

**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 COMARK HOLDINGS INC.,  
BOOTLEGGER CLOTHING INC., CLEO FASHIONS INC.  
AND RICKI'S FASHIONS INC.

APPLICANTS

**FACTUM OF THE APPLICANTS**

January 7, 2025

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## PART I - NATURE OF THE APPLICATION

1. This factum is filed in support of an Application by Comark Holdings Inc. (“**Comark**”), Ricki’s Fashions Inc. (“**Ricki’s**”), cleo fashions Inc. (“**cleo**”) and Bootlegger Clothing Inc. (“**Bootlegger**”) (together, the “**Applicants**” or the “**Comark Group**”), seeking an initial order (the “**Initial Order**”) and related relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

2. The Applicants operate a fashion clothing retail and e-commerce business with a nationally recognized portfolio of banners and exclusive private label brands. The Applicants consist of Comark, a privately-held corporation that has operated in Canada since 1976, and its three direct subsidiaries, Ricki’s, cleo, and Bootlegger, which have operated as retail clothing stores in Canada since 1939, 1994 and 1971, respectively.

3. In June 2020, the Comark Group obtained CCAA protection due to, among other things, the effects of the COVID-19 pandemic on the Comark Group’s business, including lengthy government-mandated lockdowns, and a need to right-size its balance sheet (the “**2020 CCAA Proceedings**”). The 2020 CCAA Proceedings allowed the Applicants to close approximately 30 of their underperforming stores, re-negotiate many of their retail store leases, consolidate Comark and Bootlegger’s corporate head offices with Ricki’s and the Distribution Centre (defined below), and outsource a number of corporate services to Parian Logistics Inc. (“**Parian**”), a related entity.

4. Following the 2020 CCAA Proceedings, the Comark Group believed it was poised for success. However, over the past several years, the Comark Group has experienced a series of further challenges which have negatively impacted profitability and severely strained liquidity. The effects of the COVID-19 pandemic continued. A 2021 Cyber Incident (defined below) significantly disrupted business operations and created long-lasting inventory management issues.

Certain ultra low-cost fashion retailers entered the market and attracted consumers. Additionally, supply chain and vendor issues caused material delays in the receipt of seasonal merchandise. As a result, the Applicants' businesses have not recovered to the level at which they were operating at prior to the COVID-19 pandemic and the post-restructuring success that the Comark Group had hoped for has not been realized.

5. The Applicants are now insolvent. Their cash flow and liquidity constraints have resulted in approximately \$60 million in accounts payable and accrued liabilities, including approximately \$44 million merchandise owing to vendors and approximately \$5 million owing to landlords. The Applicants do not have sufficient funds to pay these outstanding arrears, and certain vendors have commenced claims against the Applicants for outstanding amounts and damages.

6. The negative cash flow and working capital issues have caused a significant strain on the borrowing base under Comark Group's existing senior secured revolving loan facility (the "**CIBC Revolving Loan Facility**") provided by Canadian Imperial Bank of Commerce ("**CIBC**"). As a result, the Applicants are currently in breach of certain financial covenants under the CIBC Credit Agreement (defined below). On January 5, 2025, the Applicants and Parentco (defined below) received demand and acceleration notices from CIBC's counsel (the "**CIBC Demands**"), declaring all amounts outstanding under the CIBC Credit Facilities (defined below) immediately due and payable and demanding repayment. As a result of the CIBC Demands, Comark is unable to obtain further advances under the CIBC Credit Agreement.

7. CIBC, as interim lender (the "**Interim Lender**") has advised the Applicants that it is prepared to permit Comark to continue to borrow under the existing CIBC Revolving Loan Facility during the Initial Stay Period (defined below) pursuant to the CIBC Credit Agreement (each, an "**Interim Borrowing**" and collectively, the "**Interim Borrowings**"). Such Interim Borrowings

shall be made in accordance with an agreed-upon two-week cash flow forecast (the “**Cash Flow Forecast**”) and each Interim Borrowing is subject to prior approval pursuant to a draw request in form and substance satisfactory to the Interim Lender, accompanied by such supporting documentation as the Interim Lender may request, and subject to the requirements set out in the Initial Order. Without the Interim Borrowings, the Applicants are unable to fund payroll, pay rent and finance other critical operating expenses.

8. Moreover, without CCAA protection, critical vendors may take potentially damaging enforcement steps, including the termination of agreements which are vital to the Applicants’ continued operations. After considering all available options and alternatives, the Applicants have determined that commencing these CCAA proceedings is their best path forward to allow them to explore available options to address their current financial challenges.

9. Discussions are underway between CIBC and the Applicants regarding the provision of debtor-in-possession (“**DIP**”) financing on a super priority basis to the Applicants. The Applicants anticipate that they will seek approval of a DIP facility at or commensurate with the Comeback Hearing.

10. Accordingly, the Applicants seek an urgent stay of proceedings (the “**Stay of Proceedings**”) for the permitted initial ten-day period (the “**Initial Stay Period**”) under s. 11.02(2) of the CCAA, together with related relief necessary to preserve the Applicants’ business and stakeholder value during the Initial Stay Period, including the appointment of Alvarez & Marsal Canada Inc. as monitor in these proceedings (the “**Proposed Monitor**”). The relief requested in this Application is limited to what is needed to “keep the lights on” for the Initial Stay Period.

11. If this Application is granted, at the Comeback Hearing the Applicants intend to seek an Amended and Restated Initial Order, among other things, extending the stay of proceedings,

approving a DIP facility, and granting other customary Comeback Hearing Relief, including a charge to secure the DIP facility and increasing the maximum amount secured by the Administration Charge and the Directors' Charge (both defined below).

12. Additionally, the Applicants also expect to bring a motion or motions to be heard concurrently with the Comeback Hearing, or shortly thereafter, seeking, among other things, authorization/approval to (i) conduct a liquidation of all inventory and FF&E owned by Ricki's that is located at or in transit to all of the Ricki's retail stores or at the Distribution Centre (the "**Ricki's Liquidation**") and an orderly wind-down of the Ricki's business, (ii) conduct a liquidation of all inventory and FF&E owned by cleo that is located at or in transit to all of the cleo retail stores or at the Distribution Centre (the "**cleo Liquidation**") and an orderly wind-down of the cleo business, (iii) right-size the Bootlegger retail store footprint by disclaiming leases for underperforming Bootlegger stores and a liquidation of some or all of the inventory and FF&E owned by Bootlegger that is located at or in transit to the Bootlegger retail stores or at the Distribution Centre (the "**Bootlegger Liquidation**"); and (iv) conduct a potential sale of the remaining business or assets of the Applicants, including intellectual property, leases and other assets of the Applicants, through a court-supervised sale investment solicitation process ("**SISP**").

## PART II - SUMMARY OF FACTS

13. The facts regarding this Application are fully set out in the Affidavit of Shamsh Kassam.<sup>1</sup> All capitalized terms not defined herein are defined in the Affidavit of Shamsh Kassam.

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<sup>1</sup> Affidavit of Shamsh Kassam, sworn January 6, 2025 [Kassam Affidavit]. Capitalized terms not otherwise defined have the same meaning as in the Kassam Affidavit. Dollar amounts are given in Canadian dollars unless otherwise specified.

## A. THE APPLICANTS

14. Comark is a privately-held company incorporated under the laws of Canada.<sup>2</sup> Comark operates three retail businesses through its direct subsidiaries, Ricki's, cleo and Bootlegger (the "**Retail Entities**").<sup>3</sup> All of the Retail Entities are incorporated under the laws of Canada. 9383921 Canada Inc. ("**ParentCo**") is the direct parent company of Comark and is not an Applicant in these CCAA proceedings.<sup>4</sup>

15. The registered head offices of each of the Applicants is in Vancouver, British Columbia. The corporate head offices of Comark, Ricki's and Bootlegger are located in Manitoba and cleo's corporate head office is located in Ontario.<sup>5</sup>

## B. THE BUSINESS OF THE APPLICANTS

### (a) *Retail locations and leases*

16. The Retail Entities operate 221 stores: 75 Ricki's stores, 54 cleo stores, 53 Bootlegger stores, and 39 Combo Stores (defined below).<sup>6</sup> All of these stores are located in Canada.<sup>7</sup> The Applicants' stores are located in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, New Brunswick and Newfoundland and Labrador.<sup>8</sup>

17. All of the Retail Entities' retail operations are conducted in leased premises. The Applicants do not own any real property. Generally, Ricki's stores are leased by Ricki's, cleo stores are leased by cleo and Bootlegger stores are leased by Bootlegger. However, in a number of

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<sup>2</sup> Kassam Affidavit at para 18.

<sup>3</sup> Kassam Affidavit at paras 8, 19.

<sup>4</sup> Kassam Affidavit at para 19.

<sup>5</sup> Kassam Affidavit at paras 9, 19, 38.

<sup>6</sup> Kassam Affidavit at para 8.

<sup>7</sup> Kassam Affidavit at para 8.

<sup>8</sup> Kassam Affidavit at para 30.

instances the Retail Entities operate two stores under a single lease (“**Combo Stores**”).<sup>9</sup> The Retail Entities’ retail stores are typically located in a mall or shopping centre.<sup>10</sup> Each of the Retail Entities also has an online store.<sup>11</sup>

18. The terms of the Retail Entities’ retail leases vary. Some leases require payment of fixed rent, other leases require payment of rent based on a percentage of the retail location’s sales, and some leases require a combination of both. The term remaining on each of the Retail Entities’ retail leases also varies from lease to lease. The Retail Entities have the right to extend the term of some leases on the terms and conditions provided in such leases.

19. Typical of retail store leases in Canada, the Retail Entities’ leases generally contain provisions that impact store operations, including ‘Going-out-of-Business Sale Restrictions’ and ‘Operating Covenants’ that require the Applicants to continuously occupy and operate the leased premises.<sup>12</sup>

**(b) *Merchandising and distribution***

20. The Retail Entities source and purchase merchandise directly from manufacturers and third-party vendors.<sup>13</sup> For overseas manufacturers, title to the inventory typically transfers when it is shipped from the port of origin overseas and papers are received by the Canadian Retail Shippers’ Association (“**CRSA**”), a cooperative logistics venture used by the Retail Entities to reduce shipping and logistics costs.<sup>14</sup>

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<sup>9</sup> Kassam Affidavit at para 30.

<sup>10</sup> Kassam Affidavit at paras 29.

<sup>11</sup> Kassam Affidavit at para 8.

<sup>12</sup> Kassam Affidavit at para 36.

<sup>13</sup> Kassam Affidavit at paras 45-46.

<sup>14</sup> Kassam Affidavit at para 42.

21. The Retail Entities typically pay vendors directly in accordance with the arrangement between the Retail Entity and the vendor. However, the Retail Entities' Bangladesh vendors are paid via a power of attorney ("**POA**") arrangement.<sup>15</sup>

22. The flow of inventory from the Retail Entities' manufacturers to the Retail Entities' brick-and-mortar stores and the Retail Entities' ability to fulfill orders placed online is dependent on the services provided by Parian. Parian provides warehousing, distribution and e-commerce fulfillment services to the Retail Entities and certain other related entities from its distribution center in Winnipeg, Manitoba (the "**Distribution Centre**").<sup>16</sup>

23. Parian provides its distribution services to the Comark Group pursuant to a master services agreement (the "**Master Services Agreement**") and Statements of Work ("**SOW**") for each Retail Entity. Pursuant to the SOWs, Parian agreed to provide the Retail Entities with a certain amount of storage space in the Distribution Centre as well as all services required for the warehousing and handlings of goods, including inbound shipping, storage, order picking and handling, order loading, coordination of customer service functions, and inventory management (together with the distribution services provided under the Master Services Agreement, the "**Parian Services**"). At no time does title to the Retail Entities' inventory transfer to Parian.<sup>17</sup>

24. The Retail Entities rely on Purolator as their primary third-party transportation provider to deliver products from the Distribution Centre to retail stores and on Canada Post as their primary third-party transportation provider to deliver online orders from the Distribution Centre to customers' homes.<sup>18</sup>

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<sup>15</sup> Kassam Affidavit at para 43.

<sup>16</sup> Kassam Affidavit at paras 38, 44.

<sup>17</sup> Kassam Affidavit at para 45.

<sup>18</sup> Kassam Affidavit at para 51.



**(c) Employees**

25. As of December 17, 2024, the Applicants had approximately 2056 hourly and salaried employees across Canada. Each of the Retail Entities has its own leadership team which consists of a President and General Merchandising Manager and key senior management personnel responsible for banner-specific planning, online sales, in-store sales, marketing, store operations, and product development. Comark does not have any employees. Approximately 41, 29, and 22 of these employees work for the corporate headquarters of Ricki's, Bootlegger and cleo, respectively.<sup>19</sup>

26. Apart from the head office employees, the vast majority of the Retail Entities' workforce consists of retail employees (the "**Retail Employees**"). None of the Retail Employees are unionized. As of December 17, 2024, the Retail Entities had approximately 1,964 Retail Employees (474 full-time and 1,490 part-time).<sup>20</sup>

**(d) Loyalty programs, gift cards and return policies**

27. Each of the Retail Entities offers a unique loyalty program (the "**Loyalty Programs**"), gift cards and return policies to customers.<sup>21</sup>

28. In the proposed Initial Order, the Applicants seek to continue to offer the Loyalty Programs and honour credits obtained under the Loyalty Programs until January 17, 2025. The Applicants are also seeking to honour gift cards sold by the Retail Entities prior to the date of filing of these CCAA proceedings (the "**Filing Date**") until January 17, 2025. The Applicants will not be selling any further gift cards for the Retail Entities on or after the Filing Date and returns for any products

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<sup>19</sup> Kassam Affidavit at paras 57, 58

<sup>20</sup> Kassam Affidavit at para 59.

<sup>21</sup> Kassam Affidavit at paras 62, 63, 65.

purchased from any of the Retail Entities will not be honoured after January 17, 2025 (although exchanges will be accepted after this date for an additional period of time).<sup>22</sup>

(e) *Cash management system*

29. The Applicants maintain a centralized cash management system which is administered by Parian on behalf of Comark (the “**Comark Cash Management System**”) to deal with cash management, collections, disbursements and intercompany payments for all of the Applicants.<sup>23</sup> The Applicants are seeking in the proposed Initial Order that they be permitted to continue to use the Cash Management System.<sup>24</sup>

30. The Applicants have bank accounts with all the major Canadian banks. CIBC is the Applicants’ main collection and disbursement bank.<sup>25</sup>

31. The Applicants are exposed to foreign exchange risk because a large portion of their disbursements (foreign product purchases) are made in U.S. dollars while merchandise is priced in stores and online competitively in Canadian dollars.<sup>26</sup> The Applicants use forward and options contracts with Corpay to mitigate and hedge against exchange rate fluctuations.<sup>27</sup> However, given the weakness of the Canadian dollar relative to the U.S. dollar, the Retail Entities pay relatively more for their inventory purchased in U.S. dollars, negatively impacting their profit margin.<sup>28</sup>

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<sup>22</sup> Kassam Affidavit at para 65.

<sup>23</sup> Kassam Affidavit at para 66.

<sup>24</sup> Kassam Affidavit at para 71.

<sup>25</sup> Kassam Affidavit at para 67.

<sup>26</sup> Kassam Affidavit at para 70, 81.

<sup>27</sup> Kassam Affidavit at para 76.

<sup>28</sup> Kassam Affidavit at para 81.

### C. FINANCIAL POSITION OF THE APPLICANTS

32. As at November 23, 2024, the Applicants' assets had a book value of approximately \$83.5 million and the Applicants' liabilities had a book value of approximately \$168.1 million.<sup>29</sup> The Applicants' total net sales were \$130.7 million (a decline of \$19 million or 13% compared to the same period last year); adjusted EBIDTA was negative \$16.1 million (a decline of \$5.7 million or 56% compared to the same period last year); and net earnings was negative \$21.0 million (a decline of \$6.5 million or 45% compared to the same period last year).<sup>30</sup>

33. As compared to the same period last year, Bootlegger experienced sales decline of \$5.6 million or 15.0%, Ricki's experienced sales decline of \$9.5 million or 14.2%, and cleo experienced sales decline of \$3.8 million or 8.4%.<sup>31</sup> For fiscal year-to-date 2025, the Applicants have also experienced an overall decline in store level cash flow of \$7.1 million or 50%, compared to prior years.<sup>32</sup>

### D. DEBT AND CREDIT FACILITIES<sup>33</sup>

#### (a) *CIBC credit facility*

34. CIBC, the Applicants' senior secured lender, is the main operating lender to the Applicants pursuant to an amended and restated credit agreement between CIBC and Comark dated as of September 9, 2024 (the "**CIBC Credit Agreement**").<sup>34</sup>

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<sup>29</sup> Kassam Affidavit and paras 76, 77.

<sup>30</sup> Kassam Affidavit at para 78.

<sup>31</sup> Kassam Affidavit at para 79.

<sup>32</sup> Kassam Affidavit at para 80.

<sup>33</sup> For a summary of the Applicants' indebtedness, see Kassam Affidavit at para 81.

<sup>34</sup> Kassam Affidavit at para 82.

35. Pursuant to the CIBC Credit Agreement, CIBC committed three facilities to Comark (together, the “**CIBC Credit Facilities**”): (a) a term loan facility in the principal amount of \$3.4 million (the “**CIBC Term Loan Facility**”); (b) the CIBC Revolving Loan Facility in an amount of up to \$30 million; and (c) a Business Credit Availability Program (“**BCAP**”) facility in an amount of up to \$6.25 million (the “**BCAP Loan Facility**”).<sup>35</sup>

36. The maximum amount available for borrowing under the CIBC Revolving Loan Facility is subject to a borrowing base formula linked to, among other things, the value of certain of the Comark Group’s accounts receivable, inventory on hand and inventory in-transit (subject to certain reserves that CIBC may establish from time to time). Accordingly, borrowing availability under the CIBC Revolving Loan Facility fluctuates from daily, with a maximum availability cap of \$30 million.<sup>36</sup>

37. As of January 2, 2025, there is approximately \$2.4 million outstanding under the CIBC Term Loan Facility. As of January 2, 2025, the amount outstanding under the CIBC Revolving Loan Facility is \$23.7 million. The CIBC Term Loan Facility has been cash collateralized with \$2.5 million from ParentCo, which currently exceeds the CIBC Term Loan Facility balance. The amount currently outstanding under the BCAP Loan Facility is approximately \$6.25 million.<sup>37</sup>

90. The CIBC Credit Facilities are also guaranteed on a secured basis by Ricki’s, cleo and Bootlegger. ParentCo provided a guarantee of the CIBC Term Loan Facility obligations under the CIBC Credit Agreement limited in recourse solely to and secured by the shares of Comark held by ParentCo and \$2.5 million in cash collateral.<sup>38</sup>

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<sup>35</sup> Kassam Affidavit at para 83.

<sup>36</sup> Kassam Affidavit at para 83.

<sup>37</sup> Kassam Affidavit at para 93.

<sup>38</sup> Kassam Affidavit at para 90.

**(b)     *Secured and unsecured intercompany debt***

38.     ParentCo, as lender, is party to a Sponsor Loan Agreement with Comark, as borrower, dated as of August 7, 2020 (the “**ParentCo Loan Facility**”).<sup>39</sup> As of January 3, 2025, \$57 million is outstanding under the ParentCo Loan Facility.<sup>40</sup>

39.     Comark, as lender, is also party to individual secured intercompany loan agreements with each of Ricki’s, cleo and Bootlegger dated January 30, 2021, February 1, 2021, and February 1, 2021, respectively (the “**Retail Entity Facilities**”).<sup>41</sup> As of November 23, 2024, \$49.4 million is outstanding under the Ricki’s Retail Entity Facility, \$37.8 million is outstanding under the cleo Retail Entity Facility, and \$29.5 million is outstanding under the Bootlegger Retail Entity Facility.<sup>42</sup>

40.     A default in respect of the financial covenants under the CIBC Credit Agreement also constitutes an event of default under the ParentCo Loan Facility and the Retail Entity Facilities.<sup>43</sup>

**(c)     *Trade creditors***

41.     As at November 23, 2024, the Applicants had approximately \$61 million in outstanding accounts payable due to trade creditors.<sup>44</sup>

**E.     URGENT NEED FOR RELIEF UNDER THE CCAA**

42.     The Applicants face significant liquidity challenges which threaten their ability to continue as a going concern. The Retail Entities were hard hit by the closure of their stores during the

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<sup>39</sup> Kassam Affidavit at para 95; Exhibit “I” to the Kassam Affidavit.

<sup>40</sup> Kassam Affidavit at para 96.

<sup>41</sup> Kassam Affidavit at para 99.

<sup>42</sup> Kassam Affidavit at para 100.

<sup>43</sup> Kassam Affidavit at para 98.

<sup>44</sup> Kassam Affidavit at para 104.

COVID-19 pandemic. Brick and mortar stores shut down entirely, and the Retail Entities struggled to pivot to online sales, in part because inventory was trapped in their stores.<sup>45</sup> As a result of these challenges, the Comark Group filed for CCAA protection in June 2020 in order to inject working capital into and restructure their business.<sup>46</sup>

43. After the 2020 CCAA Proceedings, the COVID-19 pandemic continued to place significant strain on the Applicants' business. In November 2020, the Retail Entities' stores in Manitoba and Ontario closed for the second time due to COVID-19 related shutdowns and remained closed into 2021. During this period, the Black Friday and Christmas sales from stores were lost and were not replaced at the same level through e-commerce. Further, COVID-19 outbreaks at the Distribution Centre and at vendor sites in 2020 and 2021 caused product and shipment delays contributing to missed seasonal windows.<sup>47</sup>

44. On November 23, 2021, the Applicants were the victim of a sophisticated ransomware cyber attack (the "**Cyber Incident**"). For approximately two days, the Retail Entities' retail stores and e-commerce platform were entirely unavailable and, for a few days after this, only cash payments were accepted. For three weeks, internal systems, including all inventory, were entirely unavailable. The business was unable to move any inventory into sellable locations until such inventory could be accounted for, significantly disrupting operations.<sup>48</sup>

45. Brick and mortar stores lost approximately \$8.2 million in revenue due to the Cyber Incident.<sup>49</sup> Shipments to the Retail Entities' e-commerce customers were unable to be processed.

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<sup>45</sup> Kassam Affidavit at para 107.

<sup>46</sup> Kassam Affidavit at para 108.

<sup>47</sup> Kassam Affidavit at para 109.

<sup>48</sup> Kassam Affidavit at para 110.

<sup>49</sup> Kassam Affidavit at para 111.

Inventory was also unable to be updated online and made available for purchase.<sup>50</sup> The Applicants' company history and internal processes were lost and had to be rebuilt.<sup>51</sup>

46. From 2020 to 2022, most products received from suppliers were significantly delayed and arrived outside of the targeted seasonal time periods.<sup>52</sup> When orders for seasonal items arrived outside of their targeted time frame, products would be marked down, negatively impacting profitability. Where it was evident that seasonal items would not arrive in time for the required sales period, the production order would be cancelled such that profit from those seasonal items was lost entirely.<sup>53</sup>

47. In an effort to limit production issues and reduce the continued stain on the Applicants' balance sheet, in 2023 the Applicants re-evaluated all future collections and cancelled production orders that were not expected to drive profitability. Where vendor payments had been missed, these vendors were placed on payment plans and the Applicants engaged in daily or weekly meetings with these vendors to encourage continued production.<sup>54</sup>

48. Unfortunately, international conflict in the Red Sea, protests at certain of the vendors' factories in Bangladesh, and rail and port strikes in 2024 all caused additional delays and resulted in further strained vendor relationships and lost sales. Where the Applicants were unable to make payments, vendors have refused to order fabrics, held items at port or refused to transfer titles to the items until such payment had been made.<sup>55</sup> In December 2024, several of the Applicants'

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<sup>50</sup> Kassam Affidavit at para 112.

<sup>51</sup> Kassam Affidavit at para 114.

<sup>52</sup> Kassam Affidavit at para 115.

<sup>53</sup> Kassam Affidavit at paras 117.

<sup>54</sup> Kassam Affidavit at para 119.

<sup>55</sup> Kassam Affidavit at para 120.

vendors served the Applicants with Statements of Claim in Ontario and Manitoba, seeking payment of outstanding amounts and damages.<sup>56</sup>

49. In addition to the above, over the past four years, the Applicants faced certain retail industry challenges, including the introduction and consumer uptake of certain ultra low-cost fashion retailers, including Shein and Temu, that have placed significant financial pressure on traditional fashion retailers like the Applicants.<sup>57</sup>

50. Each of the issues and challenges described above have contributed to the Applicants' business experiencing poor sales performance over the past several years. In fiscal year 2024 (ending February 24, 2024), the Applicants significantly underperformed expectations, generating sales and EBITDA of \$200 million and negative \$21.2 million, respectively.<sup>58</sup> In fiscal year-to-date 2025, the Applicants have experienced a decline in cash flows of \$7.1 million or 50% compared to the same period last year and have a net loss of over \$21.0 million due to a poor sales performance (trending 10% below last year) and vendor delays and other issues described above.<sup>59</sup>

51. In addition to the negative cash flow and working capital issues, a recent third-party inventory appraisal (completed pursuant to the CIBC Credit Agreement) resulted in a 4% reduction of the maximum amount available to be borrowed under the CIBC Revolving Loan Facility, further reducing the Applicants' liquidity over the last few months.<sup>60</sup>

52. As set out above, the Applicants are in breach of certain financial covenants under the CIBC Credit Agreement and, absent granting the Interim Borrowings, the Applicants have no

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<sup>56</sup> Kassam Affidavit at para 121.

<sup>57</sup> Kassam Affidavit at para 122.

<sup>58</sup> Kassam Affidavit at para 123.

<sup>59</sup> Kassam Affidavit at para 124.

<sup>60</sup> Kassam Affidavit at para 125.



further access to funding under the CIBC Credit Agreement.<sup>61</sup> The Applicants' liquidity constraints under the CIBC Credit Agreement have also resulted in significant amounts owing to vendors. As at December 24, 2024, the Comark Group owed approximately \$61 million in accounts payable and accrued liabilities, including: (i) approximately \$44 million owing to merchandise vendors; (ii) approximately \$2.2 million owing to landlords in respect of outstanding rent<sup>62</sup>, (iii) approximately \$4.2 million owing to Parian; (iv) approximately \$53,000 owing for IT services; (v) approximately \$2.0 million owing in respect of duties and freight; and (vi) approximately \$8.6 million owing to other trade vendors. The Applicants also owe approximately \$57 million to ParentCo.<sup>63</sup>

53. In early 2024, the Applicants executed an internal restructuring initiative to save costs and improve their liquidity position. However, the costs savings achieved through these restructuring efforts have not been enough to right-size the business and stabilize relationships with vendors.<sup>64</sup> As described above, as a result of the CIBC Demands, declaring all amounts outstanding under the CIBC Credit Facilities immediately due and payable and demanding repayment, Comark is unable to obtain further advances under the CIBC Credit Agreement.<sup>65</sup>

54. Notwithstanding their best efforts to reduce expenses, preserve capital and improve profitability, the Applicants' liquidity position continues to rapidly deteriorate. After considering available options, and in light of the above-noted financial and operational challenges, the Applicants have determined that commencing these CCAA proceedings is in the best interests of both the Applicants and their stakeholders. The Applicants intend to use the Interim Borrowings

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<sup>61</sup> Kassam Affidavit at para 94.

<sup>62</sup> As of January 3, 2025, the Applicants owe approximately \$4.7 million to landlords in respect of outstanding rent.

<sup>63</sup> Kassam Affidavit at paras 13, 51, 127.

<sup>64</sup> Kassam Affidavit at para 128.

<sup>65</sup> Kassam Affidavit at para 13.

that will only be available to them within a CCAA proceeding to engage with their principal stakeholders to determine next steps, which at present, will likely include: (i) conducting the Ricki's Liquidation and an orderly wind-down of the Ricki's business, (ii) conducting the cleo Liquidation and an orderly wind-down of the cleo business, (iii) right-sizing the Bootlegger retail store footprint by disclaiming leases for underperforming Bootlegger stores and conducting the Bootlegger Liquidation, and (iv) conducting a potential sale of the remaining business or assets of a the Applicants through a court-supervised SISP.<sup>66</sup>

### **PART III - THE ISSUES AND THE LAW**

55. This Factum addresses the following issues:

- (a) The Applicants are entitled to seek protection under the CCAA;
- (b) This Court should grant the Stay of Proceedings;
- (c) This Court should authorize the Interim Borrowings and Interim Lender's Charge (defined below);
- (d) This Court should authorize payment of certain pre-filing claims to critical third parties;
- (e) This Court should approve the Administration Charge and the Directors' Charge, (defined below);

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<sup>66</sup> Kassam Affidavit at para 134.

**A. The Applicants are Entitled to Seek Protection under the CCAA**

56. The CCAA applies to a “debtor company” or affiliated debtor companies where the total of claims against the debtor or its affiliates exceeds five million dollars. The Applicants are each a “company” for the purposes of s. 2 of the CCAA because they do business in or have assets in Canada.<sup>67</sup> A “debtor company” means, *inter alia*, a company that is insolvent.<sup>68</sup> Whether a company is insolvent for the purposes of this definition is evaluated by reference to the definition of “insolvent person” in the *Bankruptcy and Insolvency Act* (“BIA”), and the expanded concept of insolvency adopted by this court in *Stelco*.<sup>69</sup>

57. The Applicants are either insolvent under the BIA test for solvency, or facing the kind of imminent liquidity crisis that clearly satisfies the expanded *Stelco* test. As discussed above, the Applicants have been unable to meet their obligations as they come due, including their obligations to make rental payments to landlords.<sup>70</sup> Moreover, liquidity constraints and reduced availability under the CIBC Credit Agreement have resulted in significant arrears owing to vendors.<sup>71</sup>

**B. The Ontario Court Has Jurisdiction Over the Proceeding**

58. Subsection 9(1) of the CCAA provides that an application for a stay of proceedings under the CCAA may be made to the court that has jurisdiction in the province in which the chief place

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<sup>67</sup> *Lydian International Limited (Re)*, [2019 ONSC 7473](#) [*Lydian*], at para 35 and 36, citing *Cinram International (Re)*, [2012 ONSC 3767](#).

<sup>68</sup> CCAA, ss. 2 and 3(1).

<sup>69</sup> *Stelco Inc. (Re)*, [2004 CanLII 24933](#) at para 26. This approach to the insolvency criterion has been applied on countless occasions, including *Target Canada Co. (Re)*, [2015 ONSC 303](#) at para 26 [*Target*]; *Just Energy Corp. (Re)*, [2021 ONSC 1793](#) [*Just Energy*] at paras 48 to 51; *Nordstrom Canada Retail, Inc. (Re)*, [2023 ONSC 1422](#) at para 26 [*Nordstrom*].

<sup>70</sup> Kassam Affidavit at paras 15, 127.

<sup>71</sup> Kassam Affidavit at para 127.

of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company of the company are situated.<sup>72</sup>

59. Ontario is the proper forum for the restructuring, just as it was for Comark's 2020 and 2015 CCAA Proceedings.<sup>73</sup> Ontario is the chief place of business of the Applicants as a whole. The largest number of the Retail Entities' leased stores are in Ontario (86 of 221 stores), the largest number of the Retail Entities' Retail Employees (defined below) are in Ontario (approximately 40% of all employees), and cleo's head office is in Ontario. Moreover, the Retail Entities generate the largest number of sales in Ontario (approximately 30% of all sales are from Ontario, compared to 21% in Alberta, 11% in British Columbia and 38% in all other provinces).<sup>74</sup>

### **C. The Stay of Proceedings Should be Granted**

60. Section 11.02(1) of the CCAA permits the Court to grant an initial stay of up to 10 days on an application for an initial order, provided such a stay is appropriate and the Applicants have acted with due diligence and in good faith. Under s. 11.001, other relief granted pursuant to this Court's powers under s. 11 of the CCAA at the same time as an order under s. 11.02(1) must be limited "to relief that is reasonably necessary for the continued operation of the debtor company in the ordinary course of business during that period."

61. In *Lydian*, Morawetz C.J. stated that the Initial Stay Period preserves the *status quo* and allows for operations to be stabilized and negotiations to occur, followed by requests for expanded relief on proper notice to affected parties at the full comeback hearing.<sup>75</sup> Whether particular relief

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<sup>72</sup> *Target*, paras 29 to 30; *Bed Bath & Beyond Canada Limited (Re)*, [2023 ONSC 1014](#) at para 25.

<sup>73</sup> See *Comark Holdings Inc. (Re)*, (June 3, 2020), Ont S.C.J. [Commercial List], Court File No. CV-20-00642013-00CL ([Initial Order](#)) where Justice Hainey granted an initial order in the Ontario Superior Court (Commercial List); See also *Comark Inc. (Re)*, [2015 ONSC 2010](#) [*Comark Inc. (Re) (2015)*] where Justice Morawetz issued an endorsement granting the relief sought by the Applicant in the Ontario Superior Court (Commercial List).

<sup>74</sup> Kassam Affidavit at para 23.

<sup>75</sup> *Lydian*, at paras 26 and 30; see also *Just Energy*, at para 56.

is necessary to stabilize a debtor company's operations during the Initial Stay Period is an inherently factual determination, based on all of the circumstances of the particular debtor.<sup>76</sup>

62. As the Applicants will submit at the Comeback Hearing, it is well-recognized that the CCAA can be used to effect an orderly liquidation of a debtor's business (or businesses).<sup>77</sup> Here, the stay will provide breathing space to allow the Applicants to attempt to restructure the Bootlegger business on a going concern basis, consistent with the accepted objectives of the CCAA.

63. All of the relief requested in this first-day application meets the required criteria. Each aspect of the relief sought by the Applicants in the Initial Stay Period is interdependent, and collectively the relief is critical to allow the Applicants to properly respond to the circumstances in which they find themselves. All of the requested relief consists of exactly the type of essential "keep the lights on" measures contemplated by s. 11.001 of the CCAA.

#### **D. The Interim Borrowings and Interim Lender's Charge Should be Approved**

64. The Applicants have no further ability to draw under the CIBC Credit Agreement. In order to avoid an abrupt shutdown of the Applicants' business, CIBC (in such capacity, the "**Interim Lender**") has agreed to make the Interim Borrowings available.<sup>78</sup> Pursuant to s. 11.2 of the CCAA, the Applicants seek an interim financing charge to secure the Interim Borrowings (the "**Interim Lender's Charge**"). The Interim Lender's Charge is proposed to be secured by all of the present and future assets, property, and undertaking of the Applicants (the "**Property**"), and to rank behind

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<sup>76</sup> See for example *Laurentian University of Sudbury (Re)*, [2021 ONSC 659](#), in which the CCAA Court granted a variety of relief during the Initial Stay Period that was particular to the debtor company's factual circumstances. See also *Just Energy; Boreal Capital Partners Ltd et al. (Re)*, [2021 ONSC 7802](#) at para 16 [*Boreal Capital*].

<sup>77</sup> See, i.e., *Grant Forest Products Inc. v. GE Canada Leasing Services Co.*, [2013 ONSC 5933](#) at para 44; *Indalex Ltd. (Re)*, [2011 ONCA 265](#) at para 180.

<sup>78</sup> Kassam Affidavit at para 135.

the Administration Charge (defined below), but ahead of the Directors' Charge (defined below) and all other security interests, charges and liens.<sup>79</sup>

65. Section 11.2(1) of the CCAA provides the court with the authority to grant an interim financing charge “in an amount the court considers appropriate,” subject to the limitation that the security or charge may not secure an obligation that exists before the order is made. This limitation ensures that proposed financing upholds the relative pre-filing priority of each secured creditor.<sup>80</sup> The proposed Interim Lender's Charge is sized appropriately to the Applicants' needs, does not secure the Interim Lender's pre-filing obligations, and is consistent with pre-filing priorities. The proposed Interim Lender's Charge will rank *pari passu* with and benefit from the same priority as the existing facilities under the CIBC Credit Agreement (excluding the Interim Borrowings).<sup>81</sup>

66. Section 11.2(4) of the CCAA lists the factors to be considered by the court in deciding whether to approve interim financing and grant an interim financing charge. When an application for interim financing is made at the same time as an initial application, the applicant must additionally satisfy the court that the terms of the loan are “limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period [i.e. the Initial Stay Period].” This additional requirement does not preclude interim financing and a related charge from being approved during the Initial Stay Period, and a number of CCAA courts have granted interim financing at the time of the initial order.<sup>82</sup>

67. These factors favour the requested relief. The Interim Borrowings arrangement is the only available option for the Applicants to fund operations for a temporary period and preserve the

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<sup>79</sup> Kassam Affidavit at para 137.

<sup>80</sup> *BZAM Ltd. (Re)*, (February 28, 2024), Ont S.C.J. [Commercial List], Court File No. CV- 24-00715773-00CL ([Endorsement of Justice Osborne](#)) at para 56 [*BZAM*].

<sup>81</sup> Kassam Affidavit at footnote 1.

<sup>82</sup> See, i.e., *Just Energy*, at paras 7, 71; *Mountain Equipment Co-Operative (Re)*, [2020 BCSC 1586](#) at para 2.

Applicants' business while they consider next steps in these proceedings, including a liquidation and orderly wind-down of the majority of the Applicants' operations. The Interim Borrowings arrangement is designed to preserve value to the benefit of the Applicants' stakeholders.<sup>83]</sup>

**E. Authority to Permit Pre-Filing Payments to Critical Third Parties**

68. The Applicants are seeking in the proposed Initial Order to be authorized, but not required, to pay certain pre-filing amounts owing to key participants in the Applicants' distribution network, and to other critical suppliers, with the consent of the Proposed Monitor and the Interim Lender, and in accordance with the Cash Flow Forecast or otherwise as may be agreed to with the Interim Lender. These third parties include Parian, key logistics or supply chain providers, customs brokers and clearing houses, and providers of credit and debit processing services in the ordinary course, both before and after the date of filing. Any disruptions of their services could jeopardize the continued operation of the Applicants' business during these CCAA proceedings.<sup>84</sup>

69. The Court has exercised its jurisdiction on multiple occasions to grant similar relief.<sup>85</sup> The court in *Index Energy Mills Road Corporation* outlined the factors that courts have considered in determining whether to grant such authorization, including (a) whether the goods and services are integral to the business of the applicants; (b) the applicants' dependency on the uninterrupted supply of the goods or services; (c) the fact that no payments will be made without the consent of the Proposed Monitor (which is a requirement under the proposed Initial Order); and (d) the effect

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<sup>83</sup> Kassam Affidavit at para 134.

<sup>84</sup> Kassam Affidavit at paras 148-149.

<sup>85</sup> See, for example, *Target*, at para 62 to 65; *Nordstrom*, at paras 50-53; *Just Energy*, at para 99; *Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)*, [2023 ONSC 753](#) at paras 72-74; *Boreal Capital* at paras 20-22.

on the debtors' operations and ability to restructure if it could not make such payments.<sup>86</sup> These factors are fulfilled in this case.

#### **F. The Administration Charge Should be Granted**

70. Pursuant to s. 11.52 of the CCAA, the Applicants are requesting an Administration Charge in favour of the Proposed Monitor, its Canadian counsel, and Canadian counsel to the Applicant, as security for their respective fees and disbursements up to a maximum of \$750,000 (the “**Administration Charge**”), which amount covers the time period until the Comeback Hearing. The quantum of the Administration Charge was developed in consultation with the Proposed Monitor and is proposed to be secured by the Property and to have first priority over all other charges and security interests.<sup>87</sup>

71. The requested Administration Charge satisfies the well-accepted factors originally established by Pepall J. in *Canwest Publishing*. Among other factors, the requested amount is fair and reasonable, and appropriate to the size and complexity of the businesses being restructured.<sup>88</sup> In addition, the initial amount requested is tailored only to the needs within the Initial Stay Period.

#### **G. The Directors' Charge Should be Granted**

72. In accordance with s. 11.51 of the CCAA, the Applicants also seek a directors and officers charge in the amount of \$6.2 million during the Initial Stay Period (the “**Directors' Charge**”). The Director's Charge is proposed to be secured by the Property and to rank behind the Administration

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<sup>86</sup> *Index Energy Mills Road Corporation (Re)*, [2017 ONSC 4944](#) at para 31.

<sup>87</sup> Kassam Affidavit at paras 3, 146.

<sup>88</sup> See, for example, *Target*, at para 74, citing *Canwest Publishing Inc. / Publications Canwest Inc. (Re)*, [2010 ONSC 222](#) at para 54; *Just Energy* at paras 112 to 113; *Nordstrom*, at paras 54 to 55.



Charge, the Interim Lender's Charge and the existing security granted with respect to the CIBC Credit Facilities and ahead of all other security interests, charges and liens.<sup>89</sup>

73. The Applicants' present and former directors and officers are not beneficiaries under liability insurance. Accordingly, there is no coverage for the potential liability that the director and officers could incur in relation to these CCAA proceedings.<sup>90</sup> In light of the potential liabilities and lack of any available insurance, the continued service and involvement of the directors and officers in this proceeding is conditional upon the granting of an Order which includes the Directors' Charge. A successful restructuring of the Applicants will only be possible with the continued participation of its directors, officers, management, and employees. These personnel are essential to the viability of the Applicants' business and the preservation of enterprise value.<sup>91</sup>

#### **PART IV - NATURE OF THE ORDER SOUGHT**

74. The Applicants therefore request an Order substantially in the form of the draft Order attached as Schedule "A" to the Notice of Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of January, 2025

  
\_\_\_\_\_  
Sierra Farr

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<sup>89</sup> Kassam Affidavit at paras 3, 146.

<sup>90</sup> Kassam Affidavit at para 145.

<sup>91</sup> Kassam Affidavit at para 146.

## SCHEDULE “A”: LIST OF AUTHORITIES

1. *BioSteel Sports Nutrition Inc. (Re)*, (September 14, 2023), Ont S.C.J. [Commercial List], Court File No. CV-23-00706033-00CL ([Endorsement of Justice Cavanaugh](#))
2. *Black Press Ltd. et al. (Re)*, (January 15, 2024), Supreme Court of British Columbia, Court File No. S-240259 ([Initial Order](#))
3. *Boreal Capital Partners Ltd et al. (Re)*, [2021 ONSC 7802](#)
4. *BZAM Ltd. (Re)*, (February 28, 2024), Ont S.C.J. [Commercial List], Court File No. CV-24-00715773-00CL ([Endorsement of Justice Osborne](#))
5. *Canadian Overseas Petroleum Limited (Re)*, (March 8, 2024), A.B.K.B., 2401-03404 ([CCAA Initial Order](#))
6. *Canwest Global Communications Corp. (Re)*, [2009 CanLII 55114 \(ON SC\)](#)
7. *Canwest Publishing Inc./Publications Canwest Inc. (Re)*, [2010 ONSC 222](#)
8. *Comark Inc. (Re)*, [2015 ONSC 2010](#)
9. *Comark Holdings Inc. (Re)*, (July 13, 2020), Ont S.C.J. [Commercial List], Court File No. CV-20-00642013-00CL ([Initial Order](#))
10. *Cinram International (Re)*, [2012 ONSC 3767](#)
11. *Chalice Brands Ltd. (Re)*, [2023 ONSC 3174](#)
12. *Dondeb Inc. (Re)*, [2012 ONSC 6087](#)
13. *First Leaside Wealth Management Inc. (Re)*, [2012 ONSC 1299](#)
14. *Indalex Ltd. (Re)*, [2011 ONCA 265](#)
15. *Index Energy Mills Road Corporation (Re)*, [2017 ONSC 4944](#)
16. *Just Energy Corp. (Re)*, [2021 ONSC 1793](#)
17. *Ghana Gold Corp (Re)*, [2013 ONSC 3284](#)
18. *Global Light Telecommunications Inc. (Re)*, [2004 BCSC 745](#)
19. *Grant Forest Products Inc. v. GE Canada Leasing Services Co.*, [2013 ONSC 5933](#)
20. *Laurentian University of Sudbury (Re)*, [2021 ONSC 659](#)
21. *LTL Management LLC (Re)*, [2021 ONSC 8357](#)
22. *Lydian International Limited (Re)*, [2019 ONSC 7473](#)

23. *Mountain Equipment Co-Operative (Re)*, [2020 BCSC 1586](#)

24. *Nordstrom Canada Retail, Inc. (Re)*, [2023 ONSC 1422](#)

25. *Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)*, [2023 ONSC 753](#)

26. *Stelco Inc. (Re)*, [2004 CanLII 24933](#)

27. *Syncreon Group B.V. (Re)*, [2019 ONSC 5774](#)

28. *Target Canada Co. (Re)*, [2015 ONSC 303](#)

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

Date January 7, 2025

  
Signature

**SCHEDULE “B”**  
**TEXT OF STATUTES, REGULATIONS & BY-LAWS**  
***COMPANIES’ CREDITORS ARRANGEMENT ACT***

R.S.C., 1985, c. C-36, as amended

**2. (1) [...]**

***debtor company*** means any company that

(a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act or is deemed insolvent within the meaning of the Winding-up and Restructuring Act, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, or

(d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent; (*compagnie débitrice*)

[...]

**Application**

**3 (1)** This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

[...]

**Jurisdiction of court to receive applications**

**9 (1)** Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

[...]

**General power of court**

**11** Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

[...]

### **Relief reasonably necessary**

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

### **Rights of suppliers**

**11.01** No order made under section 11 or 11.02 has the effect of

- (a) prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the order is made; or
- (b) requiring the further advance of money or credit.

### **Stays, etc. — initial application**

**11.02 (1)** A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

[...]

### **Burden of proof on application**

**11.02 (3)** The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

[...]

### **Stays — directors**

**11.03** (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

[...]

### **Interim financing**

**11.2** (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

### **Priority — secured creditors**

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

### **Priority — other orders**

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

### **Factors to be considered**

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.

#### **Additional factor — initial application**

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

[...]

#### **Security or charge relating to director's indemnification**

**11.51 (1)** On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

#### **Priority**

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

[...]

#### **Court may order security or charge to cover certain costs**

**11.52 (1)** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

### **Priority**

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

[...]

### **Authorization to act as representative of proceeding under this Act**

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



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

Court File No: CV-25-00734339-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF COMARK HOLDINGS INC., BOOTLEGGER CLOTHING  
INC., CLEO FASHIONS INC. AND RICKI'S FASHIONS INC.

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

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