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information regarding the Company;
 - b) discuss the sale of Rando's four pharmacies pursuant to an agreement of purchase and sale between Rando and Almas Mahmood ("Mahmood") dated June 25, 2018, as amended (the "APS"), which was not completed (the "Mahmood Transaction");
 - c) seek the Court's advice and direction regarding litigation commenced by Mahmood for, among other things, the return of her \$400,000 deposit (plus any accrued interest) being held by Remax West Realty Inc. ("Remax"); and
 - d) recommend that the Court issue an order:
 - directing the Receiver to have Remax release the Deposit to Mahmood (less the Receiver's costs in connection with the matter of \$20,000 plus HST); and
 - directing Mahmood and the Receiver to file notices of abandonment or discontinuance with respect to the pending litigation.

1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon unaudited financial information prepared by the Company, the books and records of the Company and discussions with representatives of the Company. The Receiver has not performed an audit or other verification of such information. The Receiver accepts no reliance for any financial disclosure provided in this Report and any party interested in the Company is encouraged to perform its own due diligence.

2.0 Background

1. As of the date of the Receivership Order, 2345 was indebted to ECN Financial Inc. ("ECN") in the amount of approximately \$4.3 million (the "ECN Facility"). Each of Rando, 2275, Blacher, 2501, 2527218, Dumopharm and 2527475 are secured guarantors of 2345's indebtedness under the ECN Facility.
2. Of the borrowers and guarantors under the ECN Facility, the only businesses are carried on by Rando, which owns and operates four pharmacies in Southwestern Ontario under the PharmaChoice banner (the "Pharmacies") and by 2275, which operates a physiotherapy clinic in North York known as Abira Healthcare.
3. Each pharmacy is a separate division of Rando. Dani Diena is the President of Rando and every other Company subject to the Receivership Order.
4. Additional information about the Company is provided in KSV's report to Court as proposed Receiver dated December 3, 2019 (the "Pre-filing Report"). A copy of the Pre-filing Report is provided in Appendix "B", without appendices.

3.0 The Mahmood Transaction

1. Shortly after its appointment, Goldman, Sloan, Nash & Haber LLP ("GSNH"), the Receiver's counsel, was advised by Paroian Skipper Lawyers, ("Paroian"), Mahmood's counsel, that Rando is litigating in Windsor, Ontario with Mahmood in the Ontario Superior Court of Justice (the "Windsor Court"), file number CV-19-27827 in relation to the Mahmood Transaction.
2. Paroian provided GSNH and the Receiver with copies of the materials that were filed with the Windsor Court. Paroian advised that a motion was scheduled to be heard on December 12, 2019 for the relief sought by Mahmood, including the return of her Deposit.
3. The Receiver advised Paroian that pursuant to the Receivership Order, the Company's proceedings with Mahmood are stayed; however, the Receiver would review the materials and advise of its position once it had done so.
4. The following is a summary of the situation outlined in the materials filed by Mahmood in the Windsor Court:
 - a) Rando and Mahmood entered into the APS on June 25, 2018. It was amended on or about December 25, 2018 and again on March 17, 2019.
 - b) The APS contemplates the sale of the Pharmacies by Rando to Mahmood, with a completion date of April 29, 2019.
 - c) The APS required Mahmood to pay a deposit of \$400,000. The Deposit was paid to Remax on June 27, 2018. It is presently in a Remax trust account.
 - d) As all four Pharmacies operate from leased premises, the APS included a condition in favour of Mahmood that all four landlords approve the assignment of their leases to Mahmood. As a result of this condition, counsel for Mahmood provided Rando with four lease assignments to be executed by the landlord for each of the leased premises.
 - e) On or about April 18, 2019, Rando returned two of the lease assignments; however, according to Mahmood's materials, the lease assignments included changes that Mahmood says she did not approve.
 - f) Counsel for Mahmood communicated with Rando on April 23, 2019, describing the unapproved changes and identifying additional amendments it required to the two lease assignments. Rando was unable to provide the two lease assignments in the form required by Mahmood. Additionally, Rando was unable to obtain lease assignments for the other two pharmacies.
 - g) Pursuant to a letter dated April 30, 2019, Mahmood's counsel advised Rando of its failure to satisfy the buyer's conditions in the APS and indicated that, in its view, the transaction was at an end and that Mahmood was entitled to terminate the APS and a return of the Deposit. Mahmood's counsel requested that Rando sign a mutual release pursuant to the provisions in the APS and that it consent to the return of the Deposit.

- h) Rando refused to sign the mutual release or consent to the release of the Deposit and instead alleged that Mahmood had aborted the transaction and that it would be filing a statement of claim for specific performance or damages.
5. Pursuant to a notice of application with court file number CV-19-27827 dated June 13, 2019 (the "Mahmood Application") filed with the Windsor Court, Mahmood sought declarations that the APS is null and void, Rando breached the terms of the APS, Mahmood terminated the APS on April 30, 2019 in accordance with its terms and the Deposit is required to be returned to Mahmood.
 6. In response to the Mahmood Application, Rando filed a responding record and issued a statement of claim with court file number CV-19-00621535-0000 (the "Rando Statement of Claim") pursuant to which Rando sought damages for, among other things, breach of contract and an order requiring Mahmood to purchase the Pharmacies for a specific amount².
 7. According to Mr. Diena, it was Mahmood's responsibility to obtain the lease assignments and Rando only provided the assignments when Mahmood was unable or unwilling to do so. Mr. Diena further advised that Mahmood never provided explanations as to the deficiencies in the two lease assignments that Rando was able to deliver.
 8. The Receiver and its counsel have reviewed the materials filed in connection with the Mahmood Application and the Rando Statement of Claim. Based on the review, including the first hand evidence included by Mahmood in her application, it would appear that Mahmood is entitled to the return of the Deposit, principally because the conditions in the APS were not satisfied and there is no evidence to suggest that she did not fulfill her obligations under the APS whereas there is clear evidence that Rando indicated that the purchaser was not entitled to contact certain landlords. It is also the Receiver's view that the balance of the litigation, including Rando's counterclaim, should be dismissed without costs as there appears to be no evidence to support such relief, including the damages claimed by Rando. The Receiver has advised Mr. Diena of its position and has served Mr. Diena with these materials.
 9. In order to settle the matter, Mahmood and the Receiver have agreed to the following (subject to Court approval):
 - a) Return of the Deposit to Mahmood less \$20,000 (plus HST) to be paid to the Receiver as a reimbursement of its costs for dealing with this matter; and
 - b) Consents to the abandonment of the Mahmood Application and the discontinuance of the Rando Statement of Claim.

² Mr. Diena advised that the agreed purchase price was \$8.2 million and not \$8.75 million as reflected in the APS.

4.0 Conclusion and Recommendation

1. Based on the foregoing, KSV respectfully recommends that the Court make an order directing the Receiver to authorize Remax to release the deposit as follows: to the Receiver \$20,000 plus HST and the balance to Mahmood and directing the parties to vacate or dismiss the litigation.

* * *

All of which is respectfully submitted,

KSV Kofman Inc

**KSV KOFMAN INC.,
SOLELY IN ITS CAPACITY AS RECEIVER OF
THE PROPERTIES, ASSETS AND UNDERTAKINGS OF
RANDO DRUGS LTD. AND RELATED COMPANIES
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix "A"

17



Court File No. CV-19-00632106

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)
JUSTICE HAINEY)
)
) WEDNESDAY, THE 4TH
) DAY OF DECEMBER, 2019

BETWEEN

ECN FINANCIAL INC.

Applicant

- and -

2345760 ONTARIO INC., RANDO DRUGS LTD, 2275518 ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS LTD., 2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475 ONTARIO INC.

Respondents

**ORDER
(appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing KSV Kofman Inc. ("KSV") as receiver (in such capacity, the "Receiver") without security, of all of the assets, undertakings and properties of 2345760 Ontario Inc., ("234") Rando Drugs Ltd. ("Rando"), 2275518 Ontario Inc. ("227"), Family Health Pharmacy West Inc. Formerly known as M. Blacher Drugs Ltd. ("West Inc."), 2501380 Ontario Inc. ("250"), 2527218 Ontario Inc. ("25272"), Dumopharm Inc. ("Dumopharm") and 2527475 Ontario Inc. ("25274") (together, the

"Debtors") acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Adam Flomen sworn December 3, 2019, the pre-filing report filed by KSV dated December 3, 2019 (the "**Report**"), and on hearing the submissions of counsel for the Applicant and the Respondent, and on reading the Consent executed by the Defendants to the appointment of a receiver, the Consent executed by KSV to act as the Receiver and the Affidavit of Service of Maureen McLaren sworn December 3, 2019,

SERVICE

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

APPOINTMENT

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

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage pharmacists, consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors, and to deposit such monies in a separate bank account controlled by the Receiver and pay such disbursements that are necessary for the continued operation of the business of the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;

- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including pursuant to the Sale Process (defined below), including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$100,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to summarily dispose of Property that is perishable or likely to depreciate rapidly in value;

- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the Receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (q) to enter into agreements with any licensed insolvency trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (s) to inquire into and report to the Applicant and the Court on the financial condition of the Debtors and the Property and any material adverse developments relating to the financial condition of the Debtors and/or the Property; and
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;
- (u) and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

5A. THIS COURT ORDERS that, should the Receiver deem it necessary to seek from any insurance company or its pharmacy benefits manager personal information regarding persons covered pursuant to benefit plans which might have had claims under such plans relating to the Debtors, such information shall be sought pursuant to a

motion on notice to the insurance company and its pharmacy benefits manager. Such information shall only be released by the insurance company or its pharmacy benefits manager on the agreement of such insurance company or as provided in the Order so obtained.

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

6A. THIS COURT ORDERS that in respect to the Client Records, the Receiver shall: (i) take all steps reasonably necessary to maintain the integrity of the confidential aspect of the Client Records; (ii) if necessary, appoint a pharmacist licensed and qualified to practice in the Province of Ontario to act as custodian (the "Custodian") for the Client Records; (iii) not allow anyone other than the Receiver or the Custodian to have access to the Client Records; (iv) allow the Debtors supervised access to the Client Records for any purposes required pursuant to the *Regulated Health Professions Act, 1991*, the *Pharmacy Act, 1991* or any other governing Ontario or Canadian statute, that requires the Debtors, from time to time, to perform certain obligations.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, claims processing services, payment processing services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post

Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

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

SALE PROCESS

14A. THIS COURT ORDERS that sale process as described in Section 5 of the Report (the "Sale Process") be and is hereby approved provided that the approval of the Sale Process shall not preclude the Receiver from entering into one or more sale transactions without conducting the Sale Process.

14B. THIS COURT ORDERS that Confidential Appendix E to the Report be and is hereby sealed pending further Order of this Court.

PIPEDA

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

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

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other

contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the Ontario *Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"); provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

20. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its

legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

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

FUNDING OF THE RECEIVERSHIP

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

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

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

following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

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

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

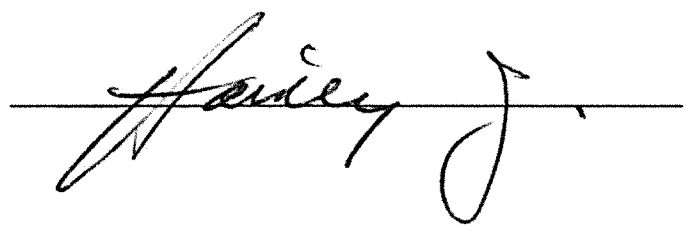
30. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

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

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

34. THIS COURT ORDERS that the Receiver, its counsel and counsel for the Applicant are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).



SUPERIOR COURT OF JUSTICE
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SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Kofman Inc., the Receiver (the "Receiver") of the assets, undertakings and properties 2345760 Ontario Inc., Rando Drugs Ltd., 2275518 Ontario Inc., Family Health Pharmacy West Inc. Formerly known as M. Blacher Drugs Ltd., 2501380 Ontario Inc., 2527218 Ontario Inc., Dumopharm Inc. and 2527475 Ontario Inc. (collectively the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 4th day of December, 2019 (the "Order") made in an action having Court file number CV-19-00632106, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

- 4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
- 5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
- 6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
- 7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 2019.

KSV Kofman Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per
:

Name:
Title:

ECN FINANCIAL INC.
Applicant

and

2345760 ONTARIO INC., et al.
Respondents

Court File No: CV-19-00632106

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

**ORDER
(APPOINTING RECEIVER)**

MILLER THOMSON LLP
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Tel: 416.595.8596
Email: cmills@millertomson.com

Fax: 416.595.8695

Solicitors for the Applicant

Appendix “B”



ksv advisory inc.

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**Report of
KSV Kofman Inc.
as Proposed Receiver of Rando Drugs Ltd.
and Related Companies**

December 3, 2019

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COURT FILE NO.: CV-19-00632106-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF s. 243 (1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

BETWEEN:

ECN FINANCIAL INC.

APPLICANT

- AND -

2345760 ONTARIO INC., RANDO DRUGS LTD., GRACE DIENA, 2275518 ONTARIO INC.,
FAMILY HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS
LTD., 2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475
ONTARIO INC.

RESPONDENT

REPORT OF
KSV KOFMAN INC.
AS PROPOSED RECEIVER

DECEMBER 3, 2019

1.0 Introduction

1. This report (the "Report") is filed by KSV Kofman Inc. ("KSV") as proposed receiver and manager of the property, assets and undertaking of 2345760 Ontario Inc ("2345"), Rando Drugs Ltd. ("Rando"), 2275518 Ontario Inc. ("2275"), M. Blacher Drugs Ltd¹. ("Blacher"), 2501380 Ontario Inc. ("2501"), 2527218 Ontario Inc. ("2527218"), Dumopharm Inc. ("Dumopharm") and 2527475 Ontario Inc. ("2527475") (collectively, the "Company"). Although Grace Diena is listed as a respondent above, KSV understands no order is being sought against her at this time.

¹ Now known as Family Health Pharmacy West Inc. This should not be confused with Family Health Pharmacy West, which is an unincorporated division of Rando.

2. As of the date of this Report, 2345 was indebted to ECN Financial Inc. ("ECN") in the amount of approximately \$4.1 million (the "ECN Facility"). Each of Rando, 2275, Blacher, 2501, 2527218, Dumopharm and 2527475 are secured guarantors of 2345's indebtedness under the ECN Facility.
3. Of the borrowers and guarantors under the ECN Facility, the only business is carried on by Rando, which operates four pharmacies in Southwestern Ontario under the PharmaChoice banner (the "Pharmacies"). Each pharmacy is an unincorporated division of Rando.
4. On July 17, 2019, the Company and ECN entered into a Forbearance Agreement (the "Forbearance Agreement"). ECN's application materials will provide further background about the events of default leading up to the entry into the Forbearance Agreement. Specifically, as it pertains to KSV, pursuant to the Forbearance Agreement:
 - a) the Company agreed to retain KSV Advisory Inc.² to act as its advisor (the "Advisor") to conduct a refinancing and sale process for the Pharmacies (the "RSP") [section 5.1(a)]. The Forbearance Agreement originally contemplated the retention of a different advisory firm; however, 2345 and ECN agreed to retain KSV for the mandate;
 - b) the Company agreed that KSV's appointment as Advisor did not preclude it from being appointed as receiver [section 6.2(f)]; and
 - c) the Company consented to the appointment of a receiver which consent was to be held in escrow pending the termination of the Forbearance Agreement or an "intervening event" (as defined therein) [Section 3.2(c) and Schedule G].
5. The Company entered into an engagement letter with KSV dated July 31, 2019 (the "Engagement Letter") appointing it as Advisor as contemplated by the Forbearance Agreement. Pursuant to Section 7 of the Engagement Letter, the Company specifically consented to KSV or its affiliates acting as a court-appointed officer in any formal insolvency proceeding involving the Company.
6. Copies of the Forbearance Agreement and the Engagement Letter are attached as Appendices "A" and "B" respectively.
7. The principal purpose of the receivership proceedings is to allow the Company's business to continue to operate on a going-concern basis while a Court-supervised sale process for the Company's business and assets is carried out by a receiver. In its role as Advisor, KSV has already conducted an extensive RSP with respect to the Pharmacies including preparing teaser letters, confidential information memoranda and the like.

² KSV Kofman Inc. carries out all of KSV's formal insolvency appointments. Consulting services are provided by KSV Advisory Inc.

8. KSV has consented to act as receiver. A copy of KSV's consent is attached as Appendix "C". KSV is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "BIA"). KSV is not the auditor of the Company. KSV is not subject to any of the restrictions on who may be appointed as receiver set out in section 13.3 of the BIA.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information regarding the Company;
 - b) summarize the RSP carried out by KSV as Advisor;
 - c) summarize the proposed process pursuant to which the Company's business and assets would be marketed for sale by KSV, as receiver, during the receivership proceedings (the "Sale Process"); and
 - d) recommend that the Court issue an order, among other things:
 - i. appointing KSV as receiver and manager of the Company; and
 - ii. approving the Sale Process.

1.2 Restrictions

1. In preparing this Report, KSV has relied upon unaudited financial information prepared by the Company, the books and records of the Company and discussions with representatives of the Company. KSV has not performed an audit or other verification of such information. An examination of the Company's financial forecasts as outlined in the Chartered Professional Accountant Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based on the Company's representative's assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. KSV accepts no reliance for any financial disclosure provided in this Report and any party interested in the Company is encouraged to perform its own due diligence.

2.0 Company Background

1. The Pharmacies (all of which are owned by Rando) are located in Southwestern, Ontario. Each pharmacy is a separate division of Rando. Dani Diena is the President of Rando and of every other Company subject to the Application. A corporate chart is provided in Appendix "D".
2. The Pharmacies are located at the following addresses:
 - a) Family Health Pharmacy West located at 1604 Tecumseh Road West, Windsor ("Pharmacy West");

- b) Family Health Pharmacy East located at 6720 Hawthorne Drive, Windsor ("Pharmacy East");
 - c) Novacare Pharmacy located at 3A-1275 Walker Road, Windsor; and
 - d) Family Health Pharmacy Walpole located at 785 Tecumseh Road, Walpole Island.
2. The Pharmacies largely operate independently, with minimal support from Rando. Rando provides some administrative head office functions for the Pharmacies.
 3. Excluding Mr. Diena, Rando has approximately 19 employees and 11 contractors who work in the Pharmacies. The business is also supported by a controller who works at Rando's head office in North York, Ontario. The controller is not exclusively dedicated to Rando's business. Rando's workforce is not unionized, and Rando does not provide a pension plan.

3.0 ECN and the Forbearance Agreement

1. ECN is the Company's most significant secured creditor. As at the date of this Report, ECN was owed approximately \$4.1 million. The ECN application materials provide details concerning the defaults under the ECN Facility, the circumstances of the Forbearance Agreement and the subsequent defaults leading to this Application.
2. Pursuant to the Forbearance Agreement, the Company was required to retain an advisor to conduct a process that, by November 30, 2019, would result in either:
 - a) an executed and verifiable commitment letter for a refinancing of all the ECN debt with a transaction closing date on or before December 31, 2019; or
 - b) an executed and verifiable agreement of purchase and sale in respect of the Pharmacies in an amount sufficient to pay the ECN Facility in full, with a closing date on or before December 31, 2019.

4.0 RSP

1. KSV's mandate, as detailed in the Engagement Letter, was as follows:
 - a) identifying prospective buyers, lenders and/or investors;
 - b) assisting in preparing financial information to support due diligence and drive value;
 - c) preparing marketing materials, in cooperation with the Company, including a teaser (high-level anonymous information), and Confidential Information Memorandum ("CIM") (more in depth based on confidential information);
 - d) preparing instructions to potential interested parties regarding the process (including draft Asset Purchase Agreement ("APA"), sale approval order, etc., as determined to be appropriate in the circumstances);

- e) marketing the Pharmacies;
 - f) maintaining the virtual data room ("VDR"), as populated with the assistance of the Company;
 - g) reviewing, analyzing, and recommending offers received;
 - h) assisting in negotiating, finalizing and closing an offer; and
 - i) performing other services as may be informed by the RSP terms agreed between the Company and ECN pursuant to the Forbearance Agreement.
2. The table below summarizes the RSP timelines:

	Date
Commencement of RSP	August 22, 2019
Preliminary Letter of Intent ("LOI") deadline	September 20, 2019
Final LOI deadline	October 4, 2019
Target closing date deadline	October 18, 2019

3. The Engagement Letter permits KSV to report directly to ECN and to act as a court officer in any formal insolvency proceedings involving the Company. At the introductory meeting between representatives of KSV (Robert Kofman and Eli Brenner) and Mr. Diena, Mr. Kofman made specific reference to these provisions of the Engagement Letter.
4. The details of the steps taken by KSV in the RSP are outlined on Confidential Appendix "1". KSV believes that the information set out in the confidential appendix should be sealed pending the earlier of the negotiation of a successful sale transaction or further order of the Court as it could potentially prejudice subsequent negotiations or re-engagement with potential buyers.
5. On November 29, 2019, KSV learned that the landlord for Pharmacy East sent a letter to Mr. Diena dated September 25, 2019 purporting to terminate the lease for Pharmacy East effective November 30, 2019. The landlord has since extended the purported termination to December 31, 2019. If this lease is terminated, it will materially affect the value of any transaction for the Pharmacies. The landlord of Pharmacy East is also the landlord of Pharmacy West. KSV was extremely surprised that Mr. Diena did not disclose to it the purported Pharmacy East lease termination at the time it occurred given the materiality of this development on the RSP. If appointed receiver, KSV intends to engage with the Pharmacy East landlord immediately following its appointment.

5.0 Sale Process

1. If appointed Receiver, KSV intends to immediately re-engage with the parties that submitted offers in the RSP. If one or more of those parties continue to have an interest in the opportunity, KSV intends to attempt to complete a binding agreement of purchase and sale with one of those parties as soon as possible. KSV will also engage with parties who expressed an interest in the opportunity during the RSP but opted not to participate in it due to their concerns about the Company's management.
2. KSV intends to have all parties requiring further due diligence sign a new confidentiality agreement, even if it signed one during the RSP process.
3. If re-engaging with the interested parties from the RSP process does not generate, or appears that it will not generate, an acceptable transaction, KSV intends to launch a new sale process commencing forthwith with offers to be submitted on or about January 17, 2020. All new offers will be required to be submitted in the form of a standard asset purchase agreement which will be prepared by the Receiver and made available in the data room. Changes to the agreement will be required to be blacklined or otherwise clearly marked. The proposed timeline is provided in the table below.

Summary of Sale Process (To be commenced after re-engaging with RSP parties.)		
Milestone	Description of Activities	Timeline
<i>Phase 1 – Finalize materials</i>		
Update marketing materials	➤ KSV to update Teaser, CIM, confidentiality agreement ("CA") and VDR used in the RSP.	Week 1
<i>Phase 2 – Marketing</i>		
Stage 1	<ul style="list-style-type: none"> ➤ Mass market introduction, including: <ul style="list-style-type: none"> ➤ Teaser to be sent to identified prospects, including investors that own similar retail pharmacies; ➤ publication of the acquisition opportunity in <i>The Globe and Mail</i> (National Edition); ➤ telephone canvass of leading prospects; and ➤ meet with and interview bidders. 	Week of December 9 and December 16

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Summary of Sale Process (To be commenced after re-engaging with RSP parties.)		
Milestone	Description of Activities	Timeline
Stage 2	<ul style="list-style-type: none">➤ KSV to provide detailed information to qualified prospects that sign the CA, including the CIM and access to the VDR;➤ KSV to facilitate diligence by interested parties;➤ KSV will prepare draft APA.	Week of January 6
Stage 3	<ul style="list-style-type: none">➤ Prospective purchasers to submit APAs or other proposals.	On or about January 17
<i>Phase 3 – Offer Review and Negotiations</i>		
	<ul style="list-style-type: none">➤ 2nd Round Bids and further bidding - Prospective purchasers may be asked to re-submit APAs on one or more occasions.	Week of January 20
Selection of Successful Bids	<ul style="list-style-type: none">➤ Select successful bidder and finalize definitive documents.	Week of January 20
Sale Approval Motion and Closing	<ul style="list-style-type: none">➤ Motion for sale approval and close transaction.	Approximately mid-February, subject to delays resulting from regulatory approvals/consents

2. Additional attributes of the Sale Process include:
 - a) the business and assets will be marketed on an “as is, where is” basis;
 - b) KSV will have the right to reject all offers, including the highest offer; and
 - c) any transaction will be subject to Court-approval.

3. KSV will also require flexibility in the timelines as regulatory approvals are required when selling pharmacies. KSV does not have the ability to control those timelines.

5.1 Sale Process Recommendation

1. KSV recommends that the Court issue an order approving the Sale Process for the following reasons:
 - a) KSV as Advisor has already conducted an extensive marketing of Rando's business and assets. Given the breadth of the RSP and the offers received, KSV is of the view that it may not be necessary to commence a fresh RSP. KSV only intends to conduct such a process if an acceptable transaction cannot be completed, or it appears that one may not be completed, from the bidders who participated in the RSP, or from the parties who were interested in the opportunity but opted not to participate;
 - b) the contemplated Sale Process, if required, is fair, open and transparent and will allow KSV to canvass the market broadly on an orderly basis in order to obtain the highest and best price;
 - c) there will be no delay commencing the Sale Process – KSV has significant knowledge from its role as Advisor and has already prepared marketing materials that can be quickly updated for a fresh RSP, if necessary;
 - d) the Sale Process is flexible and will allow KSV to establish procedures it believes necessary to maximize value; and
 - e) ECN supports the Sale Process.

6.0 Conclusion and Recommendation

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

* * *

All of which is respectfully submitted,

KSV Kofman Inc

**KSV KOFMAN INC.,
SOLELY IN ITS CAPACITY AS PROPOSED RECEIVER OF
THE PROPERTIES, ASSETS AND UNDERTAKINGS OF
RANDO DRUGS LTD. AND RELATED COMPANIES
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

ECN FINANCIAL INC.

Applicant

and

2345760 ONTARIO INC., et al.

Respondents

Court File No.: CV-19-00632106-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced TORONTO**

**FIRST REPORT OF KSV KOFMAN INC. AS RECEIVER
OF RANDO DRUGS LTD. AND RELATED
COMPANIES, DATED JANUARY 16, 2020**

GOLDMAN SLOAN NASH & HABER LLP
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Tel: 416-597-5017
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Lawyers for the Receiver, KSV Kofman Inc.

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TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	THURSDAY, THE 23 rd
)	
JUSTICE HAINEY)	DAY OF JANUARY, 2020

B E T W E E N:

ECN FINANCIAL INC.

Applicant

- and -

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518 ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS LTD., 2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475 ONTARIO INC.

Respondents

ORDER
(Motion re Mahmood Deposit)

THIS MOTION, made by KSV Kofman Inc. (“**KSV**”) in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”) of the property, assets and undertaking of Rando Drugs Ltd. (“**Rando**”) and the other Respondents for advice and directions with respect to the release of the Mahmood Deposit (defined below), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Receiver’s Motion Record, including the Notice of Motion and the first report of the Receiver dated January 16, 2020 (the “**First Report**”), and on hearing the submissions of counsel for the Receiver and those other parties present no one appearing for any

other person on the service list, although properly served as appears from the affidavit of Katie Parent sworn January 16, 2020, filed:

NOTICE AND SERVICE

1. **THIS COURT ORDERS** that the time for service of the Motion Record in respect of this motion and the First Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.

MAHMOOD DEPOSIT

2. **THIS COURT ORDERS AND DIRECTS** the Receiver to authorize the release of the deposit funds being held by RE/MAX West Realty Inc. (“**RE/MAX**”) in the amount of \$400,000.00 (plus any accrued interest) (the “**Mahmood Deposit**”) to the Receiver and Almas Mahmood (“**Mahmood**”) or as she may direct in the following amounts:

- (a) To the Receiver: \$20,000 plus HST in respect of its costs; and
- (b) The balance to Mahmood (the “**Returned Funds**”).

3. **THIS COURT ORDERS** upon receipt of the authorization from the Receiver above, RE/MAX shall forthwith release the Mahmood Deposit and shall be entitled to rely on the Receiver’s authorization without any further liability.

THE WINDSOR COURT APPLICATION AGAINST RANDO

4. **THIS COURT ORDERS** that leave is granted to Almas Mahmood to file a notice of abandonment with prejudice and without costs of its application currently pending before the Ontario Superior Court of Justice in Windsor bearing Court File No. CV-19-27827 (the “**Mahmood Application**”) and the Receiver shall consent to the filing of such notice.

THE TORONTO COURT ACTION BY RANDO

5. **THIS COURT ORDERS** that the Receiver shall forthwith file a notice of discontinuance without costs, of the action currently pending before the Ontario Superior Court of Justice in Toronto bearing Court file No. CV-19-00621535-0000, (the “**Rando Action**”) on

the term that Rando Drugs Ltd. and/or the Receiver may not commence another action for the same subject matter as this action.

RECEIVER'S COSTS

6. **THIS COURT ORDERS** that the Receiver and its counsel shall be entitled to its costs of this matter including reviewing all applicable material, bringing this motion and dismissing the action and application referred to in paragraphs 4 and 5 in an amount of \$20,000 plus HST.

MISCELLANEOUS

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

ECN FINANCIAL INC. and 2345760 ONTARIO INC., et al.

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced TORONTO**

**ORDER
(Motion re Mahmood Deposit)**

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Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced TORONTO

MOTION RECORD
returnable January 23, 2020
(Motion re Mahmood Deposit)

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