

Court File No.

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

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

AND IN THE MATTER OF REVLON, INC., ALMAY, INC., ART & SCIENCE, LTD., BARI COSMETICS, LTD., BEAUTYGE BRANDS USA, INC., BEAUTYGE I, BEAUTYGE II, LLC, BEAUTYGE U.S.A., INC., BRANDCO ALMAY 2020 LLC, BRANDCO CHARLIE 2020 LLC, BRANDCO CND 2020 LLC, BRANDCO CURVE 2020 LLC, BRANDCO ELIZABETH ARDEN 2020 LLC, BRANDCO GIORGIO BEVERLY HILLS 2020 LLC, BRANDCO HALSTON 2020 LLC, BRANDCO JEAN NATE 2020 LLC, BRANDCO MITCHUM 2020 LLC, BRANDCO MULTICULTURAL GROUP 2020 LLC, BRANDCO PS 2020 LLC, BRANDCO WHITE SHOULDERS 2020 LLC, CHARLES REVSON INC., CREATIVE NAIL DESIGN, INC., CUTEX, INC., DF ENTERPRISES, INC., ELIZABETH ARDEN (CANADA) LIMITED, ELIZABETH ARDEN (FINANCING), INC., ELIZABETH ARDEN (UK) LTD., ELIZABETH ARDEN INVESTMENTS, LLC, ELIZABETH ARDEN NM, LLC, ELIZABETH ARDEN TRAVEL RETAIL, INC., ELIZABETH ARDEN USC, LLC, ELIZABETH ARDEN, INC., FD MANAGEMENT, INC., NORTH AMERICA REVSAL INC., OPP PRODUCTS, INC., PPI TWO CORPORATION, RDN MANAGEMENT, INC., REALISTIC ROUX PROFESSIONAL PRODUCTS INC., REVLON CANADA INC., REVLON CONSUMER PRODUCTS CORPORATION, REVLON DEVELOPMENT CORP., REVLON PROFESSIONAL HOLDING COMPANY LLC, REVLON GOVERNMENT SALES, INC., REVLON INTERNATIONAL CORPORATION, REVLON (PUERTO RICO) INC., RIROS CORPORATION, RIROS GROUP INC., RML LLC, ROUX LABORATORIES, INC., ROUX PROPERTIES JACKSONVILLE, LLC, AND SINFULCOLORS INC.

APPLICATION OF REVLON, INC. UNDER SECTION 46 OF THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36,  
AS AMENDED

APPLICANT

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**FACTUM OF THE FOREIGN REPRESENTATIVE**

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June 20, 2022

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## PART I - NATURE OF THE MOTION

1. This factum is filed in support of a motion brought by Revlon, Inc. in its capacity as the foreign representative (the “**Foreign Representative**”) of 50 other debtors-in-possession that recently filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code (collectively, the “**Chapter 11 Debtors**”, and together with their non-debtor affiliates, “**Revlon**” or the “**Company**”). The Foreign Representative seeks Orders under Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for, among other things:

- (a) recognition of the Chapter 11 Cases (defined below) as foreign main proceedings pursuant to Part IV of the CCAA (the “**Initial Recognition Order**”);
- (b) recognition of certain First Day Orders (defined below);
- (c) the appointment of KSV Restructuring Inc. as Information Officer (defined below);
- (d) the granting of the DIP Charges (defined below); and
- (e) the granting of the Administration Charge (defined below).

2. Revlon is a leader in the global cosmetics industry. However, the Company has been battered by the ongoing effects of the COVID-19 pandemic, which hit while Revlon was already trying to right-size its business. Although demand for Revlon’s products has rebounded, the dual shocks of inflation and supply chain disruptions have left Revlon unable to manufacture sufficient products to fulfill orders. This has created a vicious cycle: lower production means lower sales, causing Revlon’s production to fall farther short. Without immediate access to financing, the Company was unable to fund going-concern operations.

3. On June 8, 2022, the Company failed to make a required interest payment of \$38 million due under its BrandCo Facilities (defined below). This default would have cascading effects, triggering cross-defaults under the Company’s other funded debt obligations. The Company’s two

Canadian subsidiaries, Revlon Canada and Elizabeth Arden Canada, are guarantors under several of these facilities. The uncertainty generated by the Citibank Litigation (described below) has also caused the Company significant difficulty in managing its capital structure. Negotiations for an out-of-court resolution were unsuccessful. The Chapter 11 Debtors urgently need immediate liquidity to continue going-concern operations and pursue a potential restructuring.

4. On June 15 and 16, 2022 (the “**Petition Date**”), the Chapter 11 Debtors filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code. Two of the Company’s existing lenders have agreed to provide post-petition DIP financing to support the Chapter 11 Debtors’ restructuring. Such DIP financing contemplates the Foreign Representative obtaining the Initial Recognition Order and related relief from this Court.

5. Despite current uncertain market conditions, the Chapter 11 Debtors are confident they can weather current challenges and remain at the forefront of the global beauty industry. If a value-maximizing restructuring is implemented through the Chapter 11 Cases, it is anticipated that the Company, including Revlon Canada and Elizabeth Arden Canada, will continue as a going concern. The Initial Recognition Order and related relief are immediately needed to benefit all stakeholders, including those of Revlon Canada and Elizabeth Arden Canada.<sup>1</sup>

## **PART II - THE FACTS**

### **A. The Chapter 11 Debtors**

6. Revlon, Inc. is a global leader in the beauty industry. Revlon’s portfolio consists of over 20 key brands, including the iconic Revlon and Elizabeth Arden brands, associated with thousands

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<sup>1</sup> Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Affidavit of Robert Caruso, sworn June 19, 2022 (the “**Caruso Affidavit**”). All dollar references herein are in U.S. dollars unless otherwise specified.

of products sold in approximately 150 countries. Revlon offers an extensive array of beauty offerings, which it develops, manufactures, sells, and markets across the globe.<sup>2</sup>

7. All the Chapter 11 Debtors, including the two Canadian Chapter 11 Debtors – Revlon Canada Inc. (“**Revlon Canada**”) and Elizabeth Arden (Canada) Limited (“**Elizabeth Arden Canada**”) – are direct or indirect wholly-owned subsidiaries of Revlon, Inc.<sup>3</sup> All of the Chapter 11 Debtors are incorporated or established under the laws of the United States except Revlon Canada, Elizabeth Arden Canada and two other foreign debtors.<sup>4</sup> Revlon Canada and Elizabeth Arden Canada are incorporated under the laws of Canada and maintain registered head offices in Ontario.<sup>5</sup>

8. Revlon’s net sales were \$479.6 million in the first quarter of 2022. The book value of Revlon’s assets and liabilities, as at April 30, 2022, was \$2.3 billion and \$3.7 billion, respectively.<sup>6</sup>

**B. The Financial Position of Revlon Canada and Elizabeth Arden Canada**

9. On a standalone basis, Revlon Canada and Elizabeth Arden Canada’s financial position over the last six months has been inconsistent. The trial balance for Revlon Canada and Elizabeth Arden Canada, as at December 31, 2021 reflects net income of approximately \$23,062,033 and net loss of \$-24,709,439, respectively, while the trial balance, as at April 2022, reflects net income of approximately \$2,303,958 and \$569,849, respectively.<sup>7</sup>

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<sup>2</sup> Caruso Affidavit at para 16.

<sup>3</sup> Caruso Affidavit at para 18.

<sup>4</sup> Caruso Affidavit at para 18.

<sup>5</sup> Caruso Affidavit at para 18.

<sup>6</sup> Caruso Affidavit at para 19.

<sup>7</sup> Caruso Affidavit at para 22.

**(a) Employees**

10. As of the Petition Date, the Chapter 11 Debtors have approximately 2,823 employees globally.<sup>8</sup> 102 of these are resident in Canada: 82 employed by Revlon Canada and 20 employed by Elizabeth Arden Canada.<sup>9</sup> At Revlon Canada, 19 employees are unionized and there are an additional eight employees on a leave of absence and one employee receiving severance payments. Payroll for these 102 Canadian employees is processed in the U.S.<sup>10</sup>

11. Revlon Canada's 19 unionized employees are parties to a collective agreement between Revlon Canada and UNIFOR and its Local 323 (the "**Union**"). Revlon Canada and the Union have completed collective negotiations for, but are still finalizing, a new collective agreement.<sup>11</sup>

**(b) Labour Grievances**

12. Revlon Canada is party to the following outstanding litigation:

- (a) two individual grievances by employees alleging that they were disciplined without just cause (the "**Individual Grievances**");
- (b) a group grievance by six (6) employees alleging, amongst other things, that they were improperly laid-off and should be reinstated with backpay (the "**Group Grievance**"); and
- (c) a policy grievance by the Union alleging that Revlon Canada violated various collective agreement provisions in connection with the layoff of bargaining unit employees (the "**Policy Grievance**").<sup>12</sup>

13. The Group Grievance and the Policy Grievance were scheduled for arbitration on June 20, 2022.<sup>13</sup>

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<sup>8</sup> Caruso Affidavit at para 28.

<sup>9</sup> Caruso Affidavit at para 29.

<sup>10</sup> Caruso Affidavit at para 30.

<sup>11</sup> Caruso Affidavit at para 31.

<sup>12</sup> Caruso Affidavit at para 74.

<sup>13</sup> Caruso Affidavit at para 75.

**(c) Integrated Canadian and U.S. Operations**

14. Revlon Canada and Elizabeth Arden Canada are fully integrated with the Company's global operations. In particular, prior to the Petition Date:

- (a) The President of Revlon ultimately leads operations in Canada; the Head of Finance in Canada reports to the Chief Administrative Officer in the U.S.; the Canadian Marketing and Human Resource teams report to management in the U.S.; and the managers of the Research and Development and IT teams are all located in the U.S.
- (b) Revlon Canada and Elizabeth Arden Canada primarily rely on the purchasing power and supplier relationships of the Chapter 11 Debtors in the U.S.
- (c) Revlon Canada and Elizabeth Arden Canada are dependent on the Chapter 11 Debtors in the U.S. for the overwhelming majority of licensing agreements and company-owned brands. All or substantially all of the trademarks and IP are owned by the other Chapter 11 Debtors.
- (d) The Chapter 11 Debtors, including Revlon Canada and Elizabeth Arden Canada, operate shared services via the Company's Shared Service Center ("SSC"), which is based in the U.S. The SSC in North America jointly supports the following activities: finance (including billings, collections, invoice processing, accounting), IT, and human resources. Revlon allocates approximately 1.77% of the total cost of shared services at year-end to Revlon Canada and Elizabeth Arden Canada.<sup>14</sup>
- (e) Canadian sales make up approximately 6.67% of Revlon's annual net revenue.<sup>15</sup>
- (f) The Chapter 11 Debtors (including Revlon Canada and Elizabeth Arden Canada) and their non-Debtor affiliates operate an integrated, centralized cash management system (the "**Cash Management System**").<sup>16</sup>

**C. Chapter 11 Debtors' Pre-petition Capital Structure and Indebtedness**

15. As of the Petition Date, the Chapter 11 Debtors' principal non-contingent liabilities consist of outstanding funded debt under four credit facilities and one series of unsecured notes with an

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<sup>14</sup> Caruso Affidavit at para 38.

<sup>15</sup> Caruso Affidavit at para 38.

<sup>16</sup> Caruso Affidavit at para 41.

aggregate outstanding principal amount of approximately \$3.5 billion.<sup>17</sup> This debt is owed under the following facilities, each as defined below:

<b>Instrument / Facility</b>	<b>Principal Outstanding</b>
<b>U.S. ABL Facility</b>	
Tranche A Revolving Loans	\$109,000,000
ABL FILO Term Loans	\$50,000,000
SISO Term Loan Facility	\$130,000,000
<b>Total US ABL Facility</b>	<b>\$289,000,000</b>
<b>2016 Term Loan Facility</b>	<b>\$870,116,570<sup>18</sup></b>
<b>BrandCo Facilities</b>	
First Lien BrandCo Facility	\$938,986,931
Second Lien BrandCo Facility	\$936,052,001
Third Lien BrandCo Facility	\$2,980,287
<b>Total BrandCo Facilities</b>	<b>\$1,878,019,219</b>
<b>Foreign ABTL Facility</b>	<b>\$75,000,000</b>
<b>Unsecured Notes</b>	<b>\$431,300,000</b>
<b>Total Indebtedness</b>	<b>\$3,538,794,648</b>

(a) **U.S. ABL Facility**

16. Revlon Consumer Products Corporation (“**RCPC**”) and certain subsidiaries of RCPC are borrowers under an asset-backed revolving credit agreement dated as of September 7, 2016 (the “**U.S. ABL Facility**”). The U.S. ABL Facility is guaranteed on a secured basis by certain Chapter 11 Debtors, including Revlon Canada and Elizabeth Arden Canada.<sup>19</sup>

17. The U.S. ABL Facility consists of (i) \$101 million of Tranche A revolving loans (the “**Tranche A Revolving Loans**”), (ii) \$130 million of senior secured second-in, second-out term

<sup>17</sup> Caruso Affidavit at para 42.

<sup>18</sup> The amount of principal outstanding under the 2016 Term Loan Facility is the subject of the ongoing Citibank Litigation (as described below) between Citibank and lenders holding approximately \$500 million in 2016 Term Loans. The Principal Outstanding reflected in the table above reflects the entire amount of the 2016 Term Loan as it existed prior to the mistaken payment by Citibank.

<sup>19</sup> Caruso Affidavit at paras 45.



loan facility (the “**SISO Term Loans**”), and (iii) \$50 million of “first-in, last-out” Tranche B term loans (the “**ABL FILO Term Loans**”).<sup>20</sup> As at the Petition Date, approximately \$289 million remains outstanding under the U.S. ABL Facility.<sup>21</sup>

**(b) 2016 Term Loan Facility**

18. RCPC is the borrower under a senior secured loan facility dated as of September 7, 2016 (the “**2016 Term Loan Facility**”). The 2016 Term Loan Facility is guaranteed on a secured basis by the guarantors of the U.S. ABL Facility, including Revlon Canada and Elizabeth Arden Canada.<sup>22</sup> Subject to the ongoing Citibank Litigation (described below), as of the Petition Date, approximately \$870.1 million remains outstanding under the 2016 Term Loan Facility.<sup>23</sup>

**(c) BrandCo Facilities**

19. RCPC is the borrower under three facilities (together, the “**BrandCo Facilities**”) under a credit facility dated as of May 7, 2020.<sup>24</sup> The BrandCo Facilities are guaranteed on a secured basis by the guarantors of the U.S. ABL Facility and the 2016 Term Facility, including Revlon Canada and Elizabeth Arden Canada. As of the Petition Date, approximately \$1.9 billion remains outstanding under the BrandCo Facilities.<sup>25</sup>

20. The BrandCos were established as special purpose entities to hold a number of brands such as *Elizabeth Arden*, *Almay*, and *Halston* (collectively, the “**Specified Brands**”). The BrandCos license the Specified Brands pursuant to licensing agreements (the “**BrandCo Licenses**”) to

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<sup>20</sup> Caruso Affidavit at para 44.

<sup>21</sup> Caruso Affidavit at para 43.

<sup>22</sup> Caruso Affidavit at para 50.

<sup>23</sup> Caruso Affidavit at para 50.

<sup>24</sup> Caruso Affidavit at para 54.

<sup>25</sup> Caruso Affidavit at para 54.

RCPC, which in turn sub-licenses the Specified Brands to certain other Chapter 11 Debtors. Pursuant to the BrandCo Licenses, RCPC remits royalty payments to the BrandCos of 10% of the net sales of products associated with the IP of the Specified Brands on a monthly basis. In 2021, RCPC paid the BrandCos approximately \$94 million in royalties.<sup>26</sup>

21. Each BrandCo is a debtor in the Chapter 11 Cases. Both Revlon Canada and Elizabeth Arden Canada sell many products branded with brands held by the BrandCos.<sup>27</sup>

**(d) Foreign ABTL Facility**

22. Revlon Finance LLC is the borrower under an asset-based term loan credit agreement dated as of March 2, 2021 (the “**Foreign ABTL Facility**”). As of the Petition Date, approximately \$75 million is outstanding under the Foreign ABTL Facility.<sup>28</sup> Obligations under the Foreign ABTL Facility are guaranteed on a secured basis by certain foreign subsidiaries of RCPC (the “**Foreign ABTL Guarantors**”). Revlon Canada and Elizabeth Arden Canada are not among the Foreign ATBL Guarantors.<sup>29</sup>

**(e) 2024 Unsecured Notes**

23. Pursuant to an indenture dated August 4, 2016, RCPC issued senior, unsecured note obligations consisting of 6.25% Senior Notes due in 2024 (the “**2024 unsecured Notes**”). Revlon Canada and Elizabeth Arden Canada are not guarantors under the 2024 Unsecured Notes.<sup>30</sup> As of the Petition Date, approximately \$431.3 million of the 2024 Unsecured Notes is outstanding.<sup>31</sup>

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<sup>26</sup> Caruso Affidavit at para 58.

<sup>27</sup> Caruso Affidavit at para 57.

<sup>28</sup> Caruso Affidavit at para 66.

<sup>29</sup> Caruso Affidavit at para 67.

<sup>30</sup> Caruso Affidavit at para 70.

<sup>31</sup> Caruso Affidavit at para 70.

**D. Cash**

24. As of the Petition Date, the Chapter 11 Debtors had approximately \$12,860,362 of unrestricted cash on their balance sheet.<sup>32</sup>

**E. Intercompany Transfers**

25. Revlon Canada and Elizabeth Arden Canada source their products from the U.S., which have an intercompany mark-up. As at April 30, 2022, approximately \$1.3 million is owed by Revlon Canada to intercompany creditors.<sup>33</sup> In general, Revlon products are manufactured in the US and provided to Canada and other countries. Revlon Canada and Elizabeth Arden Canada sell these products and transfer excess cash flow back to the US. Not all cash flow generated is transferred back to the US, as Canada has its own payroll and accounts payable obligations.<sup>34</sup>

**F. Recent Events**

**(a) Impact of the COVID-19 Pandemic**

26. The Chapter 11 Debtors, like many other companies in the beauty industry, have experienced a prolonged period of declining customer demand. This general downturn worsened considerably during the COVID-19 pandemic. In March 2020, business closures and stay-at-home orders enacted to mitigate the spread of COVID-19 caused significant disruptions to the Company's business operations. The Company immediately experienced a general decline in net sales and profits.<sup>35</sup> In the first quarter of 2020, as-reported net sales included approximately \$54

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<sup>32</sup> Caruso Affidavit at para 72.

<sup>33</sup> Caruso Affidavit at para 73.

<sup>34</sup> Caruso Affidavit at para 73.

<sup>35</sup> Caruso Affidavit at paras 80-82.

million of estimated negative impacts associated with COVID-19; operating losses were an additional \$186 million compared to \$23 million in 2019.<sup>36</sup>

**(b) Citibank Litigation**

27. Citibank is the Administrative Agent for the 2016 Term Loans. In that role, Citibank distributes payments from the Company to the 2016 Term Loan Lenders. An interest payment of \$7.8 million was due on August 11, 2020. On August 11, 2020, Citibank mistakenly paid not only the August 2020 interest payment using funds remitted from Revlon, but also, using its own funds, the full outstanding principal remaining on the 2016 Term Loans in an amount of nearly \$894 million (such excess payment, the “**Mistaken Principal Payment**”).<sup>37</sup>

28. Citibank promptly sent recall notices requesting that the 2016 Term Lenders remit their portion of the Mistaken Principal Payment.<sup>38</sup> Several 2016 Term Loan Lenders that together held approximately \$500 million in principal (the “**Mistaken Payment Lenders**”) refused to do so.<sup>39</sup>

29. On August 17, 2020, Citibank filed suit against the Mistaken Payment Lenders seeking the return of the Mistaken Principal Payment (the “**Citibank Litigation**”). On February 16, 2021, judgment was rendered in favor of the Mistaken Payment Lenders. Citibank promptly appealed. The appeal has been argued, but as of the Petition Date, no decision has been rendered.<sup>40</sup>

30. This uncertainty has caused the Company significant and unprecedented difficulty in managing its capital structure out of court.<sup>41</sup>

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<sup>36</sup> Caruso Affidavit at para 82.

<sup>37</sup> Caruso Affidavit at para 84.

<sup>38</sup> Caruso Affidavit at para 85.

<sup>39</sup> Caruso Affidavit at para 86.

<sup>40</sup> Caruso Affidavit at paras 87-89.

<sup>41</sup> Caruso Affidavit at para 89. Due to the unresolved Citibank Litigation, the status of \$500 million of the 2016 Term Loans (and claims relating to such loans) remains unclear.

**(c) Market Conditions and Industry Headwinds**

31. Demand for Revlon's products is strong, but its business is only sustainable if the Company can source the goods it needs to manufacture its products.<sup>42</sup> In recent months, the Company's operations have been negatively impacted in several key ways:

- (a) **Global supply chain disruptions:** With widespread shortages of many essential ingredients, competition for available materials is steep: vendors have even reneged on the Company's valid purchase orders to take higher offers from third parties.<sup>43</sup> This has forced the Company to buy materials on the spot-market, which significantly increases costs and lead-times.<sup>44</sup>
- (b) **Shipping, freight, and logistics issues:** Many of the Company's raw materials are sourced from China, where lockdowns have prevent the Chapter 11 Debtors from obtaining timely goods – forcing them to buy substitute goods for higher prices amid skyrocketing shipping costs.<sup>45</sup>
- (c) **Labour shortages and rising labour costs:** Suppliers and transporters are working with smaller labour forces, causing increased costs, delays, and difficulties.<sup>46</sup>
- (d) **Inflation:** Contractual and market standards significantly limit the Company's ability to increase prices and restrict when it can do so.<sup>47</sup> The Company faces higher costs with tightening liquidity but effectively cannot pass on inflation costs to its customers.

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<sup>42</sup> Caruso Affidavit at para 107.

<sup>43</sup> Caruso Affidavit at para 95.

<sup>44</sup> Caruso Affidavit at para 95.

<sup>45</sup> Caruso Affidavit at para 96.

<sup>46</sup> Caruso Affidavit at para 97.

<sup>47</sup> Caruso Affidavit at para 98.

- (e) **Vendor conduct:** Many of the Chapter 11 Debtors' vendors have begun requiring prepayment before shipping any goods and may now impose credit holds when the Company is overdue for any amount.<sup>48</sup>
- (f) **Shrinking borrowing base:** The borrowing base under the U.S. ABL Facility is calculated based on specified "advance rates" against the liquidation value of eligible inventory and accounts receivable. Raw materials have the lowest advance rate and accounts receivable the highest.<sup>49</sup> The earlier in the production cycle the Company experiences delays, the lower the advance rates the Company is able to obtain on its borrowing base assets.<sup>50</sup>
- (g) **Critical business pressures:** The Company's business is seasonal, and many critical deadlines in the supply cycle occur at the end of the year. Retail customers typically determine their annual procurement plans in third quarter of each year. In addition, the greatest volume of the Company's sales take place during the holiday season. The Company is therefore under tremendous pressure to generate sufficient inventory for the holidays, and before the third quarter, demonstrate to its retail customers that it can meet its delivery obligations. However, penalties for the Company's failure to meet such "on-time, in full" delivery commitments exceeded \$1.2 million in May alone.<sup>51</sup>

32. On June 8, 2022, the Chapter 11 Debtors failed to make an interest payment in the amount of \$38 million owing under the BrandCo Facilities. Failure to pay interest (if not cured within the

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<sup>48</sup> Caruso Affidavit at para 99.

<sup>49</sup> Caruso Affidavit at para 101.

<sup>50</sup> Caruso Affidavit at para 101.

<sup>51</sup> Caruso Affidavit at para 100.

grace period of five business days) would be an event of default under those facilities, and a cross-default under the Company's other funded debt.<sup>52</sup>

### **G. The Chapter 11 Cases**

33. On June 15 and 16, 2022 (the "**Petition Date**"), each of the Chapter 11 Debtors filed voluntary petitions for relief (the "**Petitions**") pursuant to Chapter 11 of the U.S. Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York (the "**U.S. Court**").<sup>53</sup> The Chapter 11 Debtors also filed certain first day motions (the "**First Day Motions**") on June 15 and 16, 2022. On June 16 and 17, 2022, the U.S. Court heard the First Day Motions. The U.S. Court entered various interim or final orders in respect of these First Day Motions as set out in the Caruso Affidavit (collectively, the "**First Day Orders**").<sup>54</sup>

### **H. DIP Financing**

34. The BrandCo Lenders and certain Prepetition ABL Lenders have agreed to provide post-petition DIP financing to support the Chapter 11 Cases in three segments:

- (a) a senior secured post-petition asset-based revolving credit facility in the aggregate principal amount of \$400 million (the "**ABL DIP Facility**"), which would roll up existing indebtedness under the U.S. ABL Facility;
- (b) a senior securing priming post-petition term loan credit facility in the aggregate principal amount of \$575 million, with an incremental uncommitted facility in the amount of \$450 million (the "**Term DIP Facility**"); and
- (c) an Intercompany Dip Facility, as defined below (together with the ABL DIP Facility and the Term DIP Facility, the "**DIP Facilities**").<sup>55</sup>

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<sup>52</sup> Caruso Affidavit at para 104.

<sup>53</sup> Caruso Affidavit at para 7.

<sup>54</sup> Caruso Affidavit at paras 10-11.

<sup>55</sup> Caruso Affidavit at paras 105 and 128.

35. The BrandCo Entities have agreed to extend credit to RCPC as borrower pursuant to a superpriority junior secured debtor-in-possession intercompany credit facility (the “**Intercompany DIP Facility**”). Currently, RCPC is required to make cash payments to the BrandCo entities for use of the BrandCo entities’ intellectual property (approximately \$9 million per month). Under the Intercompany DIP Facility, when such payments come due, the BrandCo Entities will lend such royalty payment amounts back to RCPC on a dollar-for-dollar basis, which will provide the Chapter 11 Debtors with further liquidity to operate in the ordinary course without requiring further third-party debtor-in-possession financing.<sup>56</sup> The Intercompany DIP Facility will be guaranteed by the Chapter 11 Debtors including Revlon Canada and Elizabeth Arden Canada (other than RCPC and the BrandCo Entities) and liens on substantially all of the borrower’s and the guarantors’ assets.<sup>57</sup>

36. Revlon Canada and Elizabeth Arden Canada each guaranteed and granted security over substantially all of their assets in connection with the pre-petition U.S. ABL Facility and BrandCo Facilities. The Interim DIP Order provides that Revlon Canada and Elizabeth Arden Canada will guarantee the DIP Facilities and provide security for their respective obligations.<sup>58</sup>

37. Among the relief sought on this application, the Foreign Representative seeks court-ordered charges on the property of Revlon Canada and Elizabeth Arden Canada (the “**Canadian Collateral**”) in respect of the DIP Facilities that ranks in priority to all unsecured claims but is subordinated to the proposed Administration Charge (the “**DIP Charges**”), consistent with the Interim DIP Order.<sup>59</sup> It is anticipated that Revlon will be able to fund operations via normal course inter-company transfers to Revlon Canada and Elizabeth Arden Canada during the Chapter 11

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<sup>56</sup> Caruso Affidavit at para 123.

<sup>57</sup> Caruso Affidavit at para 128.

<sup>58</sup> Caruso Affidavit at para 129.

<sup>59</sup> Caruso Affidavit at para 129.



Cases using funds borrowed from the DIP Facilities.<sup>60</sup> In addition, Revlon Canada and Elizabeth Arden Canada benefit from the continued availability of the BrandCo Entities' intellectual property, including their ability to sell associated products into the Canadian marketplace.

**I. Urgent Need for Relief**

38. Revlon Canada, Elizabeth Arden Canada and the other Chapter 11 Debtors are in need of a stay of proceedings and recognition of the First Day Orders.

39. Without urgent access to additional financing, the Chapter 11 Debtors project that they will be unable to pay essential costs required to continue operating as a going concern, causing immediate and irreparable harm to the Chapter 11 Debtors and their stakeholders. The Company has already missed an interest payment due under the BrandCo Facilities. Additionally, the Chapter 11 Debtors require immediate cash to produce sufficient product to meet Q3 and holiday demand, without which the Company will lose the trust of its retail partners and face a potentially permanent loss of market share. The Chapter 11 Debtors' lenders made it clear that they are only willing to provide the necessary liquidity through post-petition DIP financing.

40. Revlon Canada and Elizabeth Arden Canada cannot operate on a standalone basis and are entirely dependent on the other Chapter 11 Debtors for products, operations and cash management services, order fulfillment, and intellectual property. The existence of Revlon Canada and Elizabeth Arden Canada thus hinges on the Company's ability to restructure.

41. If a value-maximizing restructuring is implemented through the Chapter 11 Cases, it is anticipated that the Company, including Revlon Canada and Elizabeth Arden Canada, will continue as a going concern. By commencing the Chapter 11 Cases and obtaining post-petition

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<sup>60</sup> Caruso Affidavit at para 130.

financing, the Chapter 11 Debtors will be able to stabilize operations while proactively engaging with key creditor constituencies to develop a plan and pursue a going-concern outcome.

### PART III - ISSUES AND THE LAW

42. The issues to be determined on this motion are:

- (a) Is the Chapter 11 Proceeding a “foreign main proceeding”?
- (b) If so, are the Chapter 11 Debtors entitled to the relief sought in the Initial Recognition Order and Supplemental Order, including,
  - (i) Granting the Stay of Proceedings;
  - (ii) Recognizing the First Day Orders;
  - (iii) Granting the DIP Charges; and
  - (iv) Granting the Administration Charge?

#### A. The Chapter 11 Cases are Foreign Main Proceedings

43. The purpose of Part IV of the CCAA is to facilitate the administration of cross-border insolvencies and create a system under which foreign insolvency proceedings can be recognized in Canada.<sup>61</sup> Section 46(1) authorizes a person who is a foreign representative to apply to the court for recognition of a foreign proceeding in respect of which that person is a foreign representative.<sup>62</sup> Section 47 establishes two requirements for such an order: (a) the proceeding is a “foreign proceeding”; and (b) the applicant is a “foreign representative” in respect of that proceeding.<sup>63</sup> If these requirements are met, the Court must recognize a foreign proceeding.

44. Section 45(1) of the CCAA defines a “foreign proceeding” as any judicial proceeding in a jurisdiction outside of Canada dealing with creditors’ collective interests under any bankruptcy or

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<sup>61</sup> CCAA s. 44.

<sup>62</sup> CCAA s. 46(1).

<sup>63</sup> CCAA s. 47.

insolvency law wherein a debtor company's business and financial affairs are subject to supervision by a foreign court for the purpose of reorganization.<sup>64</sup> Courts have consistently recognized proceedings under Chapter 11 of the U.S. Bankruptcy Code as foreign proceedings.<sup>65</sup>

45. In the Chapter 11 Cases, the Chapter 11 Debtors obtained an order on Friday, June 17, 2022 (the "**Foreign Representative Order**") appointing Revlon, Inc. the foreign representative of the Chapter 11 Debtors within the meaning of subsection 45(1) of the CCAA.<sup>66</sup> The Foreign Representative therefore submits that this Court should recognize the Chapter 11 Cases as a "foreign proceeding" within the meaning of subsection 47(1) of the CCAA.

46. Copies of the Petition and the Foreign Representative Order are provided in the record accompanying this proceeding. Certified copies are not yet available because the U.S. Court was unable to process certified copies on Friday, June 17, 2022. The Foreign Representative will obtain copies of the Petitions and the Foreign Representative Order as soon as it is able (note that Monday, June 20, 2022 is a U.S. Holiday).<sup>67</sup> Where certified copies of relevant documents are not available, this Court is expressly empowered by section 46(4) of the CCAA to consider appropriate alternative evidence. Courts have relied on uncertified copies of relevant court documents to make foreign recognition orders in prior Part IV proceedings where certified copies were unavailable.<sup>68</sup>

47. Once it has been determined that a proceeding is a "foreign proceeding", the Court must specify in its Order whether the foreign proceeding is a "foreign main proceeding" or a "foreign

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<sup>64</sup> CCAA s. 45(1).

<sup>65</sup> See for example *Caesars Entertainment Operating Company, Co. (Re)*, 2015 ONSC 712 [*Caesars*] at para 28; *Lightsquared LP (Re)*, 2012 ONSC 2994 [*Lightsquared*] at paras. 18-19; *Babcock & Wilcox Canada Ltd., (Re)*, 2000 CarswellOnt 704, [2000] O.J. No. 786 (S.C.J. [Commercial List]) at para. 13; *Application of Brooks Brothers Group, Inc.*, Court File No. CV-20-00647463-00CL, Toronto: ONSC [Comm List], Endorsement of Justice Hainey dated September 14, 2020 [*Brooks Brothers*] at p 4-6.

<sup>66</sup> Caruso Affidavit at paras 4 and 10-12.

<sup>67</sup> Caruso Affidavit at para 8.

<sup>68</sup> CCAA s. 46(4); *Probe Resources Ltd., Re*, 2011 BCSC 552 at paras 14-16.

non-main proceeding.”<sup>69</sup> A “foreign main proceeding” is defined as a “foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests” (“COMI”).<sup>70</sup>

48. Section 45(2) of the CCAA establishes a rebuttable presumption that, in the absence of proof to the contrary, the location of a debtor company’s registered office is deemed to be its COMI.<sup>71</sup> Sufficient evidence about the debtor company’s operations can rebut this presumption.

49. The registered offices of all of the Chapter 11 Debtors, with the exception of Revlon Canada and Elizabeth Arden Canada and two other foreign debtors, are situated in the United States. Pursuant to section 45(2), the COMI of these U.S. registered office entities is presumed to be the United States.

50. Revlon Canada and Elizabeth Arden Canada’s registered head offices are in Ontario. However, in *Angiotech*, this Court considered the factors informing how COMI should be determined when a Canadian entity operates as part of a larger corporate group:

- (a) the location where corporate decisions are made;
- (b) the location of employee administrations, including human resource functions;
- (c) the location of the company’s marketing and communication functions;
- (d) whether the enterprise is managed on a consolidated basis;
- (e) the extent of integration of an enterprise’s international operations;
- (f) the centre of an enterprise’s corporate, banking, strategic and management functions;
- (g) the existence of shared management within entities and in an organization;
- (h) the location where cash management and accounting functions are overseen;

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<sup>69</sup> CCAA s. 47(2).

<sup>70</sup> CCAA s. 45(1).

<sup>71</sup> CCAA s. 45(2).

- (i) the location where pricing decisions and new business development initiatives are created; and
- (j) the seat of an enterprise's treasury management functions, including management of accounts receivable and accounts payable.<sup>72</sup>

51. In *Elephant & Castle*,<sup>73</sup> Justice Morawetz (as he then was) recognized the *Angiotech* factors listed above<sup>74</sup> and identified what he considered to be the most significant factors:

- (a) the location of the debtor's headquarters or head office functions or nerve centre;
- (b) the location of the debtor's management; and
- (c) the location which significant creditors recognize as being the centre of the company's operations.<sup>75</sup>

52. Based on the foregoing jurisprudence, the following factors indicate that Revlon Canada and Elizabeth Arden Canada's COMI is in the United States:

- (a) Revlon Canada and Elizabeth Arden Canada's business is completely integrated into the Chapter 11 Debtors' business as a whole;
- (b) Revlon Canada and Elizabeth Arden Canada are wholly dependent on the Chapter 11 Debtors in the U.S. for the overwhelming majority of licensing agreements and company owned brands, the IP of which is owned by the U.S. Chapter 11 Debtors;
- (c) Revlon Canada and Elizabeth Arden Canada primarily rely on the purchasing power and supplier relationships of the Chapter 11 Debtors in the U.S.;
- (d) The President of Revlon ultimately leads operations in Canada, and finance, human resources, R&D, and IT teams either report to or are located in the U.S.;
- (e) Revlon Canada and Elizabeth Canada are almost wholly dependent for financial, IT, human resources, and administrative functions on the Company's Shared Service Center, which is based in the U.S.;
- (f) Revlon Canada and Elizabeth Arden Canada are integrated into the Chapter 11 Debtors' centralized and integrated cash management system;
- (g) Revlon Canada and Elizabeth Arden Canada's orders from Canadian customers are processed and shipped from the Company's facilities in the U.S.; and

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<sup>72</sup> *Angiotech Pharmaceuticals Inc. (Re)*, 2011 BCSC 115 at para 7.

<sup>73</sup> *Massachusetts Elephant & Castle Group Inc., (Re)*, 2011 ONSC 4201 (S.C.J. [Commercial List]) [*Elephant & Castle*].

<sup>74</sup> *Elephant & Castle* at paras 26-29.

<sup>75</sup> *Elephant & Castle* at para 30.

(h) Canadian revenues make up only 6.7% of the Company's revenues.

53. Since the COMI of Revlon Canada and Elizabeth Arden Canada is the United States, the Foreign Representative submits that the Chapter 11 Cases constitute a "foreign main proceeding".

**B. The Initial Recognition Order and Supplemental Order should be granted**

54. The Foreign Representative submits it is entitled to the Initial Recognition Order recognizing the Chapter 11 Cases as a foreign main proceeding. The Initial Recognition Order provides for post-recognition relief including a stay of proceedings and a grant of the DIP Charges and an Administration Charge. This Court should exercise its discretion to grant such relief.

**(a) Stay of proceedings is required and appropriate**

55. Section 48(1) of the CCAA provides that once the Court has found that a foreign proceeding is a "foreign main proceeding", it is required to grant certain mandatory relief, including a stay of proceedings "for any period that the court considers necessary". This mandatory stay is not limited in duration. While an initial stay under a plenary CCAA proceeding is limited to ten days pursuant to section 11.02, the Court's discretion in Part IV proceedings is open-ended. Once an application for an Initial Recognition Order is granted, this Court must grant a stay under section 48(1)(a) "for any period that the court considers necessary".

56. Canadian courts have frequently authorized initial stay periods of more than ten days in Part IV proceedings. In *Pier 1 Imports*, this Court granted an initial recognition order with a stay effective "until otherwise ordered by this Court".<sup>76</sup> In *GNC Holdings, Inc.*, this Court granted an interim recognition order with a stay effective "until and unless otherwise ordered by this Court,"

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<sup>76</sup> *In the matter of a plan of compromise or arrangement of Pier 1 Imports, Inc.*, Court File No. CV-20-00636511-00CL, Toronto: ONSC [Comm List], Order of Justice Hainey dated 18 February, 2020 at para 4.

and subsequently granted an Initial Recognition Order with an open-ended stay.<sup>77</sup> In *Brooks Brothers Group International*, this Court granted an initial recognition order with “an indefinite stay of proceedings.”<sup>78</sup>

57. The Chapter 11 Debtors require “breathing space” to build back production and generate sufficient product to satisfy demand in the critical Q3/Q4 period. In addition, the Group Grievance and Policy Grievance were scheduled for arbitration on June 20, 2022.<sup>79</sup> Requiring the parties to litigate these grievances at this time would be a distraction to management and force the Company to expend limited estate resources. The requested stay period is therefore appropriate.

**(b) Recognition of the First Day Orders**

58. In addition to the mandatory relief in section 48, section 49 of the CCAA grants this Court broad discretion to “make any order that it considers appropriate”, which is frequently exercised to recognize orders granted by foreign courts in foreign insolvency proceedings. The only limit on this Court’s authority to recognize foreign court orders under section 49 is that recognition must be necessary for the protection of the debtor’s property or the interests of creditors.<sup>80</sup>

59. Section 52(1) of the CCAA requires that if an order recognizing a foreign proceedings is made, the Court “shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.”<sup>81</sup> Courts in Canada and the United States have made particular efforts to complement, coordinate and accommodate each other’s

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<sup>77</sup> *In the matter of a plan of compromise or arrangement of GNC Holdings, Inc.*, Court File No. CV-20-00642970-00CL, Toronto: ONSC [Comm List], Order of Justice Koehnen dated 24 June, 2020 (the Interim Recognition Order) and Order of Justice Koehnen dated 29 June, 2020 (the Initial Recognition Order).

<sup>78</sup> *Brooks Brothers* at page 8.

<sup>79</sup> Caruso Affidavit at para 75.

<sup>80</sup> CCAA s. 49 (1).

<sup>81</sup> CCAA s. 52(1).

proceedings.<sup>82</sup> Where there is interdependence between operations of a company in the United States and Canada, granting relief under Part IV is particularly important.<sup>83</sup>

60. In light of the foregoing, the Chapter 11 Debtors seek an order recognizing and giving effect to the First Day Orders granted by the U.S. Court because:

- (a) The U.S. Court has appropriately taken jurisdiction over the Chapter 11 Cases, so comity will be furthered by this Court's recognition of and support for the Chapter 11 Cases already under way in the United States;
  - (b) Given the close connection between Revlon Canada, Elizabeth Arden Canada and the U.S., it is reasonable and sensible for the U.S. Court to have principal control over the insolvency process. This will produce the most efficient restructuring for the benefit of all stakeholders;
  - (c) The Canadian and U.S. operations of the Company are highly integrated; and
  - (d) It is clear that the Chapter 11 Debtors must act quickly to finance and ramp up their existing production and sales to preserve the enterprise value of the business, while simultaneously working to pursue a framework for a restructuring. Establishing a centralized and coordinated process for these insolvency proceedings will maximize the prospects of a successful restructuring will benefit the interests of all stakeholders, including Revlon Canada and Elizabeth Arden Canada's creditors.
- (c) **Appointment of Information Officer**

61. The Foreign Representative seeks to appoint KSV Restructuring Inc. ("**KSV**") as information officer (the "**Information Officer**") in this proceeding pursuant to the Court's discretion in section 49.<sup>84</sup> KSV is a licensed insolvency trustee in Canada and its principals have acted as information officers in proceedings under both Part IV of the CCAA as well as the former section 18.6 of the CCAA).<sup>85</sup> KSV has consented to act as Information Officer in this proceeding.

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<sup>82</sup> *Babcock*, at paras 4-13; *Matlack Inc. (Re)*, 2001 CarswellOnt 1830, [2001] O.J. No. 6121 (S.C.J. [Commercial List]) [*Matlack*] at paras. 3, 9.

<sup>83</sup> *Matlack* at para 8.

<sup>84</sup> CCAA s. 49(1); see for example *Digital Domain Media Group Inc. (Re)*, 2012 BCSC 1565 at para 31; CCAA s. 52(1).

<sup>85</sup> Caruso Affidavit at paras 133-134.



**(d) The Interim DIP Order Should be Recognized and the DIP Charges Should be Granted**

62. Immediate access to liquidity is critical to preserving the value of the Chapter 11 Debtors' business, including Revlon Canada and Elizabeth Arden Canada. Outstanding amounts under the DIP Facilities would be guaranteed by Revlon Canada and Elizabeth Arden Canada and secured by a charge on all the property of the Chapter 11 Debtors, including the Canadian Collateral.<sup>86</sup>

63. Such a guarantee is appropriate here. This Court has emphasized the importance of integration between U.S. and Canadian debtors in affirming a Canadian guarantee in a cross-border DIP. Where the U.S. debtors and their restructuring are "inextricably intertwined" with the Canadian debtors' continued viability, this Court has been willing to approve such a guarantee.<sup>87</sup>

64. This Court has established factors relevant to approving a Canadian guarantee of a cross-border DIP in *Indalex* and *Hollander*. Many of those factors apply here:

- (a) The DIP Facilities further the objectives of the CCAA and are commercially reasonable because they are essential to the Chapter 11 Debtors' ongoing business and pursuit of a restructuring;
- (b) The ABL DIP Lenders and the Term DIP Lenders required that Revlon Canada and Elizabeth Arden Canada guarantee the DIP Facilities;
- (c) Revlon Canada and Elizabeth Arden Canada's business is entirely dependent on the U.S. Chapter 11 Debtors' continued operations and there is no standalone solution;
- (d) Revlon will be able to fund Revlon Canada and Elizabeth Arden Canada's operations as needed via funds borrowed from the DIP Facilities;
- (e) Revlon Canada and Elizabeth Arden Canada will benefit from being able to sell products from the BrandCo brands;
- (f) Revlon Canada and Elizabeth Arden Canada's creditors are not prejudiced by the guarantees because Revlon Canada and Elizabeth Arden Canada's assets are already encumbered;

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<sup>86</sup> Caruso Affidavit at para 129.

<sup>87</sup> *Smurfit-Stone Container Canada Inc. Re* 2009 CarswellOnt 391 (SCJ [Commercial List] at para 18.

- (g) Canadian stakeholders will be benefited if the Chapter 11 Debtors, including Revlon Canada and Elizabeth Arden Canada, can complete a successful restructuring, which is only possible with funding from the DIP Facilities.

65. The ABL DIP Facility provides that upon entry of the Interim DIP Order, (i) the outstanding amount of the Pre-petition FILO ABL Obligations will be rolled up in accordance with the ABL DIP Term Sheet; and (ii) the outstanding amount of the Pre-petition SISO ABL Obligations will be converted into ABL DIP Loans pursuant to the ABL DIP Credit Agreement<sup>88</sup>

66. This Court has recognized orders for DIP financing including a full roll-up provision in foreign recognition proceedings under Part IV of the CCAA.<sup>89</sup> For example, in *Hartford*, an application under Part IV of the CCAA, this Court recognized an interim DIP order made by the U.S. Court that included a full roll-up, emphasizing the importance of comity:

A significant factor to take into account is that the Final DIP Facility Order was granted by the U.S. Court. In these circumstances, I see no basis for this court to second guess the decision of the U.S. Court.<sup>90</sup>

67. CCAA Courts will recognize a roll-up DIP facility when there is no material prejudice to Canadian creditors.<sup>91</sup> That is the case here: the assets of Revlon Canada and Elizabeth Arden Canada are fully encumbered by guarantees on pre-petition debt. As such, the DIP Charges over the assets of Revlon Canada and Elizabeth Arden Canada are appropriate and should be approved.

**(e) The Administration Charge should be granted**

68. The proposed Supplemental Order provides that the Information Officer, its counsel, and the Foreign Representative's Canadian legal counsel will be granted a Court-ordered charge as security for their fees and disbursements (the "**Administration Charge**") on the Canadian

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<sup>88</sup> Caruso Affidavit at para 127.

<sup>89</sup> *Hartford Computer Hardware Inc, (Re)*, 2012 ONSC 964 [*Hartford*] at paras. 18-19; *Hollander Sleep Products LLC, et al, Re*, 2019 ONSC 3238 at paras 46-48.

<sup>90</sup> *Hartford* at paras 10-14.

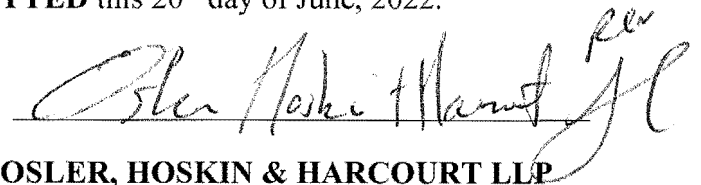
<sup>91</sup> *Hollander* at para 53; *Hartford* at paras 12-18; *Xinergy Ltd., Re*, 2015 ONSC 2692 at para 22.

Collateral in the maximum amount of CDN\$1,500,000 with first priority over all other charges.<sup>92</sup> Administration charges have frequently been granted in Part IV proceedings.<sup>93</sup> The Foreign Representative submits that the proposed Administration Charge is reasonable, considering the complexity of these proceedings and the roles required of the parties.

**PART IV - RELIEF REQUESTED**

69. For the foregoing reasons, the Foreign Representative requests that this Honourable Court grant the Initial Recognition Order and the Supplemental Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 20<sup>th</sup> day of June, 2022.

A handwritten signature in black ink, appearing to read "Marc Wasserman", is written over a horizontal line. The signature is cursive and includes a small "rcw" in the upper right corner.

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Lawyers for the Foreign Representative

**TO: THE ATTACHED SERVICE LIST**

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<sup>92</sup> Caruso Affidavit at para 135.

<sup>93</sup> See for example *Hollander* at para 35; *Brooks Brothers* at para 15; *Lightsquared LP, Re*, 2012 ONSC 2994; *Hartford* at paras 14 and 16; *Elephant & Castle* at paras 37 and 40.

## SCHEDULE A - LIST OF AUTHORITIES

### Case Law

1. *Angiotech Pharmaceuticals Inc. (Re)*, 2011 BCSC 115
2. *Babcock & Wilcox Canada Ltd., (Re)*, 2000 CarswellOnt 704 (S.C.J. [Commercial List])
3. *Caesars Entertainment Operating Company, Co. (Re)*, 2015 ONSC 712
4. *Digital Domain Media Group Inc. (Re)*, 2012 BCSC 1565
5. *Hartford Computer Hardware Inc. (Re)*, 2012 ONSC 964
6. *Hollander Sleep Products LLC, et al, Re*, 2019 ONSC 3238
7. *Lightsquared LP (Re)*, 2012 ONSC 2994
8. *Massachusetts Elephant & Castle Group Inc., (Re)*, 2011 ONSC 4201 (S.C.J. [Commercial List])
9. *Matlack Inc. (Re)*, 2001 CarswellOnt 1830 (S.C.J. [Commercial List])
10. *Probe Resources Ltd., Re*, 2011 BCSC 552
11. *Smurfit-Stone Container Canada Inc., Re*, 2009 CarswellOnt 391 (SCJ [Commercial List])
12. *Xinergy Ltd., (Re)*, 2015 ONSC 2692

## SCHEDULE B - STATUTES

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

44. The purpose of this Part is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote

- (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;
- (b) greater legal certainty for trade and investment;
- (c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;
- (d) the protection and the maximization of the value of debtor company's property; and
- (e) the rescue of financially troubled businesses to protect investment and preserve employment.

### Definitions

- 45 (1) The following definitions apply in this Part.

*foreign court* means a judicial or other authority competent to control or supervise a foreign proceeding.

*foreign main proceeding* means a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests.

*foreign non-main proceeding* means a foreign proceeding, other than a foreign main proceeding.

*foreign proceeding* means a judicial or an administrative proceeding, including an interim proceeding, in a jurisdiction outside Canada dealing with creditors' collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company's business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization.

*foreign representative* means a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding respect of a debtor company, to

- (a) monitor the debtor company's business and financial affairs for the purpose of reorganization; or
- (b) act as a representative in respect of the foreign proceeding.

### **Centre of debtor company's main interests**

(2) For the purposes of this Part, in the absence of proof to the contrary, a debtor company's registered office is deemed to be the centre of its main interests.

### **Application for recognition of a foreign proceeding**

**46 (1)** A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.

[...]

### **Order recognizing foreign proceeding**

**47. (1)** If the court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, the court shall make an order recognizing the foreign proceeding.

### **Nature of foreign proceeding to be specified**

(2) The court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

### **Order relating to recognition of a foreign main proceeding**

**48. (1)** Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding, the court shall make an order, subject to any terms and conditions it considers appropriate,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;

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

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

(d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

[...]

### **Other orders**

**49. (1)** If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

(a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);

(b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and

(c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

[...]

### **Terms and conditions of orders**

**50.** An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.

[...]

### **Cooperation — court**

**52 (1)** If an order recognizing a foreign proceeding is made, the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

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

Court File No: ●

AND IN THE MATTER OF REVLON, INC., ALMAY, INC., ART & SCIENCE, LTD., BARI COSMETICS, LTD., BEAUTYGE BRANDS USA, INC., BEAUTYGE I, BEAUTYGE II, LLC, BEAUTYGE U.S.A., INC., BRANDCO ALMAY 2020 LLC, BRANDCO CHARLIE 2020 LLC, BRANDCO CND 2020 LLC, BRANDCO CURVE 2020 LLC, BRANDCO ELIZABETH ARDEN 2020 LLC, BRANDCO GIORGIO BEVERLY HILLS 2020 LLC, BRANDCO HALSTON 2020 LLC, BRANDCO JEAN NATE 2020 LLC, BRANDCO MITCHUM 2020 LLC, BRANDCO MULTICULTURAL GROUP 2020 LLC, BRANDCO PS 2020 LLC, BRANDCO WHITE SHOULDERS 2020 LLC, CHARLES REVSON INC., CREATIVE NAIL DESIGN, INC., CUTEX, INC., DF ENTERPRISES, INC., ELIZABETH ARDEN (CANADA) LIMITED, ELIZABETH ARDEN (FINANCING), INC., ELIZABETH ARDEN (UK) LTD., ELIZABETH ARDEN INVESTMENTS, LLC, ELIZABETH ARDEN NM, LLC, ELIZABETH ARDEN TRAVEL RETAIL, INC., ELIZABETH ARDEN USC, LLC, ELIZABETH ARDEN, INC., FD MANAGEMENT, INC., NORTH AMERICA REVSALE INC., OPP PRODUCTS, INC., PPI TWO CORPORATION, RDN MANAGEMENT, INC., REALISTIC ROUX PROFESSIONAL PRODUCTS INC., REVLON CANADA INC., REVLON CONSUMER PRODUCTS CORPORATION, REVLON DEVELOPMENT CORP., REVLON PROFESSIONAL HOLDING COMPANY LLC, REVLON GOVERNMENT SALES, INC., REVLON INTERNATIONAL CORPORATION, REVLON (PUERTO RICO) INC., RIROS CORPORATION, RIROS GROUP INC., RML LLC, ROUX LABORATORIES, INC., ROUX PROPERTIES JACKSONVILLE, LLC, AND SINFULCOLORS INC.

AND IN THE MATTER OF REVLON, INC. (ET AL.)

APPLICATION OF REVLON, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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

Proceeding Commenced at Toronto

**FACTUM OF THE FOREIGN REPRESENTATIVE**



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