

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF DCL CORPORATION

**FOURTH REPORT OF THE MONITOR**  
**ALVAREZ & MARSAL CANADA INC.**

**MARCH 28, 2023**

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## 1.0 INTRODUCTION

- 1.1 On December 20, 2022 (the “**Filing Date**” or “**Petition Date**”), DCL Corporation (“**DCL Canada**” or the “**Applicant**”) obtained an initial order (the “**Initial Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The proceedings commenced thereby are referred to herein as the “**CCAA Proceedings**”. Among other things, the Initial Order appointed Alvarez & Marsal Canada Inc. as monitor in the CCAA Proceedings (in such capacity, the “**Monitor**”).
- 1.2 On December 29, 2022, the Applicant obtained an amended and restated Initial Order (the “**Amended and Restated Initial Order**”) that, among other things, approved the DIP Facility and the Final DIP Credit Agreement (each as defined in the First Report (as defined below)), and extended the Stay Period (as defined in the Amended and Restated Initial Order) until and including March 17, 2023.
- 1.3 On February 22, 2023, the Court issued an order which, among other things, approved the Stalking Horse APA and the Final Bidding Procedures (each as defined and described in the Second Report (as defined below)).
- 1.4 On March 16, 2023, the Applicant obtained an Order further extending the Stay Period until and including March 31, 2023.
- 1.5 DCL Canada is a subsidiary of its U.S. parent, H.I.G. Colors Inc. (“**Holdings**”), a direct wholly-owned subsidiary of the ultimate corporate parent, H.I.G. Colors Holdings, Inc. (“**HIG Colors Holdings**” and, together with Holdings and its direct and indirect subsidiaries, including the Applicant and its subsidiaries, the “**DCL Group**”).

1.6 The CCAA Proceedings were commenced as part of a larger coordinated restructuring of the DCL Group. On the Petition Date, HIG Colors Holdings and certain of its U.S.-based subsidiaries (collectively, “**DCL US**” or the “**Chapter 11 Debtors**”)<sup>1</sup> each filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “**U.S. Bankruptcy Court**”, and such proceedings, the “**Chapter 11 Proceedings**”, and together with the CCAA Proceedings, the “**Restructuring Proceedings**”). On December 22, 2022, the U.S. Bankruptcy Court granted a number of “first day orders” in the Chapter 11 Proceedings.

1.7 In connection with the CCAA Proceedings, Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as proposed monitor, filed the Pre-Filing Report of the Proposed Monitor dated December 20, 2022 (the “**Pre-Filing Report**”). The Monitor has also provided the Court with its First Report of the Monitor dated December 27, 2022 (the “**First Report**”), its Second Report of the Monitor dated February 16, 2023 (the “**Second Report**”) and its Third Report of the Monitor dated March 15, 2023 (the “**Third Report**” and together with the Pre-Filing Report, the First Report and the Second Report, the “**Prior Reports**”). The Prior Reports and other Court-filed documents in the CCAA Proceedings are available on the Monitor’s website at: [www.alvarezandmarsal.com/DCLCanada](http://www.alvarezandmarsal.com/DCLCanada) (“**Case Website**”).<sup>2</sup>

## 2.0 PURPOSE OF THIS REPORT

2.1 On March 10, 2023, the Applicant served a Motion Record that was returnable before the Court on March 16, 2023, seeking the issuance of an approval and vesting order in respect

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<sup>1</sup> The Chapter 11 Debtors are: HIG Colors Holdings, Holdings, DCL Holdings (USA), Inc., DCL Corporation (USA) LLC (“**DCL USA LLC**”), DCL Corporation (BP), LLC, and Dominion Colour Corporation (USA).

<sup>2</sup> Materials filed in connection with the Chapter 11 Proceedings are available at: <https://cases.ra.kroll.com/DCL>

of the sale transaction contemplated by the Stalking Horse APA. It was originally contemplated that such sale transaction would close on March 17, 2023, which was also the maturity date of the DIP Facility.

2.2 As described in the Third Report, due to a delay in obtaining certain registrations, permits and licenses required by the proposed purchaser to continue to operate the business of the DCL Group without interruption following closing, the Monitor understands that the parties required additional time to close the transaction. In addition, the Applicant also required additional time to negotiate arrangements and amendments in respect of the Final DIP Credit Agreement and the Stalking Horse APA given the extended closing date. Accordingly, the Applicant sought and obtained a short extension of the Stay Period to March 31, 2023.

2.3 The Applicant is now returning to Court to seek the issuance of the Approval and Vesting Order (as defined below). In the days leading up to the date of this fourth report of the Monitor (this “**Fourth Report**”), a forbearance with the agent under the DIP Facility (the “**DIP Agent**”) and further amendments to the Stalking Horse APA (resulting in the Second Amended and Restated Sale Agreement (as defined and described below)), needed to be settled by the parties. Accordingly, the Monitor was only able to finalize, serve and file this Fourth Report on the date hereof.

2.4 The purpose of the Fourth Report is to provide the Court with information and, where applicable, the Monitor’s views on:

- (i) the Applicant’s cash flow results for the two-week period ended March 17, 2023;
- (ii) the proposed order (the “**Approval and Vesting Order**”), among other things:

- (a) approving the transactions (collectively, the “**Transaction**”) contemplated by the second amended and restated asset purchase agreement (the “**Second Amended and Restated Sale Agreement**”) dated as of March 28, 2023, between the Applicant and the Chapter 11 Debtors, as sellers (collectively, the “**Sellers**”), and Pigments Services, Inc., as purchaser (including any permitted assignees, “**Pigments**”)<sup>3</sup>;
  - (b) vesting the Applicant’s assets in and to Pigments’ assignees, free and clear of any security, lien, charge or other restriction, other than the Permitted Encumbrances (as defined in the Approval and Vesting Order); and
  - (c) extending the Stay Period until and including June 30, 2023;
- (iii) the activities of the Monitor since the date of the Second Report; and
  - (iv) the Monitor’s conclusions and recommendations in connection with the foregoing, as applicable.

### **3.0 TERMS OF REFERENCE AND DISCLAIMER**

- 3.1 In preparing this Fourth Report, A&M, in its capacity as Monitor, has been provided with and has relied upon unaudited financial information and the books and records prepared by DCL Canada and the DCL Group (including information prepared by the Applicant’s and the Chapter 11 Debtors’ restructuring advisor, Ankura LLC (“**Ankura**”)) and has held

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<sup>3</sup> Pigments is an affiliate of the prepetition term loan lenders to DCL Canada and DCL US (the “**Term Loan Lenders**”). As discussed in the Second Report, a significant portion of Pigments’ contemplated purchase price is comprised of a credit bid of the obligations outstanding under the prepetition term loan (the “**Prepetition Term Loan**”).

discussions with management, the chief restructuring officer (the “**CRO**”), Ankura and the DCL Group’s Canadian and U.S. restructuring legal counsel (collectively, the “**Information**”). Except as otherwise described in this Fourth Report, in respect of DCL Canada’s cash flow forecast:

- (i) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CASs**”) pursuant to the *Chartered Professional Accountants Canada Handbook* (the “**CPA Handbook**”) and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
- (ii) some of the information referred to in this Fourth Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the CPA Handbook, has not been performed.

3.2 Future oriented financial information referred to in this Fourth Report was prepared based on DCL Canada’s and the Chapter 11 Debtors’ estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results may vary from the projections, even if the assumptions materialize, and the variations could be significant.

3.3 This Fourth Report should be read in conjunction with the affidavit of the CRO, Mr. Scott Davido, sworn March 10, 2023 (the “**Fourth Davido Affidavit**”) and the supplement to

the Fourth Davido Affidavit, sworn March 28, 2023 (the “**Supplemental Davido Affidavit**”) filed in support of the Applicant’s motion for the approval of the Second Amended and Restated Sale Agreement and an extension of the Stay Period until and including June 30, 2023. Capitalized terms used but not defined in this Fourth Report shall have the meanings given to such terms in the Fourth Davido Affidavit and the Supplemental Davido Affidavit, as applicable. Unless otherwise stated, all monetary amounts contained in this Fourth Report are expressed in U.S. dollars (“**USD**”).

#### 4.0 CASH FLOW RESULTS

##### DCL Canada’s Cash Flow Results

4.1 Actual receipts and disbursements for the two-week period from March 4, 2023 to March 17, 2023 (the “**Reporting Period**”), as compared to the “Updated Cash Flow Forecast” attached as Appendix “A” to the Third Report, are summarized in the following table:

<b>Cash Flow Variance Report</b>			
<b>USD \$000’s</b>			
	<b>Actual</b>	<b>Budget</b>	<b>Variance</b>
<b>Receipts</b>			
Third-party collections	\$ 172	\$ 99	\$ 73
Intercompany Transfers	2,264	2,962	(698)
	2,436	3,061	(625)
<b>Disbursements</b>			
Payroll & Benefits	(456)	(479)	23
Vendor Payments	(396)	(478)	82
Rent, Utilities, Insurance	(303)	(115)	(188)
Professional Fees	(754)	(1,121)	367
Freight, Duties & Other	(235)	(363)	128
DIP Interest & Fees	-	-	-
Total Disbursements	(2,144)	(2,556)	412
<b>Net Cash Flow</b>	292	505	(213)
Opening Cash Balance	979	979	-
Net Cash Flow	292	505	(213)
Revolving Facility draws	87	2,556	(2,469)
Revolving Facility sweeps	(878)	(4,040)	3,162
<b>Ending Cash Balance</b>	<b>\$ 480</b>	<b>\$ -</b>	<b>\$ 480</b>



4.2 During the Reporting Period:

- (i) the negative variance in Intercompany Transfers<sup>4</sup> of approximately \$698,000 is due primarily to the positive variance in disbursements and available cash on hand, resulting in lower funding requirements for DCL Canada; and
- (ii) the positive variance in total disbursements of approximately \$412,000 is attributed primarily to the timing of certain professional fee payments, which have been deferred until the Transaction closing date, and accordingly are considered timing in nature.

- 4.3 As at March 17, 2023, DCL Canada's: (i) cash balance was approximately \$480,000; and (ii) direct borrowings under the DIP Facility were approximately \$2.6 million.

Critical Suppliers

- 4.4 During the Reporting Period, DCL Canada made, with the consent of the Monitor, pre-filing payments totalling approximately \$189,000 to critical suppliers in respect of goods and services provided to the Applicant prior to the Filing Date.
- 4.5 Since the commencement of the CCAA Proceedings, DCL Canada has made in aggregate approximately \$1.8 million in pre-filing payments in respect of: (i) goods and services provided to the Applicant prior to the Filing Date; and (ii) vendor payments made on behalf of DCL NL (which payments have been accounted for through the Intercompany Account

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<sup>4</sup> "Intercompany Transfers" are, as defined in the First Report, cash transfers made, on a regular basis, between DCL Canada, DCL US and their other affiliates, to fund operating disbursements and to settle open balances as among the parties. As further described in the First Report, Intercompany Transfers represent payments by DCL USA LLC to DCL Canada for: (a) Inventory Sales to DCL USA LLC; (b) the net provision of Shared Services; (c) payments to suppliers of the Applicant's Dutch subsidiary, DCL Corporation (NL) B.V. ("**DCL NL**"); and (d) any additional funding required to support the Applicant during the CCAA Proceedings to be made by way of Intercompany Loans (each as defined in the First Report), net of amounts transferred by DCL Canada to DCL USA LLC.

(as defined below)). Each such payment was made pursuant to and in accordance with the Amended and Restated Initial Order and with the consent of the Monitor.

#### Cash Management System

- 4.6 As described in the Second Report, following the commencement of the CCAA Proceedings, DCL Canada made certain amendments and modifications to its Court-approved “Cash Management System”, with the consent of the Monitor and the DIP Agent.
- 4.7 As described in the Fourth Davido Affidavit, additional modifications were subsequently made to the Cash Management System. The Applicant and the DIP Agent finalized the amendments to the Cash Management System and on March 7, 2023, with the consent of the Monitor, entered into an amended and restated cash management agreement (the “**Amended and Restated Cash Management Agreement**”). The primary purpose of these amendments was to ensure that cash received in the Applicant’s collection accounts were properly allocated and applied against the appropriate U.S. or Canadian DIP Facility loans, based on the underlying customer receivable being collected. The Monitor understands that the amended Cash Management System is substantially similar to the initial Court-approved Cash Management System.

#### Intercompany Account

- 4.8 As described in the Pre-Filing Report, DCL Canada, DCL USA LLC and DCL Canada’s European subsidiaries, including DCL NL, formalized certain intercompany arrangements pursuant to the Intercompany Agreements, which provide for the continuation of ordinary course operating intercompany transactions during the Restructuring Proceedings. The

Intercompany Agreements were approved by the Court pursuant to the Amended and Restated Initial Order.

- 4.9 During the Reporting Period, DCL Canada received approximately \$4.5 million from DCL USA LLC in Intercompany Transfers. As recorded in the DCL Group's intercompany account (the "**Intercompany Account**"), these Intercompany Transfers, together with additional intercompany transactions, can be summarized as follows:

<b>Preliminary Estimate of DCL Canada's Intercompany Account Cumulative Seven-Week Period Ended March 17, 2023</b>	<b>USD \$000's</b>
<b>Opening Net Receivable / (Payable) Balance as at January 27, 2023</b>	\$ 571
Add: Inventory Sales to DCL USA LLC	3,388
Add: Net Shared Services provided to DCL USA LLC	310
Add: Vendor Payments made on behalf of DCL NL	171
Less: Professional Fees paid by DCL USA LLC allocated to DCL Canada	(306)
Less: Intercompany Transfers from DCL USA LLC	(4,485)
<b>Ending Net Receivable / (Payable) Balance as at March 17, 2023</b>	<b>\$ (351)</b>

- 4.10 As set out above, as at March 17, 2023, the Intercompany Account reflected a net payable balance of approximately \$351,000.<sup>5</sup>
- 4.11 Given that, in the ordinary course, the Intercompany Account is reconciled on a monthly basis, the table above includes preliminary estimates of such balances and is subject to further review and retroactive adjustment. The Monitor will continue to monitor and report on the Intercompany Account during the CCAA Proceedings, including with respect to any

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<sup>5</sup> Pursuant to the Amended and Restated Initial Order, the Court granted DCL USA LLC a charge on DCL Canada's property (other than certain cash collateral with HSBC Bank Canada) as security for any intercompany loan (i.e., when DCL Canada is in a payable position) received by DCL Canada from DCL USA LLC. Similarly, within the Chapter 11 Proceedings, the Chapter 11 Debtors obtained the U.S. Bankruptcy Court's approval of a super-priority administrative claim, which is intended to provide DCL Canada with similar protections when DCL Canada is in a receivable position to any of the Chapter 11 Debtors during the Chapter 11 Proceedings.

reallocation of amounts outstanding under the DIP Facility as between DCL Canada and DCL US.

## **5.0 UPDATED CASH FLOW FORECAST**

- 5.1 As described in the Third Report and the Supplemental Davido Affidavit, given the maturity of the DIP Facility as of March 17, 2023, and the delay in the closing of the Transaction, the DCL Group and the DIP Agent entered into a forbearance agreement on March 22, 2023, with the initial forbearance period thereunder expiring on March 24, 2023. The parties thereafter entered into an amended and restated forbearance agreement dated as of March 28, 2023 (the “**Forbearance Agreement**”), that, among other things, extends the forbearance period to April 14, 2023, which is the new outside date for the closing of the Transaction. Pursuant to the Forbearance Agreement, the parties also agreed to certain amendments to the Final DIP Credit Agreement to account for the new outside closing date for the Transaction.
- 5.2 In connection with the Forbearance Agreement, the DCL Group prepared a supplemental DIP Budget (the “**Supplemental DIP Budget**”). A copy of the Supplemental DIP Budget is attached hereto as **Appendix “A”**. The Supplemental DIP Budget is presented on a consolidated basis and encompasses the cash flow forecast for DCL Canada. Based on the Supplemental DIP Budget, the Applicant is forecast to have sufficient liquidity through the period required to finalize and close the Transaction.

## **6.0 APPROVAL AND VESTING ORDER**

- 6.1 As described in the Prior Reports, a primary purpose of the Restructuring Proceedings was to commence a marketing process for DCL Group's business and assets (the "**Stalking Horse Sales Process**").
- 6.2 The Stalking Horse Sales Process was supported by the Stalking Horse APA, which served as the "stalking horse bid" pursuant to the Final Bidding Procedures approved by the Court. The Stalking Horse APA (as amended and restated is referred to herein as the "**Sale Agreement**"), and the Final Bidding Procedures, were summarized in the Second Report. A copy of the Second Report (without appendices) is attached hereto as **Appendix "B"**.
- 6.3 In connection with the delay in obtaining Court approval of the Transaction and the Sale Agreement and in the closing of the Transaction, the DCL Group and Pigments negotiated and finalized certain corresponding amendments to the Sale Agreement, which led to the execution of the Second Amended and Restated Sale Agreement on March 28, 2023. Pursuant to the Second Amended and Restated Sale Agreement, the Transaction is to be consummated by no later than April 14, 2023.
- 6.4 Among other revisions reflected therein, the Second Amended and Restated Sale Agreement includes a condition in favour of Pigments that Excess Availability (as defined therein) on the DCL Group's latest borrowing base shall not be less than \$0 (the previous condition under the Sale Agreement required such Excess Availability not be less than \$469,000). This amendment means that the DCL Group cannot allow the DIP Facility to go into an over-advance position on closing. As described above, the Supplemental DIP Budget forecasts sufficient liquidity and borrowing availability through the outside closing

date of April 14, 2023. The Monitor intends to work with the Applicant to monitor the borrowing base during such period and, if necessary, will provide a further update to the Court at the relevant time. Other amendments reflected in Second Amended and Restated Sale Agreement are summarized in the Supplemental Davido Affidavit.

- 6.5 The Applicant is now seeking the Court's approval of the Transaction contemplated by the Second Amended and Restated Sale Agreement and the vesting of the Canadian Purchased Assets (as defined in Second Amended and Restated Sale Agreement) in and to Pigments (or its assignees) in accordance with the Approval and Vesting Order.

Stalking Horse Sales Process

- 6.6 The following provides an overview of the steps taken by DCL Group and its investment banker, TM Capital, in connection with the Stalking Horse Sales Process:

- (i) prior to the commencement of the Restructuring Proceedings, TM Capital canvassed a select list of parties who had been identified as the most likely acquirers of the DCL Group and during the period from September through December 2022, and certain of these parties performed diligence on the DCL Group's business;
- (ii) while TM Capital continued the marketing process following the Filing Date, the DCL Group also negotiated the proposed credit bid transaction received from the Term Loan Lenders, which resulted in the execution of the original asset purchase agreement by the Sellers and Pigments Holdings, Inc.<sup>6</sup> on December 22, 2022 (the

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<sup>6</sup> The Monitor understands that, in connection with the entering into of the Second Amended and Restated Sale Agreement, Pigments Holdings, Inc. assigned all of its rights thereunder to Pigments, and Pigments Holdings, Inc. remains liable for the obligations of the assignees thereunder.

**“Original Stalking Horse APA”**). The DCL Group and the Term Loan Lenders thereafter negotiated amendments to the Original Stalking Horse APA, which resulted in the Sale Agreement;

- (iii) following the entering into of the Original Stalking Horse APA, TM Capital advanced the Stalking Horse Sales Process;
- (iv) throughout the pre-filing sale process and the Stalking Horse Sales Process, TM Capital contacted over 190 parties, comprised of 53 strategic buyers and 138 financial buyers, including the parties that participated in the pre-filing sale process described above. Of this group, over 70 parties executed non-disclosure agreements, received a confidential information memorandum and were granted access to a virtual data room;
- (v) based on the information provided, the Monitor is of the view that the list of parties contacted by TM Capital was extensive and provided for wide market coverage in connection with identifying a going concern buyer for the DCL Group;
- (vi) qualified parties were invited to continue their diligence, including, but not limited to, virtual and in-person meetings with management, facility tours, access to additional financial and operational data, and access to the DCL Group’s Quality of Earnings report as prepared by their financial advisor;
- (vii) during the weeks leading up to the Bid Deadline (as defined below), TM Capital received a letter of intent from two interested parties. Following a review of these proposals and further discussions with the interested parties, TM Capital and the

DCL Group determined that such proposals were inferior in value to the Sale Agreement and did not meet the specific criteria required to be a Qualified Bid (as described in the Second Report). The Monitor was provided with and reviewed copies of the letters of intent;

- (viii) Qualified Bids were required to be received by no later than March 10, 2023 at 5:00 p.m. Eastern Time (the “**Bid Deadline**”); and
- (ix) other than the Sale Agreement, the DCL Group did not receive any Qualified Bids prior to expiration of the Bid Deadline. Accordingly, the Sale Agreement was deemed to be the “Successful Bid” under the Final Bidding Procedures and the auction was cancelled, concluding the Stalking Horse Sales Process.

#### Sale Transaction

6.7 The Sale Agreement was discussed in the Second Report and a copy of the executed Second Amended and Restated Sale Agreement is attached to the Supplemental Davido Affidavit as Exhibit “E” thereto. Certain key terms of the Second Amended and Restated Sale Agreement are summarized below:

- (i) the purchase price is estimated to be approximately \$166.2 million to \$170.8 million, and is comprised of: (a) a credit bid in the amount of \$45 million owing pursuant to the Prepetition Term Loan; (b) a cash amount sufficient to repay the DIP Facility and any outstanding Pre-Petition ABL Obligations, and to cash collateralize any outstanding letters of credit, financial assurances or Bank Products (each as defined in the Final DIP Credit Agreement); (c) a cash amount of up to \$2.75 million to fund the Required Amount (as defined in the Second Report); (d)



the assumption of the Assumed Liabilities (as defined in the Second Amended and Restated Sale Agreement to include certain employee, real property lease, post-petition trade obligations and environmental obligations, as well as remaining Prepetition Term Loan obligations not subject to the credit bid); (e) a cash amount sufficient to pay the Deferred Fees (as defined in the Second Amended and Restated Sale Agreement) of certain Canadian and U.S. professionals; and (f) 500,000 shares of common stock of Pigments Holdings, Inc.;

- (ii) Pigments will acquire substantially all of the assets and businesses of both DCL US and DCL Canada, including the equity interests in DCL Canada's European subsidiaries;
- (iii) the DCL Group's business will continue as a going concern, other than certain operations located at Applicant's manufacturing facility located at 445 Finley Avenue (the "**Ajax Plant**"); and
- (iv) Pigments will be assuming substantially all of the DCL Group's employees, other than those employees who were previously employed at the Ajax Plant.

#### Canadian Pension Plans

- 6.8 Pursuant to the Second Amended and Restated Sale Agreement, Pigments has rights to designate for assumption, or partial assumption, none or one or more the Applicant's Canadian Pension Plans (as defined in the Second Amended and Restated Sale Agreement) prior to closing.
- 6.9 The Monitor understands that any Canadian Pension Plan (or any part thereof) that is not assumed by Pigments will likely be terminated and wound-up in due course. The Monitor

further understands that the Applicant's two defined benefit pension plans are in a slight surplus position on a wind-up basis as of December 31, 2022. Therefore, should the plans continue to be in a surplus position, a termination and wind-up of such plans would not be expected to result in a reduction of accrued benefits to the members of those plans.

- 6.10 The Monitor understands Pigments has not yet made a designation at the time of this Fourth Report. The Monitor will provide a further update to the Court at the relevant time once Pigments has confirmed such designations.

Approval and Vesting Order

- 6.11 Pursuant to the proposed Approval and Vesting Order, the Applicant is seeking the approval of the Transaction contemplated by the Second Amended and Restated Sale Agreement, including, among other things, the vesting of all of the Canadian Purchased Assets in and to the respective Canadian Assets Purchasers (as defined in the Approval and Vesting Order) free and clear of any security, lien, charge or other restriction other than the Permitted Encumbrances and the Assumed Liabilities. Such vesting shall be effective upon the delivery by the Monitor to Pigments and the Sellers of a certificate (the “**Monitor’s Certificate**”) confirming that the Monitor has received written confirmation from Pigments and the Sellers that all closing conditions have been satisfied or waived by the applicable parties and that the Monitor has received (i) the Canadian Designated Amount Portion in the amount of \$575,000; and (ii) the CCAA Cash Pool of \$750,000 (each as defined in the Second Amended and Restated Sale Agreement) to be held pending further order of the Court.

- 6.12 Following the closing date, the Administration Charge (as defined in the Amended and Restated Initial Order) will attach to the Canadian Designated Amount Portion and the CCAA Cash Pool.
- 6.13 Concurrently with the relief being sought by the Applicant in respect of the Approval and Vesting Order, the DCL Group is seeking approval of the Transaction in the U.S. Bankruptcy Court at a hearing (the “**U.S. Sale Hearing**”) scheduled, as of the date of this Fourth Report, to be heard on March 29, 2023. The Monitor understands that certain limited reservations of rights have been filed with the U.S. Bankruptcy Court in connection with the U.S. Sale Hearing and DCL US is working to resolve such reservations of rights consensually.

Impact to Canadian Creditors

- 6.14 As described in the Second Report, pursuant to the Second Amended and Restated Sale Agreement, the CCAA Cash Pool in the amount of \$750,000 will be delivered to the Monitor on closing, to be held, subject to the costs associated with administering the CCAA Proceedings, for the benefit of the Applicant’s estate.<sup>7</sup> This balance will be increased by any funds remaining from the Canadian Designated Amount Portion following the wind-down of the Applicant’s estate.
- 6.15 As at the date of this Fourth Report, and based on the information available to the Monitor, the creditors anticipated to benefit from the CCAA Cash Pool may include, among others, holders of:

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<sup>7</sup> Certain secured and intercompany claims shall not attach to the CCAA Cash Pool pursuant to the Approval and Vesting Order.

- (i) unsecured pre-filing trade and other debt, which according to the Applicant's books and records, total approximately \$15.9 million (not including any intercompany balances amongst members of the DCL Group);
- (ii) Excluded Employee Liabilities (as defined in the Second Amended and Restated Sale Agreement), including potential severance and termination claims relating to those employees who were previously employed at the Ajax Plant; and
- (iii) any other potential claims that the Monitor and/or DCL Canada may become aware of in the future, including following any claims process.

Stay Extension

6.16 The Stay Period currently expires on March 31, 2023, and the Applicant is seeking an extension of the Stay Period until and including June 30, 2023.

6.17 The Monitor supports the Applicant's motion to extend the Stay Period for the following reasons:

- (i) it will provide the Applicant with the stability to continue to operate in the ordinary course and close the Transaction contemplated by the Second Amended and Restated Sale Agreement;
- (ii) it is intended that a further motion will be brought before the Court during the extended Stay Period to provide the Monitor with additional powers to conduct an orderly wind-down of DCL Canada's estate and administer the CCAA Cash Pool;

- (iii) the Canadian Designated Amount Portion is projected to provide sufficient liquidity for the Applicant through to the end of the proposed extended Stay Period following closing; and
- (iv) the Applicant continues to act in good faith and with due diligence.

## **7.0 ACTIVITIES OF THE MONITOR SINCE THE DATE OF THE SECOND REPORT**

7.1 Since the date of the Second Report, the activities of the Monitor have included:

- (i) continuing to assist DCL Canada with communications to suppliers, critical service providers, customers and other parties;
- (ii) engaging in discussions with the DCL Group, as well as their respective legal counsel and financial advisor regarding the Restructuring Proceedings, including:
  - (a) the Stalking Horse Sales Process generally; and (b) assisting with the Forbearance Agreement and the Second Amended and Restated Sale Agreement;
- (iii) responding to inquiries from stakeholders, including addressing questions or concerns of parties who contacted the Monitor on the hotline number or email account established by the Monitor for the CCAA Proceedings;
- (iv) monitoring receipts, disbursements, purchase commitments and the Intercompany Account, including the review of payments made;
- (v) posting non-confidential materials filed with the Court to the Case Website; and
- (vi) with the assistance of its legal counsel, preparing the Third Report and this Fourth Report.

## **8.0 CONCLUSIONS AND RECOMMENDATIONS**

8.1 For the reasons discussed herein, the Monitor respectfully recommends that the Court grant the Approval and Vesting Order.

8.2 The Monitor is supportive of the Transaction and the Approval and Vesting Order for the following reasons:

- (i) the Second Amended and Restated Sale Agreement provides for: (a) a going concern sale of the majority of the Applicant's business; (b) continued employment of substantially all of the Applicant's active employees (other than those at the Ajax Plant); (c) a continued customer for the Applicant's many suppliers; and (d) a continued source of goods for the DCL Group's customers (the Monitor notes that the vast majority of the Applicant's sales are intercompany sales, which DCL US then sells on to its third-party customers);
- (ii) the Second Amended and Restated Sale Agreement is subject to heavily negotiated and commercially reasonable terms and conditions and reflects the DCL Group's efforts to obtain the best possible price for its assets through a Court-approved Stalking Horse Sales Process, and the Monitor is satisfied that the Stalking Horse Sales Process was managed in accordance with its terms and that prospective purchasers and investors were provided a reasonable opportunity to participate in the process and provide a superior bid. In the Monitor's view, the Stalking Horse Sales Process was carried out in a fair and transparent manner and allowed for the best possible transaction for the Applicant in the circumstances; and

- (iii) it is the Monitor's view that the purchase price under the Second Amended and Restated Sale Agreement is fair and reasonable in the circumstances given the wide canvassing of the market pursuant to the Court-approved Stalking Horse Sales Process. It is also the Monitor's view that the Transaction, which provides for a going concern sale of the DCL Group, is more beneficial to the Applicant's creditors and other stakeholders than a sale or a disposition under a bankruptcy.


All of which is respectfully submitted to this Court this 28<sup>th</sup> day of March, 2023.

**ALVAREZ & MARSAL CANADA INC.,**  
**solely in its capacity as Monitor of**  
**DCL Corporation and not in its personal or corporate capacity**

Per:

  
Josh Nevsky  
Senior Vice-President

Per:

  
Stephen Ferguson  
Senior Vice-President

**APPENDIX “A”**

**SUPPLEMENTAL DIP BUDGET**



		Consolidated Cash Flow Forecast																	
	Week Number	Actual 3/4 3/10	Actual 3/11 3/17	1 3/18 3/24	2 3/25 3/31	3 4/1 4/7	4 4/8 4/14	Closing	5 4/15 4/21	6 4/22 4/28	7 4/29 5/5	8 5/6 5/12	9 5/13 5/19	10 5/20 5/26	11 5/27 6/2	Actual 2-week Total	Forecast 11-week Total	13-week Total	
#	Detail																		
1.	Sales Receipts	4,920	4,999	3,507	4,668	4,648	4,627	-	4,662	4,758	4,848	4,681	4,689	4,958	4,850	9,919	50,896	60,815	
2.	HST Rebates	-	-	-	-	-	-	-	-	1,300	-	-	270	-	270	-	1,840	1,840	
3.	Other	160	639	760	-	-	-	-	-	-	-	-	-	-	-	799	760	1,559	
4.	Blackstone Closing Costs <sup>1</sup>	-	-	-	-	-	-	9,800	-	-	-	-	-	-	-	-	9,800	9,800	
5.	Accrued & Unpaid Pro Fees	-	-	-	-	-	-	4,326	-	-	-	-	-	-	-	-	4,326	4,326	
6.	Additional Capital Contribution	-	-	-	-	-	-	6,206	-	-	-	-	-	-	-	-	6,206	6,206	
7.	Total Receipts	5,079	5,638	4,267	4,668	4,648	4,627	20,331	4,662	6,058	4,848	4,681	4,959	4,958	5,120	10,717	73,828	84,545	
8.	Payroll & Benefits	(599)	(628)	(961)	(533)	(977)	(279)	-	(977)	(549)	(977)	(279)	(977)	(549)	(977)	(1,227)	(8,035)	(9,262)	
9.	Pre-Petition Payables	(469)	(105)	-	-	-	-	-	-	-	-	-	-	-	-	(574)	-	(574)	
10.	Vendor Payments	(686)	(1,118)	(1,628)	(1,850)	(1,500)	(1,500)	-	(2,050)	(2,050)	(2,150)	(2,150)	(2,150)	(2,150)	(2,150)	(1,804)	(21,328)	(23,132)	
11.	Utilities	(419)	(426)	(250)	(821)	(455)	(252)	-	(41)	-	(205)	(1)	(43)	-	(55)	(845)	(2,123)	(2,967)	
12.	Rent	(13)	(14)	-	(8)	(15)	-	-	-	-	(23)	-	-	-	(23)	(27)	(68)	(95)	
13.	Insurance	(52)	-	(85)	(3)	-	-	-	-	(85)	(3)	-	-	(85)	(300)	(52)	(559)	(611)	
14.	Freight, Duties & Other	(863)	(533)	(940)	(595)	(870)	(675)	-	(795)	(612)	(788)	(759)	(798)	(612)	(780)	(1,396)	(8,225)	(9,622)	
15.	Maintenance Capex	-	(18)	(50)	(50)	(50)	(50)	-	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(18)	(545)	(564)	
16.	Total NA Operating Disbursements	(3,101)	(2,843)	(3,913)	(3,860)	(3,866)	(2,756)	-	(3,912)	(3,346)	(4,195)	(3,238)	(4,018)	(3,445)	(4,334)	(5,943)	(40,883)	(46,827)	
17.	International Op. Disbursements	(929)	(575)	(786)	(1,905)	(934)	(917)	-	(437)	(2,019)	(1,079)	(1,034)	(437)	(810)	(1,033)	(1,504)	(11,389)	(12,893)	
18.	Total Operating Disbursements	(4,030)	(3,417)	(4,699)	(5,765)	(4,800)	(3,673)	-	(4,349)	(5,364)	(5,273)	(4,272)	(4,455)	(4,255)	(5,367)	(7,447)	(52,272)	(59,719)	
19.	Professional Fees	(604)	(1,864)	-	-	-	-	(4,010)	(180)	(180)	(230)	(180)	(180)	(180)	(230)	(2,469)	(5,370)	(7,838)	
20.	DIP Interest Payment / Fees	-	-	-	-	(286)	-	-	-	-	(212)	-	-	-	(211)	-	(708)	(708)	
21.	Adequate Protection	(316)	-	-	-	-	-	(316)	-	-	-	-	-	-	-	(316)	(316)	(632)	
22.	Other Non-Operating Outflows <sup>1</sup>	-	-	-	-	-	-	(9,800)	-	-	-	(50)	(50)	(50)	(50)	-	(10,000)	(10,000)	
23.	UST Fees	-	-	-	-	-	-	-	-	(500)	-	-	-	-	-	-	(500)	(500)	
24.	Total - Non-Op. Disbursements	(920)	(1,864)	-	-	(286)	-	(14,126)	(180)	(680)	(442)	(230)	(230)	(230)	(491)	(2,785)	(16,894)	(19,679)	
25.	Net Cash Flow	129	356	(432)	(1,097)	(437)	954	6,206	133	13	(867)	178	274	474	(739)	485	4,661	5,146	
26.	Cash Roll forward:																		
27.	Beginning Balance	5,537	3,119	3,817	3,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	5,537	3,817	5,537	
28.	(+) Inflows	5,079	5,638	4,267	4,668	4,648	4,627	20,331	4,662	6,058	4,848	4,681	4,959	4,958	5,120	10,717	73,828	84,545	
29.	(-) Disbursements	(4,950)	(5,282)	(4,699)	(5,765)	(5,086)	(3,673)	(14,126)	(4,529)	(6,044)	(5,715)	(4,502)	(4,685)	(4,485)	(5,858)	(10,232)	(69,167)	(79,398)	
30.	(+/-) ABL Draws / (Sweeps)	(2,538)	376	(386)	97	437	(954)	(6,206)	(133)	(13)	867	(178)	(274)	(474)	739	(2,162)	(6,479)	(8,640)	
31.	(+/-) Other/FX	(9)	(34)	-	-	-	-	-	-	-	-	-	-	-	-	(43)	-	(43)	
32.	Ending Balance	3,119	3,817	3,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	3,817	2,000	2,000	
33.	Revolver Summary:																		
34.	Beginning Balance	45,321	42,784	43,159	42,774	42,870	43,307	42,353	36,148	36,014	36,001	36,868	36,690	36,416	35,942	45,321	43,159	45,321	
35.	(+) Draw	5,145	4,895	4,699	5,765	5,086	3,673	36,148	4,529	6,044	5,715	4,502	4,685	4,485	5,858	10,040	91,188	101,229	
36.	(-) Paydown	(7,682)	(4,520)	(5,085)	(5,668)	(4,648)	(4,627)	(42,353)	(4,662)	(6,058)	(4,848)	(4,681)	(4,959)	(4,958)	(5,120)	(12,202)	(97,667)	(109,869)	
37.	Ending Balance	42,784	43,159	42,774	42,870	43,307	42,353	36,148	36,014	36,001	36,868	36,690	36,416	35,942	36,681	43,159	36,681	36,681	
38.	Maximum Available	55,000	55,000	55,000	55,000	55,000	55,000	55,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000				
39.	Eligible Collateral	47,910	46,434	47,111	46,724	46,331	45,955	45,955	45,807	45,578	45,188	44,907	44,620	44,103	43,638				
40.	(-) Carve Out	-	-	-	-	-	-	-	-	-	-	-	-	-	-				
41.	(-) Administrative Charge	-	-	-	-	-	-	-	-	-	-	-	-	-	-				
42.	(-) Existing reserves	(508)	(508)	(508)	(508)	(508)	(508)	(508)	(508)	(508)	(508)	(508)	(508)	(508)	(508)				
43.	(-) LOC	(1,800)	(1,800)	(1,800)	(1,800)	(1,800)	(1,800)	(1,800)	(1,800)	(1,800)	(1,800)	(1,800)	(1,800)	(1,800)	(1,800)				
44.	(-) Inventory Adjustment	-	-	-	-	-	-	-	-	-	-	-	-	-	-				
45.	Eligible Collateral, net of reserves	45,602	44,126	44,803	44,417	44,023	43,648	43,648	43,499	43,270	42,880	42,600	42,312	41,795	41,330				
46.	ABL Availability	45,602	44,126	44,803	44,417	44,023	43,648	43,648	43,499	43,270	42,880	42,600	42,312	41,795	41,330				
47.	Less: Loan Balance	42,784	43,159	42,774	42,870	43,307	42,353	36,148	36,014	36,001	36,868	36,690	36,416	35,942	36,681				
48.	Excess Availability (excl. Cash)	2,818	967	2,029	1,547	716	1,294	7,500	7,485	7,269	6,012	5,910	5,896	5,853	4,649				
49.	Excess Availability (net of Cash)	5,938	4,784	5,029	3,547	2,716	3,294	9,500	9,485	9,269	8,012	7,910	7,896	7,853	6,649				

**Notes:**

(1) Estimated costs consisting of cure costs (\$2M), wind-down (\$2M), transaction costs (\$2.25M), 503(b)(9) claims (\$2M), Canadian Creditor pool (\$0.75M), US Litigation Trust (\$0.5M) and CRP professionals (\$0.3M).

**APPENDIX “B”**

**SECOND REPORT OF THE MONITOR  
DATED FEBRUARY 16, 2023  
(without appendices)**

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF DCL CORPORATION

**SECOND REPORT OF THE MONITOR**  
**ALVAREZ & MARSAL CANADA INC.**

**FEBRUARY 16, 2023**

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## APPENDICES

**Appendix “A”** – First Report of the Monitor dated December 27, 2022 (without appendices)

**Appendix “B”** – Amended DIP Budget and Updated Cash Flow Forecast

## 1.0 INTRODUCTION

- 1.1 On December 20, 2022 (the “**Filing Date**” or “**Petition Date**”), DCL Corporation (“**DCL Canada**” or the “**Applicant**”) obtained an initial order (the “**Initial Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The proceedings commenced thereby are referred to herein as the “**CCAA Proceedings**”. Among other things, the Initial Order appointed Alvarez & Marsal Canada Inc. as monitor in the CCAA Proceedings (in such capacity, the “**Monitor**”).
- 1.2 On December 29, 2022, the Applicant obtained an amended and restated Initial Order (the “**Amended and Restated Initial Order**”) that, among other things, approved the DIP Facility and the Final DIP Credit Agreement (each as defined in the First Report (as defined below)), and extended the Stay Period (as defined in the Amended and Restated Initial Order) until and including March 17, 2023.
- 1.3 DCL Canada is a subsidiary of its U.S. parent, H.I.G. Colors Inc. (“**Holdings**”), a direct wholly-owned subsidiary of the ultimate corporate parent, H.I.G. Colors Holdings, Inc. (“**HIG Colors Holdings**” and, together with Holdings and its direct and indirect subsidiaries, including the Applicant and its subsidiaries, the “**DCL Group**”).
- 1.4 The CCAA Proceedings were commenced as part of a larger coordinated restructuring of the DCL Group. On the Petition Date, HIG Colors Holdings and certain of its U.S.-based subsidiaries (collectively, “**DCL US**” or the “**Chapter 11 Debtors**”) <sup>1</sup> each filed voluntary

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<sup>1</sup> The Chapter 11 Debtors are: HIG Colors Holdings, Holdings, DCL Holdings (USA), Inc. (the “**US Borrower**”), DCL Corporation (USA) LLC (“**DCL USA LLC**”), DCL Corporation (BP), LLC, and Dominion Colour Corporation (USA).

petitions for relief under Chapter 11 of the U.S. Bankruptcy Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**U.S. Bankruptcy Court**”, and such proceedings, the “**Chapter 11 Proceedings**”, and together with the CCAA Proceedings, the “**Restructuring Proceedings**”). On December 22, 2022, the U.S. Bankruptcy Court granted a number of “first day orders” in the Chapter 11 Proceedings.

1.5 In connection with the CCAA Proceedings, Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as proposed monitor, filed the Pre-Filing Report of the Proposed Monitor dated December 20, 2022 (the “**Pre-Filing Report**”). The Monitor has also provided the Court with the First Report of the Monitor dated December 27, 2022 (the “**First Report**”). The Pre-Filing Report, the First Report and other Court-filed documents in the CCAA Proceedings are available on the Monitor’s case website at: [www.alvarezandmarsal.com/DCLCanada](http://www.alvarezandmarsal.com/DCLCanada) (the “**Case Website**”).<sup>2</sup> A copy of the First Report (without appendices) is also attached hereto as **Appendix “A”**.

1.6 The purpose of this second report of the Monitor (this “**Second Report**”) is to provide the Court with information and, where applicable, the Monitor’s views on:

- (i) the Applicant’s cash flow results for the six-week period ended January 27, 2023, together with an updated cash flow forecast;
- (ii) the Applicant’s request that the Court issue the proposed order (the “**Order**”), that, among other things, authorizes the execution by the Applicant of the Stalking Horse

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<sup>2</sup> Materials filed in connection with the Chapter 11 Proceedings are available at: <https://cases.ra.kroll.com/DCL>

APA, *nunc pro tunc*, and approves the Final Bidding Procedures (each as defined below);

- (iii) counsel to the Monitor's review of the security granted by the Applicant in respect of the Prepetition Term Loan (as defined below);
- (iv) the activities of the Monitor since the date of the First Report (December 27, 2022); and
- (v) the Monitor's conclusions and recommendations in connection with the foregoing.

## **2.0 TERMS OF REFERENCE AND DISCLAIMER**

2.1 In preparing this Second Report, A&M, in its capacity as Monitor, has been provided with and has relied upon unaudited financial information and the books and records prepared by DCL Canada and the DCL Group (including information prepared by the Applicant's and the Chapter 11 Debtors' restructuring advisor, Ankura LLC ("**Ankura**")) and has held discussions with management, the chief restructuring officer (the "**CRO**"), Ankura and the DCL Group's Canadian and U.S. restructuring legal counsel (collectively, the "**Information**"). Except as otherwise described in this Second Report, in respect of DCL Canada's cash flow forecast:

- (i) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CASs**") pursuant to the *Chartered Professional Accountants*

*Canada Handbook* (the “**CPA Handbook**”) and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and

- (ii) some of the information referred to in this Second Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the CPA Handbook, has not been performed.

2.2 Future oriented financial information referred to in this Second Report was prepared based on DCL Canada’s and the Chapter 11 Debtors’ estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results may vary from the projections, even if the assumptions materialize, and the variations could be significant.

2.3 This Second Report should be read in conjunction with the affidavit of the CRO, Mr. Scott Davido, sworn February 15, 2023 (the “**Third Davido Affidavit**”) filed in support of the Applicant’s motion for relief under the CCAA. Capitalized terms used but not defined in this Second Report shall have the meanings given to such terms in the Third Davido Affidavit.

2.4 Unless otherwise stated, all monetary amounts contained in this Second Report are expressed in U.S. dollars (“**USD**”).



### 3.0 CASH FLOW RESULTS

#### DCL Group's Consolidated Cash Flow Results

- 3.1 As described in the First Report, the DIP Facility includes certain cash flow covenant tests that are tested against the DCL Group's consolidated cash flow results. One such test requires that aggregate sales receipts be at least 80% of the aggregate amount thereof in the applicable DIP Budget (as defined in the Final DIP Credit Agreement) for the applicable period. As described further in the Third Davido Affidavit, on a consolidated basis, the DCL Group faced certain challenges regarding the collection of third-party accounts receivable and, for certain of the periods ended January 20, 2023 through February 3, 2023, the DCL Group was unable to maintain such aggregate sale receipts of at least 80%, resulting in "Events of Default" arising under the DIP Facility.
- 3.2 The DCL Group has requested a waiver of such Events of Default from the DIP Agent and lenders under the DIP Facility, which is expected to be implemented by way of an amending agreement (the "**DIP Amendment**"). The DIP Amendment is anticipated to be finalized as part of the order approving the DIP Facility, on a final basis, in the Chapter 11 Proceedings, which is expected to occur at the Second Day Hearing (as defined below) scheduled to take place on February 21, 2023, together with other relief to be sought before the U.S. Bankruptcy Court relating to the Global Settlement (as defined and discussed below). If the DIP Amendment is finalized in its anticipated form, and subject to the Monitor's review thereof, the Monitor is prepared to provide the requisite consent, as required by the Amended and Restated Initial Order, to the Applicant's execution of the DIP Amendment.

- 3.3 While collections to date have been lower than forecast, the Monitor notes that lower than forecast disbursements have more than offset this negative variance. On a consolidated basis, through the period ended February 3, 2023, the DCL Group has experienced a positive net cash flow variance of approximately \$6.4 million compared to the DIP Budget.

#### DCL Canada's Cash Flow Results

- 3.4 Actual receipts and disbursements for the six-week period from December 17, 2022, to January 27, 2023 (the “**Reporting Period**”), as compared to the “Updated Cash Flow Forecast” attached as Appendix “B” to the First Report, are summarized in the following table:

<b>Cash Flow Variance Report</b>			
<b>USD \$000's</b>			
	<b>Actual</b>	<b>Budget</b>	<b>Variance</b>
<b>Receipts</b>			
Third-party collections	\$ 632	\$ 666	\$ (34)
Intercompany Transfers	1,330	6,557	(5,227)
	1,962	7,223	(5,261)
<b>Disbursements</b>			
Payroll & Benefits	(1,721)	(1,937)	216
Vendor Payments	(1,583)	(6,028)	4,445
Rent, Utilities, Insurance	(170)	(343)	173
Professional Fees	(1,466)	(1,407)	(59)
Freight, Duties & Other	(545)	(1,334)	789
DIP Interest & Fees	-	(32)	32
Total Disbursements	(5,485)	(11,081)	5,596
<b>Net Cash Flow</b>	<b>(3,523)</b>	<b>(3,858)</b>	<b>335</b>
Opening Cash Balance	2,018	326	1,692
Net Cash Flow	(3,523)	(3,858)	335
Revolving Facility draws	2,949	3,532	(583)
<b>Ending Cash Balance</b>	<b>\$ 1,444</b>	<b>\$ -</b>	<b>\$ 1,444</b>

3.5 During the Reporting Period:

- (i) the negative variance in Intercompany Transfers<sup>3</sup> of approximately \$5.2 million was due primarily to the positive variance in disbursements, resulting in lower funding requirements for DCL Canada;
- (ii) the positive variance in total disbursements is primarily due to lower than forecast payments to vendors and for freight and duties, resulting from: (a) the scheduled shut down of DCL Canada's three operating facilities during the December holiday period, which was not contemplated in the forecast; (b) the delayed restart of the Ajax Plant (as defined below) due to an equipment malfunction and raw material inventory shortage; and (c) lower than expected manufacturing volume during January and February 2023, due to lower than forecast sales levels and raw material availability. The Monitor understands from DCL Canada's management that the majority of this positive variance is expected to be a permanent savings; and
- (iii) DCL Canada made, with the consent of the Monitor, pre-filing payments totalling approximately \$921,000 to third parties in respect of: (a) goods and services provided to the Applicant prior to the Filing Date; and (b) vendor payments made on behalf of DCL NL (as described in greater detail below). Each such payment

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<sup>3</sup> "Intercompany Transfers" are, as defined in the First Report, cash transfers made, on a regular basis, between DCL Canada, DCL US and their other affiliates, to fund operating disbursements and to settle open balances as among the parties. As further described in the First Report, Intercompany Transfers represent payments by DCL USA LLC to DCL Canada for: (a) Inventory Sales to DCL USA LLC; (b) the net provision of Shared Services; (c) payments to suppliers of the Applicant's Dutch subsidiary, DCL Corporation (NL) B.V. ("**DCL NL**"); and (d) any additional funding required to support the Applicant during the CCAA Proceedings to be made by way of Intercompany Loans (each as defined in the First Report), net of amounts transferred by DCL Canada to DCL USA LLC.

was made pursuant to and in accordance with the Amended and Restated Initial Order and with the consent of the Monitor.

- 3.6 As at January 27, 2023, DCL Canada's: (i) cash balance was approximately \$1.4 million; and (ii) direct borrowings were approximately \$2.9 million under the DIP Facility.
- 3.7 As at January 27, 2023, on a consolidated basis, the DCL Group's borrowings under: (i) the DIP Facility were approximately \$16.9 million; (ii) the Prepetition ABL Facility (as defined and described in the Pre-Filing Report) were approximately \$22.7 million;<sup>4</sup> and (iii) the Prepetition Term Loan were approximately \$90.5 million. The obligations of, and security granted by, DCL Canada in respect of the Prepetition Term Loan are discussed in greater detail later in this Second Report.

#### Cash Management System

- 3.8 As described in the Pre-Filing Report and the initial affidavit of Scott Davido dated December 20, 2022 (the "**Initial Affidavit**"), DCL Canada was authorized pursuant to the Amended and Restated Initial Order to continue to utilize its existing Cash Management System. The Cash Management System continues to operate in substantially the same manner as it had prior to the commencement of the CCAA Proceedings, subject to certain amendments and modifications that DCL Canada has made to its Cash Management System, with the consent of the Monitor and the DIP Agent, which are more fully described in the Third Davido Affidavit. The Monitor understands that the Applicant and the DIP Agent are working on finalizing further amendments and modifications to the Cash

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<sup>4</sup> As discussed in the Pre-Filing Report, DCL Canada's obligations under the Prepetition ABL Facility were reduced to \$0 prior to the Filing Date.

Management System as described in the Third Davido Affidavit, and the Monitor will provide a further update to the Court, if necessary, at the relevant time.

Intercompany Agreements & Intercompany Account

- 3.9 As described in the Pre-Filing Report, DCL Canada, DCL USA LLC and DCL Canada's European subsidiaries, including DCL NL, formalized the Intercompany Agreements which provide for the continuation of ordinary course operating intercompany transactions during the Restructuring Proceedings. The Intercompany Agreements were approved by the Court pursuant to the Amended and Restated Initial Order.
- 3.10 As further described in the Third Davido Affidavit, the Intercompany Agreements were amended to address the fact that the agreements refer to the payment of only a single supplier of DCL NL by the Applicant (using funding provided by DCL USA LLC), and there are in fact two such suppliers of DCL NL that are paid by the Applicant. Pursuant to the Amended and Restated Initial Order, such minor amendments are permitted with the consent of the Monitor and the DIP Agent. The amendments to the Intercompany Agreements were executed on February 3, 2023, and such consent was provided.
- 3.11 During the Reporting Period, DCL Canada received approximately \$1.3 million from DCL USA LLC in Intercompany Transfers.
- 3.12 As recorded in the DCL Group's intercompany account (the "**Intercompany Account**"), these Intercompany Transfers, together with additional intercompany transactions, can be summarized as follows:

Preliminary Estimate of DCL Canada's Intercompany Account Cumulative Six-Week Period Ended January 27, 2023		USD \$000's
Opening Net Receivable / (Payable) Balance as at the Filing Date		\$ -
Add: Inventory Sales to DCL USA LLC		1,386
Add: Net Shared Services provided to DCL USA LLC		266
Add: Vendor Payments made on behalf of DCL NL		487
Less: Professional Fees paid by DCL USA LLC allocated to DCL Canada		(238)
Less: Intercompany Transfers from DCL USA LLC		(1,330)
<b>Ending Net Receivable / (Payable) Balance as at January 27, 2023</b>		<b>\$ 571</b>

3.13 As set out above, as at January 27, 2023, the Intercompany Account reflected a net receivable balance of approximately \$571,000.<sup>5</sup>

3.14 Given that, in the ordinary course, the Intercompany Account is reconciled on a monthly basis, the table above includes preliminary estimates of such balances and is subject to further review and retroactive adjustment. The Monitor will continue to monitor and report on the Intercompany Account during the CCAA Proceedings, including with respect to any reallocation of amounts outstanding under the DIP Facility as between DCL Canada and DCL US.

#### 4.0 UPDATED CASH FLOW FORECAST

4.1 Following the Events of Default described above and pursuant to the Global Settlement, the DCL Group prepared an updated DIP Budget (the “**Amended DIP Budget**”) in connection with the requested DIP Amendment. One component of the Amended DIP Budget is an updated cash flow forecast for DCL Canada (the “**Updated Cash Flow Forecast**”) for the seven-week period from January 28, 2023, to March 17, 2023 (the

<sup>5</sup> Pursuant to the Amended and Restated Initial Order, the Court granted DCL USA LLC a charge on DCL Canada's property (other than certain cash collateral with HSBC Bank Canada) as security for any intercompany loan (i.e., when DCL Canada is in a payable position) received by DCL Canada from DCL USA LLC. Similarly, within the Chapter 11 Proceedings, the Chapter 11 Debtors obtained the U.S. Bankruptcy Court's approval of a super-priority administrative claim, which is intended to provide DCL Canada with similar protections when DCL Canada is in a receivable position to any of the Chapter 11 Debtors during the Chapter 11 Proceedings.

“**Cash Flow Period**”). A copy of the Amended DIP Budget and the Updated Cash Flow Forecast, together with a summary of assumptions, is attached hereto as **Appendix “B”**. A summary of the Updated Cash Flow Forecast is set out in the following table:

Updated Cash Flow Forecast	USD\$000's
<b>Receipts</b>	
Third-party collections	\$ 403
Intercompany Transfers	4,430
	<u>4,833</u>
<b>Disbursements</b>	
Payroll & Benefits	(1,703)
Vendor Payments	(1,134)
Rent, Utilities, Insurance	(514)
Freight, Duties & Other	(1,077)
Professional Fees	(1,969)
DIP Interest & Fees	(35)
	<u>(6,432)</u>
<b>Net Cash Flow</b>	<u>(1,599)</u>
Cash balance, opening	1,444
Net Cash Flow	(1,599)
DIP Facility Draws	6,432
DIP Facility Repayment	(9,306)
Exit Financing / Sale Proceeds (placeholder) <sup>6</sup>	3,029
<b>Ending Cash Balance</b>	<u>\$ --</u>

4.2 The Monitor notes the following with respect to the Updated Cash Flow Forecast:

- (i) the Cash Flow Period extends to March 17, 2023, the anticipated closing date under the Stalking Horse APA or alternative sale transaction;
- (ii) during the Cash Flow Period, net cash flows (excluding Intercompany Transfers and the “Exit Financing / Sale Proceeds” line item described below) are projected to be negative approximately \$6.0 million, which is projected to be sufficiently

<sup>6</sup> See discussion note in Section 4.2(iii) herein.

funded by: (a) cash-on-hand; (b) further draws on the DIP Facility, with a peak outstanding amount of approximately \$2.3 million during the pendency of the CCAA Proceedings; and (c) Intercompany Transfers of approximately \$4.4 million; and

- (iii) the “Exit Financing / Sale Proceeds” of \$3.0 million is a placeholder balance only. As required by the DIP Agent, the DCL Group included this placeholder in the DIP Budget to reflect a hypothetical sale transaction closing on or before March 17, 2023, the proceeds of which would be used to repay obligations outstanding under the DIP Facility at that time. This placeholder amount is not indicative or representative of the total proceeds that may be generated by any actual sale transaction involving the DCL Group and the Applicant, nor does it contemplate a proper allocation of such proceeds as between DCL Canada and DCL US.

## **5.0 GLOBAL SETTLEMENT, STALKING HORSE APA AND BIDDING PROCEDURES**

### Global Settlement

- 5.1 In the Chapter 11 Proceedings, the DCL Group and its advisors have been in discussions and negotiations with the Official Committee of Unsecured Creditors (the “UCC”) and its advisors with respect to various issues raised by the UCC in connection with the proposed relief sought by DCL US at the Second Day Hearing. As further detailed in the Third Davido Affidavit, the efforts made to resolve these issues with the UCC on a consensual basis and to settle outstanding matters as between the Stalking Horse Bidder and the Sellers (each as defined below) have been successful and are reflected in: (i) amendments to the Original Stalking Horse APA (as defined below); (ii) amendments to the proposed form of



bidding procedures to be sought in connection with the Stalking Horse Sales Process (as defined below); (iii) amendments to the Final DIP Credit Agreement discussed above; and (iv) certain other relief sought by DCL US in the Chapter 11 Proceedings (collectively, the **“Global Settlement”**).

#### Stalking Horse APA

- 5.2 The objective of the Restructuring Proceedings is to stabilize and maintain the DCL Group’s business and to commence a court-supervised marketing process for the business and assets of the DCL Group (the **“Stalking Horse Sales Process”**).
- 5.3 The Monitor understands that the DCL Group views the entering into of a stalking horse agreement as beneficial to such marketing process and stabilizing to its business and for its employees. In furtherance of such objective, and as required pursuant to the DIP Facility, on December 22, 2022, HIG Colors Holdings and certain of its subsidiaries, including DCL Canada, as sellers (collectively, the **“Sellers”**), entered into an asset purchase agreement dated as of December 21, 2022 with Pigments Holdings, Inc. (an affiliate of the Term Loan Lenders (as defined below)), as purchaser (in its capacity as a stalking horse bidder, the **“Stalking Horse Bidder”**), to acquire substantially all of the Chapter 11 Debtors’ and the Applicant’s assets on the terms and conditions set forth therein (the **“Original Stalking Horse APA”**), as subsequently amended and restated on February 13, 2023 (the **“Stalking Horse APA”**).<sup>7</sup> A copy of the Stalking Horse APA is attached as Exhibit “D” to the Third Davido Affidavit, and the Original Stalking Horse APA was included as an exhibit to the

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<sup>7</sup> The Original Stalking Horse APA was amended to: (i) reflect the Global Settlement; (ii) clarify the funding mechanics of the Designated Amount (as defined below); (iii) update disclosure schedules; and (iv) to address certain technical matters, as further detailed in the Third Davido Affidavit.

Second Davido Affidavit, which was served on the service list in the CCAA Proceedings on December 23, 2022.

- 5.4 Pursuant to the Order, the Applicant seeks, among other things, the Court's: (i) authorization to enter into the Stalking Horse APA, *nunc pro tunc*; and (ii) approval of the bid made by the Stalking Horse Bidder pursuant to the Stalking Horse APA as the stalking horse bid in the Final Bidding Procedures (the "**Stalking Horse Bid**").
- 5.5 Concurrently with the relief being sought by the Applicant in respect of the Stalking Horse Bid and the Final Bidding Procedures, the DCL Group is seeking approval of the Stalking Horse Bid, to act as the stalking horse bid in the Stalking Horse Sales Process, and the Final Bidding Procedures in the U.S. Bankruptcy Court at a hearing (the "**Second Day Hearing**") scheduled, as of the date of this Second Report, to be heard on February 21, 2023.
- 5.6 The Monitor's understanding of certain key terms of the Stalking Horse APA is summarized below:<sup>8</sup>
- (i) the estimated Purchase Price under the Stalking Horse APA is approximately \$166.2 million to \$170.9 million<sup>9</sup>, comprised of:
- (a) a credit bid in the amount of \$45 million owing pursuant to the Prepetition Term Loan (the "**Credit Bid**"). The Stalking Horse Bidder may increase the

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<sup>8</sup> The summary is provided for convenience purposes only. Capitalized terms used in this Section 5, but not defined herein shall have the meanings ascribed to them in the Stalking Horse APA.

<sup>9</sup> This estimated purchase price is based on the DCL Group's most recent financial statements and Amended DIP Budget and is for illustrative purposes only. The actual purchase price on closing may be materially different from the illustrative purchase price range included herein.

amount of the Credit Bid up to the full amount of the Prepetition Term Loan at least three business days prior to the Bid Deadline, or in connection with the Auction (each as defined below);

- (b) the cash amount of approximately \$47.4 million to \$48.1 million, sufficient to repay the DIP Facility and any outstanding Pre-Petition ABL Obligations, and to cash collateralize any outstanding letters of credit, financial assurances or Bank Products (each as defined in the Final DIP Credit Agreement);
- (c) the cash amount of up to \$2.75 million, required to fund the Required Amount<sup>10</sup> to the extent there is insufficient cash on hand and availability under the DIP Facility on Closing; and
- (d) the assumption of the Assumed Liabilities, which is defined to include certain employee, real property lease, post-petition trade obligations and environmental obligations, as well as the Prepetition Term Loan obligations not subject to the Credit Bid, estimated to be approximately \$71 million to \$75 million (approximately \$45.5 million of which relates to the Prepetition Term Loan obligations not subject to the Credit Bid);

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<sup>10</sup> “Required Amount” is defined in the Stalking Horse APA as an amount equal to the Professional Fees and Expenses (as defined in the Stalking Horse APA), plus the Designated Amount, plus the CCAA Cash Pool (each as defined below). The Required Amount is to be funded first by the Sellers’ cash on hand and availability under the DIP Facility on Closing. In the event that such cash and availability is insufficient to fund the Designated Amount and the CCAA Cash Pool on Closing, the Stalking Horse Bidder is required to fund such amounts up to \$2.75 million as “Additional Cash Consideration”.

- (ii) the Stalking Horse Bidder will acquire substantially all of the assets and businesses of the Chapter 11 Debtors and the Applicant, including the equity interests of the Applicant's European subsidiaries. The Stalking Horse APA provides for the preservation of the DCL Group's business as a going concern and contemplates the assumption of substantially all of the employees of the Chapter 11 Debtors and the Applicant, other than the Applicant's operations and employees primarily employed at the Applicant's manufacturing facility located at 445 Finley Avenue (the "**Ajax Plant**" or the "**Designated Location**"). As further described in the Third Davido Affidavit, the Monitor understands that, at the time of this Second Report, the manufacturing operations at the Ajax Plant have been discontinued and the Ajax Plant has been placed in a safe and secure idled condition;<sup>11</sup>
- (iii) Pigments Holdings, Inc. will act as the "stalking horse bidder" in connection with the Stalking Horse Sales Process;
- (iv) the Original Stalking Horse APA provided for (x) various options to the Stalking Horse Bidder in respect of its acquisition of the Designated Location and the operations conducted thereon, and (y) a corresponding amount that would have been made available to the Sellers, as a condition of Closing, to conduct an orderly wind-down of the Sellers after the Closing (the "**Designated Amount**"). The Stalking Horse APA clarifies that, while the Stalking Horse Bidder will acquire the Ajax Plant, the Stalking Horse Bidder will not continue any operations at same, and

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<sup>11</sup> All remaining unionized employees and two salaried non-unionized employees primarily employed at the Ajax Plant have been temporarily laid off and the remaining 15 salaried employees have been temporarily redeployed to other DCL Canada facilities.

fixes the Designated Amount at \$2.0 million. The Monitor has worked with the Sellers and advisors to the Stalking Horse Bidder to review and assess the Designated Amount of \$2.0 million. In consultation with the Monitor, the Applicant and the Chapter 11 Debtors have determined the allocation of the Designated Amount between the Canadian and U.S. estates, and \$575,000 shall be delivered to the Monitor, on behalf of the DCL Canada (the “**Canadian Designated Amount**”), and \$1,425,000 shall be delivered to the US Sellers. Any excess funds remaining from the Canadian Designated Amount will be transferred to the CCAA Cash Pool;

- (v) the Stalking Horse APA also provides for an amount of \$750,000 to be delivered by the Sellers to the Monitor, to be held for the benefit of the Applicant’s estate, including any costs of administration of the CCAA Proceedings (the “**CCAA Cash Pool**”). As noted above, the CCAA Cash Pool will be increased by any remaining excess funds from the Canadian Designated Amount;
- (vi) as part of the Global Settlement, the Stalking Horse Bidder shall: (a) pay \$500,000, in cash, to a litigation trust for the benefit of certain unsecured creditors of DCL US to be specified in the trust documents establishing the trust (the “**Trust**”); and (b) assign to the Trust certain claims that DCL US may have against equity holders, insiders, sponsors and current and former officers and directors (the “**Representatives**”) of the US Sellers. Any similar claims that the Applicant may have against Representatives of the Applicant will be assigned to the Stalking Horse Bidder and then released;

- (vii) the Stalking Horse Bidder also has various rights to exclude certain assets and liabilities at prescribed times under the Stalking Horse APA. As an example, under the Stalking Horse APA, prior to the Closing Date, the Stalking Horse Bidder has rights to designate for assumption, or partial assumption, the Applicant's Canadian Pension Plans. The Monitor will provide a further update to the Court at the relevant time once the Stalking Horse Bidder has delivered to the Sellers any notices of such designations;
- (viii) the entry into the Stalking Horse APA is conditional upon, among other things, the Court and the U.S. Bankruptcy Court approving each of the Stalking Horse APA and the Final Bidding Procedures in the CCAA Proceedings and the Chapter 11 Proceedings, respectively, and includes termination rights in favour of the Stalking Horse Bidder, if: (a) the Exit Costs, which is defined as priority claims arising under section 503(b)(9) of the Bankruptcy Code, exceed \$2.9 million; (b) the amount necessary to conduct an orderly wind down of the Sellers exceeds the Designated Amount; and (c) the Select Assumed Liabilities, which is defined to include Cure Costs and certain assumed taxes, unpaid employee obligations, accrued and unpaid pension contribution amounts, and accrued and unpaid rent and utility services amounts, exceed \$6.5 million. The Monitor is reviewing the analysis prepared by the Sellers of their anticipated estimated Exit Costs and Select Assumed Liabilities and has been advised by the Sellers that the Sellers do not anticipate that these termination rights will be exercisable by the Stalking Horse Bidder;
- (ix) no allocation of the Stalking Horse Bidder's Purchase Price as among the U.S. and Canadian Purchased Assets is contained in the Stalking Horse APA. However, as

further described below, pursuant to the Final Bidding Procedures, the Stalking Horse Bidder or any other bidder can be required to allocate their respective purchase price as among the U.S. and Canadian purchased assets if the bidding exceeds the Chapter 11 Debtors' and the Applicant's pre-filing secured debt; and

- (x) the Stalking Horse APA does not include a termination or break fee, or an expense reimbursement, that would be payable if the Sellers closed an alternate transaction.

#### Bidding Procedures

- 5.7 As discussed in the First Report, in September 2022, certain entities within the DCL Group engaged TM Capital Corp. ("**TM Capital**") to act as their investment banker.
- 5.8 As part of the Stalking Horse Sales Process, the DCL Group and TM Capital have developed a bidding process designed to maximize the value of the assets and business of DCL US and DCL Canada through a competitive bidding and auction process (the "**Final Bidding Procedures**").
- 5.9 Pursuant to the Order, the Applicant seeks, among other things, the Court's: (i) approval of the Final Bidding Procedures in the CCAA Proceedings; and (ii) declaration that the Stalking Horse Bid is a "Qualified Bid" under the Final Bidding Procedures.
- 5.10 The Stalking Horse APA will act as the Stalking Horse Bid and will be subject to better and higher offers that may be received during the Stalking Horse Sales Process. Pursuant to the Final Bidding Procedures, the Chapter 11 Debtors and the Applicant will offer for sale their entire business (a "**Whole Company Bid**"), as well as consider other investment or other transactions, including non-overlapping bids from multiple bidders and non-overlapping bids submitted by the same bidder, for discrete or groups of assets or business

units, each on a standalone basis. Individual standalone bids will not be considered a Qualified Bid unless one or more complimentary standalone bids are also submitted, such that when combined, they provide for value in excess of the Bid Threshold (as defined below).

5.11 The Final Bidding Procedures are described in the Third Davido Affidavit and are attached to the proposed Order. Key terms and dates include the following:

- (i) all qualified bids (a **“Qualified Bid”**) must be received by no later than March 10, 2023 at 5:00 p.m. Eastern Time (the **“Bid Deadline”**);
- (ii) a Qualified Bid must meet certain criteria as specified in the Final Bidding Procedures, including but not limited to: (a) clearly state which assets and which liabilities and obligations the bidder is agreeing to assume; (b) clearly state the purchase price, identifying separately any cash and non-cash components (credit-bids and assumed liabilities) which, in the case of a Whole Company Bid, shall be no less than the Stalking Horse APA’s Purchase Price, plus the Minimum Overbid (as defined in the Final Bidding Procedures) amount of \$2.25 million (together, the **“Bid Threshold”**); (c) be an unconditional bid and may not be submitted on a basis that is conditioned on financing, internal approvals or further due diligence; (d) be irrevocable and accompanied by an executed asset purchase agreement and accompanying schedules, including a redline of changes made to the Stalking Horse APA; and (e) be accompanied by a cash deposit in the amount of 10% of the bidder’s purchase price;



- (iii) DCL US and DCL Canada, in consultation with the Consultation Parties (as defined in the Final Bidding Procedures), will determine which bids are Qualified Bids and notify each potential bidder by March 12, 2023 at 5:00 p.m. Eastern Time;
- (iv) if one or more Qualified Bids, in addition to the Stalking Horse Bid, are received by the Bid Deadline, DCL US and DCL Canada may conduct an auction on March 13, 2023 at 10:00 a.m. Eastern Time at the offices of King & Spalding LLP in New York (the “**Auction**”);
- (v) the Auction, if any, shall continue until DCL US and DCL Canada designate, in their reasonable business judgment, after consultation with the Consultation Parties, one or more bid(s) to be the highest or otherwise best bid(s) (each, a “**Successful Bid**”, and each such bidder, a “**Successful Bidder**”);
- (vi) if no Qualified Bids, other than the Stalking Horse Bid, are received by the Bid Deadline, the Auction will be cancelled, and the Stalking Horse APA will be designated as the Successful Bid;
- (vii) the Chapter 11 Debtors would then seek the approval of the Successful Bid from the U.S. Bankruptcy Court and the Applicant would then seek the approval of the Successful Bid from the Court, in each case, on March 16, 2023;
- (viii) the Monitor is included as a Consultation Party such that the Chapter 11 Debtors and the Applicant shall consult with the Monitor to the extent that they are making a determination or taking any action, or in connection with any other matter, related to the Final Bidding Procedures or at the Auction, if any. The process set forth in

the Final Bidding Procedures in respect of the Applicant and its assets shall be conducted under the oversight of the Monitor; and

- (ix) if an Auction is conducted, the bidder with the second-best bid (as determined by DCL US and DCL Canada, in consultation with the Consultation Parties) shall be required to serve as the Backup Bidder (as defined in the Final Bidding Procedures). If the Successful Bidder fails to consummate its transaction, DCL US and DCL Canada may select the Backup Bidder as the Successful Bidder.

5.12 The Monitor considered the following in assessing the Stalking Horse APA, the Stalking Horse Sales Process and the Final Bidding Procedures, and in supporting the relief sought by the Applicant pursuant to the Order in connection therewith:

- (i) the Monitor is of the view that the Stalking Horse Sales Process and the Final Bidding Procedures are commercially reasonable and have been designed to maximize value through a competitive bidding and potential auction process, and provide greater certainty of a going concern outcome for the business given the Stalking Horse APA should such process not produce a superior result;
- (ii) in the event that a bid is submitted that exceeds the aggregate amount of the Chapter 11 Debtors' and the Applicant's pre-filing secured debt, such bid shall, if requested by the Monitor, include a purchase price allocation as between the U.S. assets and the Canadian assets, such that the Applicant and the Monitor can consider any potential recoveries and/or the impact of the bid on the unsecured creditors of the Applicant;

- (iii) the Monitor is of the view that, at the conclusion of the Stalking Horse Sales Process, the Applicant's assets and business will have been adequately marketed, and potential bidders will have been provided with sufficient time to perform diligence and prepare and submit a Qualified Bid, given: (a) the Pre-Filing Marketing Process which commenced in September 2022 (as defined and described in Pre-Filing Report) and targeted a select group of parties that were identified by TM Capital and the DCL Group as the most likely acquirors of the DCL Group's business; and (b) the continuation and expansion of the sales process following the commencement of the Restructuring Proceedings on December 20, 2022, which included TM Capital contacting over 150 potential purchasers regarding the opportunity. In addition, the Monitor has discussed the Stalking Horse Sales Process with TM Capital, and the Monitor understands that TM Capital views the timelines in the Stalking Horse Sales Process as appropriate based on its interactions with potential bidders;
- (iv) as discussed above, the Second Day Hearing for approval of, among other things, the Final Bidding Procedures as part of the Chapter 11 Proceedings is scheduled to be heard by the U.S. Bankruptcy Court on February 21, 2023. The Monitor understands that no objections have been filed with the U.S. Bankruptcy Court in connection with the Second Day Hearing. As the Chapter 11 Debtors and the Applicant are seeking approval of the same Final Bidding Procedures, the Monitor has been advised by counsel to DCL Canada that any changes to the Final Bidding Procedures in the Chapter 11 Proceedings that are applicable to the Applicant,

including with respect to dates, will also be incorporated as part of the Final Bidding Procedures in the CCAA Proceedings; and

- (v) the Monitor does not believe the creditors of DCL Canada would be materially prejudiced by the Stalking Horse APA, the Stalking Horse Sales Process or the Final Bidding Procedures.

#### Security Review

- 5.13 As the Stalking Horse APA contemplates a Credit Bid of the term loan (the “**Prepetition Term Loan**”) incurred pursuant to that certain credit agreement dated as of April 6, 2018, among, the Applicant and certain other members of DCL Group, as borrowers, the Term Loan Agent (as defined below) and the lenders party thereto (the “**Term Loan Lenders**”) (as amended, the “**Prepetition Term Loan Credit Agreement**”), the Monitor requested that its counsel, Osler, Hoskin & Harcourt LLP (“**Osler**”), conduct an independent review of the security granted by the Applicant in respect of the Prepetition Term Loan.
- 5.14 As further described in the Initial Affidavit, pursuant to the fourth amendment to the Prepetition Term Loan Credit Agreement dated as of December 16, 2021 (the “**Fourth Amendment**”), Holdings was added as a borrower thereunder in order to facilitate an internal restructuring of the Prepetition Term Loan which, in essence, resulted in a transfer of \$67 million of the Prepetition Term Loan that was owed by the Applicant, prior to the amendment, to Holdings. The Monitor understands that the Fourth Amendment was entered into by Virtus Group, LP (as predecessor in interest to Delaware Trust Company), in its capacity as administrative agent and collateral agent under the Prepetition Term Loan

(the “**Term Loan Agent**”), at the request of the Applicant and its U.S. affiliates in order to achieve certain tax efficiencies.

5.15 Prior to the Fourth Amendment, the Monitor understands that the total principal amount of approximately \$78.5 million was owed by the Applicant in respect of the Prepetition Term Loan.

5.16 Following the Fourth Amendment, the Monitor understands that, as of March 31, 2022, the total principal amount due on the Prepetition Term Loan was approximately \$90.5 million, owing as follows:

- (i) approximately \$11.6 million owing by the Applicant;
- (ii) approximately \$11.9 million owing by the US Borrower (a U.S. entity); and
- (iii) approximately \$67 million owing by Holdings (a U.S. entity).

5.17 As security for the Prepetition Term Loan, at the time the Prepetition Term Loan was advanced, the Applicant granted to the Term Loan Agent, among other things: (i) a general security interest in all of its present and after acquired personal property, subject to customary exclusions, pursuant to the Canadian Security Agreement dated as of April 6, 2018; and (ii) a charge on the Applicant’s owned real properties municipally known as 435 and 445 Finley Avenue, Ajax, Ontario and 199 New Toronto St., Etobicoke, Ontario, pursuant to a Debenture dated June 6, 2018, and related real property charges (collectively, the “**Prepetition Term Loan Security Documents**”).

5.18 Osler has conducted a review of such security and has provided the Monitor with a written opinion that sets forth Osler’s view that, subject to the qualifications, assumptions,

limitations and discussions set forth therein, the security granted by the Applicant to the Term Loan Agent in respect of the Prepetition Term Loan pursuant to the Prepetition Term Loan Security Documents constitutes valid and enforceable security, securing the obligations of the Applicant and Holdings, in each case, as against the Applicant in the Province of Ontario in accordance with such security's respective terms,<sup>12</sup> and that the necessary registrations have been made in the Province of Ontario in order to perfect or evidence such security. A copy of Osler's opinion shall be made available by the Monitor to any interested party upon request.

## **6.0 ACTIVITIES OF THE MONITOR SINCE THE DATE OF THE FIRST REPORT**

6.1 Since the date of the First Report, the activities of the Monitor have included the following:

- (i) engaging in discussions with the DCL Group and its legal counsel and financial advisors regarding the Restructuring Proceedings;
- (ii) attending regular update calls with TM Capital regarding the Stalking Horse Sales Process;
- (iii) assisting the Applicant with the completion of the Stalking Horse APA and the Final Bidding Procedures;
- (iv) assisting the DCL Group with the review and calculation of the Designated Amount;

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<sup>12</sup> The opinion assumes the enforceability of documents and their interpretation in instances where the governing law of the applicable credit document is not the Province of Ontario.


- (v) assisting the Applicant with arranging for an appraisal and other assessments of the Designated Location;
- (vi) assisting DCL Canada with communications to employees, suppliers, including critical suppliers, and other parties;
- (vii) monitoring receipts, disbursements, purchase commitments and the Intercompany Account, including the review of payments made;
- (viii) responding to inquiries from stakeholders, including addressing questions or concerns of parties who contacted the Monitor on the hotline number or email account established by the Monitor for the CCAA Proceedings;
- (ix) posting non-confidential materials filed with the Court to the Case Website; and
- (x) with the assistance of its legal counsel, preparing this Second Report.


## **7.0 CONCLUSIONS AND RECOMMENDATIONS**

- 7.1 For the reasons set out in this Second Report, the Monitor is of the view that the relief requested by the Applicant is reasonable in the circumstances and respectfully recommends that the Court grant the Order.

All of which is respectfully submitted to this Court this 16<sup>th</sup> day of February, 2023.

**ALVAREZ & MARSAL CANADA INC.,  
solely in its capacity as Monitor of  
DCL Corporation and not in its personal or corporate capacity**

Per:   
\_\_\_\_\_  
Josh Nevsky  
Senior Vice-President

Per:   
\_\_\_\_\_  
Stephen Ferguson  
Senior Vice-President



**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**  
**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
DCL CORPORATION**

Court File No.: CV-22-00691990-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
Proceeding commenced at Toronto

**FOURTH REPORT OF THE MONITOR**

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capacity as Monitor of DCL Corporation and not in its  
personal or corporate capacity