

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF MAV BEAUTY BRANDS INC., MARC ANTHONY COSMETICS LTD.,  
MARC ANTHONY US HOLDINGS, INC., MARC ANTHONY COSMETICS USA, INC., MAC  
PURE HOLDINGS, INC., MAV MIDCO HOLDINGS, LLC, RENPURE, LLC, ONESTA HAIR  
CARE, LLC, and THE MANE CHOICE HAIR SOLUTION LLC

Applicants

**FACTUM OF THE APPLICANTS**

November 14, 2023

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Ashley Taylor (LSO #39932E)**  
Email: ataylor@stikeman.com  
Tel: (416) 450 6627

**Philip Yang (LSO #82084O)**  
Tel: (416) 869-5593  
Email: pyang@stikeman.com

**Rania Hammad (LSO #86940I)**  
Tel: (416) 869-5578  
Email: rhammad@stikeman.com

Lawyers for the Applicants

TO: THE SERVICE LIST

## **PART I – OVERVIEW<sup>1,2</sup>**

1. The Companies are a group of hair care and personal care companies with a diversified portfolio of four personal care brands. MAV Brands is the ultimate parent company of the other Companies and its common shares trade on the Toronto Stock Exchange.
2. The Companies' revenue and net income have decreased significantly since fiscal year 2020. While the Companies' financial difficulties were driven by a variety of factors, the Companies have experienced continuing declines in operating performance as a result of, among other things, net product distribution losses with the Companies' retail customers and a variety of external market pressures.
3. The Companies are insolvent. Without CCAA protection and access to interim financing provided by the DIP Lenders (as detailed below), the Companies will not have sufficient cash to meet their obligations as they come due.
4. Accordingly, the Applicants seek protection from their creditors and certain other ancillary relief pursuant to an Initial Order made under the CCAA to implement a sale of their business for the benefit of all stakeholders.

## **PART II – FACTS**

5. The facts with respect to this application are briefly summarized below and more fully set out in the MacKay-Lee Affidavit.

### **A. CORPORATE STRUCTURE**

6. The Companies form one corporate group, controlled by management at their head office located in Vaughan, Ontario.<sup>3</sup>

#### **(i) *Operating Companies***

7. MAV Cosmetics is the Applicants' primary operating company and was amalgamated under the BCBCA.<sup>4</sup>

---

<sup>1</sup> Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the affidavit of Laurel Mackay-Lee sworn November 13, 2023 (the "**MacKay-Lee Affidavit**"). All references to currency in this factum are to United States dollars, unless otherwise noted.

<sup>2</sup> All references to currency herein are references to United States dollars, unless otherwise indicated.

<sup>3</sup> MacKay-Lee Affidavit, *supra* at para. 17.

8. Renpure is an operating company which focuses on selling “Rempure” branded hair and body care products. Renpure was incorporated under the laws of the State of Delaware as a limited liability company.<sup>5</sup>

9. The Mane Choice is an operating company which focuses on selling “The Mane Choice” branded hair and body care products. The Mane Choice was incorporated under the laws of the State of Delaware as a limited liability company.<sup>6</sup>

**(ii) Non-Operating Companies**

10. MAV Brands was amalgamated under the BCBCA and is a publicly traded company whose common shares are listed for trading on the TSX under the symbol “MAV”. The other Applicants are wholly-owned, directly or indirectly, by MAV Brands.<sup>7</sup>

11. Each of MAV US Holdings, MAV Cosmetics USA, MAC Holdings, MAV Midco, and Onesta are non-operating companies incorporated under the laws of the State of Delaware.<sup>8</sup>

**B. THE COMPANIES’ BUSINESS AND OPERATIONS**

**(i) Overview**

12. The Companies are a group of personal care companies with a diversified portfolio of four personal care brands: “Marc Anthony”, “Cake Beauty”, “Rempure”; and “The Mane Choice”. The Companies’ brands target a distinct consumer base with limited competitive overlap.<sup>9</sup>

13. Each of the above-referenced brands are registered trademarks in Canada with the Canadian Intellectual Property Office, in the US with the Patent and Trademarks Office, and in various other jurisdictions where the Companies operate.<sup>10</sup>

**(ii) Manufacturing and Distribution**

14. The Companies do not own or operate any manufacturing facilities. The Companies contract and maintain direct relationships with a diversified network of independent third-party

---

<sup>4</sup> *Ibid* at para. 11.

<sup>5</sup> *Ibid* at para. 12.

<sup>6</sup> *Ibid* at para. 13.

<sup>7</sup> *Ibid* at para. 14.

<sup>8</sup> *Ibid* at para. 16.

<sup>9</sup> *Ibid* at para. 19.

<sup>10</sup> *Ibid* at para. 20.

suppliers and manufacturers located primarily in North America to produce and test their products.<sup>11</sup>

15. All the Companies' products are shipped from their third-party manufacturers to their third-party distribution centres. These third-party distributors are responsible for the warehousing of the Companies' products prior to sale and the management of outbound freight to fulfill orders placed by the Companies' retail and distribution partners.<sup>12</sup>

16. Products may be picked up directly by the Companies' retail partners, delivered by third-party carriers arranged by the Companies, or delivered to ports for shipment for international orders.<sup>13</sup>

**(iii) Leases Premises**

17. The Companies do not own any real property. All the Companies' operations are conducted from their leased head office space in Vaughan, Ontario.<sup>14</sup>

**(iv) Employees**

18. The Companies employ approximately 72 people, all of whom are full-time employees except for one contract employee. The large majority of the Companies' employees are employed by MAV Cosmetics. Of the Companies' 72 employees, approximately 67 are Canadian residents, four (4) are residents of the United States and one (1) is a contractor residing in Mexico.<sup>15</sup>

19. None of the Companies' employees are subject to a collective bargaining agreement.<sup>16</sup>

20. The Companies' vacation policy does not allow for carry over of unused vacation year over year. As at October 31, 2023, the unused vacation owing to employees was approximately \$75,000.<sup>17</sup>

---

<sup>11</sup> *Ibid* at para. 21.

<sup>12</sup> *Ibid* at para. 23.

<sup>13</sup> *Ibid* at para. 24.

<sup>14</sup> *Ibid* at para. 26.

<sup>15</sup> *Ibid* at para. 27.

<sup>16</sup> *Ibid* at para. 28.

<sup>17</sup> *Ibid* at para. 30.

**(v) Cash Management System**

21. In the ordinary course of business, the Companies use their Cash Management System to, among other things, collect funds and pay expenses associated with their operations.<sup>18</sup>

22. As part of the Cash Management System, the Companies maintain multiple bank accounts both in the US and Canada. In total, the Companies have four (4) Canadian bank accounts and nine (9) U.S. bank accounts.<sup>19</sup>

**C. FINANCIAL POSITION OF THE COMPANIES**

23. The Companies' total obligations and debt service costs exceeds the actual cash flow that the Companies are generating annually from their operations. The annual principal and interest costs under the Credit Agreement between 2021 and 2022 was approximately \$15 million. At the same time, the Companies' Adjusted EBITDA declined from \$28.47 million in fiscal year 2020 to \$16.51 million in fiscal year 2021 to \$12.43 million in fiscal year 2022.<sup>20</sup>

24. The Companies balance sheet has also deteriorated in recent years. The Companies went from having over \$426.43 million in assets as of December 31, 2020, to having just over \$110.22 million in assets as of September 30, 2023.<sup>21</sup>

25. Moreover, the Companies lack liquidity. Over the course of the past few years, the Companies' cash position, excluding amounts drawn under the Revolving Facility (as defined below), has continually deteriorated from approximately \$9.07 million as of December 31, 2020, to approximately \$6.98 million as of December 31, 2021, to approximately \$5.48 million as of December 31, 2022. As of October 31, 2023, the Companies had approximately \$1.13 million in cash, excluding amounts drawn under the Revolving Facility.<sup>22</sup>

26. As can be seen from the September Balance Sheet, the Companies are insolvent from a balance sheet perspective.<sup>23</sup>

---

<sup>18</sup> *Ibid* at para. 31.

<sup>19</sup> *Ibid* at para. 32.

<sup>20</sup> *Ibid* at para. 38.

<sup>21</sup> *Ibid* at para. 39.

<sup>22</sup> *Ibid* at para. 40.

<sup>23</sup> *Ibid* at para. 60.

**(i) Assets**

27. As at September 30, 2023, the assets of the Companies had an unaudited net book value of approximately \$110.22 million and consisted of approximately \$46.94 million in current assets and \$59.57 million in intangible assets.<sup>24</sup>

**(ii) Liabilities**

28. As at September 30, 2022, the liabilities of the Companies had an unaudited book value of approximately \$133.31 million and consisted of approximately \$15.52 million in current liabilities and \$117.78 million in non-current liabilities.<sup>25</sup>

**D. THE COMPANIES' DEBT STRUCTURE**

**(i) Secured Obligations**

29. The Companies primary secured financing has come through the Credit Agreement, pursuant to which the Lenders provided a Revolving Facility in the aggregate principal amount of \$20 million and a Term Facility in the aggregate principal amount of up to \$107.5 million, to the Borrowers, MAV Cosmetics and MAC Holdings.<sup>26</sup>

30. Each of the Companies has guaranteed the full amount of the Borrowers' obligations under the Credit Agreement. The Borrowers' obligations under the Credit Agreement are secured by the Canadian GSA and US GSA, pursuant to which each of the Companies granted a first-ranking charge on all their assets in favour of RBC, in its capacity as Agent.<sup>27</sup>

31. The Credit Agreement includes customary events of default, including payment and covenant breaches, and the occurrence of a change of control. As of November 13, 2023, the outstanding principal amount under the Credit Agreement is approximately \$122.67 million.<sup>28</sup>

**(ii) Unsecured Obligations**

32. The remainder of the Companies liabilities are unsecured.

---

<sup>24</sup> *Ibid* at para. 42.

<sup>25</sup> *Ibid* at para. 43.

<sup>26</sup> *Ibid* at para. 45.

<sup>27</sup> *Ibid* at para. 49.

<sup>28</sup> *Ibid* at para. 51.

33. The Companies have outstanding obligations to their employees, in the aggregate approximate amount of \$75,000, for accrued vacation pay.<sup>29</sup>

34. As at September 30, 2023, amounts owed to unsecured trade creditors totalled approximately \$6.7 million.<sup>30</sup>

35. The Companies have monthly lease obligations of approximately C\$70,000.<sup>31</sup>

36. One or more of the Applicants are named as defendants in certain routine litigation matters. In the aggregate, the amounts claimed against the Companies are approximately \$1.79 million.<sup>32</sup>

## **E. THE COMPANIES' FINANCIAL DIFFICULTIES**

37. The Companies have experienced continuing declines in operating performance as a result of, among other things, net product distribution losses with the Companies' retail customers and external pressures, including increased operating costs in light of rapidly accelerating interest rates, competition in the personal care industry generally, and the disruption to retail sales as a result of store closures and the Companies' slow response to adapt to shifts in end-consumer preferences toward e-commerce and online platforms during the COVID-19 pandemic.<sup>33</sup>

38. The Companies' revenue decreased 21% from \$114.90 million in fiscal year 2020 to \$90.69 million in fiscal year 2022, with net income decreasing from a net profit of approximately \$6.51 million in fiscal year 2020 to a net loss of approximately \$154.35 million (including significant impairment charges related to goodwill and intangibles of \$145.48 million) in fiscal year 2022.<sup>34</sup>

39. Moreover, the Companies are significantly over-leveraged and have insufficient cash to meet their obligations. As at October 31, 2023, the Companies had approximately \$1.13 million

---

<sup>29</sup> *Ibid* at para. 54.

<sup>30</sup> *Ibid* at para. 55.

<sup>31</sup> *Ibid* at para. 56.

<sup>32</sup> *Ibid* at para. 57.

<sup>33</sup> *Ibid* at para. 58.

<sup>34</sup> *Ibid* at paras. 39 and 59.

in cash, excluding amounts drawn under the Revolving Facility, while having approximately \$15.52 million in current liabilities.<sup>35</sup>

40. The Companies' performance has been reflected in MAV Brands' share price on the TSX, which has declined from a price of C\$2.20 per common share as October 31, 2021, to C\$0.04 per common share as of October 31, 2023.<sup>36</sup>

## **F. THE COMPANIES' RESPONSE TO FINANCIAL DIFFICULTIES**

41. The Companies undertook significant measures to reduce their operating costs such as product engineering improvements to reduce production costs, negotiated reduced logistic and warehousing costs with vendors, reduced bonus payments, and reduced headcounts from over 100 employees to 72 employees.<sup>37</sup> Despite these efforts, the Companies performance and liquidity position continued to deteriorate in the face of continued net production distribution losses to retail customers, increasing costs, and interest rates.<sup>38</sup>

42. Furthermore, in response to the Companies' financial difficulties, the Companies and the Lenders agreed, among other things, to an extension of the maturity date under the Credit Agreement to July 10, 2024, to provide the Companies with sufficient breathing room to run the Strategic Review Process. More recently, the Lenders waived the Minimum Cash Covenant under the Credit Agreement.<sup>39</sup>

43. In January 2023, MAV Brands engaged Piper Sandler as its financial advisor to assist with, among other things, exploring the possibility of refinancing the Companies' existing debt and identifying and soliciting strategic alternatives.<sup>40</sup>

44. In March 2023, MAV Brands announced that it had initiated a Strategic Review Process to identify, review and evaluate potential strategic alternatives that may be available to the Companies.<sup>41</sup> Further, to oversee the Strategic Review Process Special Committee, MAV Brands established the Special Committee.<sup>42</sup>

---

<sup>35</sup> *Ibid* at para. 61.

<sup>36</sup> *Ibid* at para. 62.

<sup>37</sup> *Ibid* at para. 63.

<sup>38</sup> *Ibid* at para. 64.

<sup>39</sup> *Ibid* at para. 65.

<sup>40</sup> *Ibid* at para. 66.

<sup>41</sup> *Ibid* at para. 68.

<sup>42</sup> *Ibid* at para. 69.



45. On June 19, 2023, A&M was engaged by MAV Brands to provide consulting services in connection with the Companies' efforts to improve MAV Brand's financial and operating performance and to assist MAV Brands with the Strategic Review Process as and if required.<sup>43</sup>

46. Piper Sandler considered a broad range of strategic alternatives for the Companies, including the raising of additional debt or equity capital, but ultimately given the circumstances of the Companies, Piper Sandler pursued financial and strategic buyers for the sale of all or substantially all of MAV Brands' securities and or/its assets.<sup>44</sup> Since April 2023, Piper Sandler, in consultation with the Applicants, contacted a total of 97 potentially interested parties, comprised of financial and strategic buyers.<sup>45</sup>

47. As a result of the efforts of the Applicants and Piper Sandler, five parties submitted non-binding letters of intent or expressions of interest during the Strategic Review Process. A period of extensive and intensive arm's length negotiations followed the receipt of the non-binding offers, each of which was carefully evaluated by the Special Committee and its advisors, Piper Sandler and A&M.<sup>46</sup>

48. Following completion of the Strategic Review Process and after careful consideration of all alternatives available to the Companies, the Boards of Directors of the Companies, determined that a filing under the CCAA and the Transaction contemplated by the Asset Purchase Agreement was in the best interests of the Companies and all of their stakeholders, and represents the best alternative available to the Applicants.<sup>47</sup>

49. Given the Companies' current financial circumstances, the Applicants expect to seek approval of the Transaction and the Asset Purchase Agreement on an expedited timeline at a subsequent motion, providing the greatest stability for the Companies.<sup>48</sup>

## **G. THE DIP AGREEMENT**

50. As appears from the Cash Flow Forecast, the Applicants require interim financing to fund these CCAA Proceedings.<sup>49</sup>

---

<sup>43</sup> *Ibid* at para. 70.

<sup>44</sup> *Ibid* at para. 71.

<sup>45</sup> *Ibid* at para. 72.

<sup>46</sup> *Ibid* at para. 73.

<sup>47</sup> *Ibid* at para. 75.

<sup>48</sup> *Ibid* at para. 78.

<sup>49</sup> *Ibid* at para. 102.

51. Accordingly, on November 13, 2023, the DIP Agreement was entered into among MAV Cosmetics and MAC Holdings, as borrowers, MAV Brands, MAV Cosmetics, MAV US Holdings, MAV Cosmetics USA, MAC Holdings, MAV Midco, Renpure, Onesta, and Mane Choice, as guarantors, RBC, as administrative agent, and Lenders under the Credit Agreement, as the DIP Lenders.<sup>50</sup>

52. The DIP Agreement is subject to customary covenants, conditions precedent, and representations and warranties made by the Applicants to the DIP Lenders. Among other things, the DIP Agreement provides for the following:

- (a) DIP Facility: Non-revolving loan up to the maximum principal amount of \$3.9 million;
- (b) Advances: The DIP Facility shall be available in multiple advances, as follows:
  - (i) an initial advance in the amount of \$250,000; and
  - (ii) subsequent advances to be drawn based on the funding needs of the Applicants as set forth in the DIP Budget and as agreed among the Applicants and the DIP Lenders. Each subsequent advance shall be in a principal amount of not less than \$250,000, and \$3,900,000 in the aggregate.
- (c) Interest Rate: Interest is payable on each advance at Adjusted Term SOFR for the SOFR Interest Period in effect for such advance plus 5.1% Accrued Interest on each advance; and
- (d) Fees: \$100,000 exit fee on the Maturity Date.<sup>51</sup>

53. The proposed Initial Order contemplates that the DIP Lenders Charge will rank subordinate to all the other Charges.<sup>52</sup> The DIP Lenders Charge will secure all of the credit advanced under the DIP Facility. The DIP Lenders Charge will not secure any obligations incurred prior to these CCAA Proceedings.<sup>53</sup>

---

<sup>50</sup> *Ibid* at para. 103.

<sup>51</sup> *Ibid* at para. 104.

<sup>52</sup> *Ibid* at para. 105.

<sup>53</sup> *Ibid* at para. 106.

### **PART III – ISSUES**

54. The issues in respect of the relief being sought under the Initial Order are whether:
- (a) this Court should grant protection to the Applicants under the CCAA and creditor protection, by way of the requested Stay of Proceedings;
  - (b) this Court should approve the DIP Agreement and grant the DIP Lenders Charge;
  - (c) this Court should grant the Administration Charge and the D&O Charge; and
  - (d) this Court should authorize MAV Brands to incur no further expenses in relation to the Securities Filings and declare that none of the D&Os, employees, and other representatives of MAV Brands shall have any personal liability for any failure by MAV Brands to make the Securities Filings.

### **PART IV – LAW AND ANALYSIS IN RESPECT OF INITIAL ORDER**

#### **A. The remedial purpose of the CCAA is to restructure insolvent corporations to avoid the social and economic losses which would result from a liquidation**

55. Canada's insolvency statutes pursue an array of overarching remedial objectives that reflect Parliament's intention that those statutes minimize the wide ranging and potentially catastrophic impacts insolvency can have on the stakeholders of insolvent debtors. As part of this framework, the CCAA generally prioritizes avoiding the social and economic losses resulting from liquidation of an insolvent corporation by allowing it to restructure its business and financial affairs. The CCAA also has the simultaneous objectives of maximizing creditor recovery, preservation of going-concern value where possible, preservation of jobs and communities affected by a debtor's financial distress and enhancement of the credit system generally.<sup>54</sup>

56. The CCAA has been and remains the engine of this evolution and adaptation that is required to restructure debtors nowadays.<sup>55</sup> A restructuring under the CCAA may take any number of forms, limited only by the creativity of those proposing the restructuring. The courts have developed new and creative remedies to ensure that the objectives of the CCAA are met.

---

<sup>54</sup> 9354-9186 *Québec inc v Callidus Capital Corp.*, 2020 SCC 10 [*Callidus*] at paras. 40-42.

<sup>55</sup> *Ted Leroy Trucking [Century Services] Ltd. (Re)*, 2010 SCC 60 [*Century Services*] at para. 21.

57. Since the enactment of the CCAA in 1933, restructuring has evolved from the survival of a debtor in an operational state to the survival of the business conducted by a debtor under a different corporate form or ownership, including some form of liquidation of a debtor's assets. The latter are referred to as "liquidating CCAAs" and are commonplace in the Canadian restructuring landscape.<sup>56</sup>

58. Such evolution of the concept of restructuring is recognition of the number of stakeholders in a CCAA context that extend beyond the insolvent corporation's creditors and include its employees, directors, the parties doing business with the insolvent corporation, the general public and the community in which the insolvent corporation operates.<sup>57</sup>

**B. This Court should grant protection to the Applicants under the CCAA**

**(i) *The Applicants are either "debtor companies" or "affiliated debtor companies" to which the CCAA applies***

59. The CCAA applies to a "debtor company" or "affiliated debtor companies" where the total claims against the debtor or its affiliates exceeds \$5 million. The CCAA defines a "debtor company" as, among other things, any company that is insolvent or has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA").<sup>58</sup>

60. The CCAA defines "company" as, among other things,

Any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province and any incorporated company having assets or doing business in Canada, wherever incorporated...<sup>59</sup>

61. MAV Brands and MAV Cosmetics, as companies incorporated or formed under the legislature of a province (British Columbia), meet the CCAA definition of "company."<sup>60</sup> The remaining Applicants each also constitute a "company" as defined in the CCAA because they

---

<sup>56</sup> *Callidus*, *supra* at paras. 41-43, 45-46.

<sup>57</sup> *Century Services*, *supra* at para. 60; *Air Canada, Re*, 2003 CanLII 49366 (Ont. SCJ) at para. 13, leave to appeal to the CA refused (2003 CarswellOnt 5213).

<sup>58</sup> CCAA, s. 2(1) and s. 3(1).

<sup>59</sup> CCAA, s. 2(1).

<sup>60</sup> MacKay-Lee Affidavit, *supra* at paras. 11 and 15.

are each an incorporated company (under the laws of the State of Delaware) having assets and/or doing business in Canada.<sup>61</sup>

62. Each of the Applicants are wholly-owned, directly or indirectly, by MAV Brands. The Companies form one corporate group; controlled by management at their head office located in Vaughan, Ontario. Further, the Companies have assets in Canada, being the patent rights associated with each of the Companies brands, 'Marc Anthony', 'Cake Beauty', 'Renpure' and 'The Mane Choice', being registered with the Canadian Intellectual Property Office.<sup>62</sup>

63. In *Re Cinram*, Justice Morawetz (as he then was) held that having only nominal assets in Canada met the test for being a "company" under the CCAA:

Having only nominal assets in Canada, such as funds on deposit in a Canadian bank account, bring a foreign corporation within the definition of "company". In order to meet the threshold statutory requirements of the CCAA, an applicant need only be in technical compliance with the plain words of the CCAA.<sup>63</sup>

64. The test for "having assets or doing business in Canada" is disjunctive, such that either "having assets" in Canada or "doing business in Canada" is sufficient to qualify an incorporated company as a "company" within the meaning of the CCAA.<sup>64</sup> When determining whether an applicant is a debtor company on the basis of having nominal assets in Canada, courts have stated that they will not engage in a qualitative or quantitative analysis of the applicant's assets, as doing so would undermine the effectiveness of the CCAA.<sup>65</sup>

65. Accordingly, each of the Applicants meets the CCAA definition of "company" and is thus a debtor company for purposes of the CCAA.

**(ii) This Court has jurisdiction over the Applicants**

66. Subsection 9(1) of the CCAA provides that an application under the CCAA may be made to the court that has jurisdiction in the province where the debtor company has its "head office

---

<sup>61</sup> *Ibid* at paras. 11, 12, and 15.

<sup>62</sup> *Ibid* at paras. 14, 16, and 18-19.

<sup>63</sup> *Re Cinram*, 2012 ONSC 3767 at [para. 47](#).

<sup>64</sup> *Ibid* at [para. 46](#).

<sup>65</sup> *Re Global Light Telecommunications Inc.*, 2004 BCSC 745 at [para. 17](#).

or chief place of business.” If “the head office is in one province or territory and its chief operations are located in another, an application can be made in either jurisdiction.”<sup>66</sup>

67. Each of the Applicants’ head office is located in Vaughan, Ontario.<sup>67</sup>

68. The Applicants do not own any real property; business operations are carried out from a leased office space located in Vaughan, Ontario.<sup>68</sup>

69. Accordingly, the Ontario court is the appropriate venue for these CCAA proceedings.

**(iii) The Applicants are insolvent**

70. As set out above, companies are entitled to CCAA protection if they are, a “debtor company” which means, *inter alia*, a company that is insolvent.<sup>69</sup> Although the CCAA does not define the term “insolvent,” the definition of “insolvent person” under section 2(1) of the BIA is well-established to be the governing definition in applications under the CCAA. The definition of “insolvent person” in the BIA is as follows:

... “insolvent person” means a person who is not bankrupt and who resides, carries on business or has property in Canada, and whose liability to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.<sup>70</sup>

71. The tests for “insolvent person” under the BIA are disjunctive. A company satisfying either (a), (b) or (c) of the test is considered insolvent for purposes of the CCAA.<sup>71</sup>

---

<sup>66</sup> CCAA, s. 9(1); J. P. Sarra, *Rescue! The Companies’ Creditors Arrangement Act* 2nd ed. (2013), at p. 128.

<sup>67</sup> MacKay-Lee Affidavit, *supra* at para. 17.

<sup>68</sup> *Ibid* at para. 26.

<sup>69</sup> CCAA, s. 2(1) and s. 3(1).

<sup>70</sup> *Stelco Inc. (Re)*, 2004 CarswellOnt 1211 (Ont. Sup. Ct. J. [Commercial List]) [*Stelco*].

72. In *Ste/Co*, Justice Farley applied an expanded definition of insolvent in the CCAA context to reflect the "rescue" emphasis of the CCAA, modifying part (a) of the BIA's definition of "insolvent person" to include a financially troubled corporation that is "reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring".<sup>72</sup>

73. The Applicants are insolvent due to the following:

- (a) as demonstrated by the Cash Flow Forecast, the Applicants are unable or will soon become unable to meet their obligations generally as they become due without the additional financing provided by the DIP Agreement;
- (b) the Applicants' current and long-term liabilities both exceed their current and long term assets; and
- (c) the Applicants, either individually or as a whole, have debts in excess of \$5 million.<sup>73</sup> Specifically, each of the Applicants are principally liable, or have provided guarantees under the Credit Agreement which, at the time of commencement of these CCAA Proceedings, represents a secured obligation of the Applicants' in the outstanding principal amount of approximately \$122.67 million.<sup>74</sup>

74. For the foregoing reasons, the Applicants are debtor companies to which the CCAA applies and are eligible for protection under the CCAA.

### **C. The relief sought is reasonably necessary**

75. Pursuant to s. 11.001, the relief sought on an initial application is to be limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during the initial stay period. The stated purpose of s. 11.001 is to "limit the decisions that can be taken at the outset of a CCAA proceeding to measures necessary to avoid

---

<sup>71</sup> *Ibid* at para. 28.

<sup>72</sup> *Ibid* at paras. 25-26.

<sup>73</sup> MacKay-Lee Affidavit, *supra* at paras. 51, 60, and 102.

<sup>74</sup> *Ibid* at paras. 44, 48, and 51.

the immediate liquidation of an insolvent company, thereby improving participation of all players.”<sup>75</sup>

76. As detailed in the MacKay-Lee Affidavit and below, the Applicants have worked with their advisors and the Proposed Monitor to limit the relief sought on this initial application to only the relief that is reasonably necessary in the circumstances for the continued operation of their businesses. In each case, the Applicants considered whether the requested relief is necessary for the immediate stabilization of their businesses to protect them and the interests of their various stakeholders. In cases where immediate relief is necessary, the Applicants have attempted to limit any authorizations from the Court to what is required within the proposed initial stay period and will only seek additional authorization on the Comeback Hearing.

#### **D. The Stay of Proceedings is necessary**

77. Pursuant to section 11.02(1) of the CCAA, a Court may grant an order staying all proceedings in respect of a debtor company for a period of not more than ten days, provided that the Court is satisfied that circumstances exist to make the order appropriate.<sup>76</sup>

78. Exercising discretionary authority to grant a stay pursuant to the CCAA must be informed by the purpose behind the CCAA, which should be broadly and liberally interpreted.<sup>77</sup>

79. The purpose of the CCAA is to, amongst other things, maintain the status quo for the debtor company for a period while it consults with its stakeholders with a view to continuing operations for the benefit of both the debtor company and its stakeholders. The Supreme Court of Canada has held that when exercising judicial discretion under the CCAA, the court must often be cognizant of the various interests at stake in the reorganization, which can extend beyond those of the debtor and creditors to include employees, directors, and even other parties doing business with the insolvent company.<sup>78</sup>

80. The Applicants require a Stay of Proceedings in order to provide them with the time necessary to pursue the Transaction. An inability to affect the sale in a coordinated, court-supervised manner could be potentially disastrous for the Applicants’ many stakeholders, including their employees and suppliers.

---

<sup>75</sup> CCAA, s. 11.001, 11.02(1) and (3); *Lydian International Limited (Re)*, 2019 ONSC 7473 at paras. 22-26.

<sup>76</sup> CCAA, s. 11.02(1).

<sup>77</sup> *Stelco Inc. (Re)*, 2005 CarswellOnt 1188 (Ont. C.A.) at paras 23-26; *Nortel Networks Corporation (Re)*, 2009 CarswellOnt 4467 (Ont. Sup. Ct. J. [Commercial List]) [*Nortel*] at paras. 31 and 47; *Sino-Forest Corporation (Re)*, 2012 ONSC 2063 at para. 40.

<sup>78</sup> *Century Services*, *supra* at para. 60; *Nortel*, *supra* at para. 47.



81. For the foregoing reasons, the initial Stay of Proceedings up to November 24, 2023, should be granted on the terms sought herein.

**E. The DIP Agreement and DIP Lenders Charge should be approved and granted, respectively**

82. The Applicants are facing a liquidity crisis. The Cash Flow Forecast demonstrates that the Companies require interim financing to fund these CCAA proceedings.<sup>79</sup> The Applicants are requesting approval of the DIP Agreement entered into among MAV Cosmetics and MAC Holdings, as borrowers, MAV Brands, MAV Cosmetics, MAV US Holdings, MAV Cosmetics USA, MAC Holdings, MAV Midco, Renpure, Onesta, and Mane Choice, as guarantors, RBC, as administrative agent, and the Lenders under the Credit Agreement, as the DIP Lenders. The DIP Agreement attached as Exhibit “L” to the MacKay-Lee Affidavit.<sup>80</sup>

83. Based on the Applicants’ existing debt structure with the Lenders under the Credit Agreement, the Applicants, in consultation with their legal and financial advisors, did not believe that any third party would be willing or able to provide the financing urgently required on materially better terms on the timeline required by the Applicants.<sup>81</sup>

84. Section 11.2 of the CCAA provides the Court with the express statutory authority to approve the DIP Agreement and the DIP Lenders Charge, and order that the DIP Lenders Charge rank in priority over the claims of any secured creditor of the company.<sup>82</sup> Section 11.2(4) sets out the following factors to be considered by the Court in deciding whether to grant a super-priority charge in respect of the DIP Facility:

- (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;

---

<sup>79</sup> MacKay-Lee Affidavit, *supra* at para. 102.

<sup>80</sup> *Ibid* at para. 103.

<sup>81</sup> *Ibid* at para. 102.

<sup>82</sup> CCAA, s. 11.2.

- (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.<sup>83</sup>

85. In *Canwest Publishing*, Justice Pepall highlighted the importance of meeting the criteria set out in section 11.2(1) in addition to those found in section 11.2(4), namely:

- (a) whether notice has been given to secured creditors likely to be affected by the security or charge;
- (b) whether the amount to be granted under a DIP facility is appropriate and required having regard to the debtors' cash-flow statement; and
- (c) whether the DIP charge secures an obligation that existed before the order approving the DIP was made.<sup>84</sup>

86. Based on the foregoing factors prescribed in subsections 11.2(1) and 11.2(4) of the CCAA, the DIP Agreement and the DIP Lenders Charge should be approved and granted, as:

- (a) the notice requirements under section 11.2(1) of the CCAA have been met;
- (b) given the Applicants' assets and circumstances, they cannot obtain alternative financing outside of these CCAA proceedings;
- (c) the DIP Facility is necessary in order for the Applicants to pursue its restructuring efforts, which will preserve its business as a going-concern for the benefit of all its stakeholders;
- (d) the DIP Facility is being advanced by the Applicants' secured lenders, namely the Lenders under the Credit Agreement, thereby demonstrating their confidence in management;

---

<sup>83</sup> CCAA, s. 11.2(4).

<sup>84</sup> CCAA, s. 11.2(1); *Canwest Publishing Inc. Re*, 2010 ONSC 222 [*Canwest Publishing*], at paras. 42-44.

- (e) The Lenders under the Credit Agreement are owed far in excess of the value of the Applicants assets, therefore no creditor is going to be prejudiced by the DIP Facility;<sup>85</sup>
- (f) the quantum of the DIP Facility is reasonable and appropriate having regard to short period of the anticipated proceedings and the Cash Flow Forecast;
- (g) the \$250,000 being advanced during the initial 10-day Stay of Proceedings is “reasonably necessary for the continued operations” of the Applicants in the “ordinary course of business during the same 10-day Stay of Proceedings”<sup>86</sup>;
- (h) the DIP Lenders Charge will not secure any obligations incurred prior to the commencement of these CCAA Proceedings<sup>87</sup>; and
- (i) the Proposed Monitor is supportive of the approval of the DIP Agreement and corresponding DIP Lenders Charge.<sup>88</sup>

87. It is essential that the DIP Agreement is approved, so that the Applicants have adequate financing in order to continue operating during the CCAA proceedings and to pursue their restructuring efforts.

#### **F. The Administration Charge should be granted**

88. The Applicants request that this Court grant a super-priority Administration Charge on the Property in favour of the Proposed Monitor, counsel to the Proposed Monitor, and counsel to the Applicants. At the initial hearing, the Administration Charge will be requested in the amount of \$450,000 in respect of the initial stay period.

89. This Court has the jurisdiction to grant the Administration Charge pursuant to section 11.52 of the CCAA. In *Canwest Publishing*, Justice Pepall identified six non-exhaustive factors that the Court may consider when determining whether to grant an administration charge:

- (a) the size and complexity of the business being restructured;
- (b) the proposed role of the beneficiaries of the charge;

---

<sup>85</sup> MacKay-Lee Affidavit, *supra* at paras. 42 and 51.

<sup>86</sup> *Lydian*, *supra* at paras. 22-26.

<sup>87</sup> MacKay-Lee Affidavit, *supra* at para. 106.

<sup>88</sup> Pre-filing report of A&M, in its capacity as Proposed Monitor, dated November 13, 2023 [*Pre-Filing Report*] at para. 7.5.

- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the monitor.<sup>89</sup>

90. The Administration Charge is warranted, necessary, and appropriate in the circumstances, given that:

- (a) the beneficiaries of the Administration Charge will provide essential legal and financial advice throughout these CCAA proceedings;
- (b) there is no anticipated unwarranted duplication of roles; and
- (c) the Proposed Monitor believes that the proposed quantum of the Administration Charge is reasonable.<sup>90</sup>

**G. The D&O Charge should be granted**

91. The Applicants request that this Court grant a priority D&O Charge on the Property in favour of the Applicants' current and future directors and officers in the amount of \$600,000, ranking subordinate to the Administration Charge.

92. The D&O Charge protects the directors and officers against obligations and liabilities they may incur as directors and officers of the Companies after the commencement of the CCAA proceeding, except to the extent that any such claims or the obligation or liability is incurred as a result of the director's or officer's gross negligence or wilful misconduct.

93. Section 11.51 of the CCAA provides the Court with the express statutory jurisdiction to grant the D&O Charge in an amount the Court considers appropriate, provided notice is given to the secured creditors who are likely to be affected by it.<sup>91</sup>

---

<sup>89</sup> *Canwest Publishing*, *supra* at [para. 54](#).

<sup>90</sup> Pre-Filing Report, *supra* at para. 11.3.

<sup>91</sup> CCAA, [s. 11.51](#).

94. With respect to the Applicants, the D&O Charge is reasonable in the circumstances because:

- (a) the Applicants will benefit from the active and committed involvement of the directors and officers, who have considerable institutional knowledge and valuable experience and whose continued participation will help facilitate the Transaction;
- (b) the Applicants cannot be certain whether the existing insurance will be applicable or respond to any claims made, and do not have sufficient funds available to satisfy any given indemnity should its directors and officers need to call upon such indemnities;
- (c) the D&O Charge does not secure obligations incurred by a director as a result of the directors' gross negligence or wilful misconduct;
- (d) absent approval by this Court of the D&O Charge in the amounts set out above, some or all of the Companies' directors and officers will resign;
- (e) the amount of the D&O Charge was specifically analyzed by A&M to cover potential accruals of claims, including in relation to employee vacation entitlements, prior to these CCAA Proceedings; and
- (f) the Proposed Monitor is of the view that the D&O Charge is reasonable and appropriate in the circumstances.<sup>92</sup>

#### **H. The Securities Filings relief should be granted**

95. The Applicants seek (a) an order permitting MAV Brands to incur no further expenses in relation to the Securities Filings; and (b) a declaration that none of the directors, officers, employees and other representatives of the Applicants or the Proposed Monitor shall have any personal liability for failure by the Applicants to make any Securities Filings that may be required by the Securities Provisions.<sup>93</sup>

96. The Applicants rely on the Court's inherent jurisdiction pursuant to section 11 of the CCAA in connection with the Securities Filings relief sought. Courts have frequently exercised

---

<sup>92</sup> Pre-Filing Report, *supra* at para. 11.11.

<sup>93</sup> MacKay-Lee Affidavit, *supra* at para. 100.

their broad jurisdiction under the CCAA to permit reporting issuers to not incur further expenses in relation to any filings and disclosures that may be required by any federal, provincial or other laws respecting securities or capital markets in Canada.<sup>94</sup>

97. In light of these CCAA Proceedings, it would not be practical or appropriate, and would be an unnecessary distraction and unwarranted expense, for the Applicants to incur costs associated with its filing and disclosure obligations. The Applicants' resources and time are better directed towards their restructuring efforts. Further, there is no prejudice to shareholders or stakeholders given that detailed financial information and other information regarding the Companies will continue to be made publicly available through the materials filed in these CCAA Proceeding and via the website established by the Proposed Monitor.<sup>95</sup>

98. Further, incurring the time and costs associated with preparing the Securities Filings is unnecessary given the Transaction contemplated under the Asset Purchase Agreement will result in MAV Brands no longer being a public company.<sup>96</sup>

#### **PART V – ORDER SOUGHT**

99. For all of the foregoing reasons, the Applicants request an Order substantially in the form of the draft Initial Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 14<sup>th</sup> day of November, 2023.

---

**STIKEMAN ELLIOTT LLP**  
Counsel for the Applicants

---

<sup>94</sup> *Inscape Corporation, Re*, Amended and Restated Initial Order issued January 20, 2023 [Court File No. CV-23-00692784-00CL] at paras. 42-43 [Inscape ARIQ]; *CannTrust Holdings Inc., Re*, Initial Order issued March 31, 2020 [Court File No. CV-20-00638930-00CL] at paras. 46-47; *Pure Global Cannabis Inc., Re*, Initial Order issued March 19, 2020 [Court File No. CV-20-00638503-00CL] at para. 49; *Magna Gold Corp. Re*, Amended and Restated Initial Order issued May 29, 2023 [Court File No. CV-23-00696874-00CL].

<sup>95</sup> MacKay-Lee Affidavit, *supra* at para. 101.

<sup>96</sup> *Ibid.*

**SCHEDULE “A”**  
**LIST OF AUTHORITIES**

**Cases**

1. *Air Canada, Re*, 2003 CanLII 49366 (Ont. SCJ)
2. *Canwest Publishing Inc, Re*, 2010 ONSC 222
3. *CannTrust Holdings Inc., Re*, Initial Order issued March 31, 2020 [Court File No. CV-20-00638930-00CL]
4. *Inscape Corporation, Re*, Amended and Restated Initial Order issued January 20, 2023 [Court File No. CV-23-00692784-00CL]
5. *Lydian International Limited (Re)*, 2019 ONSC 7473
6. *Magna Gold Corp. Re*, Amended and Restated Initial Order issued May 29, 2023 [Court File No. CV-23-00696874-00CL]
7. *Nortel Networks Corporation (Re)*, 2009 CarswellOnt 4467 (Ont. Sup. Ct. J. [Commercial List])
8. *Pure Global Cannabis Inc., Re*, Initial Order issued March 19, 2020 [Court File No. CV-20-00638503-00CL]
9. *Re Cinram*, 2012 ONSC 3767
10. *Re Global Light Telecommunications Inc.*, 2004 BCSC 745
11. *Sino-Forest Corporation (Re)*, 2012 ONSC 2063
12. *Stelco Inc. (Re)*, 2004 CarswellOnt 1211 (Ont. Sup. Ct. J. [Commercial List])
13. *Stelco Inc. (Re)*, 2005 CarswellOnt 1188 (Ont. C.A.)
14. *Ted Leroy Trucking [Century Services] Ltd. (Re)*, 2010 SCC 60
15. *9354-9186 Québec inc v Callidus Capital Corp.*, 2020 SCC 10

**Other Authorities**

16. J. P. Sarra, *Rescue! The Companies' Creditors Arrangement Act* 2nd ed. (2013), at p. 128

**SCHEDULE “B”**  
**RELEVANT LEGISLATION**

**Companies’ Creditors Arrangement Act, RSC 1985, c C-36**

**Definitions**

**2 (1)** In this Act,

**aircraft objects** [Repealed, [2012, c. 31, s. 419](#)]

**bargaining agent** means any trade union that has entered into a collective agreement on behalf of the employees of a company; (*agent négociateur*)

**bond** includes a debenture, debenture stock or other evidences of indebtedness; (*obligation*)

**cash-flow statement**, in respect of a company, means the statement referred to in [paragraph 10\(2\)\(a\)](#) indicating the company’s projected cash flow; (*état de l’évolution de l’encaisse*)

**claim** means any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of [section 2](#) of the [Bankruptcy and Insolvency Act](#); (*réclamation*)

**collective agreement**, in relation to a debtor company, means a collective agreement within the meaning of the jurisdiction governing collective bargaining between the debtor company and a bargaining agent; (*convention collective*)

**company** means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of [section 2](#) of the [Bank Act](#), telegraph companies, insurance companies and companies to which the [Trust and Loan Companies Act](#) applies; (*compagnie*)

**court** means



- **(a)** in Nova Scotia, British Columbia and Prince Edward Island, the Supreme Court,
- **(a.1)** in Ontario, the Superior Court of Justice,
- **(b)** in Quebec, the Superior Court,
- **(c)** in New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen's Bench,
- **(c.1)** in Newfoundland and Labrador, the Trial Division of the Supreme Court, and
- **(d)** in Yukon and the Northwest Territories, the Supreme Court, and in Nunavut, the Nunavut Court of Justice; (*tribunal*)

**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*)

**director** means, in the case of a company other than an income trust, a person occupying the position of director by whatever name called and, in the case of an income trust, a person occupying the position of trustee by whatever named called; (*administrateur*)

**eligible financial contract** means an agreement of a prescribed kind; (*contrat financier admissible*)

**equity claim** means a claim that is in respect of an equity interest, including a claim for, among others,

- **(a)** a dividend or similar payment,
- **(b)** a return of capital,
- **(c)** a redemption or retraction obligation,
- **(d)** a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or
- **(e)** contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d); (*réclamation relative à des capitaux propres*)

**equity interest** means

- **(a)** in the case of a company other than an income trust, a share in the company — or a warrant or option or another right to acquire a share in the company — other than one that is derived from a convertible debt, and
- **(b)** in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt; (*intérêt relatif à des capitaux propres*)

**financial collateral** means any of the following that is subject to an interest, or in the Province of Quebec a right, that secures payment or performance of an obligation in respect of an eligible financial contract or that is subject to a title transfer credit support agreement:

- **(a)** cash or cash equivalents, including negotiable instruments and demand deposits,
- **(b)** securities, a securities account, a securities entitlement or a right to acquire securities, or
- **(c)** a futures agreement or a futures account; (*garantie financière*)

**income trust** means a trust that has assets in Canada if

- **(a)** its units are listed on a prescribed stock exchange on the day on which proceedings commence under this Act, or
- **(b)** the majority of its units are held by a trust whose units are listed on a prescribed stock exchange on the day on which proceedings commence under this Act; (*fiducie de revenu*)

**initial application** means the first application made under this Act in respect of a company; (*demande initiale*)

**monitor**, in respect of a company, means the person appointed under [section 11.7](#) to monitor the business and financial affairs of the company; (*contrôleur*)

**net termination value** means the net amount obtained after netting or setting off or compensating the mutual obligations between the parties to an eligible financial contract in accordance with its provisions; (*valeurs nettes dues à la date de résiliation*)

**prescribed** means prescribed by regulation; (*Version anglaise seulement*)

**secured creditor** means a holder of a mortgage, hypothec, pledge, charge, lien or privilege on or against, or any assignment, cession or transfer of, all or any property of a debtor company as security for indebtedness of the debtor company, or a holder of any bond of a debtor company secured by a mortgage, hypothec, pledge, charge, lien or privilege on or against, or any assignment, cession or transfer of, or a trust in respect of, all or any property of the debtor company, whether the holder or beneficiary is resident or domiciled within or outside Canada, and a trustee under any trust deed or other instrument securing any of those bonds shall be deemed to be a secured creditor for all purposes of this Act except for the purpose of voting at a creditors' meeting in respect of any of those bonds; (*créancier garanti*)

**shareholder** includes a member of a company — and, in the case of an income trust, a holder of a unit in an income trust — to which this Act applies; (*actionnaire*)

**Superintendent of Bankruptcy** means the Superintendent of Bankruptcy appointed under [subsection 5\(1\)](#) of the [Bankruptcy and Insolvency Act](#); (*surintendant des faillites*)

**Superintendent of Financial Institutions** means the Superintendent of Financial Institutions appointed under [subsection 5\(1\)](#) of the [Office of the Superintendent of Financial Institutions Act](#); (*surintendant des institutions financières*)

**title transfer credit support agreement** means an agreement under which a debtor company has provided title to property for the purpose of securing the payment or performance of an obligation of the debtor company in respect of an eligible financial contract; (*accord de transfert de titres pour obtention de crédit*)

**unsecured creditor** means any creditor of a company who is not a secured creditor, whether resident or domiciled within or outside Canada, and a trustee for the holders of any unsecured bonds issued under a trust deed or other instrument running in favour of the trustee shall be deemed to be an unsecured creditor for all purposes of this Act except for the purpose of voting at a creditors' meeting in respect of any of those bonds. (*créancier chirographaire*)

## **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.

## **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 10 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.

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

**(2)** A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- **(a)** staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- **(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**

**(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.

### **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.

#### **Restriction — indemnification insurance**

**(3)** The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

**Negligence, misconduct or fault**

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.



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 MAV BEAUTY BRANDS INC., MARC ANTHONY COSMETICS LTD., MARC ANTHONY US HOLDINGS, INC., MARC ANTHONY COSMETICS USA, INC., MAC PURE HOLDINGS, INC., MAV MIDCO HOLDINGS, LLC, RENPURE, LLC, ONESTA HAIR CARE, LLC, and THE MANE CHOICE HAIR SOLUTION LLC

Applicants

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

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE APPLICANTS**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Ashley Taylor (LSO #39932E)**  
Email: [ataylor@stikeman.com](mailto:ataylor@stikeman.com)  
Tel: (416) 869-5236

**Philip Yang (LSO #82084O)**  
Tel: (416) 869-5593  
Email: [pyang@stikeman.com](mailto:pyang@stikeman.com)

**Rania Hammad (LSO #86940I)**  
Tel: (416) 869-5578  
Email: [rhammad@stikeman.com](mailto:rhammad@stikeman.com)

Lawyers for the Applicants