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

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 2688182 ALBERTA INC.

APPLICANTS

MOTION RECORD OF THE APPLICANTS
(Motion for Expansion of Monitor's Powers and CCAA Termination Order returnable May 15, 2025)

May 8, 2025

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Lawyers for the Applicants

TO: THE SERVICE LIST

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(as at May 8, 2025)

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CATARAQUI HOLDINGS INC. **c/o Primaris Management Inc.** 181 Bay Street, Suite 2700 Toronto, Ontario M5J 2T3 Attention: Elina Towie Email: etowie@primarisreit.com *Landlord for Cataraqui Town Centre (945 Gardiners Road, Kingston ON)*	**ANTHEM MINETT CARLINGWOOD HOLDINGS INC.** **c/o Anthem Properties Group Ltd.** Suite 1100, Bentail 4, Box 49200 1055 Dunsmuir Street Vancouver, British Columbia V7X 1K8 Email: ddavidson@anthemproperties.com; chall@anthemproperties.com; khill@AnthemProperties.com; nroos@AnthemProperties.com *Landlord for Carlingwood Mall (2121 Carling Avenue, Ottawa ON)*
PRIMARIS REAL ESTATE INVESTMENT TRUST 181 Bay Street, Suite 2700 Toronto, Ontario M5J 2T3 Attention: Elina Towie Email: etowie@primarisreit.com *Landlord for Conestoga Mall (550 King Street North, Waterloo ON) and Sunridge Mall (2525 36th Street NE, Calgary, AB)*	**WESTCLIFF MANAGEMENT LTD.** 2600-600 de Maisonneuve Boulevard West, Suite 2900 Montreal, Quebec H3A 3J2 Email: mcotnoir@westcliff.ca *Landlord for Champlain Place (477 Paul Street, Dieppe, NB)*
WBCS INC. **c/o Weaving Baskets Group Inc.** 1 Water Street East, Mall Administration Office Cornwall, Ontario K6H 6M2, Attention: Property Manager Email: leodoucet@weavingbaskets.ca *Landlord for Cornwall Square (1 Water Street East, Cornwall, ON)*	**MONTEZ (CORNER BROOK) INC.** **c/o Westcliff Management Ltd.** 2600-600 de Maisonneuve Boulevard West, Montreal, Quebec H3A 3J2 Email: lgreene@cornerbrookmall.com; mcotnoir@westcliff.ca *Landlord for Corner Brook Plaza (44 Maple Valley Road, Corner Brook, NL)*

COUNTRY CLUB CENTRE LTD. **c/o Northwest Properties** 406-4190 Lougheed Highway Burnaby, British Columbia V5C 6A8 Email: reception@nwproperties.ca *Landlord for Country Club Mall (3200 Island Hwy., Nanaimo, BC)*	**COTTONWOOD MALL LIMITED PARTNERSHIP** **c/o Warrington PCI Management** #300-1030 West Georgia Street Vancouver, British Columbia V6E 2Y3 Email: AR@warringtonpci.com *Landlord for Cottonwood Mall (45585 Luckakuck Way, Chilliwack, BC)*
W.E. ROTH CONSTRUCTION LIMITED **c/o Pioneer Property Management Ltd.** 420, 10320 – 102 Avenue, Edmonton, Alberta, T5J 4A1 Email: office@dugganwellnesscentre.ca *Landlord for Duggan Mall (6601 -48th Avenue, Camrose, AB)*	**DEVONSHIRE MALL HOLDINGS INC.** **c/o Primaris Management Inc.** 181 Bay Street, Suite 2700 Toronto, Ontario M5J 2T3 Attention: Elina Towie Email: etowie@primarisreit.com *Landlord for Devonshire Mall (3100 Howard Avenue, Windsor ON)*
TERRACAP INVESTMENTS (FRONTIER) INC. **c/o Terracap Management Inc.** 100 Sheppard Avenue East, Suite 502 Toronto, Ontario M2N 6N5 Email: qkroschinski@terracap.ca *Landlord for Frontier Mall (11413 Railway Street East, North Battleford, SK)*	**11445006 ALBERTA LTD.** **c/o ONE Property Management Limited Partnership** #200, 12420-104 Avenue NW, Edmonton, Alberta T5N 3Z9 Attention: Patrick Moore Email: patrick.moore@shape.ca *Landlord for Emerald Hills Centre (5000 Emerald Hills Drive, Sherwood Park, AB)*
1000688186 ONTARIO INC. **c/o Halton Management Inc.** 280 Guelph Street, Georgetown, Ontario L7G 4B1 Email: bharti@haltonmanagement.ca; info@haltonmanagement.ca *Landlord for Georgetown Market Place (280 Guelph Street, Georgetown, ON)*	**1540709 ONTARIO LIMITED** **c/o Fishman Holdings North American Inc.** 16775 Yonge Street, Suite 300 Newmarket, Ontario L3Y 8J4 Attention: Sharon Faul Email: sharon.faul@avisonyoung.com *Landlord for Gateway Mall (1403 Central Avenue, Prince Albert, SK)*

HANEY PLACE CENTRES LTD. **c/o Lorval Developments Ltd.** B520 – 20020 84 Avenue Langley, British Columbia V2Y 5K9 Attention: Jason Black Email: jasonb@gulfpacific.ca *Landlord for Haney Place (11900 Haney Place, Maple Ridge, BC)*	**HARVARD DIVERSIFIED ENTERPRISES INC.** **c/o Harvard Developments Corporation** Suite 2000, 1874 Scarth Street, Regina, Saskatchewan S4P 4B3 Attention: Krista Bebeau Email: kbebeau@harvard.ca *Landlord for Grasslands @ Harbour Landing (4548 Gordon Road, Regina, SK)*
11867865 CANADA INC. and 13711072 CANADA INC. **c/o Knightstone Capital Management Inc.** 701-240 Saint-Jacques Street West Montreeal, Quebec H2Y 1L9 **c/o 11867865 Canada Inc.** 52 Gordon Crescent Westmount, Quebec H3Y 1M6 Email: dreisman@k-cap.com; leasing@k-cap.com *Landlord for King's Crossing (97 Dalton Avenue, Kingston, ON)*	**KILDONAN PLACE LTD.** **c/o Primaris Management Inc.** 181 Bay Street, Suite 2700 Toronto, Ontario M5J 2T3 Attention: Elina Towie Email: etowie@primarisreit.com *Landlord for Kildonan Place (1555 Regent Avenue West, Winnipeg, MB)*
LANSDOWNE MALL INC. **c/o Primaris Management Inc.** 181 Bay Street, Suite 2700 Toronto, Ontario M5J 2T3 Attention: Elina Towie Email: etowie@primarisreit.com *Landlord for Lansdowne Place (645 Lansdowne Street West, Peterborough, ON)*	**EUROPRO (LAMBTON MALL) LP** 130 Adelaide Street West, Suite 1100 P.O. Box 194 Toronto, Ontario M5H 3P5 Email: asamko@europro.ca *Landlord for Lambton Mall (1380 London Road, Sarnia ON)*

HOOPP REALTY INC. and NSAHOPP MAYFLOWER INC. **c/o McCOR Management** 21 St. Clair Avenue East, Suite 1201 Toronto, Ontario M4T 1L9 Attention: Luc Corneli Email: lmahe@mccor.ca *Landlord for Mayflower Mall (800 Grand Lake Road, Sydney, NS)*	**LINDSAY SQUARE MALL INC.** **c/o Davpart Inc.** 4576 Yonge Street, Suite 700 Toronto, Ontario M2N 6N4 Attention: Evo Jerkovic Email: kjerkovice@davpart.com *Landlord for Lindsay Square (401 Kent Street West, Lindsay, ON)*
NEW SUDBURY CENTRE INC. **c/o Primaris Management Inc.** 181 Bay Street, Suite 2700 Toronto, Ontario M5J 2T3 Attention: Elina Towie Email: etowie@primarisreit.com *Landlord for New Sudbury Shopping Centre (1349 Lasalle Boulevard, Sudbury, ON)*	**MEDICINE HAT MALL INC.** **c/o Primaris Management Inc.** 181 Bay Street, Suite 2700 Toronto, Ontario M5J 2T3 Attention: Elina Towie Email: etowie@primarisreit.com *Landlord for Medicine Hat Mall (3292 Dunmore Road SE, Medicine Hat, AB)*
TRINITY NORTHUMBERLAND INC. **c/o Trinity Property Services Inc.** 77 Bloor Street West, Suite 1601 Toronto, Ontario M5S 1M2 Attention: President Email: notices@trinity-group.com c/o Attention: Vice President Operations *Landlord for Northumberland Mall (1111 Elgin Street West, Cobourg, ON)*	**WESTDALE CONSTRUCTION CO. LIMITED** **c/o Westdale Construction Co. Umlted** 35 Lesmill Road York, Ontario M38 2T3 Attention: Shopping Center Operations c/o Shopping Center Manager Email: tracir@westdaleproperties.com *Landlord for Northgate Mall (489 Albert Street North, Regina, SK)*

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PETER POND PORTFOLIO INC. **c/o Primaris Management Inc.** 181 Bay Street, Suite 2700 Toronto, Ontario M5J 2T3 Attention: Elina Towie Email: etowie@primarisreit.com *Landlord for Peter Pond Shopping Centre (9713 Hardin Street, Fort McMurray, AB)*	**PARK PLACE MALL HOLDINGS INC.** **c/o Primaris Management Inc.** 181 Bay Street, Suite 2700 Toronto, Ontario M5J 2T3 Attention: Elina Towie Email: etowie@primarisreit.com *Landlord for Park Place (501 – 1st Avenue South, Lethbridge, AB)*
QUINTE MALL HOLDINGS INC. **c/o Primaris Management Inc.** 181 Bay Street, Suite 2700 Toronto, Ontario M5J 2T3 Attention: Elina Towie Email: etowie@primarisreit.com *Landlord for Quinte Mall (390 North Fort Street, Belleville, ON)*	**PLACE D'ORLEANS HOLDINGS INC.** **c/o Primaris Management Inc.** 181 Bay Street, Suite 2700 Toronto, Ontario M5J 2T3 Attention: Elina Towie Email: etowie@primarisreit.com *Landlord for Place D'Orleans (110 Place D'Orleans Drive, Orleans, ON)*
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SM INTERNATIONAL HOLDINGS LTD. 293 Bay Street Sault Ste. Marie, Ontario P6A 1X3 Email: info@ssmcoc.com; leasing@thestationmall.com *Landlord for Station Mall (293 Bay Street, Sault Ste. Marie, ON)*	**VOISIN DEVELOPMENTS LIMITED** **c/o Sunrise Shopping Centre** 101 Ira Needles Boulevard, Waterloo, Ontario N2J 3Z4 Email: accounting@voisindevelopments.ca; steve@voisindevelopments.ca *Landlord for Sunrise Shopping Centre (1400 Ottawa Street South, Kitchener, ON)*
1865099 ONTARIO LIMITED 158 Dunlop Street East, Suite 201 Barrie, Ontario L4M 1B1 c/o 1865099 Ontario Limited P.O. Box 982 Barrie, Ontario L4M 5E1 Attention: Ashley Varcoe Email: ashleyvarcoe@rogers.com *Landlord for Suncoast Mall (397 Bayfield Road, Goderich, ON)*	**PELLEX HOLDINGS LTD.** **c/o Crestwell Realty Inc.** 6060-450 Southwest Marine Drive, Vancouver, British Columbia V5X 0C3 Email: office@crestwell.com *Landlord for Tamarack Shopping Centre (1500 Cranbrook Street North, Cranbrook BC)*

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EUROPRO (TECUMSEH MALL) LP 310 Wilson Avenue, Toronto, Ontario M3H 1S8 Email: ktaylor@europro.ca *Landlord for Tecumseh Mall (7654 Tecumseh Road, Windsor, ON)*	**1451945 ONTARIO LIMITED AND TIMMINS SQUARE SHOPPING CENTRE INC.** **c/o Bayfield Property Management** 40 Eglinton Avenue East, Suite 300 Toronto, Ontario M4P 3A2 Email: TimminsAdmin@bayfieldadvisors.com *Landlord for Timmins Square (1500 Riverside Drive, Timmins, ON)*
VILLAGE SHOPPING CENTRE (2006) INC. **c/o Plaza Group Management Limited** 527 Queen Street, Suite 200 Fredericton, New Brunswick E3B 1B8 Attention: Nathalie Lalonde Email: nathalie.lalonde@plaza.ca, info@plaza.ca *Landlord for The Village, (430 Topsail Road, St. John's, NL)*	**GULF & PACIFIC EQUITIES CORP.** 300-1300 Bay Street, Toronto, Ontario M5R 3K8 Email: accounting@gpequities.com *Landlord for Tricity Mall (6503 51st Street, Cold Lake, AB)*

CT REIT (TOTEM MALL) INC. **c/o Edgecombe Realty Advisors Inc.** 100-1090 Homer Street, Vancouver, British Columbia V6B 2M9 Email: EFTadmin@ctreit.com Attention: Conor Fitzpatrick Email: Conor.Fitzpatrick01@ctreit.com *Landlord for Totem Mall (9600 – 93rd Avenue, Fort St. John, BC)*	**G.C. WANETA PLAZA LTD.** **c/o Anthem Properties Group Ltd.** Suite 1100, Bentail 4, Box 49200, 1055 Dunsmuir Street Vancouver, British Columbia V7X 1K8 Email: khill@AnthemProperties.com; nroos@AnthemProperties.com *Landlord for Waneta Plaza (8100 Rock Island Highway, Trail, BC)*
MOUNTWATER CAPITAL CORP. **c/o Artis Victoria Square Ltd.** #306 - 1168 Hamilton Street, Vancouver, British Columbia V6B 2S2 Email: accounting@mountwatercapital.com *Landlord for Victoria Square (2223 Victoria Avenue East, Regina, SK)*	**WESTDELL DEVELOPMENT CORP.** 1105 Wellington Road London, Ontario N6E 1V4 Attention: Kathleen Tasani Email: ktasani@westdellcorp.com Attention: Jeff Wilson Email: jwilson@westdellcorp.com *Landlord for Whiteoaks Mall (1105 Wellington Road South, London, ON)*
WEST EDMONTON MALL PROPERTY INC. Suite 3000, Phase III, West Edmonton Mall 8882-170 Street Edmonton, Alberta T5T 4M2 Attention: Anita Hoy Email: Anita.Hoy@wem.ca *Landlord for West Edmonton Mall (8882 – 170th Street, Edmonton, AB)*	**CANADIAN TIRE PROPERTIES INC.** 2180 Yonge Street, Floor 15 Toronto, Ontario M4P 2V8 **c/o Parkland Mall Administration Office** 227 Broadway Street East Yorkton, Saskatchewan S3N 3G7 Attention: Jessica Farber Email: Jessica.Farber@ctreit.com Attention: Conor Fitzpatrick Email: Conor.Fitzpatrick01@ctreit.com *Landlord for Parkland Mall Shopping Centre (277 Broadway Street East, Yorkton, SK)*

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FIRST MILTON SHOPPING CENTRES LIMITED and CALLOWAY REIT (MILTON) INC. **c/o First Gulf Corporation** 351 King Street East, 13th Floor Toronto, Ontario M5A 0L6 Attention: Senior Vice President Retail Email: cdoan@firstgulf.com *Landlord for Milton Crossroads (1250 Steeles Avenue East, Milton, ON)*	**HAMMER LP** 75 Centennial Parkway North Hamilton, Ontario L8E 2P2 **c/o Cushman & Wakefield Asset Services ULC** 161 Bay Street, Suite 1500, PO Box 602, Toronto, Ontario M5J 2S1 Attention: Lori Stuart Email: LegalNotices@cushwake.com; lori.stuart@cushwake.com *Landlord for Eastgate Square (75 Centennial Parkway North, Hamilton, ON)*

CEC LEASEHOLDS INC. 1200 Waterfront Centre, 200 Burrard Street Vancouver, British Columbia V6C 3L6 **c/o Cushman & Wakefield Asset Services ULC** 161 Bay Street, Suite 1500, PO Box 602, Toronto, Ontario M5J 2S1 Email: LegalNotices@cushwake.com; eve.renaud@cushwake.com *Landlord for Calgary Eaton Centre (CORE Shopping Centre) (751 – 3rd Street SW, Calgary, AB)*	**LONDONDERRY SHOPPING CENTRE INC.** 243, 1 Londonderry Mall NW Edmonton, Alberta T5C 3C8 **c/o Leyad Corporation** 1100 rue de Bleury Montreal, Quebec H2Z 1N4 Attention: Marlene Perrotta Email: marlene@leyad.ca Attention: Qun Li Wei Email: qunli@leyad.ca Attention: Daniel Prudkov Email: daniel@leyad.ca Attention: Matthew Peris Email: matthew@leyad.ca *Landlord for Londonderry Mall (1 Londonderry Mall NW, Edmonton, AB)*
PRIME SITE PROPERTIES INC. 1101 Arthur Street West, Thunder Bay, Ontario P7E 5S2 **c/o Mirabelli Corporation** 815 Norah Cresent, Thunder Bay Thunder Bay, Ontario P7C 5H9 Attention: Adrian Mirabelli Email: info@mirabellicorp.com *Landlord for Arthur Street Marketplace (1165 Arthur Street West, Thunder Bay, ON)*	**PICCADILLY PLACE MALL INC.** 2900 – 550 Burrard Street Vancouver, British Columbia V6C 0A3 Attention: Lori Cymbaluk Email: lori.cymbaluk@jll.com *Landlord for Piccadily Mall (1151 -10th Avenue SW, Salmon Arm, BC)*

PRIMARIS REAL ESTATE INVESTMENT TRUST 181 Bay Street, Suite 2700 Toronto, Ontario M5J 2T3 Attention: Elina Towie Email: etowie@primarisreit.com Attention: Sherri Kelsie Email: skelsie@primarisreit.com Attention: Craig McLellan Email: cmclellan@primarisreit.com *Landlord for Halifax Shopping Centre (7001 Mumford Road, Halifax, NS)*	**DELOITTE MANAGEMENT SERVICES LP** **c/o Cushman & Wakefield ULC** Bay Adelaide Centre East 8 Adelaide Street West, Suite 200 Toronto, Ontario M5H 0A9 **c/o Deloitte Management Sercices LP** 2300-360 Main Street Winnipeg, Manitoba R3C 3Z3 **c/o 6644511 Canada Ltd.** 8 Adelaide Street West, Suite 200 Toronto, Ontario M5H 0A9 Attention: Fay Goveas Email: fay.goveas@ca.cushwake.com *Sub-Landlord for cleo Corporate Office*

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

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 2688182 ALBERTA INC.

APPLICANTS

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

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 2688182 ALBERTA INC.

APPLICANT

NOTICE OF MOTION
(Motion for Expansion of Monitor's Powers and CCAA Termination Order)

2688182 Alberta Inc. (the "**Applicant**") will make a Motion to a Judge presiding over the Commercial List on May 15, 2025 at 9:30 a.m., or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard

[ ] In writing under subrule 37.12.1(1);

[ ] In writing as an opposed motion under subrule 37.12.1(4);

[ ] In person;

[ ] By telephone conference;

[x] By video conference.

at the following location:

https://ca01web.zoom.us/j/61804264297?pwd=MEpzRUtlUVB0UGc4eStsVGNtYmkxUT09#success (Meeting ID: 618 0426 4297 Passcode: 057603)

THE MOTION IS FOR

1. An order, substantially in the form included at Tab 3 to the Motion Record (the "**Order**"), among other things:

(a) authorizing Alverez & Marsal Canada Inc. ("**A&M**") in its capacity as monitor in these CCAA proceedings (in such capacity, the "**Monitor**"), to exercise expanded powers in respect of the Applicant, and to provide certain protections to the Monitor in connection therewith;

(b) authorizing the Applicant to make an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 ("**BIA**"), and empowering the Monitor, or such other licensed insolvency trustee as may be engaged by the Applicant, to file any such assignment for and on behalf of the Applicant;

(c) extending the Stay Period (defined below) until the earlier of (i) the CCAA Termination Time (defined below), or (ii) August 15, 2025;

(d) upon delivery of the Termination Certificate (defined below) on the service list in these CCAA proceedings (the "**Service List**"):

(i) terminating these CCAA proceedings;

(ii) terminating the Charges (defined below); and

(iii) discharging A&M as the Monitor;

(e) granting certain releases in respect of the CCAA proceedings;

(f) approving the reports of the Monitor filed in these CCAA proceedings (the "**Monitor's Reports**") and the activities described therein; and

(g) approving the fees and disbursements of the Monitor for the period from January 7, 2025 to April 26, 2026, and the Monitor's legal counsel, Goodmans LLP ("**Goodmans**") for the period from January 7, 2025 to May 8, 2025 as described in the fourth report of the Monitor (the "**Fourth Report**").

THE GROUNDS FOR THE MOTION ARE:[1]

Background

2. On January 7, 2025, Comark Holdings Inc. ("**Comark**"), 10959367 Canada Inc. (formerly, Ricki's Fashions Inc.) ("**Old Ricki's**"), 9376208 Canada Inc. (formerly, cleo fashions Inc.) ("**Old cleo**"), Bootlegger Clothing Inc. ("**Bootlegger**") (together, the "**Comark Group**") were granted protection under the *Companies' Creditors Arrangement Act, R.S.C., 1985*, c. C-36 (the "**CCAA**") pursuant to an initial order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**");

3. The Initial Order, among other things, (i) appointed A&M as the Monitor; (ii) granted a stay of proceedings for an initial 10-day period; (iii) authorized the Comark Group to borrow from

[1] Capitalized terms not otherwise defined have the meanings given to them in the Affidavit of Shamsh Kassam sworn May 8, 2025 (the "**Fifth Kassam Affidavit**").

CIBC as interim lender; and (iv) granted priority charges (together with the charges granted in the ARIO (defined below), the "**Charges**") over the Property;

4. At the Comeback Hearing, this Court granted the Amended and Restated Initial Order (the "**ARIO**"), among other things, (i) extending the stay of proceedings to May 15, 2025 (the "**Stay Period**"); (ii) authorizing the Comark Group to enter into the DIP Term Sheet and granting the DIP Lender's Charge; (iii) authorizing the Comark Group to pursue offers for or avenues of restructuring, sale or reorganization of the Comark Group's business or assets; and (iv) increasing the maximum amount secured by certain of the Charges;

5. At the Comeback Hearing, this Court also granted the Realization Process Approval Order, among other things, (i) approving the Consulting Agreement between the Comark Group and the Consultant for the purpose of conducting a liquidation sale (the "**Sale**") of the Comark Group's Inventory and FF&E; (ii) approving the Sale Guidelines; and (iii) authorizing the Comark Group to undertake the Sale. The Consulting Agreement permitted the Comark Group to remove any of the Comark Group's Liquidating Stores from the Sale if the Comark Group identified one or more going-concern transactions for the Comark Group's businesses or any portion thereof, and to terminate the Consulting Agreement if all of the Liquidating Stores were removed from the Sale;

6. At the February 4 Hearing, this Court granted the Approval and Vesting and DIP Assignment Order, among other things, (i) approving an asset purchase agreement (the "**Putman APA**"), pursuant to which the Putman Purchaser would acquire certain assets of the retail business of each of Old Ricki's and Old cleo (the "**Putman Transaction**"), (ii) assigning certain leases of Old Ricki's and Old cleo to the Putman Purchaser pursuant to section 11.3 of the CCAA; (iii) approving the transfer and assignment of the DIP Facility and the DIP Lender's Charge from CIBC

to the parent company of Comark, 9383921 Canada Inc. ("**ParentCo**"); and (iv) upon delivery of the Putman Monitor's Certificate, (a) vesting all of Old Ricki's and Old cleo's rights, title and interest in and to the Purchased Assets to the Putman Purchaser; and (b) amending the title of these CCAA proceedings; and (v) directing a distribution of the cash proceeds of the Putman APA to CIBC, in its capacity as DIP Lender;

7. At the February 4 Hearing, this Court also granted the Stalking Horse Sale Process Approval Order, among other things (i) authorizing the Comark Group and the Monitor to engage in a sales process for the Remaining Business of the Comark Group in accordance with the terms of a Process Letter; (ii) authorizing the execution of the Stalking Horse Term Sheet setting out the key terms under which the Stalking Horse Purchaser would acquire the Remaining Business through a reverse vesting transaction and approving the Stalking Horse Term Sheet to act as a stalking horse bid; and (iii) authorizing and empowering the Comark Group to negotiate and finalize a definitive Stalking Horse Purchase Agreement;

8. At the March 21 Hearing, this Court granted an approval and reverse vesting order (the "**ARVO**"), among other things:

(a) approving a purchase agreement (the "**Purchase Agreement**") among Comark, Old Ricki's, Old cleo, and Bootlegger, ParentCo, as vendor (the "**Vendor**"), and 16751598 Canada Inc., as purchaser (the "**Purchaser**"), pursuant to which the Purchaser would receive a conveyance of all of the issued and outstanding shares of Comark (the "**Purchased Shares**") through a reverse vesting transaction (the "**Bootlegger Transaction**"); and

(b) upon delivery by the Monitor of a certificate (the "**RVO Monitor's Certificate**"):

(i) adding the Applicant as an applicant to these CCAA proceedings;

(ii) transferring and vesting all of the Comark Group's rights, title and interest in and to the Excluded Assets, the Excluded Contracts and the Excluded Liabilities in and to the Applicant;

(iii) releasing and discharging the Comark Group and the Retained Assets from the Excluded Contracts and the Excluded Liabilities, and from any and all Claims and Encumbrances, other than Permitted Encumbrances;

(iv) establishing the Wind-Down Reserve (as defined in the ARVO);

(v) extinguishing and cancelling the Outstanding Senior Secured Indebtedness and the Senior Secured Debt Documents and releasing and discharging the Comark Group, the Retained Assets, the Purchased Shares and the Vendor from all Claims and Encumbrances relating thereto;

(vi) transferring and vesting all of the Vendor's rights, title and interest in and to the Purchased Shares in and to the Purchaser, free and clear of and from any and all Claims and Encumbrances (excluding the Retained Liabilities and Permitted Encumbrances); and

(vii) discharging the Comark Group entities as applicants to these CCAA proceedings;

9. At the March 21 Hearing, the Comark Group also sought a declaration pursuant to the *Wage Earner Protection Program Act* ("**WEPPA**"). This aspect of the Comark Group's motion was adjourned;

10. On April 17, 2025, the Court granted the WEPPA Order declaring that, effective as of April 15, 2024, each of Old Ricki's, Old cleo and Bootlegger meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 (the "**WEPP Regulation**"), and their former employees are individuals to whom the WEPPA applies;

11. Since the March 21 Hearing, the Applicant and, prior to the closing of the Bootlegger Transaction, the Comark Group, in close consultation and with the assistance of the Monitor, have, among other things, closed the Bootlegger Transaction, existed applicable retail store locations upon the effective date of the disclaimer of leases, provided post-closing transition services to the Putman Purchaser under the terms of the Putman APA (the "**Putman Transition Services**"), and entered into consensual lease assignment agreements with each of the landlords in connection with the real property leases that were retained by the Purchaser;

Expansion of Monitor's Powers and CCAA Termination Order

(a) Expansion of Monitor's Powers

12. As of closing of the Bootlegger Transaction, the Applicant does not currently have any directors, officers or employees;

13. The proposed Order authorizes the Monitor to exercise expanded powers in respect of the Applicant to facilitate the administration of the Applicant's business, property, operations, affairs and estate and the completion of these CCAA proceedings;

14. The expansion of the Monitor's powers is an efficient arrangement that avoids duplication of costs or the expenditure of additional resources, since the Monitor will have continued involvement with the Applicant in its capacity as CCAA monitor;

15. The Applicant cannot conduct the resolution of these CCAA proceedings without expanded Monitor's powers;

16. No creditors will be prejudiced if the Court expands the Monitor's powers;

(c) Termination of CCAA Proceedings

17. The Applicant, through an affiliate, continues to provide Putman Transition Services to the Putman Purchaser in accordance with the Putman APA;

18. It is anticipated that the Putman Transition Services will be completed in June or July;

19. The proposed Order authorizes the termination of these CCAA proceedings, the termination of the Charges, and the discharge of A&M as the Monitor upon the service of a certificate by the Monitor (the "**Termination Certificate**") certifying that, to the knowledge of the Monitor, all matters to be attended to in connection with these CCAA proceedings have been completed;

20. It is anticipated that the Applicant will file an assignment into bankruptcy on or shortly after the service of the Termination Certificate;

(c) Releases

20. The proposed Order provides that, upon termination of these CCAA proceedings, (i) the Comark Group, their current and former directors, officers, employees, consultants, legal counsel, affiliates and advisors, but in each case solely to the extent relating to the period prior to closing of the Bootlegger Transaction; (ii) the current and former directors, officers, employees, consultants, legal counsel, affiliates and advisors of the Applicant; and (iii) A&M (in its capacity as Monitor and in its personal capacity), its legal counsel and their respective current and former directors, officers, partners, employees, consultants, affiliates and advisors (collectively, the "**Released Parties**"), shall be released from any and all liability that they have or may have now or in the future in connection with these CCAA proceedings and/or with respect to their respective conduct in connection therewith (the "**Released Claims**") provided that the Released Claims shall not include any claim or liability finally determined to be the result of the gross negligence, willful misconduct or fraud on the part of the applicable Released Party;

21. The Released Parties have made significant and often critical contributions to the development and implementation of these CCAA proceedings;

22. The proposed releases are appropriately limited in scope and tailored;

23. The Monitor has reviewed the proposed releases and supports their approval;

(d) Approval of Monitor's Fees and Activities

24. The proposed Order approves the activities of the Monitor as detailed in the Monitor's Reports and approves the fees and disbursements of the Monitor from January 7, 2025 to April 26, 2025 and its counsel for the period from January 7, 2025 to May 8, 2025;

25. The Court has not previously approved any of the Monitor's activities or the Monitor's fees and disbursements;

26. The Applicant supports the approval of the Monitor's activities as described in the Monitor's Reports and the approval of the fees and disbursements of the Monitor and its counsel;

(e) Extension of the Stay Period

27. The proposed Order extends the stay period until the earlier of: (a) the date on which the Monitor serves a certificate (the "**Termination Certificate**") on the Service List certifying that all matters to be attended to in connection with the CCAA proceedings have been completed (the "**CCAA Termination Time**"), or (b) August 15, 2025;

28. An extension of the Stay Period is necessary to continue to allow the Applicant to continue to provide the Putman Transition Services and complete any incidental or ancillary tasks or discharge any duties necessary prior to the Monitor serving the Termination Certificate;

29. The Wind-Down Reserve is anticipated to be sufficient to cover the costs that will be incurred during the remainder of these CCAA proceedings. The estate is not expected to incur any material costs during the extended stay period in connection with the continuation of the Putman Transition Services;

30. The Applicant has acted, and continues to act, in good faith and with due diligence in these CCAA proceedings;

31. The Monitor supports the request to extend the Stay Period;

Other Grounds

32. The provisions of the CCAA, including sections 11 and 11.02, and the inherent and equitable jurisdiction of this Honourable Court;

33. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 and 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and

34. Such further and other grounds as the lawyers may advise.

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

35. The Affidavit of Shamsh Kassam, sworn January 6, 2025;

36. The Affidavit of Shamsh Kassam, sworn January 15, 2025;

37. The Affidavit of Shamsh Kassam, sworn January 29, 2025;

38. The Affidavit of Shamsh Kassam, sworn March 14, 2025;

39. The Affidavit of Shamsh Kassam, sworn May 8, 2025;

40. The Pre-Filing Report of the Proposed Monitor dated January 6, 2025;

41. The First Report of the Monitor, dated January 16, 2025;

42. The Second Report of the Monitor, dated January 31, 2025;

43. The Third Report of the Monitor, dated March 18, 2025;

44. The Fourth Report of the Monitor, to be filed; and

45. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

May 8, 2025

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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 2688182 ALBERTA INC.

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

Ontario
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

NOTICE OF MOTION

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TAB 2

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

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 2688182 ALBERTA INC.

APPLICANT

AFFIDAVIT OF SHAMSH KASSAM
(Sworn May 8, 2025)

I, Shamsh Kassam, of the City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY:

1. I previously served as a director of 2688182 Alberta Inc. (the "**Applicant**"). I also currently serve as a director and/or officer of a number of affiliated companies in a broader corporate group, including Comark Holdings Inc. ("**Comark**"), 10959367 Canada Inc. (formerly, Ricki's Fashions Inc.) ("**Old Ricki's**"), 9376208 Canada Inc. (formerly, cleo fashions Inc.) ("**Old cleo**"), Bootlegger Clothing Inc. ("**Bootlegger**") (together, the "**Comark Group**"), and the parent company of Comark, 9383921 Canada Inc. ("**ParentCo**")[1]. I have personal knowledge of the matters deposed to in this affidavit. Where I have relied on other sources of information, I have specifically referred to such sources and believe them to be true. In preparing this affidavit, I have consulted with legal, financial and other advisors to the Applicant. The Applicant does not waive or intend to waive any applicable privilege by any statement herein.

[1] Following the granting of an Approval and Vesting and DIP Assignment Order earlier in these proceedings and the closing of the transactions approved therein (as described in greater detail below), ParentCo took an assignment of the debtor-in-possession loan facility initially provided by Canadian Imperial Bank of Commerce and, as a result thereof, became the DIP Lender in these proceedings

2. This affidavit is made in support of a motion by the Applicant for an order (the "**Expansion of Monitor's Powers and CCAA Termination Order**"), among other things:

(a) authorizing Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as monitor in these CCAA proceedings (in such capacity, the "**Monitor**"), to exercise expanded powers in respect of the Applicant to facilitate the administration of the Applicant's business, property, operations, affairs and estate and the completion of these CCAA proceedings, and to provide certain protections to the Monitor in connection therewith;

(b) authorizing the Applicant to make an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 ("**BIA**"), and empowering the Monitor, or such other licensed insolvency trustee as may be engaged by the Applicant, to file any such assignment for and on behalf of the Applicant;

(c) extending the Stay Period (defined below) until the earlier of (i) the CCAA Termination Time (defined below), or (ii) August 15, 2025;

(d) upon delivery of the Termination Certificate (defined below) on the service list in these CCAA proceedings (the "**Service List**"):

(i) terminating these CCAA proceedings;

(ii) terminating the Charges (defined below); and

(iii) discharging A&M as the Monitor;

(e) granting certain releases in respect of the CCAA proceedings;

(f) approving the reports of the Monitor filed in these CCAA proceedings (the "**Monitor's Reports**") and the activities described therein;

(g) approving the fees and disbursements of the Monitor for the period from January 7, 2025 to April 26, 2025, and the Monitor's legal counsel, Goodmans LLP ("**Goodmans**") for the period from January 7, 2025 to May 8, 2025 as described in the fourth report of the Monitor (the "**Fourth Report**").

3. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise, and do not represent amounts or measures prepared in accordance with ASPE or US GAAP.

4. This affidavit is organized in the follow sections:

A. Overview of the Applicant's and the Comark Group's Activities since the Last Motion

5. On January 7, 2025, the Comark Group was granted protection under the *Companies' Creditors Arrangement Act, R.S.C., 1985*, c. C-36 (the "**CCAA**") pursuant to an initial order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**").

6. The Initial Order, among other things, (i) appointed A&M as the Monitor; (ii) granted a stay of proceedings against the Comark Group, the Monitor, and their respective employees, directors, advisors, officers and representatives acting in such capacities for an initial 10-day period (the "**Initial Stay Period**"); (iii) authorized the Comark Group to borrow from Canadian Imperial Bank of Commerce ("**CIBC**"), as interim lender (in such capacity, the "**Interim Lender**"), under the Comark Group's existing revolving facility (the "**CIBC Revolving Loan Facility**"), to fund the Comark Group's working capital requirements and other general corporate purposes, and the costs of these proceedings during the Initial Stay Period, subject to certain conditions; (iv) authorized, but did not require, the Comark Group to pay certain pre-filing amounts, with the consent of the Monitor and the Interim Lender, consistent with the Cash Flow Forecast (as defined in the First Kassam Affidavit (defined below)) or otherwise agreed to with the Interim Lender; and (v) granted priority charges (together with the charges granted in the ARIO (defined below), the "**Charges**") over the Property.

7. In support of the application for the Initial Order, I swore an affidavit dated January 6, 2025 (the "**First Kassam Affidavit**"), which described, among other things, the events leading to the Comark Group's insolvency and its urgent need for relief under the CCAA. A copy of the First Kassam Affidavit (without exhibits) is attached hereto as **Exhibit "A"**.

In support of the relief sought at the comeback hearing held on January 17, 2025 (the "**Comeback Hearing**"), I swore an affidavit dated January 16, 2025 (the "**Second Kassam Affidavit**"). A copy of the Second Kassam Affidavit (without exhibits) is attached hereto as **Exhibit "B"**. In support of the relief sought at the motion held on February 4, 2025 (the "**February 4 Hearing**"), I swore an affidavit dated January 30, 2025 (the "**Third Kassam Affidavit**"). A copy of the Third Kassam Affidavit (without exhibits) is attached hereto as **Exhibit "C"**. In support of the relief sought at the motion held on March 21, 2025 (the "**March 21 Hearing**"), I swore an affidavit dated March 14, 2025 (the "**Fourth Kassam Affidavit**"). A copy of the Fourth Kassam Affidavit (without exhibits) is attached hereto as **Exhibit "D"**. Capitalized terms not otherwise defined herein have the meanings given to them in the First Kassam Affidavit, the Second Kassam Affidavit, the Third Kassam Affidavit and/or the Fourth Kassam Affidavit, as applicable.

8. At the Comeback Hearing, this Court granted the Amended and Restated Initial Order (the "**ARIO**"), among other things, (i) extending the stay of proceedings to May 15, 2025 (the "**Stay Period**"); (ii) authorizing the Comark Group to enter into the DIP Term Sheet in the maximum principal amount of $18 million and granting the DIP Lender's Charge; (iii) authorizing the Comark Group, with the support of the Monitor and the DIP Lender, to pursue offers for or avenues of restructuring, sale or reorganization of the Comark Group's business or assets, in whole or in part; (iv) approving the form of Merchandise Transfer Agreement, authorizing the Comark Group and the Monitor to enter Merchandise Transfer Agreements with Overseas Vendors and perform their respective obligations under any Merchandise Transfer Agreement, and authorizing and approving any Merchandise Transfer Agreement executed by the Monitor and the Comark Group prior to January 17,

2025; and (v) increasing the maximum amount secured by the Administration Charge to $1 million and the maximum amount secured by the Directors' Charge to $7.4 million.

9. At the Comeback Hearing, this Court also granted the Realization Process Approval Order, among other things, (i) approving a consulting agreement (the "**Consulting Agreement**") between the Comark Group and Tiger Asset Solutions Canada, ULC (the "**Consultant**"), under which the Consultant acted as exclusive consultant for the purpose of conducting a liquidation sale (the "**Sale**") of Old Ricki's, Old cleo and Bootlegger's Inventory and FF&E (as defined in the Consulting Agreement); (ii) approving the proposed sale guidelines (the "**Sale Guidelines**") for the orderly realization of the Inventory and FF&E at the Comark Group's Liquidating Stores; and (iii) authorizing the Comark Group, with the assistance of the Consultant, to undertake the Sale in accordance with the terms of the Realization Process Approval Order, the Consulting Agreement and the Sale Guidelines.

10. Under the terms of the Consulting Agreement, the Consultant and the Comark Group agreed that in the event that the Comark Group identified one or more going concern transactions, including to any related party, for any of the Comark Group's businesses or any portion thereof, the Comark Group was entitled to remove any of the Comark Group's Liquidating Stores from the Sale at any time prior to January 31, 2025 or upon giving 14-days written notice after January 31, 2025. The Comark Group had the express right to terminate the Consulting Agreement in the event that they removed all of the Comark Group's Liquidating Stores from the Sale.

11. At the February 4 Hearing, this Court granted the Approval and Vesting and DIP Assignment Order, among other things, (i) approving an asset purchase agreement (the "**Putman APA**") between Old cleo and Old Ricki's, as sellers, and 1001110197 Ontario

Inc., as purchaser (the "**Putman Purchaser**"), pursuant to which the Putman Purchaser would acquire certain assets of the retail business of each of Old Ricki's and Old cleo, (ii) assigning certain leases of Old Ricki's and Old cleo to the Putman Purchaser pursuant to section 11.3 of the CCAA; (iii) approving the transfer and assignment of the DIP Facility and the DIP Lender's Charge from CIBC to ParentCo; and (iv) upon delivery of a monitor's certificate (the "**Putman Monitor's Certificate**") confirming that the steps in the transaction noted above (the "**Putman Transaction**") had been completed, vesting all of Old Ricki's and Old cleo's rights, title and interest in and to the Purchased Assets, as defined in the Putman APA, to the Putman Purchaser; (v) directing a distribution of the cash proceeds of the Putman APA to CIBC, in its capacity as DIP Lender, as a mandatory repayment under the DIP Term Sheet; and (vi) amending the title of these CCAA proceedings, following the delivery of the Putman Monitor's Certificate, to reflect the Old Ricki's and Old cleo numbered corporation names.

12. At the February 4 Hearing, this Court also granted the Stalking Horse Sale Process Approval Order, among other things (i) approving the process letter prepared by the Monitor (the "**Process Letter**") setting out the key milestones and bid requirements in respect of the remaining business or assets of the Comark Group which are not included in the Putman Transaction (the "**Remaining Business**"); (ii) authorizing the Comark Group and the Monitor to engage in a sales process in accordance with the terms of the Process Letter, provided that the result of such sales process would be subject to approval of this Court; (iii) authorizing the execution of a term sheet between the Comark Group and a related entity (the "**Stalking Horse Term Sheet**") setting out the key terms, conditions and timetable under which the Stalking Horse Purchaser (as defined in the Stalking Horse Term Sheet) would acquire the Bootlegger business, together with the tax attributes of the Comark

Group and certain other related assets through a reverse vesting transaction; (iv) approving the Stalking Horse Term Sheet to act as a stalking horse bid in accordance with the Process Letter; (v) authorizing and empowering the Comark Group to negotiate and finalize a definitive Purchase Agreement; and (vi) requiring the Monitor to post a copy of the finalized Purchase Agreement to the Monitor's case website and the Comark Group to provide a copy of the Purchase Agreement to the CCAA service list.

13. At the March 21 Hearing, this Court granted an approval and reverse vesting order (the "**ARVO**"), among other things: (i) approving a purchase agreement (the "**Purchase Agreement**") among Comark, Old Ricki's, Old cleo, and Bootlegger, ParentCo, as vendor (the "**Vendor**"), and 16751598 Canada Inc., as purchaser (the "**Purchaser**"), pursuant to which the Purchaser would receive a conveyance of all of the issued and outstanding shares of Comark (the "**Purchased Shares**") through a reverse vesting transaction (the "**Bootlegger Transaction**"); and (ii) upon delivery by the Monitor of a certificate (the "**RVO Monitor's Certificate**") to the Vendor and Purchaser: (a) adding the Applicant as an applicant to these CCAA proceedings; (b) transferring and vesting all of the Comark Group's right, title and interest in and to the Excluded Assets, the Excluded Contracts and the Excluded Liabilities (each as defined in the Purchase Agreement) in and to the Applicant; (c) releasing and discharging the Comark Group and the Retained Assets from the Excluded Contracts and the Excluded Liabilities, and from any and all Claims and Encumbrances (each as defined in the Purchase Agreement), other than Permitted Encumbrances (as defined in the Purchase Agreement); (d) establishing the Wind-Down Reserve (defined below), to be held by the Monitor free and clear of any Claims and Encumbrances; (e) extinguishing and cancelling the Outstanding Senior Secured Indebtedness and the Senior Secured Debt Documents (as defined in the Purchase

Agreement) and releasing and discharging the Comark Group, the Retained Assets, the Purchased Shares and the Vendor from all Claims and Encumbrances relating to the Outstanding Senior Secured Indebtedness and the Senior Secured Debt Documents; (f) transferring and vesting all of the Vendor's right, title and interest in and to the Purchased Shares in and to the Purchaser, free and clear of and from any and all Claims and Encumbrances (excluding the Retained Liabilities and Permitted Encumbrances); and (g) discharging the entities in the Comark Group as applicants to these proceedings.

14. At the March 21 Hearing, the Comark Group also sought a declaration pursuant to the *Wage Earner Protection Program Act* ("**WEPPA**"). This aspect of the Comark Group's motion was adjourned at the request of counsel for His Majesty the King ("**HMK**") while they sought further instructions. Ultimately, HMK advised the Monitor that they would not oppose the WEPPA declaration. On April 15, 2025, the Monitor submitted a draft order to the Court which was granted by Justice Cavanagh on April 17, 2025 (the "**WEPPA Order**"). The WEPPA Order declares that pursuant to subsections 5(1)(b)(iv) and 5(5) of WEPPA, effective as of April 15, 2025, each of Old Ricki's, Old cleo and Bootlegger meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 (the "**WEPP Regulation**"), and their former employees are individuals to whom the WEPPA applies.

15. Since the granting of the ARVO and the WEPPA Order, the Applicant and, prior to the closing of the Bootlegger Transaction, the Comark Group, in close consultation and with the assistance of the Monitor, have been working in good faith and with due diligence to, among other things:

(a) close the Bootlegger Transaction in accordance with the terms of the ARVO (as described further below);

(b) exit the applicable retail store locations upon the effective date of disclaimer of the leases that were not acquired by the Purchaser through the Bootlegger Transaction;

(c) provide post-closing transition services to the Putman Purchaser under the terms of the Putman APA (the "**Putman Transition Services**"); and

(d) enter into consensual lease assignment agreements with each of the landlords in connection with the real property leases that were retained by the Purchaser and subsequently assigned to Warehouse One Clothing Ltd. ("**Warehouse One**"), an affiliate of ParentCo and the Purchaser, in connection with the Bootlegger Transaction.

B. Closing of the Bootlegger Transaction

16. As described above, at the March 21 Hearing, this Court granted the ARVO which, among other things, (i) approved the Purchase Agreement and the Bootlegger Transaction, (ii) provided for the conveyance of the Purchased Shares to the Purchaser through a reverse vesting transaction, (iii) provided for the transfer to and vesting in the Applicant all of the Comark Group's right, title and interest in and to the Excluded Assets, the Excluded Contracts and the Excluded Liabilities (each as defined in the Purchase Agreement) upon the delivery of the RVO Monitor's Certificate, and (iv) provided for the extinguishment and cancellation of the Outstanding Senior Secured Indebtedness (which was owed to ParentCo) and the Senior Secured Debt Documents (as defined in the Purchase Agreement) upon the delivery of the RVO Monitor's Certificate.

17. On April 22, 2025, the Bootlegger Transaction closed, and the Monitor delivered the RVO Monitor's Certificate. As a result of this transaction:

(a) 46 leases were retained by the Purchaser and subsequently assigned to Warehouse One in accordance with consensual arrangements reached with the applicable landlords;

(b) approximately 330 former employees accepted employment with Warehouse One; and

(c) the Outstanding Senior Secured Indebtedness in the final amount of $3,706,732.90 was repaid to ParentCo in full.

18. Prior the closing of the Bootlegger Transaction, the Comark Group issued notices to disclaim approximately 25 leases that were not retained by the Purchaser through the Bootlegger Transaction. Since that time, the Comark Group has exited each of these locations in a "broom swept" and clean condition.

C. Expansion of Monitor's Powers

19. As of closing of the Bootlegger Transaction, the Applicant does not currently have any directors, officers or employees and, as a result, the proposed Expansion of Monitor's Powers and CCAA Termination Order authorizes the Monitor, for, on behalf of, and in the name of the Applicant, if the Monitor considers it necessary or desirable, to, among other things:

(a) take any and all actions and steps in the name of and on behalf of the Applicant to facilitate the administration of the Applicant's business, property, operations,

affairs and estate as may be necessary, appropriate, or desirable, in the sole discretion of the Monitor, including wind-down, liquidation, sale, assignment, transfer or disposal of assets, or other activities;

(b) execute all agreements, documents and writings, on behalf of, and in the name of, the Applicant, in order to facilitate the performance of any of its powers or obligations, or the exercise of any of its rights, including, without limitation, in connection with the Putman APA, the Purchase Agreement, any Order of this Court, or any agreement or instrument to which an Applicant is party;

(c) execute such other documents, on behalf of, and in the name of, the Applicant, as may be necessary or desirable in connection with any proceedings before this Court or pursuant to any Order of this Court, including such disclaimers, notices of termination and/or assignment agreements as may be reasonably necessary in connection with the CCAA proceedings;

(d) take any and all corporate actions and actions regarding the governance of the Applicant and such actions taken by the Monitor are hereby authorized without requiring any further action or approval by the Applicant or any current or former officer, director or shareholder of the Applicant;

(e) cause the Applicant to take any action or make any payment or disbursement permitted pursuant to the ARIO or any other Order granted in the CCAA proceedings;

(f) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of the Applicant (including any government authority or body) in the name of or on behalf of the Applicant;

(g) claim, or cause the Applicant to claim, any and all insurance refunds, tax refunds, or return of duties or levies, including refunds of goods and services taxes and harmonized sales taxes, to which the Applicant is entitled;

(h) engage, retain, or terminate the services of, or cause the Applicant to engage, retain or terminate the services of any officer, employee, consultant, agent, representative, advisor, or other person or entity, all under the supervision and direction of the Monitor, as the Monitor deems necessary or appropriate to assist with the exercise of its powers and duties;

(i) facilitate or assist the Applicant with accounting, tax and financial reporting functions, based solely upon the information in the Applicant's books and records and on the basis that the Monitor shall incur no liability or obligation to any person with respect to such reporting, remittances, statements, records or other documents;

(j) take any steps and execute any documents reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and

(k) take any and all actions necessary to give effect to the Expansion of Montior's Powers and CCAA Termination Order on behalf of the Applicant without requiring any further action or approval by the Applicant or any current or former officers or directors of the Applicant;

20. The proposed Expansion of Monitor's Powers and CCAA Termination Order provides that the Monitor shall continue to have the rights, protections and priorities afforded to the Monitor by the CCAA and the ARIO and that the Monitor and each of its affiliates, current and former officers, directors, partners, employees and agents, as applicable, shall not be liable for any act or omission on the part of the Monitor in carrying out the provisions of the Expansion of Monitor's Powers and CCAA Termination Order and exercising any powers granted thereunder, save and except for any gross negligence or wilful misconduct on its part.

21. By virtue of its involvement since the outset of these CCAA proceedings, the Monitor has a high degree of familiarity with the Applicant, the Comark Group and the current circumstances. The Applicant has a limited scope of remaining activity over the course of the coming months and the Monitor has the capacity and resources to assist the Applicant in the completion of those activities.

22. Since the Monitor will have continued involvement with the Applicant in its capacity as CCAA monitor, the expansion of the Monitor's powers to take actions in the name and on behalf of the Applicant is an efficient arrangement that avoids duplication of costs or the expenditure of additional resources. In addition, without granting the powers listed above, the Applicant cannot conduct the resolution of these CCAA proceedings as the Applicant does not have any directors or officers.

23. I do not know of any creditors that may be prejudiced if the Court grants the powers listed above.

D. Termination of CCAA Proceedings

24. The Applicant, through an affiliate, continues to provide post-closing transition services to the Putman Purchaser in accordance with the Putman APA. It is anticipated that the provision of transition services will be completed in June or July.

25. As such, the Applicant is seeking relief under the proposed Expansion of Monitor's Powers and CCAA Termination Order authorizing the termination of these CCAA proceedings, the termination of the Charges granted in the ARIO and the discharge of A&M as the Monitor upon the service of the Termination Certificate certifying that, to the knowledge of the Monitor, all matters to be attended to in connection with these CCAA proceedings have been completed.

26. The Applicant is also seeking: (i) the authorization to make an assignment in bankruptcy pursuant to the BIA from or after the filing of the Termination Certificate; (ii) the authorization for the Monitor, or such other licensed trustee as may be engaged by the Applicant, to file any such assignment in bankruptcy for and on behalf of the Applicant; and (iii) the authorization for the Monitor to fund a reasonable retainer to any trustee in bankruptcy from the Wind-Down Reserve.

27. It is anticipated that the Applicant will file an assignment into bankruptcy on or shortly after the service of the Termination Certificate.

E. Releases

28. Upon termination of these CCAA proceedings, the Applicant proposes that (i) the Comark Group, their current and former directors, officers, employees, consultants, legal counsel, affiliates and advisors, but in each case solely to the extent relating to the period

prior to closing of the Bootlegger Transaction; (ii) the current and former directors, officers, employees, consultants, legal counsel, affiliates and advisors of the Applicant; and (iii) A&M (in its capacity as Monitor and in its personal capacity), its legal counsel and their respective current and former directors, officers, partners, employees, consultants, affiliates and advisors (collectively with (i) and (ii), the "**Released Parties**"), shall be released from any and all liability that they have or may have now or in the future in connection with these CCAA proceedings and/or with respect to their respective conduct in connection therewith, including any actions required or steps taken in carrying out any Monitor Incidental Matters (as defined in the proposed Expansion of Monitor's Powers and CCAA Termination Order) or any other actions taken by A&M or Goodmans following the CCAA Termination Time with respect to the Applicant or these CCAA proceedings (collectively, the "**Released Claims**"), provided that the Released Claims shall not include any claim or liability finally determined to be the result of the gross negligence, willful misconduct or fraud on the part of the applicable Released Party. Such releases shall be triggered by the filing of the Termination Certificate.

29. The releases in favour of the Released Parties are necessary to bring finality to these CCAA proceedings. The Released Parties have made significant and often critical contributions to the development and implementation of these CCAA proceedings. I believe that the Released Parties have worked diligently towards ensuring the continuing operations of the Comark Group during the course of these CCAA proceedings and have contributed to the successful sale of substantially all of the Comark Group's business through the Putman Transaction and the Bootlegger Transaction for the benefit of the Comark Group's stakeholders. The proposed releases are incremental to the releases granted in the ARVO in relation to the Bootlegger Transaction an are limited in scope to claims relating to the CCAA

proceedings or the conduct of the Released Parties in the CCAA proceedings. The proposed releases are also necessary to facilitate the release of the Charges granted in the ARIO in favour of certain of the Released Parties. I believe that the proposed releases are appropriately tailored given the exclusions noted above and are necessary to bring finality to these CCAA proceedings in an efficient manner.

30. I am advised by the Monitor that it has reviewed the proposed releases and supports their approval.

F. Approval of Monitor's Fees and Activities

31. The proposed Expansion of Monitor's Powers and CCAA Termination Order approves the activities as detailed in the Monitor's Reports. This Court has not previously approved any of the Monitor's activities. The Applicant supports the approval of the Monitor's activities as described in the Monitor's Reports.

32. The proposed Expansion of Monitor's Powers and CCAA Termination Order also approves the fees and disbursements of the Monitor from January 7, 2025 to April 26, 2025 and the fees and disbursements of Goodmans for the period from January 7, 2025 to May 8, 2025 and authorizes the Monitor to apply funds held in the Wind-Down Reserve to the payment of any outstanding fees or disbursements of the Monitor and Goodmans. The proposed Expansion of Monitor's Powers and CCAA Termination Order also approves the fees and disbursements of the Monitor and Goodmans to complete any matters in its role as Monitor that are ancillary or incidental to these CCAA proceedings following service of the Termination Certificate. The Applicant supports the approval of the fees and disbursements of the Monitor and Goodmans.

G. Extension of the Stay Period

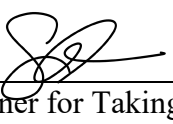
33. The ARIO extended the Stay Period to May 15, 2025. The Applicant is seeking to further extend the Stay Period until the earlier of: (a) the date on which the Monitor serves a certificate (the "**Termination Certificate**") on the Service List certifying that all matters to be attended to in connection with the CCAA proceedings have been completed (the "**CCAA Termination Time**"), or (b) August 15, 2025.

34. An extension of the Stay Period is necessary to continue to allow the Applicant to provide the Putman Transition Services in accordance with the terms of the Putman APA until the CCAA Termination Time and complete any incidental or ancillary tasks or discharge any duties necessary prior to the Monitor serving the Termination Certificate.

35. At the March 21 Hearing, this Court granted the ARVO which, among other things, established a reserve (the "**Wind-Down Reserve**") to be used to fund: (i) the fees of the Monitor, its counsel and counsel to the Applicant and the Comark Group; (ii) any other expenses permitted pursuant to the ARIO; and (iii) any costs associated with the bankruptcy of the Applicant. The Wind-Down Reserve is anticipated to be sufficient to cover the costs that will be incurred during the remainder of these CCAA proceedings. The estate is not expected to incur any material costs during the extended stay period in connection with the continuation of the Putman Transition Services.

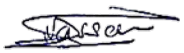
36. I believe that the Applicant has acted, and continues to act, in good faith and with due diligence in these CCAA proceedings. I believe that the proposed extension of the Stay Period is in the best interests of the Applicant and its stakeholders. I am also informed by the Monitor that it supports the request to extend the Stay Period.

SWORN BEFORE ME over videoconference this 8th day of May, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely. The affiant is located in the City of Vancouver, in the Province of British Columbia, while the commissioner is located in the City of Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits
(or as may be)

Sierra Farr (LSO#87551D)



Shamsh Kassam

This is Exhibit "A" referred to in the Affidavit of SHAMSH KASSAM sworn by SHAMSH KASSAM of the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on May 8, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

SIERRA FARR

(LSO# 87551D)

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

APPLICANTS

AFFIDAVIT OF SHAMSH KASSAM
(Sworn January 6, 2025)

I, Shamsh Kassam, of the City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY:

1. This affidavit is made 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**") for relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").

2. I currently serve as Chief Executive Officer ("**CEO**") of Comark, Vice President of each of Ricki's, cleo and Bootlegger, and a director of each of the Applicants. I am also a director and/or officer of a number of affiliated companies in a broader corporate group, including ParentCo (defined below), Parian (defined below) and others. As such, I have personal knowledge of the matters deposed to in this Affidavit. Where I have relied on other sources of information, I have specifically referred to such sources and believe them to be true. In preparing this Affidavit, I have consulted with legal, financial and other advisors to the Applicants and other members of the senior

management teams of the Applicants. The Applicants do not waive or intend to waive any applicable privilege by any statement herein.

3. As described in greater detail below, the Applicants are seeking, among other relief, the following as part of the proposed Initial Order:

(a) a stay of proceedings against the Applicants, the Monitor (defined below), and the Applicants' respective employees, directors, advisors, officers and representatives acting in such capacities for an initial 10-day period (the "**Initial Stay Period**");

(b) authorization to borrow from the Interim Lender (defined below) under the CIBC Revolving Loan Facility (defined below) to fund the Applicants' working capital requirements and other general corporate purposes, capital expenditures, and costs of these proceedings during the Initial Stay Period, provided such (i) such Interim Borrowings (defined below) are made in accordance with the Cash Flow Forecast (defined below) and (ii) 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;

(c) authorization (but not the requirement) to pay certain pre-filing amounts, with the consent of the Monitor and Interim Lender, consistent with the Cash Flow Forecast or otherwise agreed to with the Interim Lender, to key participants in the Applicants' distribution network, and to other critical suppliers, if required; and

(d) the granting of the following priority charges (collectively, the "**Charges**") over the Property (as defined in the Initial Order), listed in the following order of priority:

(i) an Administration Charge (defined below) in the maximum amount of $750,000;

(ii) an Interim Lender's Charge (defined below);[1]

(iii) security granted with respect to the CIBC Credit Facilities (defined below);[2] and

(iv) a Directors' Charge (defined below) in the maximum amount of $6.2 million;

4. If the proposed Initial Order is granted, the Applicants intend to bring a motion within 10 days of the granting of the Initial Order (the "**Comeback Hearing**") seeking an Amended and Restated Initial Order ("**ARIO**"), among other things, extending the stay of proceedings and

[1] The Interim Lender's Charge will rank *pari passu* with the security granted with respect to the CIBC Credit Facilities.

[2] The security granted with respect to the CIBC Credit Facilities will rank *pari passu* with the Interim Lender's Charge.

granting other customary Comeback Hearing relief, including increasing the maximum amount secured by the Administration Charge and the Directors' Charge.

5. In addition, while the Applicants and their shareholders continue to assess next steps, the Applicants currently intend to bring a motion or motions to be heard concurrently with the Comeback Hearing, or shortly thereafter, seeking this Court's approval of:

(a) a debtor-in-possession loan facility (the "**DIP Facility**") which will, among other things, be secured by a super-priority charge ranking in priority to all Charges and other encumbrances over the Property, other than the Administration Charge;

(b) a consulting agreement (the "**Consulting Agreement**") to be entered into between the Applicants and a liquidation consultant (the "**Consultant**");

(c) proposed sale guidelines (the "**Sale Guidelines**") for the orderly liquidation of the inventory and furniture, fixtures and equipment ("**FF&E**") located at or in transit to Ricki's store locations, cleo store locations, and some or all Bootlegger store locations, and inventory located at the Distribution Centre (defined below), through sales to be conducted in accordance with the terms of the Sale Guidelines, the Consulting Agreement and the proposed liquidation order; and

(d) an expedited sale and investment solicitation process ("**SISP**") for the remaining assets or business of the Applicants.

6. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise, and do not represent amounts or measures prepared in accordance with ASPE or US GAAP.

7. This affidavit is organized in the follow sections:

A. Introduction

8. The Applicants are large Canadian specialty apparel retailers with a nationally recognized portfolio of banners and exclusive private label brands. The Applicants consist of Comark, a privately-held corporation, and its three direct subsidiaries: Ricki's, cleo, and Bootlegger (together, the "**Retail Entities**"). As of the date of this affidavit, the Retail Entities have 221 store locations, comprised of: 75 Ricki's stores, 54 cleo stores, 53 Bootlegger stores, and 39 Combo Stores (defined below). All of these stores are located in Canada. Each of the Retail Entities also has an online store.

9. In June 2020, the Comark Group filed for and obtained CCAA protection due to, among other things, the effects of the COVID-19 pandemic on the Comark Group's businesses, including government mandated lockdowns for weeks and months at a time, and a need to right-size its balance sheet (the "**2020 CCAA Proceedings**"). Through the 2020 CCAA Proceedings, the Retail Entities closed approximately 30 of their underperforming stores and re-negotiated the remainder of their retail leases with landlords. The 2020 CCAA Proceedings also included an internal organizational restructuring, whereby Comark's corporate head office (previously located in Mississauga, Ontario) and Bootlegger's corporate head office (previously located in Richmond, British Columbia) were moved to Winnipeg, Manitoba, consolidating their office space and workforce with Ricki's corporate head office and the Distribution Centre. This organizational restructuring also included the consolidation and outsourcing of a number of corporate services to Parian Logistics Inc. ("**Parian**"), a related entity, to achieve cost-savings and improve efficiencies. Following such consolidation, Parian provides each of the Retail Entities with critical services, including warehousing logistics, finance and accounting support, IT services, HR support, and other services.

10. In July 2020, the reorganized Comark Group was sold to an entity controlled by its principal shareholder through a court-approved reverse vesting transaction and the Comark Group emerged from CCAA protection in August 2020 with approximately 280 go-forward stores.

11. Following the 2020 CCAA Proceedings, the Comark Group believed it was poised for success. However, as set out in greater detail below, the Comark Group has experienced a series of issues and challenges over the past four years which have negatively impacted profitability and strained liquidity, including (i) the long-lasting effects of the COVID-19 pandemic (in particular, the effect on the Comark Group's overseas vendor supply network) which issues continued after the Comark Group emerged from the 2020 CCAA Proceedings in August 2020, (ii) a 2021 Cyber Incident (defined below) which significantly disrupted business operations and created long-lasting inventory management issues, (iii) the introduction into the market and consumer uptake of certain ultra low-cost fashion retailers, and (iv) recent supply chain and vendor issues which caused material delays in the receipt of seasonal merchandise, resulting in lower than anticipated sales for each of the Retail Entities. As a result, the Applicants' businesses have not recovered to the level they were operating at prior to the COVID-19 pandemic and the post-restructuring success that the Comark Group had planned for has failed to materialize. For fiscal year-to-date 2025[3] (nine month period ending November 23, 2024), the Applicants have experienced negative EBITDA of approximately $16.1 million, a decline of approximately $5.7 million or 56% compared to the same period last year.

12. Since the 2020 CCAA Proceedings, Comark's parent company, ParentCo (defined below), and ParentCo's shareholders have supported the Comark Group's businesses, contributing

[3] The Comark Group's fiscal year-end is the last Saturday in February. Fiscal year 2025 runs from February 2024 to the last Saturday of February 2025.

approximately $35.5 million to the businesses through various secured intercompany loans from ParentCo, provided pursuant to the ParentCo Loan Facility (defined below). The Comark Group, with the support of ParentCo and its shareholders, have implemented various cost reduction and restructuring initiatives to preserve capital, streamline their business operations, and address their liquidity position. Unfortunately, despite the financial support from ParentCo and the expense reduction initiatives, the Comark Group's financial and operational performance has continued to struggle as a result of the supply delays and other issues noted above.

13. The negative cash flow and working capital issues have caused a significant strain on the Borrowing Base (as defined in the CIBC Credit Agreement) under Comark Group's existing senior secured revolving credit 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. On January 5, 2025, the Applicants and ParentCo received demand and acceleration notices from CIBC's counsel (the "**CIBC Demands**"). The CIBC Demands declare the entire balance outstanding under the CIBC Credit Facilities immediately due and payable and demand repayment. As a result of the CIBC Demands, Comark is unable to obtain further advances under the CIBC Credit Agreement.

14. The Applicants' cash flow and liquidity constraints have also resulted in significant arrears 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;[4] (iii) approximately $4.2 million owing to Parian, (iv) approximately $2.0 million owing in

[4] As of January 3, 2025, the Applicants owe approximately $4.7 million to landlords in respect of outstanding rent.

respect of duties and freight; and (v) approximately $8.6 million owing to other trade vendors. The Applicants also owe approximately $57 million to ParentCo. The Applicants do not have sufficient funds to pay these outstanding amounts. Certain vendors have stopped shipping new merchandise and have stated that they are not willing to commence production for summer and fall product merchandise. Certain other vendors have issued statements of claim in recent weeks against the Applicants in Ontario and Manitoba seeking payment of outstanding amounts and damages**.** While ParentCo is supportive of the Applicants' businesses and has provided over $35 million in secured funding since 2020, of which $15 million was advanced in the current fiscal year, it is unwilling to advance any further funding to the Applicants.

15. Due to its poor liquidity position, over the past several months, the Retail Entities have deferred rent payments to some landlords, making payments over the course of the month instead of on the first of the month. However, as the liquidity position of the Retail Entities continued to deteriorate, in November 2024, the Retail Entities did not pay percentage rent to certain landlords, and, to date, have not paid the majority of rent (fixed or percentage) to landlords for December 2024 and have not paid any rent to any landlords for the month of January 2025. Should the Initial Order be granted, the Applicants plan to make rent payments in the normal course in semi-monthly installments, in accordance with the Cash Flow Forecast (as defined below) and the proposed Initial Order.

16. In light of their current financial crisis, the Applicants urgently require a stay of proceedings granted under the CCAA and other related relief. The Applicants intend to use the breathing room afforded by the CCAA to engage with their principal stakeholders and to advance a process to address their current financial circumstances and maximize the value of their businesses. At present, this is likely to include (i) 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) 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) a right-sizing of 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) 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 SISP**.**

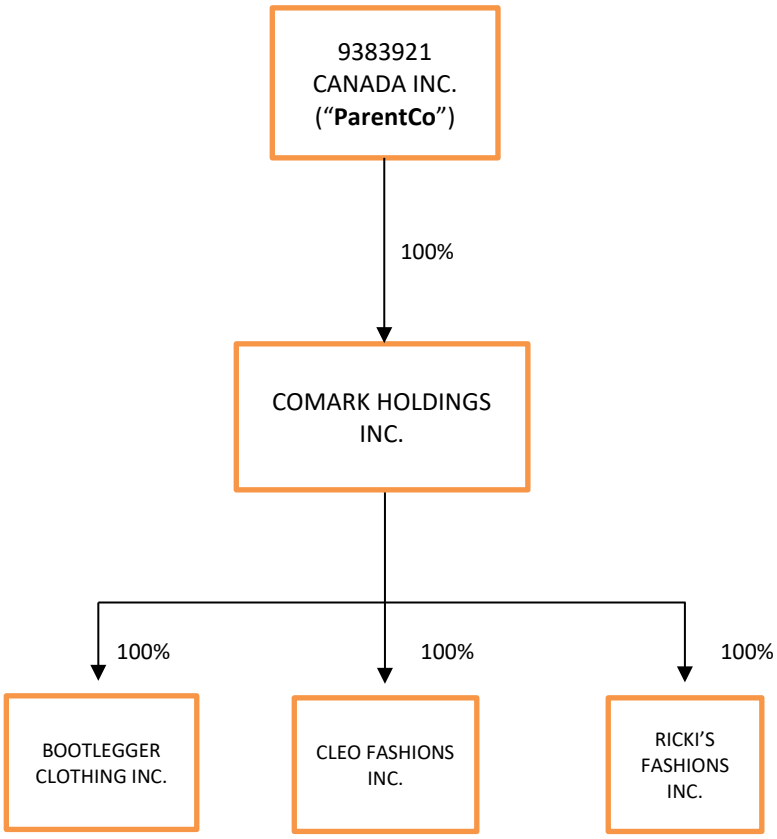
17. Discussions are underway between CIBC and the Applicants regarding the provision of debtor-in-possession ("**DIP**") financing on a super priority basis to the Applicants. The Applicants anticipate that they will seek approval of a DIP facility at or commensurate with the Comeback Hearing. In the interim, during the Initial Stay Period, CIBC has confirmed that it is prepared to act as Interim Lender and will permit the Applicants to continue to borrow under the existing CIBC Revolving Loan Facility provided (i) such Interim Borrowings are made in accordance with an agreed-upon two-week cash flow forecast (the "**Cash Flow Forecast**"), and (ii) 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;

B. Corporate Structure of the Applicants

(a) The Comark Group

18. Comark is a privately-held corporation governed by the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 ("**CBCA**"). The Comark Group businesses have been in operation in Canada since 1976.

19. Comark operates three retail businesses through its three direct subsidiaries, Ricki's, cleo and Bootlegger. All of the Applicants are CBCA corporations with their registered head office in Vancouver, British Columbia. 9383921 Canada Inc. ("**ParentCo**") is the direct parent company of Comark and is not an Applicant in these CCAA proceedings. ParentCo's ultimate parent company has three shareholders. A chart showing the organizational structure of the Applicants is set out below.



20. As is common in privately-held companies that form part of a private-equity investment portfolio, Comark pays an affiliate of ParentCo a yearly management fee of $250,000 as payment for certain governance, finance, legal, tax, IT, insurance and benefits advice and support as well as other strategic support services. The management fee is paid on a quarterly basis.

(b) Comark Investments Limited Partnership

21. Prior to November 2024, the Retail Entities were each limited partners in a limited partnership, the Comark Investments Limited Partnership ("**Comark LP**"). Comark LP earned income by investing funds borrowed through an intercompany loan from an affiliate of ParentCo in interest-bearing investments and distributed this income to the Retail Entities through advances to the Retail Entities, which advances were subsequently repaid by way of distribution. The Retail

Entities used these funds to repay the intercompany loans owed to Comark, and, in turn, Comark used these funds to repay a portion of the loans owed to ParentCo.

22. In November 2024, the affiliate of ParentCo demanded repayment of the loaned amount. After the final distribution of interest to the Retail Entities, Comark LP was wound up in December 2024.

C. Chief Place of Business

23. The chief place of business of the Applicants is Ontario. 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).

D. The Businesses of the Applicants

(a) The Canadian Apparel Retail Industry

24. In Canada, clothing and accessories retail stores generated aggregate sales revenue of approximately $3.6 billion in September 2024.[5] The Canadian retail apparel industry is highly competitive. The Retail Entities' major competitors include *American Eagle*, *Shein*, *Temu*, *Amazon*, *Guess*, *The Bay*, *Northern Reflections*, *Laura*, and *Reitmans*.

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[5] Statistics Canada, Retail sales, by industry – Seasonally adjusted. Online: https://www150.statcan.gc.ca/n1/daily-quotidien/241122/t002a-eng.htm.

25. The competitive retail and, in particular, retail apparel industry in Canada has undergone significant changes in the past decade. This includes the entry of new low-cost retail concepts and new advertising models, the significant growth of online shopping, and an increase in both the frequency and level of discounts offered by retailers through promotions delivered to customers in-store and online. As a result of these changes, many Canadian retailers, including apparel retailers, have experienced financial challenges and have filed for protection under the CCAA, including *Reitmans*, *Aldo*, *Aeropostale*, *American Apparel*, *Mexx*, *Forever XXI*, *Target Canada*, *Express*, *Sears Canada*, *Nordstrom Canada* and *Ted Baker Canada*, among others.

26. The unprecedented closure of brick and mortar stores for months due to COVID-19 and resulting production and global supply chain delays has also had extraordinary effects on the profitability and viability of apparel retailers across North America. The COVID-19 pandemic, and resulting supply chain issues experienced by apparel retailers, had lasting impacts on the retail apparel industry including the types of products purchased and the changing shopping habits of consumers.

(b) Ricki's, cleo and Bootlegger

27. The Retail Entities' stores sell predominantly exclusive private label merchandise. Their product mix includes work attire and casual clothing for Canadian men and women over the age of 25. The Retail Entities operate different brands under the operating companies Ricki's, cleo and Bootlegger, each of which has a distinctive brand identity, target market, and loyal customer base:

(a) **Ricki's** – Ricki's was founded in 1939 and acquired by Comark's predecessor company in 1982. Ricki's stores provide contemporary everyday work attire and casual clothing and accessories to Canadian women in their late twenties and early

thirties. Almost all of the products sold at Ricki's are company-branded and include a selection of tops, sweaters, pants, dresses, blouses, blazers, outerwear, denim and accessories. Ricki's merchandise consists of both core products (approximately 50%) and seasonal goods (approximately 50%).

(b) **cleo** – cleo's predecessor, Irene Hill, was founded in 1958 and acquired by Comark's predecessor company in 1979. In 1994, Irene Hill was rebranded to cleo. The cleo brand provides work wear and casual clothing for women over the age of 45. cleo is the largest retailer of women's petite merchandise in Canada, based on number of stores. Petite clothing currently accounts for approximately 45% of cleo's merchandise. Product lines are primarily sold under the cleo company brand, including tops, bottoms and dresses that can be worn casually or for work. cleo's merchandise consists of both core products (approximately 25%) and seasonal goods (approximately 75%).

(c) **Bootlegger** – Bootlegger was founded in 1971 and acquired by Comark's predecessor company in 1980. Bootlegger is a retailer of denim, other casual apparel, and accessories for men and women between the ages of 35 and 55. Approximately two-thirds of merchandise at Bootlegger is company-branded, while one-third is third-party branded, including brands such as Levi's, Silver Jeans and Kismet. Bootlegger's merchandise consists of both core product (approximately 60%) and seasonal goods (approximately 40%).

28. The Retail Entities also have a significant e-commerce presence in Canada for all three operating companies, discussed further below.

(c) Leases and Retail Stores

(i) Store Formats and Locations

29. The typical format for the Retail Entities' retail stores is a strategically located store in a mall or shopping centre. The average store size is approximately 3,800 square feet.

30. As of the date of this affidavit, the Applicants conduct business through 221 total store locations in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, New Brunswick and Newfoundland and Labrador. All of the 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 instances the Retail Entities operate two or three stores under a single lease (the "**Combo Stores**").

31. The Retail Entities' 221 total stores consist of 75 Ricki's stores, 54 cleo stores, 53 Bootlegger stores, 20 Ricki's/cleo Combo Stores, 16 Ricki's/Bootlegger Combo Stores, and 3 Ricki/s/Bootlegger/cleo Combo Stores.

32. The following chart sets out the Retail Entities' current store locations by Province:

Province	Number of Ricki's Store Locations	Number of cleo Store Locations	Number of Bootlegger Store Locations	Number of Ricki's/ cleo Combo Store Locations	Number of Ricki's/ Bootlegger Combo Store Locations	Number of Ricki's/ cleo/ Bootlegger Combo Store Locations	Total
British Columbia	9	6	14	-	2	1	**32**
Alberta	18	10	13	2	5	1	**49**
Saskatchewan	6	4	6	1	4	-	**21**
Manitoba	5	4	3	1	-	-	**13**
Ontario	31	24	11	15	5	1	**87**
New Brunswick	2	2	2	1	-	-	**7**
Nova Scotia	2	-	2	-	-	-	**4**
Newfoundland	2	4	2	-	-	-	**8**
Total	**75**	**54**	**53**	**20**	**16**	**3**	**221**

33. 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 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. Some of the Retail Entities' extension rights provide for a fixed basic rent during the extension term and others provide that the basic rent shall be reset upon the commencement of the extension term to the current fair market rent.

(ii) Landlords for Retail Premises

34. A majority of the Retail Entities' leases are with large third-party landlords, whose subsidiaries own malls and shopping centres across Canada.

35. The 13 landlord groups that lease the largest number of stores to the Retail Entities are set out below, with such landlords accounting for 154 of the Retail Entities' 221 retail stores. The remaining 67 retail stores are leased from 40 different landlords, with each landlord leasing three or fewer retail stores to the Retail Entities. As noted above, some leases are for Combo Stores.

Landlord Group	**Number of Retail Store Locations**
Morguard	28
Primaris Retail REIT	28
BentallGreenOak (Canada) LP	14
Cadillac Fairview	13
Cushman & Wakefield Asset Services Inc.	13
SmartCentres	11
Primaris Management Inc.	10
RioCan	10
Oxford	7
Jones Lang LaSalle Real Estate Services, Inc.	6
Salthill Capital	5
QuadReal	5
Cushman & Wakefield Asset Services ULC	4
Other	67
Total	**221**

(iii) Retail Lease Provisions

36. Typical of retail store leases in Canada, the Retail Entities' leases generally contain provisions that impact store operations, including:

(a) *Going-Out-of-Business Sale Restrictions*: Most of the Retail Entities' retail leases contain restrictions that relate to going out of business sales in one form or another,

including in most cases blanket prohibitions on "bankruptcy sales", "going out of business sales", "liquidation sales", and other similar terms.

(b) *Operating Covenants*: Most of the Retail Entities' retail leases contain operating covenants that require the Applicants to continuously occupy and operate in the leased premises, with various levels of detail. Most leases require the Retail Entities to continue to operate the entire leased premises and operate at hours specified by the landlord.

(iv) Current Status of Retail Leases

37. Due to the Applicants' recent financial challenges, described in further detail below, the Retail Entities delayed rent payments to some of their landlords for the months of October and November 2024. In October 2024, all delayed rent payments were made within the month, such that there were no rental arrears outstanding past 30 days. However, as the financial situation of the Applicants continued to deteriorate, the Retail Entities did not pay percentage rent to certain of their landlords for the month of November 2024, did not pay the majority of rent (percentage or fixed) to their landlords for the month of December 2024, and did not make any rent payments that came due on January 1, 2025. At present, the Retail Entities currently owe approximately $4.7 million in arrears to their landlords. The proposed Initial Order provides that, until a lease is disclaimed or consensually terminated:

(a) all fixed rent will be paid (i) for rent incurred and relating to the Initial Stay Period, forthwith upon approval of the Initial Order, (ii) for rent incurred and relating to the remainder of January, forthwith upon approval of the DIP Facility, and (iii)

thereafter twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears).

(b) all percentage rent regarding revenues incurred during the period from and including the date of the Initial Order shall be calculated and paid in accordance with the terms of the applicable pre-existing arrangement.

(v) Office and Warehouse Space

38. In addition to the retail locations, the Applicants also lease two buildings which serve as the Applicants' corporate and banner headquarters and contain the warehouse space for the Comark Group businesses. The Applicants lease a portion of an approximately 400,000 square foot building in Winnipeg, Manitoba on a per square foot basis from Parian. Parian is 100% directly owned by ParentCo and provides warehousing, distribution and e-commerce fulfillment services to the Retail Entities and certain other related entities. The building leased from Parian serves as Comark's corporate headquarters, houses the head offices of Ricki's and Bootlegger and contains the distribution centre for the Applicants (the "**Distribution Centre**"), providing warehouse space to each of the Retail Entities. cleo also sub-sub-leases premises in an office building in Mississauga, Ontario, which houses cleo's head office.

(d) Merchandising and Sourcing

39. As set out above, the Applicants are a leading retailer of private label and branded specialty apparel. Bootlegger sells a variety of branded merchandise, including *Levi's*, *Silver Jeans* and *Kismet*. Ricki's and cleo also sell a small amount of branded merchandise, along with private label products.

40. The Retail Entities offer private label products under each of the Ricki's, cleo and Bootlegger banners. The private label products provide consumers with an enhanced value proposition, and thereby represent a significant percentage of the Applicants' total sales and gross profit.

41. The Retail Entities source private label products from factories primarily based in China and Bangladesh to take advantage of lower costs. As at November 23, 2024, approximately 82% of the Retail Entities' unit purchases were sourced from foreign manufacturers, and these purchases are typically made in U.S. dollars. The remaining 18% of purchases are sourced in North America.

42. Each of the Retail Entities enters purchase orders directly with third party vendors in order to purchase inventory. While certain vendors supply inventory to all three Retail Entities, the Retail Entities also have unique vendors. 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**"). The CRSA is a cooperative logistics venture of Canadian retailers and retail suppliers used by the Retail Entities to combine direct import volumes from Asia and procure ocean freight, manage purchase orders, consolidate and deconsolidate loads and deliver shipments to retailers. Use of the CRSA reduces the Retail Entities' shipping and logistics costs.

43. The Retail Entities typically pay vendors directly in accordance with the arrangement between the Retail Entity and the vendor. The Retail Entities' Bangladesh vendors are paid via a power of attorney ("**POA**") arrangement. Under the POA arrangements, upon presentation of an original endorsed Forwarder's Cargo Receipt ("**FCR**") the Retail Entities (or their third-party transportation provider) take possession of the goods at the destination port. These arrangements

have now been discontinued and any payments in respect of POAs for pre-filing goods will be stayed under the proposed Initial Order.

(e) Distribution and Shared Services

44. The flow of inventory from the Retail Entities' manufacturers to the Retail Entities' brick and mortar retail 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 each of Ricki's, cleo and Bootlegger from the Distribution Centre in Winnipeg, Manitoba.

45. Parian provides its distribution services to the Applicants pursuant to a master services agreement dated June 4, 2018 (the "**Master Services Agreement**") and Statements of Work ("**SOW**") for each Retail Entity dated June 4, 2018 (and amended November 1, 2020 and March 1, 2021). 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.

46. The Applicants share the Parian Services, including access to the Distribution Centre and the use of the Salesforce e-commerce platform, with certain other Parian customers, who are each an affiliate of the Applicants.

47. Each month, Parian invoices each of its customers for the Parian Services on a cash-settled basis (i.e., all invoices are settled in cash, as opposed to recorded as an intercompany

payable/receivable). Such invoices, unless disputed, must be paid in accordance with the terms of the invoice. The costs of the Parian Services are shared between its customers, with invoices generally including (i) a monthly fixed fee based on an average cost per square foot of storage space in the Distribution Centre, (ii) an operating cost fee based on a fixed share of all Parian's operating costs, including Parian employee wages, and (iii) a variable share of Parian's additional costs, including costs for store distribution and handling, e-commerce distribution and handling, depreciation, and corporate support (each determined per month based on the volume of Parian Services provided to the company during that month). In 2024, the Applicants paid Parian approximately $24.6 million in respect of the Parian Services. The amounts paid to Parian are consistent with or more favourable than prevailing market prices.

48. As of December 24, 2024, the Applicants owe Parian approximately $4.2 million in arrears. The Applicants' failure to pay these amounts to Parian has put significant financial strain on Parian, as Parian has already incurred these costs but has not been reimbursed. The significant arrears owing to Parian is imperiling Parian's ability to satisfy its own payroll obligations and limiting Parian's ability to provide services to its other customers which is, in turn, affecting their respective businesses. Any disruptions of Parian's services could jeopardize the continued operation of the Applicants' business during these CCAA proceedings.

49. It is therefore crucial for Parian's continued operations that Parian continue to be paid in respect of the Parian Services that it provides to the Applicants during these CCAA proceedings, which account for the majority of Parian's business. Moreover, continued services from Parian are essential to the Applicants' businesses and it is anticipated that payments for such services will continue throughout the CCAA proceeding.

50. The majority of products destined for sale at one of the Retail Entities' stores are transported to the Distribution Centre from either Canadian or foreign vendors.

51. The Retail Entities transport products to their stores and customers through third-party transportation companies. The Retail Entities do not have their own transportation capability. Purolator is the Retail Entities' primary third-party transportation provider that transports products from the Distribution Centre to retail stores. Canada Post is the Retail Entities' primary third-party transportation provider that transports products for online orders from the Distribution Centre to customers' homes. The Retail Entities are invoiced directly for their usage of Purolator or Canada Post services and pay those invoices directly in the ordinary course.

(f) Other Shared Services

52. Certain of the IT services used by the Applicants, including services provided by Microsoft, Salesforce, Telus, and Thales, are provided pursuant to agreements with an affiliate of ParentCo at preferred rates to the Applicants (the "**IT Services**"). The cost of the IT Services are passed on to the Applicants and other affiliated companies on a cash-settled basis**.** As at December 24, 2024, the Applicants owe approximately $53,000 in arrears in respect of the IT Services.

(g) E-Commerce Businesses

53. The Retail Entities each currently have an omni-channel retailing platform with e-commerce, mobile and programs such as "ship-to-store" in order to provide a seamless customer experience. Each banner operates a consumer direct website under the domain names www.rickis.com, www.bootlegger.com, and www.cleo.ca. The products offered online by each of the Retail Entities are typically the same as the products offered in store, with a small proportion of online-exclusive items, such as additional colours of products.

54. Customers shopping on the websites are able to access and purchase a variety of products for delivery or in-store pick-up at a store location. All orders placed online are fulfilled through the Distribution Centre.

55. The Retail Entities' e-commerce platforms are hosted through Salesforce.com, Inc. ("**Salesforce**"). Without the services provided by Salesforce, the Retail Entities would not be able to operate their e-commerce businesses.

56. As of October 31, 2024, online sales account for 17.8% of company-wide sales and 17.2% of company-wide gross profit for fiscal year-to-date 2025. The percentage of sales through e-commerce varies by Retail Entity. 7.3% of Bootlegger's sales occur through its website, whereas 24.8% of Ricki's sale occur through its website and 18.5% of cleo's sales occur through its website. It is anticipated that the Applicants will discontinue e-commerce sales for each of the Retail Entities shortly after the issuance of the proposed Initial Order.

(h) Employees

57. As of December 17, 2024, the Retail Entities had approximately 2056 hourly and salaried employees across Canada. Comark does not have any employees.

58. 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. Approximately 41, 29, and 22 of these employees work for the corporate headquarters of Ricki's, Bootlegger and cleo, respectively (collectively, the "**Head Office Employees**"), as follows:

Province	Number of cleo Head Office Employees	Number of Ricki's Head Office Employees	Number of Bootlegger Head Office Employees
British Columbia	-	1	2
Alberta	1	2	4
Saskatchewan	-	-	1
Manitoba	-	32	19
Ontario	21	5	3
New Brunswick	-	1	-
Total	**22**	**41**	**29**

59. 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) distributed as follows:

Province	Number of cleo Store Employees	Number of Ricki's Store Employees	Number of Bootlegger Store Employees	Number of Combo Store Employees	Total Number of Retail Employees
British Columbia	41	82	109	27	**259**
Alberta	67	183	141	73	**464**
Saskatchewan	41	40	49	40	**170**
Manitoba	34	55	29	11	**129**
Ontario	239	248	91	186	**764**
New Brunswick	19	17	15	12	**63**
Nova Scotia	-	26	14	-	**40**
Newfoundland	30	27	18	-	**75**
Total	**471**	**678**	**466**	**349**	**1964**

60. A typical retail store is staffed with 5 to 10 hourly employees, with additional coverage during holidays and peak selling periods. The staff includes both full and part-time sales associates and a store manager.

(i) Employee Benefit Plans

61. All employees of the Applicants are compensated through base salary or hourly wages and company-paid benefits. In addition, some employees are eligible to receive bonuses. The Applicants also provide group health and dental benefits, as well as life and disability insurance benefits, to their employees through Canada Life.

(i) Loyalty Programs, Gift Cards and Return Policies

62. Each of the Retail Entities offers a unique loyalty program to customers (the "**Loyalty Programs**"), which can be obtained in any Ricki's, cleo or Bootlegger store, or through their websites. By signing up for a Loyalty Program, a customer can receive discounts and points for frequent purchases, which can be redeemed for merchandise credit. Membership in the Loyalty Programs is free.

63. Customers of the Retail Entities can purchase Retail Entity-specific gift cards ("**Gift Cards**") in-store or online, to be redeemed for merchandise. The Gift Cards are managed by a third party pursuant to the Stored Value Card Agreement with Valuelink LLC dated May 24, 2006, as amended. Collectively, as of November 23, 2024, there is approximately $2.6 million of net outstanding liability in respect of Gift Cards.

64. Each of the Retail Entities offer the same return policy. Returns of in-store purchases are accepted within 45 days of the purchase date, and returns of online orders are accepted within 45

days of the order ship date. Returns of in-store and online orders can be made at any Retail Entity's stores, and online orders can also be shipped back to the respective Retail Entity.

65. The Applicants are seeking in the proposed Initial Order that they be authorized, with the consent of the Proposed Monitor, 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 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).

(j) Cash Management System

66. 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. This allows Parian, on behalf of Comark, to facilitate cash forecasting and reporting and to monitor the collection and disbursement of funds. Parian reviews and monitors account activity on a daily basis, including the accounts payable systems and the weekly cash flow forecasts of each banner.

67. The Applicants have bank accounts with all the major Canadian banks: CIBC, Toronto Dominion Bank, Bank of Montreal, Royal Bank of Canada, and the Bank of Nova Scotia. CIBC is the Applicants' main collection and disbursement bank. All other bank accounts (the "**Local Store Accounts**") are utilized to facilitate store deposits, which are swept on a semi-weekly basis to a collections account held at CIBC (the "**Concentrator Account**").

68. The Applicants currently have thirteen bank accounts with CIBC of which nine are Canadian dollar bank accounts and four are U.S. dollar accounts (collectively, the "**Bank Accounts**"). An overview of the Applicants' Bank Accounts is as follows:

(a) one Canadian dollar Concentrator Account that receives store deposits from local CIBC store deposit accounts automatically and from the Local Store Accounts twice weekly by telephone transfer;

(b) one Canadian dollar payroll account used to facilitate payroll for all Bootlegger, Ricki's, and cleo employees;

(c) four Canadian dollar bank accounts used to facilitate payments relating to benefits programs for Bootlegger, Ricki's, cleo, and Comark;

(d) one Canadian dollar disbursement account to facilitate all non-payroll and non-benefits disbursements;

(e) two Canadian dollar operating accounts for Comark. Monthly interest and quarterly principal payments of the CIBC Term Loan Facility are automatically applied against the CIBC Revolving Loan Facility. One operating account is used to make draws on the CIBC Revolving Loan Facility. The other operating account is used for payment of USD currency purchases, remittance of garnishment cheques and depositing of sundry cheques; and

(f) four U.S. dollar disbursement accounts held by Comark for itself and for Ricki's, cleo, and Bootlegger. These accounts are used to facilitate U.S. dollar payments to vendors. The Applicants utilize the foreign exchange services of Corpay to

facilitate certain of these transactions by sending the Canadian dollar equivalent amounts of any U.S. dollar disbursements required to Corpay, who subsequently deposits the equivalent U.S. dollar amount in the Comark U.S. dollar disbursement account.

69. Cash activity in the Concentrator Account is reviewed and reconciled by Parian's sales audit and banking associates, under the supervision and oversight of the Comark Group. Parian's accounting department then reviews and reconciles all other CIBC bank accounts.

70. 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 all sales are received in Canadian dollars. As a result, the Applicants use forward and options contracts with Corpay to mitigate and hedge against exchange rate fluctuations between the Canadian and U.S. dollar.

71. The Applicants are seeking in the proposed Initial Order that they be permitted to continue to use the Comark Cash Management System.

(k) Outstanding Litigation

72. The Applicants are subject to ongoing litigation. The Applicants carry customary and appropriate insurance to mitigate the risk of litigation on its ongoing operations.

73. In December 2024, Statements of Claim were issued in Manitoba and Ontario against the Applicants by several of their overseas vendors. Such claims seek relief for breach of contract, payment of outstanding amounts and damages plus interest and costs.

E. The Financial Position of the Applicants

74. A copy of the Applicants' consolidated audited annual financial statements as of February 24, 2024 are attached as Exhibit "A" to this affidavit. These are the most recent set of annual audited financial statements prepared by the Applicants.

75. In addition, a copy of the Applicants' unaudited balance sheet and fiscal year-to-date income statement for the period ended November 23, 2024 is attached as Exhibit "B" to this affidavit. Certain information contained in this unaudited balance sheet is summarized below.

(a) Assets

76. As at November 23, 2024, the assets of the Applicants had a book value of approximately $83.5 million and consisted of the following (rounded to the nearest thousand Canadian dollar):

Current Assets: $66,305,000	
Cash and Cash Equivalent	$3,522,000
Accounts Receivable	$494,000
Derivative Asset	$417,000
Inventories	$58,091,000
Prepaid Expenses and Deposits	$3,781,000
Non-Current Assets: $17,576,000	
Property and Equipment	$17,576,000
Total Assets	**$83,464,000**

(b) Liabilities

77. As at November 23, 2024, the liabilities of the Applicants had a book value of approximately $168.5 million and consisted of the following (rounded to the nearest thousand Canadian dollar):

Current Liabilities: $69,030,000	
Trade Accounts Payable	$44,100,000
Other Accounts Payable and Accrued Liabilities	$22,243,000
Deferred Revenue	$2,585,000
Deferred Inducements	$519,000
Other Current Liabilities	($416,900)
Non-Current Liabilities: $99,091,000	
Bank Indebtedness	$39,879,000
Long-term Debt	$2,622,000
Due to Shareholders	$56,590,000
Total Liabilities	**$168,121,000**

(c) Revenue

78. The Applicants revenue, cash flows, adjusted EBITDA and net earnings have each experienced a decline in fiscal year-to-date 2025 as compared to the same period in fiscal year 2024. In fiscal year-to-date 2025 (period ending November 23, 2024), the Applicants' total net sales were $130.7 million (a decline of $19 million or 13% compared to the same period last year); adjusted EBITDA 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 with the same period last year).

79. Ricki's has historically been the most profitable of the three Retail Entities and has made up the majority of the Comark Group's net earnings. However, all three of the Retail Entities have experienced a general decline in sales in fiscal year-to-date 2025. As compared to the same period last year, Bootlegger experienced a decline in sales of $5.6 million or 15.0%, Ricki's experienced a decline in sales of $9.5 million or 14.2%, and cleo experienced a decline in sales of $3.8 million or 8.4%.

80. 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.

81. The continued strengthening of the U.S. dollar relative to the Canadian dollar has added significant strain on the Applicants' businesses. Most of the Retail Entities' merchandise is purchased in U.S. dollars, with merchandise necessarily being priced in stores and online competitively in Canadian dollars. Accordingly, 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.

(d) Debt and Credit Facilities

(i) Summary of the Applicants' Secured Debt and Credit Facilities

Borrower	***Lender***	***Type***	***Amount Outstanding***	***Guarantors***
Comark	CIBC	CIBC Credit Agreement	Term Loan Facility- $2.4M Revolving Loan Facility –$23.7M BCAP Loan Facility - $6.25M	Ricki's cleo Bootlegger ParentCo[6] Export Development Canada ("**EDC**")[7]
Comark	ParentCo	Secured Intercompany Debt	$57M	Ricki's cleo Bootlegger
Ricki's	Comark	Secured Intercompany Debt	$49.4M	None
cleo	Comark	Secured Intercompany Debt	$37.8M	None
Bootlegger	Comark	Secured Intercompany Debt	$29.5M	None

(ii) Secured Debt and Credit Facilities

(A) CIBC Amended and Restated Credit Agreement

82. CIBC is the main operating lender to the Comark Group pursuant to an amended and restated credit agreement between CIBC and Comark dated as of September 9, 2024 (the "**CIBC**

[6] ParentCo is only a guarantor of the CIBC Term Loan Facility (defined below).

[7] EDC is only a guarantor of the BCAP Loan Facility (defined below) for the lesser of (i) 80% of the BCAP Loan Facility, and (ii) CAD $5 million, plus, in either case, accrued and unpaid interest for a maximum of 120 days.

Credit Agreement"). A copy of the CIBC Credit Agreement is attached to this affidavit as Exhibit "C".

83. 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) a revolving loan facility in an amount of up to $30 million (the "**CIBC Revolving Loan Facility**"), which was temporarily increased to $35 million during the period commencing on September 9, 2024 and ending on December 31, 2024, and which includes a $3 million sublimit for letters of credit; and

(c) a Business Credit Availability Program ("**BCAP**") facility in an amount of up to $6.25 million (the "**BCAP Loan Facility**").

84. The CIBC Revolving Loan Facility is used for working capital and other general corporate purposes. The CIBC Term Loan Facility in the original principal amount of $6.4 million was fully advanced on the original date of the CIBC Credit Agreement in August 2020 and the proceeds were used to repay a portion of a separate credit agreement between CIBC and a predecessor of Comark. The BCAP Loan Facility provided additional liquidity to the Comark Group to finance its operations in accordance with the EDC BCAP Guarantee Program, which was established for the purpose of assisting businesses affected by the economic impacts of the COVID-19 pandemic. The BCAP Loan Facility was established by CIBC pursuant to the CIBC Credit Agreement (and CIBC is the lender in respect thereof), though EDC has guaranteed the lesser of (i) 80% of the BCAP Loan Facility, and (ii) CAD $5 million (plus, in either case, accrued and unpaid interest for

a maximum of 120 days) in favour of CIBC, subject to and in accordance with the terms of a separate guarantee agreement between EDC and CIBC.

85. 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) established pursuant to the terms of the CIBC Credit Agreement. Accordingly, borrowing availability under the CIBC Revolving Loan Facility fluctuates from month to month, with a maximum availability cap of $30 million (which was temporarily increased to $35 million during the period commencing on September 9, 2024 and ending on December 31, 2024).

86. Under the CIBC Term Loan Facility and the CIBC Revolving Loan Facility, Comark is permitted to elect to borrow funds as a Canadian Prime Rate Loan, Base Rate Loan, SOFR Loan or CORRA Loan (each as defined in the CIBC Credit Agreement), subject, in some cases, to CIBC's approval. Comark may elect to borrow funds under the BCAP Loan Facility as a Canadian Prime Rate loan or a CORRA Loan. Comark has elected to borrow funds as a Canadian Prime Rate Loan.

87. Loans under the CIBC Credit Agreement bear interest at the applicable interest rate plus an applicable margin determined in accordance with the following table:

	CORRA Loan or SOFR Loan Applicable Margin	Canadian Prime Loan or Base Rate Loan Applicable Margin
Revolving Loan	3.00%	1.50%
Term Loan	4.50%	3.00%

BCAP Loan	3.5% (CORRA Loan only)	2.00% (Canadian Prime Loan only)

88. The default rate of interest is an additional 2.00% on each facility.

89. The obligations under the CIBC Credit Facilities are secured by all present and after-acquired undertaking, property and assets of Comark pursuant to a general security agreement dated August 7, 2020 (the "**CIBC GSA**"). A copy of the CIBC GSA is attached to this affidavit as Exhibit "D".

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. The relevant guarantee documents, all dated August 7, 2020, are attached to this affidavit as Exhibits "E", "F", "G" and "H". As noted above, the BCAP Loan Facility is also guaranteed by EDC pursuant to a separate guarantee agreement between CIBC and EDC.

91. The CIBC Credit Agreement includes certain financial covenants, including an obligation to maintain a minimum, cumulative consolidated net income, subject to certain adjustments over specified periods of time.

92. Comark was in breach of the Minimum EBITDA covenant in August, September**,** October and November 2024 and will be in breach in December 2024.

93. As of January 2, 2025, the amount outstanding under the CIBC Revolving Loan Facility is approximately $23.7 million, which amount fluctuates daily. As of January 2, 2025, the amount

outstanding under the CIBC Term Loan Facility is $2.4 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 outstanding under the BCAP Loan Facility is approximately $6.25 million.

94. As set out above, CIBC issued the CIBC Demands on January 5, 2025, thereby accelerating amounts outstanding under the CIBC Credit Agreement, declaring such amounts immediately due and payable and demanding payment. As a result of the CIBC Demands, the Applicants have no further access to funding under the CIBC Credit Agreement, absent the granting of the relief requested herein in respect of Interim Borrowings. Copies of the CIBC Demands are attached to this affidavit as Exhibit "I", "J", "K", "L", and "M".

(B) Secured Intercompany Debt

a. ParentCo Loan Facility

95. ParentCo, as lender, is party to a Sponsor Loan Agreement with Comark, as borrower, dated as of August 7, 2020 (the "**ParentCo Loan Facility**"). A copy of the loan agreement for the ParentCo Loan Facility is attached to this affidavit as Exhibit "N". Pursuant to the ParentCo Loan Facility, ParentCo agreed to make loan advances to Comark, with the initial loan advance being in the principal amount of $25.4 million. Pursuant to a Subordination, Postponement, and Standstill Agreement dated August 7, 2020, ParentCo's security interest is subordinated and postponed in favour of CIBC.

96. As of January 3, 2025, approximately $57 million is outstanding under the ParentCo Loan Facility. The ParentCo Loan Facility provides for a fixed interest rate of 1% per year plus a non-

compounding participating interest at a rate of up to the lesser of 11% and the amount of free cash (subject to certain reserves and restrictions) generated by Comark.

97. The obligations under the ParentCo Loan Facility are secured by the property and assets of Comark pursuant to a general security agreement dated August 7, 2020 (the "**ParentCo GSA**"). A copy of the ParentCo GSA is attached to this affidavit as Exhibit "O". The ParentCo Loan Facility is also guaranteed on a secured basis by Ricki's, cleo and Bootlegger, which guarantees are attached to this affidavit as Exhibits "P", "Q" and "R", respectively.

98. The ParentCo Loan Facility requires Comark to comply with the terms of the CIBC Credit Agreement. As a result, a default under the CIBC Credit Agreement also constitutes an event of default under the ParentCo Loan Facility.

b. Retail Entity Facilities

99. 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**"). The Retail Entity Facilities are all substantially in the same form and subordinated and postponed in favour of the CIBC Credit Facilities and ParentCo Loan Facility. Copies of the Retail Entity Facility loan agreements are attached to this affidavit as Exhibits "S", "T" and "U".

100. The Retail Entity Facilities are revolving facilities under which Comark may, in its discretion, make advances. 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.

101. The interest rates for the Retail Entity Facilities provide for an interest rate equal to the CDOR rate (as defined in the Retail Entity Facilities).

102. Each of Ricki's, cleo and Bootlegger has provided Comark with a general security agreement (collectively, the "**Retail Entity GSAs**") securing the obligations under its respective Retail Entity Facility. Copies of these Retail Entity GSAs are attached to this affidavit as Exhibit "V", "W" and "X".

103. The Retail Entity Facilities require the Retail Entities to comply with the financial covenants under the CIBC Credit Agreement. As a result, a default in respect of such covenants under the CIBC Credit Agreement also constitutes an event of default under the Retail Entity Facilities.

(e) Trade Creditors

104. As at December 24, 2024, the Applicants had approximately $61 million in outstanding accounts payable and accrued liabilities. Of this amount, approximately $44 million is owing to merchandise vendors ($36 million of which is owing to trade creditors located outside of North America).

105. In order to the preserve capital, the Applicants have taken steps to reduce expenditures and preserve liquidity, including pausing payments to trade creditors or cancelling orders for future inventory. In order to ensure the continuity of the Retail Entities' supply chain during these CCAA proceedings, 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 Monitor and the Interim Lender and in accordance with the Cash Flow Forecast or otherwise as may be agreed with the Interim Lender.

(f) PPSA Registrations

106. In addition to registrations made in respect of the secured indebtedness described above, and as set out in the personal property registration searches against the Applicants for Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador, Ontario, and Saskatchewan attached as Exhibits "Y", "Z", "AA", "BB", "CC", "DD", "EE" and "FF", respectively:

(a) there are legacy registrations under the *Personal Property Security Act* (British Columbia) against each of the Retail Entities in favour of 6879900 Canada Inc., which relate to the now wound-up Comark LP structure referenced above;

(b) there are legacy registrations against some of the Applicants by predecessor entities of the Applicants in connection with intercompany arrangements that are no longer relevant; and

(c) There are registrations under the *Personal Property Security Act* (Alberta) and *Personal Property Security Act* (Ontario) against Comark in favour of Leggat National Leasing. The Alberta registration indicates a collateral classification of serial goods with a serial number of 4T1S11BK7NU063845 (2022 Toyota Camry; MV – Motor Vehicle). The Ontario registration indicates collateral classifications of Consumer Goods and Motor Vehicle with a VIN number of 4T1S11BK7NU065739 (2022 Toyota Camry), amount secured of $41,767 and no general collateral description.

F. The Urgent Need for Relief under the CCAA

(a) Lasting Impacts of COVID-19

107. The Retail Entities were hard hit by the closure of their stores during the COVID-19 pandemic. Brick and mortar stores shut entirely, and the Retail Entities struggled to pivot to online sales, in part because all of the Retail Entities' inventory was trapped in their stores.

108. 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 businesses.[8] In July 2020, the Comark Group was sold to an entity controlled by its principal shareholder through a reverse vesting transaction (structured in this manner primarily to preserve significant tax attributes). The Comark Group emerged from CCAA protection in August 2020.

109. Even after emerging from the 2020 CCAA Proceedings, the COVID-19 pandemic continued to place significant strain on the Applicants' businesses. In November 2020, the Retail Entities' brick and mortar 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 Retail Entities lost out on Black Friday and Christmas sales and did not gain those sales back 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, as discussed in further detail below.

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[8] The predecessor corporation of Comark (Comark Inc.) also applied for and was granted CCAA protection in March 2015, pursuant to which an affiliate of ParentCo purchased the Comark business by way of an Asset Purchase Agreement in July 2015.

(b) 2021 Cyber Incident

110. 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 closed in their entirety. For a few days after this, the retail stores were able to open but accepted only cash payments. For three weeks, until December 13, 2021, internal systems, including all inventory, were entirely unavailable. The businesses were unable to move any inventory into sellable locations until such inventory could be accounted for, significantly disrupting the operations of the Applicants.

111. During this period, the Distribution Centre was unable to ship inventory to the retail stores. Inventory shipments in late November and early December of each year contain a substantial portion of seasonal items which are targeted for sale during the critical holiday season. Because of the delayed arrival of inventory, heavy promotional activity was required in order to sell seasonal items beyond their ideal or targeted window. Markdowns were significantly higher in the post-Cyber Incident period as compared to the previous year, resulting in a reduced profit margin for the Retail Entities. It is estimated that brick and mortar stores lost approximately $8.2 million in revenue due to the Cyber Incident alone.

112. For e-commerce sales, shipments to the Retail Entities' customers were unable to be processed for several weeks. Inventory was also unable to be updated online and made available for purchase. When systems were available and inventory count complete, e-commerce orders were prioritized.

113. While customers received notification of the Cyber Incident on each of the Retail Entities' websites and social media accounts, the centralized customer service function was without system

access and order visibility during this period, significantly hampering the ability to service customer needs. This complicated both channels' ability to sell and impacted consumer confidence.

114. The Retail Entities regained full capability to sell products by December 13, 2021. However, the effects of the Cyber Incident extended far beyond this time period. All of the companies' internal processes and systems, including the Applicants' history and critical path, were lost or compromised through the Cyber Incident and, as these systems were not recovered, they had to be rebuilt.

(c) Supplier Issues and Delays

115. As a result of the COVID-19 pandemic and the Cyber Incident, as well as industry-wide supply-chain disruptions, delays to certain production orders occurred. From 2020 to 2022, most products received from the Retail Entities' suppliers were significantly delayed and arrived outside of the targeted seasonal time periods.

116. As discussed above, a large portion of the Retail Entities' businesses are comprised of seasonal clothing items. Consumers usually only purchase these items during a specific time period each year, and seasonal items sold outside of this time period typically must be marked down significantly to drive sales and clear inventory.

117. As a result, when orders for seasonal items arrive outside of their targeted time frame, markdowns are applied to the products, negatively impacting profitability. Alternatively, if it is clear that the seasonal items will not arrive in time for the required period, the production order may need to be cancelled, and any profit from those seasonal items will be lost entirely.

118. Even after some products began to arrive on time in 2022, other items were still delayed and collections were out of sequence, such that seasonal goods from different periods began to collide, creating a peak of inventory and forcing markdowns.

119. 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.

120. 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. This, in turn, placed increased financial pressure on the Applicants' businesses. Where the Applicants were unable to make payments, certain vendors have refused to order fabrics, held items at port or refused to transfer titles to the items until such payment had been made. This has compounded the Applicants' issues with seasonal delays, in turn affecting the Applicants' financial position.

121. As noted above, in December 2024, several of the Applicants' vendors served the Applicants with Statements of Claim in Ontario and Manitoba, seeking payment of outstanding amounts and damages.

(d) Industry Impacts

122. In addition to the above-noted issues, the Applicants have faced certain retail industry challenges over the past four years that have contributed to the financial strain on the businesses. Namely, a difficult economic environment combined with the introduction and consumer uptake

of certain ultra low-cost fashion retailers, including Shein and Temu, have placed significant financial pressure on traditional fashion retailers. Consumer needs have also changed as the COVID-19 pandemic led to increased remote work and a decreased need for workwear clothing, which previously made up a sizeable portion of the Applicants' businesses.

(e) Poor Sales Performance

123. Each of the above issues and challenges have contributed to the Applicants' businesses 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.

124. 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 combination of poor sales performance (trending 10% below last year) and the vendor delays and other issues described above.

(f) Decreased Borrowing Base

125. 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.

126. The Applicants are also in breach of certain financial covenants under the CIBC Credit Agreement and CIBC has demanded payment and accelerated the amounts owing under the CIBC Credit Agreement.

127. The Applicants' liquidity constraints and reduced availability under the CIBC Credit Agreement have resulted in significant amounts owing to vendors, including: (i) approximately $4.2 million owing to Parian, the Applicants' warehouse distribution and shared service provider, as of December 24, 2024, pursuant to the Master Services Agreement; (ii) in excess of $8 million owing to domestic merchandise vendors; (iii) in excess of $36 million owing to foreign merchandise vendors; (iv) approximately $57 million owing to ParentCo; (v) in excess of $1.8 million owing to the Canadian Border Services Agency; and (vi) approximately $8.6 million owing to other trade vendors. As noted above, the Retail Entities also delayed rent payments to some landlords for the months of October 2024, did not make percentage rent payments to certain of their landlords for November 2024, did not pay the majority of their rent (percentage or fixed) to their landlords in December 2024, and did not pay any rent to any landlords in January 2025.

(g) 2024 Internal Restructuring

128. In early 2024, the Applicants executed an internal restructuring initiative in an effort to save costs and improve their liquidity position. The Applicants reduced full time employee headcount, terminated or renegotiated technology contracts and reduced the marketing budget as part of these restructuring initiatives.

129. The Applicants also realized efficiencies by automating certain aspects of their warehouse through the use of a Bombay Sorter, a flat sorter used for high-speed automated sortation of small lightweight items.

130. Through these cost saving initiatives, the Applicants have saved the businesses approximately $6 million. However, this has not been enough to right-size the businesses and stabilize relationships with vendors.

G. Relief Sought

131. Notwithstanding their best efforts to reduce expenses, preserve capital and improve profitability, the Applicants' liquidity position continues to rapidly deteriorate, particularly during the traditionally slower post Christmas retail seasons. Overall, the Applicants' negative cash flow and working capital issues have caused a strain on the Borrowing Base. As described above, the Applicants received the CIBC Demands from CIBC's counsel on January 5, 2025 declaring all amounts outstanding under the CIBC Credit Facilities immediately due and payable and demanding repayment. Without access to additional funding, the Applicants cannot pay their obligations (including payroll) in the ordinary course. While ParentCo has been supportive of the Applicants' businesses, including by providing over $35 million in secured loans to the Comark Group since 2020 (of which $15 million was advanced in the current fiscal year), it is unwilling to advance any further funding to the Applicants. The Applicants are unable to meet their liabilities as they become due and are therefore insolvent.

132. Following a review of the Applicants' performance described above, the evaluation of the impact on the Applicants, and the careful consideration of all options and alternatives, the board of directors of Comark has determined that, in its business judgement, and based on advice of its professional advisors, it is in the best interest of the Applicants' businesses and their stakeholders to file for CCAA protection.

(a) Stay of Proceedings

133. The Applicants are insolvent and urgently require a broad stay of proceedings and other CCAA protections to obtain the breathing space and emergency funding required to determine next steps. At the present time, the next steps will likely consist of, among other things, (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) a potential sale of the remaining business or assets of a the Applicants, including intellectual property, leases and other assets of the Applicants, though a court-supervised sale process. The Applicants are concerned that certain of their landlords may attempt to exercise self-help remedies as a result of the missed or delayed payments, including locking out the Retail Entities from their retail stores. It would be detrimental to the Applicants and their stakeholders if proceedings were commenced, or rights or remedies executed against the Applicants.

(b) Interim Financing

134. Interim financing is needed on an urgent basis during the Initial Stay Period to provide stability and fund operations for a limited period of time and preserve the Applicants' businesses while they consider next steps in these proceedings. This interim financing is necessary and designed explicitly to preserve value to the benefit of the Applicants' stakeholders.

135. As set out above, as a result of the CIBC Demands, the Applicants no longer have access to funds under the CIBC Credit Agreement. In order to avoid an abrupt shutdown of their businesses, 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 pursuant to the CIBC Credit Agreement (each, an "**Interim Borrowing**" and collectively, the "**Interim Borrowings**"), provided (i) such Interim Borrowings are made in accordance with an agreed-upon Cash Flow Forecast, and (ii) 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;

136. Based on the Cash Flow Forecast, this Interim Borrowing arrangement is expected to provide the Applicants with sufficient liquidity to continue their business operations during the Initial Stay Period.

137. This Interim Borrowing arrangement is proposed to be secured by a Court-ordered charge (the "**Interim Lender's Charge**") on all of the present and future assets, property and undertaking of the Applicants (the "**Property**"). The Interim Lender's Charge will not secure any obligation that exists before the Initial Order is made. The Interim Lender's Charge will have priority over all other security interests, charges and liens, except the Administration Charge. Given the current financial circumstances of the Applicants, the Interim Lender has indicated that it is not prepared to advance funds without the security of the Interim Lender's Charge, including the proposed priority thereof.

(c) Monitor

138. It is proposed that Alvarez & Marsal Canada Inc. ("**A&M**") will act as Monitor (the "**Proposed Monitor**") in the CCAA proceedings if the proposed Initial Order is issued. A&M has consented to act as the Monitor of the Applicants. A copy of the Proposed Monitor's consent is attached as Exhibit "GG".

139. The Applicants, with the assistance of A&M, have prepared the Cash Flow Forecast, as required by the CCAA, which will be appended to the Proposed Monitor's pre-filing report, which shows that the Applicants can continue operations during the proposed Initial Stay Period with access to the Interim Borrowings.

140. I understand that A&M will file an initial pre-filing report with the Court as Proposed Monitor in conjunction with the Applicants' request for relief under the CCAA.

(d) Administration Charge

141. In connection with its appointment, it is proposed that the Monitor, along with its counsel and counsel to the Applicants, will be granted a Court-ordered charge on all of the Property as security for their respective fees and disbursements relating to services rendered in connection with this CCAA proceeding up to a maximum amount of $750,000 (the "**Administration Charge**"). The Administration Charge is proposed to have priority over all other charges and security interests.

142. The Applicants will propose that the Administration Charge be increased to $1 million at the Comeback Hearing.

(e) Directors' and Officers' Protection

143. A successful restructuring of the Applicants will only be possible with the continued participation of their respective directors (the "**Directors**"), management and employees. These personnel are essential to the viability of the Applicants' continuing business and the preservation of enterprise value.

144. I am advised by Tracy Sandler of Osler, Hoskin Harcourt LLP, the Applicants' counsel, and believe that, in certain circumstances, directors can be held liable for certain obligations of a company owing to employees and government entities, which may include unpaid accrued wages; unpaid accrued vacation pay; termination and severance obligations; and unremitted sales, goods and services, and harmonized sales taxes. The Applicants estimate, with the assistance of the

Proposed Monitor, that these obligations may amount to as much as approximately $6.2 million during the Initial Stay Period.

145. It is my understanding that the Applicants' present and former directors and officers are not beneficiaries under any liability insurance policies and, as such, I believe that there is no coverage against the potential liability that the directors and officers could incur in relation to this CCAA proceeding.

146. In light of the complexity and scope of the overall enterprise and the potential liabilities, the directors and officers have indicated to the Applicants that their continued service and involvement in this proceeding is conditional upon: (i) the granting of an Order under the CCAA which grants a charge in favour of the directors and officers of the Applicants in the initial amount of $6.2 million on the Property (the "**Directors' Charge**"); and (ii) the subsequent increase of the Directors' Charge to $7.4 million at the Comeback Hearing. The Directors' Charge would act as security for indemnification obligations for the Directors' and officers' potential liabilities as set out above. The Directors' Charge is proposed to be subordinate to the proposed Administration Charge, the Interim Lender's Charge, and the existing security granted with respect to the CIBC Credit Facilities. The Directors' Charge is necessary so that the Applicants may benefit from their directors' and officers' experience with the businesses and the retail apparel industry and so that its directors and officers can guide the Applicants' restructuring efforts during these CCAA proceedings.

(f) Payments During this CCAA Proceeding

147. During the course of these CCAA proceedings, the Applicants intend to make payments for goods and services supplied post-filing in the ordinary course as set out in the Cash Flow Forecast and as permitted by the proposed Initial Order.

148. The Applicants expect third parties with contractual arrangements with the Applicants to continue to provide goods and services in accordance with the proposed Initial Order. However, in order to ensure uninterrupted business operations during these CCAA proceedings, the Applicants are proposing in the Initial Order that they be authorized, but not required, with the consent of the Monitor and the Interim Lender and in accordance with the Cash Flow Forecast or otherwise as may be agreed to with the Interim Lender, to make certain payments, including payments owing in arrears, to certain critical third parties that provide services that are integral to the Applicants' ability to operate during these proceedings. These third parties include key logistics or supply chain providers, customs brokers and clearing houses, and providers of credit and debit processing services.

149. Similarly, the Applicants are proposing that they be authorized, with the consent of the Monitor and the Interim Lender, in accordance with the Cash Flow Forecast or otherwise agreed to with the Interim Lender, to continue to make certain payments in respect of the critical Parian Services provided by Parian to the Applicants and in respect of certain IT Services.

H. Relief to be Sought at the Comeback Hearing

150. As noted above, if the Initial Order is granted, the Applicants intend to seek the ARIO and various other relief at the Comeback Hearing. The Applicants intend to deliver a supplementary affidavit in advance of the Comeback Hearing.

I. Conclusion

151. I am confident that granting the proposed Initial Order sought by the Applicants is in the best interests of the Applicants and their stakeholders. Without the relief requested, including the stay of proceedings discussed above, the Applicants will experience a sudden and abrupt shutdown of their businesses and other enforcement action taken by creditors, which would significantly harm the Applicants' businesses and significantly impair the realizable value of their assets. Granting the requested stay of proceedings will give the Applicants the breathing space and emergency funding required to determine and pursue next steps, including the Ricki's Liquidation, the cleo Liquidation, the Bootlegger Liquidation and a potential sale of the remaining assets or business of the Applicants.

SWORN BEFORE ME over videoconference this 6th day of January, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely. The affiant is located in the City of Vancouver, in the Province of British Columbia, while the commissioner is located in the City of Toronto, in the Province of Ontario.

Commissioner for Taking Affidavits
(or as may be)

Sierra Farr (LSO#87551D)

Shamsh Kassam

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

Court File No:

AND IN THE MATTER OF 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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Lawyers for the Applicants

This is Exhibit "B" referred to in the Affidavit of SHAMSH KASSAM sworn by SHAMSH KASSAM of the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on May 8, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

SIERRA FARR

(LSO# 87551D)

Court File No. CV-20-00642013-00CL

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

AFFIDAVIT OF SHAMSH KASSAM
(Sworn January 16, 2025)

I, Shamsh Kassam, of the City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY:

1. I currently serve as Chief Executive Officer ("**CEO**") of Comark Holdings Inc. ("**Comark**"), Vice President of each of its subsidiaries, Ricki's Fashions Inc. ("**Ricki's**"), cleo fashions Inc. ("**cleo**") and Bootlegger Clothing Inc. ("**Bootlegger**") (together with Comark, the "**Applicants**" or the "**Comark Group**"), and a director of each of the Applicants. I am also a director and/or officer of a number of affiliated companies in a broader corporate group, including the parent company of Comark ("**ParentCo**"), the Comark Group's logistics provider, Parian Logistics Inc. ("**Parian**") and others. As such, I have personal knowledge of the matters deposed to in this Affidavit. Where I have relied on other sources of information, I have specifically referred to such sources and believe them to be true. In preparing this Affidavit, I have consulted with legal, financial and other advisors to the Applicants and other members of the senior management teams of the Applicants. The Applicants do not waive or intend to waive any applicable privilege by any statement herein.

2. This affidavit is made in support of a motion by the Applicants for:

(a) an Amended and Restated Initial Order ("**ARIO**"), among other things:

(i) extending the stay of proceedings until May 15, 2025;

(ii) authorizing the Applicants to enter into the DIP Term Sheet (defined below) and borrow under the DIP Facility (defined below) in the maximum principal amount of $18 million, and granting the DIP Lender's Charge (defined below);

(iii) authorizing the Applicants, with the support of the Monitor (defined below) and the DIP Lender (defined below), to pursue offers for or avenues of restructuring, sale or reorganization of the Comark Group business or the Property (defined below), in whole or in part, including pursuant to any solicitation process letter establishing bid procedures as may be determined by the Applicants and the Monitor, in consultation with the DIP Lender, for circulation to potentially interested parties identified by the Applicants and the Monitor, provided that completion of any such refinancing, restructuring, sale or reorganization transaction will be subject to Court approval (except as otherwise permitted by paragraph 12(a) of the ARIO or by the Realization Process Approval Order (defined below));

(iv) approving the form of Merchandise Transfer Agreement (defined below), authorizing the Applicants and the Monitor to enter Merchandise Transfer Agreements with Overseas Vendors (defined below) and perform their respective obligations under any Merchandise Transfer Agreement, and

authorizing and approving any Merchandise Transfer Agreement executed by the Monitor and the Applicants prior to the January 17, 2025; and

(v) increasing the maximum amount secured by the Administration Charge to $1 million and the maximum amount secured by the Directors' Charge to $7.4 million;

(b) A realization process approval order (the "**Realization Process Approval Order**"), among other things:

(i) approving a consulting agreement between the Applicants and Tiger Asset Solutions Canada, ULC (the "**Consultant**") dated as of January 14, 2025 (as may be amended and restated in accordance with the terms of the Realization Process Approval Order, the "**Consulting Agreement**"), under which the Consultant will act as exclusive consultant for the purpose of conducting a sale (the "**Sale**") of the Retail Entities' (defined below) merchandise and inventory (collectively, the "**Inventory**") and goods, furniture, fixtures, equipment and/or improvements to real property (collectively, the "**FF&E**") located at or in transit to the Applicants' Liquidating Stores (defined below) or at any Warehouse (as defined in the Consulting Agreement), or, in some cases, ordered by the Applicants following the commencement of the Sale;

(ii) approving the proposed sale guidelines (the "**Sale Guidelines**") for the orderly realization of the Inventory and FF&E at the Liquidating Stores; and

(iii) authorizing the Applicants, with the assistance of the Consultant, to undertake the Sale in accordance with the terms of the Realization Process Approval Order, the Consulting Agreement and the Sale Guidelines.

3. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise, and do not represent amounts or measures prepared in accordance with ASPE or US GAAP.

4. This affidavit is organized in the follow sections:

A. Overview of the Applicants' Activities since the Initial Order

5. On January 7, 2025, the Applicants were granted protection under the *Companies' Creditors Arrangement Act*, RSC 1985 c C-36 (the "**CCAA**") pursuant to an Initial Order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). A copy of the Initial Order is attached hereto as **Exhibit "A"**. A copy of the endorsements of Justice Cavanagh issued in connection with the Initial Order are attached hereto as **Exhibits "B"** and **"C"**.

6. In support of the application for the Initial Order, I swore the affidavit dated January 6, 2025 (the "**Initial Affidavit**"), which described, among other things, the events leading to the Applicants' insolvency and their urgent need for relief under the CCAA. A copy of my Initial Affidavit (without exhibits) is attached hereto as **Exhibit "D"**. Capitalized terms not otherwise defined herein have the meanings given to them in the Initial Affidavit.

7. The Initial Order, among other things, (i) appointed Alvarez & Marsal Canada Inc. as monitor within these CCAA proceedings (the "**Monitor**"); (ii) granted a stay of proceedings against the Applicants, the Monitor, and their respective employees, directors, advisors, officers and representatives acting in such capacities for an initial 10-day period (the "**Initial Stay Period**"); (iii) authorized the Applicants to borrow from CIBC, as interim lender (the "**Interim Lender**"), under the Applicants' existing revolving facility (the "**CIBC Revolving Loan Facility**") to fund the Applicants' working capital requirements and other general corporate purposes, capital expenditures, and costs of these proceedings during the Initial Stay Period, subject to certain conditions; (iv) authorized, but did not require, the Applicants to pay certain pre-filing amounts, with the consent of the Monitor and the Interim Lender, consistent with the Cash Flow Forecast (as defined in the Initial Affidavit) or otherwise agreed to with the Interim Lender; and (v) granted priority charges over the Property.

8. Since the granting of the Initial Order, the Applicants, in close consultation and with the assistance of the Monitor, have been working in good faith and with due diligence to, among other things:

(a) stabilize the businesses and operations of the Applicants as part of these CCAA proceedings to enable the Applicants to continue operating their retail store business and e-commerce business;

(b) advise their stakeholders, including landlords, employees, logistics suppliers, merchandise vendors, and others, of the granting of the Initial Order;

(c) negotiate the DIP Term Sheet with the Interim Lender;

(d) develop the Sale Guidelines and finalize arrangements with the Consultant for the orderly realization of the Applicants' Inventory and FF&E;

(e) engage with critical stakeholders; and

(f) respond to numerous creditor and stakeholder inquiries regarding these CCAA proceedings.

9. In accordance with the Initial Order:

(a) on January 7, 2025, the Monitor posted the Initial order and related application materials on the Monitor's website at https://www.alvarezandmarsal.com/ComarkRetail (the "**Monitor's Website**");

(b) the Monitor arranged for publication of a notice in *The Globe and Mail* (Nation Edition) containing the information prescribed under the CCAA, with such notice being published on January 10, 2025 and January 17, 2025; and

(c) on January 14, 2025, the Monitor sent a notice to, among others, all of the Applicants' known creditors who had claims over $1,000, including all known international creditors. Additionally, on January 15, 2025, the Monitor made publicly available on the Monitor's Website a list containing the names and addresses of those creditors and the estimated amounts of their claims (subject to the exclusions required by the Initial Order).

10. On January 7, 2025, a Case Center database was established for these CCAA proceedings and all counsel currently on the CCAA service list have been granted access thereto. A copy of the Initial Order and the Applicants' application materials were uploaded to the Case Center database that same day.

(a) Communication with Key Stakeholders

(i) Landlords

11. On January 7, 2025, counsel to the Applicants sent letters to all known landlords of the Applicants' retail stores (the "**Landlords**"), at their most recent email addresses contained in the Applicants' books and records, advising that the Applicants had applied for and been granted an Initial Order under the CCAA, providing a link to the Monitor's Website and directing the recipient to the Initial Order. The letters further advised that:

(a) payments of rent and other amounts outstanding under leases immediately prior to the effective time of the Initial Order have been stayed pursuant to the Initial Order,

and amounts payable in respect of rent after the effective time of the Initial Order will be paid by the Applicants in accordance with the Initial Order; and

(b) all vendors, including landlords, must continue honouring existing contractual obligations.

12. The Applicants, through their counsel, also circulated draft Sale Guidelines for the proposed Sale to certain Canadian counsel who represent a significant number of the Landlords for their review and subsequently engaged in discussions with such counsel, along with counsel to the Monitor, with respect to the proposed Sale Guidelines and certain other issues raised by landlords' counsel regarding the Initial Order and the proposed ARIO.

(ii) Employees

13. In addition to the Landlords and Overseas Vendors (described below), the Applicants completed the following outreach to their employees promptly after obtaining the Initial Order:

(a) on January 7, 2025, meetings were conducted with the corporate office leadership teams of Ricki's, cleo and Bootlegger (collectively, the "**Retail Entities**") advising of the Applicants' decision to file for CCAA protection, the issuance of the Initial Order, and the expected impact of the Initial Order on the Retail Entities' respective businesses;

(b) on January 7, 2025, meetings were conducted with the store leadership teams of the Retail Entities, including district managers and store managers, to advise of the Applicants' decision to file for CCAA protection, the issuance of the Initial Order, and the expected impact of the Initial Order on the Retail Entities' respective stores and operations;

(c) the store managers, in turn, held townhall meetings that same day at their respective store locations to advise store-level employees of the Applicants' decision to file for CCAA protection, the issuance of the Initial Order, and the expected impact of the Initial Order on the Retail Entities; and

(d) on January 8, 2025, all employees of the Retail Entities were sent a follow-up email re-iterating the above information regarding the CCAA Proceedings and enclosing a Frequently Asked Questions document (the **"Employee FAQs"**) addressing common employee issues and concerns. Employees of the Retail Entities were also provided with a copy of the press release issued in connection with the CCAA proceedings.

14. The Employee FAQs have since been posted on the applicable internal intranet site for each of the respective Retail Entities to ensure employees' ease of reference during these CCAA proceedings. The Retail Entities intend to supplement the Employee FAQs with answers to additional questions frequently received from impacted employees.

15. District managers of the Retail Entities have also been provided with a Customer Frequently Asked Questions document (the **"Customer FAQs"**) to distribute to the stores in their respective districts. The Customer FAQs are intended to facilitate employees' ability to respond to questions received from customers during the CCAA proceedings.

(iii) Overseas Vendors and CRSA

16. As described in the Initial Affidavit, the Retail Entities source approximately 82% of their merchandise from factories primarily based in China and Bangladesh (the "**Overseas Vendors**").

17. Prior to these CCAA proceedings, the Overseas Vendors were paid either via a power of attorney ("**POA**") arrangement (for vendors in Bangladesh) or via wire payments (for vendors in China). Under both arrangements, the Canadian Retail Shippers' Association ("**CRSA**"), a cooperative logistics venture of Canadian retailers and retail suppliers used by the Applicants to help reduce shipping and logistics costs, would release inventory to the Retail Entities (or their third-party transportation provider) at the port of entry only upon presentation of an original endorsed Forwarder's Cargo Receipt ("**FCR**"). The services provided by CRSA are integral to the Applicants' ability to operate during these CCAA proceedings.

18. Certain of the Retail Entities' merchandise is currently in-transit on cargo ships or being held at the port of entry. To ensure uninterrupted business operations during these CCAA proceedings, the Applicants have reached an agreement with the CRSA that will ensure the continuation of their services and release of inventory in the normal course, all in accordance with the authority granted in the Initial Order and the consent of the Monitor and the Interim Lender.

19. Despite the agreement with the CRSA, the Retail Entities have not been able to retrieve a sizeable portion of their in-transit merchandise because certain Overseas Vendors have refused to provide the required FCR to the Retail Entities, purportedly due to the outstanding arrears owing to them. Prior to the commencement of these CCAA proceedings, the Applicants owed approximately $36 million to Overseas Vendors.

20. Since the granting of the Initial Order, the Applicants, with the consent of the Monitor and the Interim Lender, have entered into arrangements with a number of Overseas Vendors for the timely release of merchandise and/or FCRs in consideration for the payment of some portion of the pre-filing arrears, all in accordance with the Initial Order.

21. To help facilitate negotiations with the Overseas Vendors who are refusing or may in the future refuse to release FCRs and/or merchandise, the Applicants, with the assistance of the Monitor and with the consent of the Interim Lender, have drafted a template form of agreement (the "**Merchandise Transfer Agreement**"), a copy of which is attached to this affidavit as **Exhibit "E"**. In the proposed ARIO, the Applicants are seeking approval of the form of Merchandise Transfer Agreement, the authorization to enter into further arrangements with Overseas Vendors substantially in the form of the Merchandise Transfer Agreement, and the approval of Merchandise Transfer Agreements executed prior to January 17, 2025. Under the Merchandise Transfer Agreement, the parties agree to the following procedure:

(a) Within two business days of the date of the applicable Merchandise Transfer Agreement, the Overseas Vendor shall deliver to the Monitor the original FCR and such other documents as necessary to enable the applicable Retail Entity to take possession of the inventory (the "**Transfer Documentation**"). The Monitor shall then notify the parties that it holds the Transfer Documentation in escrow (the "**Documentation Notice**").

(b) No later than one business day following the Documentation Notice, the applicable Retail Entity shall make a cash payment to the Overseas Vendor in the amount set out in the Merchandise Transfer Agreement (the "**Release Payment**").

(c) No later than one business day following receipt of the Release Payment, the Overseas Vendor shall notify the applicable Retail Entity and the Monitor that it has received the Release Payment (the "**Payment Notice**").

(d) Following the Payment Notice, the Monitor shall release the Transfer Documentation to the applicable Retail Entity.

22. The Merchandise Transfer Agreement provides that, (a) in the event that the Retail Entity does not effectuate the Release Payment, the Monitor shall release the Transfer Documentation to the Overseas Vendor; and (b) in the event that the Release Payment is paid out but the Overseas Vendor does not issue the Payment Notice, the Applicants and the Monitor shall be entitled to seek relief from this Court on an urgent basis.

(iv) Other Stakeholders

23. The Monitor and the Applicants have also engaged in discussions with certain other logistics providers and critical service providers to ensure uninterrupted business operations during these CCAA proceedings.

B. Realization Process and Consulting Agreement

24. In order to maximize the value of their assets, the Applicants are seeking the Court's approval of:

(a) the Consulting Agreement, a copy of which is attached hereto as **Exhibit "F"**; and

(b) the Sale Guidelines, which are attached as Exhibit "B" to the Consulting Agreement.

(a) Process for Identifying the Consultant

25. Pursuant to the authority set out in the Initial Order, the Monitor reached out to two potential third-party liquidators that are well known in the industry, indicating that the Monitor, on behalf of the Applicants, was seeking bids in connection with the realization of some or all of the Retail Entities' Inventory and FF&E, and, if interested in participating in a request for proposals process, they should execute and return a non-disclosure agreement (the "**NDA**"). Upon

receipt of an executed NDA by the Monitor, each third-party liquidator was given access to a populated data room including financial and operational details about the Applicants and the Inventory. Both potential liquidators signed an NDA. The liquidators were then asked to provide their bids. The bids were reviewed and discussed among the Applicants, the Monitor and the Interim Lender. After negotiations with Tiger Asset Solutions Canada, ULC ("**Tiger**"), in consultation with the Monitor and with the consent of the Interim Lender, Tiger, as Consultant, and the Applicants entered into the Consulting Agreement on January 14, 2025.

26. Tiger was selected by the Applicants based on, among other things, its in-depth expertise and knowledge of the Applicants' business, merchandise, and store operations (having recently conducted a third-party appraisal of the Applicants' inventory on behalf of CIBC), and its extensive experience conducting retail liquidations in Canada (including *Nordstrom Canada*, *GNC*, *Bed, Bath and Beyond*, *Chico's, Gymboree*, *Canadian Shoe Outlet*, *Stokes*, *Scotch and Soda*, *Sears Canada*, *Scholars Choice*, *Maison Ethier*, and *Payless Canada*). The Applicants have concluded that: (i) the Consultant's services are necessary for a seamless and efficient large-scale store closing process and to maximize the value of the Inventory and FF&E; and (ii) the Consultant is qualified and capable of performing the required tasks in a value-maximizing manner.

(b) The Sale

27. Given the Applicants' limited liquidity and ongoing carrying costs, the Applicants are seeking approval of an orderly realization of the Retail Entities' Inventory and FF&E as soon as possible in order to maximize recoveries and limit operating costs, and to ensure that the Retail Entities can exit from the Liquidating Stores as soon as practicable.

28. The proposed realization of the Inventory and FF&E is currently contemplated to run for no longer than 16 weeks following the Sale Commencement Date (defined below), which date can

be extended or abridged by the Applicants and the Consultant, in consultation with the Monitor and the DIP Lender. Key terms of the Consulting Agreement include:

(a) the Consultant is appointed as exclusive liquidator for purposes of conducting the Sale;

(b) the Sale will commence on a date agreed to by the Applicants and the Consultant following the granting of the Realization Process Approval Order (the "**Sale Commencement Date**") and conclude no later than 16 weeks following such Sale Commencement Date (the "**Sale Termination Date**" and the period between the Sale Commencement Date and the Sale Termination Date, the "**Sale Term**"). It is currently anticipated that the Sale will commence no later than January 18, 2025, with the Sale commencing at most stores on January 17, 2025, should the Realization Process Approval Order be approved;

(c) at present, the Applicants intend to conduct the Sale at substantially all of the Retail Entities' stores. As such, all such stores are listed as "**Liquidating Stores**" at Exhibit "A-1" to the Consulting Agreement. Importantly, the Applicants have the right under the Consulting Agreement to amend the list of Liquidating Stores (by removing store locations from Exhibit "A-1") at any time on or prior to January 31, 2025 or upon giving 14-days written notice after January 31, 2025;

(d) all sales during the Sale Term will be final with no returns or exchanges accepted or allowed following the Sale Commencement Date;

(e) the Liquidating Stores will accept cash, and credit and debit cards, during the Sale. Gift cards will not be accepted by the Applicants after 12:01a.m. on January 17, 2025;

(f) the Consultant, in collaboration with the Applicants, shall recommend staffing levels for the Liquidating Stores and appropriate incentive programs, if any, for the Liquidating Store's employees, which will be approved in advance by the Applicants in consultation with the Monitor and the DIP Lender (provided that payments under any such incentive program shall be the Applicants' responsibility);

(g) as consideration for its services in accordance with the Consulting Agreement, the Consultant is entitled to a fee with respect to Inventory sold at the Liquidating Stores during the Sale Term of 2.0% of the gross receipts from sales of Inventory during the Sale Term (excluding sales taxes) (the "**Merchandise Fee**");

(h) the Applicants are responsible for all expenses of the Sale, including (without limitation) all operating expenses of the Liquidating Stores, and all of the Consultant's reasonable and documented out-of-pocket expenses incurred pursuant to an aggregate budget established in connection with the transactions contemplated under the Consulting Agreement (the "**Expense Budget**"), which is attached as Exhibit "C" to the Consulting Agreement. Without the written consent of the Applicants, in consultation with the Monitor and the DIP Lender, the Expense Budget shall not exceed $3,842,223, including legal costs of the Consultant;

(i) concurrently with the execution of, and as a condition to the Consultant's obligations under the Consulting Agreement, the Applicants are required to fund

$475,000 (the "**Special Purpose Payment**") to the Consultant on account of any final amounts owing by the Applicants until the Final Reconciliation (defined below), or upon further order of the Court. The proposed Realization Process Approval Order approves the payment of the Special Purpose Payment *nunc pro tunc* and orders and declares that the Special Purpose Payment shall be and remain free of all claims and encumbrances (including the Charges and deemed trusts) of creditors and other stakeholders of the Applicants;

(j) the Consultant undertakes to sell during the Sale Term, on an "as is where is" basis, the FF&E located at or in the Liquidating Stores. The Consultant is entitled to a commission from the sale of all such FF&E equal to 15% of the gross proceeds of the sale of such FF&E (excluding sales taxes) (the "**FF&E Fee**"). The Applicants are responsible for all reasonable and documented out-of-pocket costs and expenses incurred by the Consultant in connection with the sale of FF&E;

(k) During the Sale Term, all accounting matters (including, without limitation, the determination of the Merchandise Fee, Sale Costs, Supervisor Costs, FF&E Fee, FF&E Costs (each as defined in the Consulting Agreement) and all other fees, expenses, or other amounts reimbursable or payable thereunder) are to be reconciled by the Applicants and the Consultant, in consultation with the Monitor, on every Wednesday for the prior calendar week and the amounts determined to be owing for such prior calendar week pursuant to such reconciliation shall be paid as soon as reasonably practicable in accordance with the DIP Budget (as defined in the DIP Term Sheet) but in all cases not more than 10 days following completion of such reconciliation;

(l) the Applicants and the Consultant, in consultation with the Monitor and the DIP Lender, will complete a final reconciliation and settlement of all amounts payable pursuant to the Consulting Agreement, including, without limitation, the determination of the Merchandise Fee, Sale Costs, Supervisor Costs, FF&E Fee, FF&E Costs and all other fees, expenses, or other amounts reimbursable or payable under the Consulting Agreement (the "**Final Reconciliation**"), no later than 20 days following the earlier of: (a) the Sale Termination Date for the last Liquidating Store; or (b) the date upon which the Consulting Agreement is terminated in accordance with its terms; and

(m) to the extent there is any Inventory remaining on the Sale Termination Date (the "**Remaining Inventory**"), if requested by the Applicants, such Remaining Inventory will be sold on behalf of the Applicants or otherwise disposed of by the Consultant as directed by the Applicants, in consultation with the Monitor.

29. As note above, as of the date of swearing this Affidavit, the Applicants intend to conduct the Sale at all of the Liquidating Stores. However, the Consultant and the Retail Entities have agreed that in the event of one or more going concern transactions, including to any related party, for any of the Applicants' businesses or any portion thereof, the Applicants are entitled to remove any Liquidating Stores from the Sale in accordance with the Consulting Agreement and the parties shall work cooperatively and in good faith to modify the transactions contemplated thereunder appropriately. Among other things, the Merchandise Fee and the FF&E fee will not apply to any Inventory or FF&E included in the applicable going concern transaction(s) once the applicable Liquidating Store is removed from Exhibit "A-1" to the Consulting

Agreement. The Applicants have the express right to terminate the Consulting Agreement in the event that they remove all Liquidating Stores from the Sale.

30. The Applicants intend to continue the sale of goods via their webstores or e-commerce websites (collectively, the "**Websites**"). Any goods sold by the Applicants via any Websites during the Sale Term until and including January 31, 2025 shall be deemed excluded from the definition of Merchandise in the Consulting Agreement and not subject to the Merchandise Fee. In the event that the Applicants decide to continue the sale of goods via their Websites for the period from and after February 1, 2025, the Merchandise Fee shall apply to such sales.

31. The Consulting Agreement is expressly subject to, among other things, approval of this Court. The Sale set out in the Consulting Agreement and the Sale Guidelines has been designed by the Applicants and the Consultant, in consultation with the Monitor and with the consent of the DIP Lender. I am of the view that engaging the Consultant to assist with the Sale will produce better results than attempting to realize on the Inventory and FF&E without the assistance of the Consultant.

32. The Consulting Agreement is subject to the Sale Guidelines attached as Exhibit "B" to the Consulting Agreement. The Sale Guidelines stipulate, among other things, that the Sale will be conducted in accordance with the terms of the leases for the Liquidating Stores (the "**Leases**") during each Liquidating Store's normal hours of operation. The Sale Guidelines may be amended on a store-by-store basis by agreement of the applicable Retail Entity, the Consultant, and the applicable Landlord. The Sale Guidelines also include the following key terms:

(a) the Sale shall be conducted so that each Liquidating Store remains open during its normal hours of operation provided for in its respective Lease, until the earlier of (i) the applicable Sale Termination Date and (ii) the date on which such Lease is

disclaimed in accordance with the ARIO and CCAA or otherwise consensually terminated by the applicable Retail Entity or Retail Entities and Landlord;

(b) the Sale shall end on the Sale Termination Date, which shall be no later than April 30, 2025;

(c) all display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner;

(d) notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Liquidating Stores as an "everything on sale", "everything must go", "store closing" and/or similar theme sale at the Liquidating Stores;

(e) the Consultant shall be entitled to include additional merchandise in the Sale; provided that: (i) the additional merchandise is owned by an Applicant, is currently in the possession of, or in the control of, an Applicant (including in any Warehouse used by an Applicant), or is ordered from an existing supplier in respect of the Applicants' existing SKUs (as defined in the Consulting Agreement) by or on behalf of an Applicant, including merchandise currently in transit to an Applicant (including any Warehouse used by an Applicant) or a Liquidating Store; and (ii) the additional merchandise is of the type and quality typically sold in the Liquidating Stores and consistent with any restriction on usage of the Liquidating Stores set out in the applicable Leases;

(f) at the conclusion of the Sale and after the seven days following the Sale, which shall in no event be later than May 7, 2025 (the "**FF&E Removal Period**"), the Consultant shall arrange that the premises for each Liquidating Store are in "broom-swept" and clean condition, and shall arrange that the Liquidating Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted;

(g) the Retail Entities provide notice, including for purposes of the ARIO, to the Landlords of the Retail Entities and the Consultant's intention to sell and remove FF&E from the Liquidating Stores; and

(h) the Retail Entities and the Consultant shall not conduct any auctions of Inventory or FF&E at any of the Liquidating Stores.

33. I am advised by Ms. Tracy C. Sandler of Osler, Hoskin and Harcourt LLP, counsel to the Applicants, that the Sale Guidelines are substantially similar to those which have been granted in respect of Canadian stores in other Canadian retail insolvencies, including *Nordstrom Canada*, *Mastermind Toys*, and *Ted Baker*.

(c) Realization Process Approval Order

34. The proposed Realization Process Approval Order requested by the Applicants, among other things:

(a) approves, authorizes and ratifies the Consulting Agreement, the Sale Guidelines and the transactions contemplated thereunder;

(b) authorizes the Applicants, with the assistance of the Consultant, to conduct the Sale in accordance with the terms of the Realization Process Approval Order, the Consulting Agreement and the Sale Guidelines, and to advertise the Sale within the Liquidating Stores in accordance with the Sale Guidelines;

(c) authorizes the Applicants, with the assistance of the Consultant, to market and sell the Inventory and FF&E in accordance with the Sale Guidelines and the Consulting Agreement, free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims; and

(d) grants certain protections from liability in favour of the Consultant, including that:

(i) the Consultant shall not be deemed to be an owner or in possession, care, control or management of the Liquidating Stores or any Warehouse, of the assets located therein or associated therewith or of the Applicants' employees located at the Liquidating Stores, any Warehouse or any other property of the Applicants;

(ii) the Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation; and

(iii) the Consultant shall bear no responsibility for any liability whatsoever relating to Claims (as defined in the Realization Process Approval Order) of customers, employees and any other persons arising from events occurring at the Liquidating Stores during and after the Sale Term or at any

Warehouse, or otherwise in connection with the Sale, except to the extent that such Claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Consultant, its employees, supervisors, independent contractors, agents or other representatives, or otherwise in accordance with the Consulting Agreement.

35. I am advised by the Monitor and believe that the Monitor supports the proposed Consulting Agreement, the Sale Guidelines, including the proposed timeline, and the Applicants' request for the Realization Process Approval Order.

C. Amended and Restated Initial Order

(a) DIP Financing

36. Pursuant to the Initial Order, the Applicants were granted interim funding from the Interim Lender under the CIBC Revolving Loan Facility during the Initial Stay Period (the "**Interim Borrowings**"). The Interim Borrowings are secured by a Court-ordered charge (the "**Interim Lender's Charge**") on all of the present and future assets, property and undertakings of the Applicants (the "**Property**") and by certain cash collateral and shares of Comark pledged by ParentCo. The Interim Borrowings mature on January 17, 2025.

37. Since the granting of the Initial Order, CIBC (the "**DIP Lender**") has agreed to provide additional funding to Comark, as Borrower, during these CCAA proceedings under a senior secured, super priority, debtor-in-possession, revolving credit facility (the "**DIP Facility**") on the terms set out in a term sheet agreed to between the Borrower, the Retail Entities and ParentCo as

Guarantors, and the DIP Lender (the "**DIP Term Sheet**"). A copy of the final executed DIP Term Sheet is attached hereto as **Exhibit "G"**.

38. Based on the Updated Cash Flow Forecast, the DIP Facility is expected to provide the Applicants with sufficient liquidity to continue their business operations during these CCAA proceedings while completing the Sale described above for the benefit of the Applicants and their stakeholders.

39. The proposed DIP Facility includes the following commercial terms.[1] All defined terms below are defined in the DIP Term Sheet:

(a) **Facility size:** up to a maximum amount of $18 million.

(b) **Outside Date for Maturity:** May 30, 2025

(c) **Conditions precedent to DIP advances:** (i) each DIP Party executing and delivering the DIP Term Sheet and any other documents required by the DIP Lender; (ii) all representations and warranties of the DIP Parties under the DIP Term Sheet being true and correct in all material respects; (iii) the Court issuing the ARIO and Realization Process Approval Order, in form and substance satisfactory to the DIP Lender no later than January 17, 2025; (iv) no Event of Default having occurred; (v) the DIP Advance not causing the aggregate amount of all outstanding DIP Advances to (A) exceed the Maximum Amount or (B) be greater than the amount shown for the total aggregate DIP Advances in the DIP Budget; (vi) the aggregate DIP Exposure and the outstanding principal under the CIBC Revolving

[1] The below is intended to be a summary of the DIP Term Sheet only. Reference should be had to the DIP Term Sheet for the complete terms set out therein.

Loan Facility not exceeding an amount equal to the Borrowing Base; (vii) the continuation of the DIP Parties' cash management arrangements being approved by the ARIO; (viii) the DIP Parties making all necessary or advisable registrations and taking all other steps in applicable jurisdictions to evidence and give effect to the DIP Lender's Charge; (ix) there being no Liens ranking *pari passu* with or in priority to the DIP Lender's Charge other than the Permitted Priority Liens; (x) there being no order of the Court that contravenes the DIP Term Sheet, DIP Credit Agreement (if any) or any DIP Financing Credit Documents; (xi) the DIP Lender having received the Guarantee Amendment Documents from ParentCo; (xii) Comark having delivered an Advance Request in respect of such DIP Advance and all applicable Variance Reports in accordance with the DIP Term Sheet; (xiii) beginning on the week commencing on January 19, 2025, (A) for the period commencing on January 12, 2025 and ending the week prior to such DIP Advance Request the Actual Cumulative Receipts shall be equal to or greater than the "Minimum Cumulative Receipts" (as set out in Schedule "G" to the DIP Term Sheet), and (B) for the period commencing on January 12, 2025 and ending the week prior to such DIP Advance Request the Actual Cumulative Disbursements shall be equal to or less than the "Maximum Cumulative Disbursements" (as set out in Schedule "G" to the DIP Term Sheet); and (xiv) the sum of the aggregate principal amount outstanding under the CIBC Revolving Loan Facility (after giving effect to any repayment of the Interim Borrowings from the proceeds of such DIP Advance), less any repayment of the principal amount of the Pre-Filing Credit Agreement from sources other than DIP Advances plus the aggregate principal amount outstanding under the DIP Facility shall not exceed $24 million.

(d) **Mandatory Payments:** proceeds received by a DIP Party in respect of Accounts, and any instruments or Property received by a DIP Party for any Collateral, less $100,000 to indefeasibly pay the DIP Financing Obligations and Obligations in the following order: (A) first, the Obligations in respect of the CIBC Revolving Loan Facility, including the Interim Borrowings, until Repaid in Full, (B) second, the DIP Financing Obligations, until Repaid in Full, (C) third, the Obligations in respect of the CIBC Term Loan Facility (as defined in the Initial Affidavit), until Repaid in Full, and (D) fourth, the Obligations in respect of the BCAP Loan Facility, to be applied in accordance with the waterfall set out in the CIBC Credit Agreement, until Repaid in Full. The Proceeds shall be promptly turned over to the DIP Lender with proper assignments or endorsements by deposit to the Blocked Accounts. If at any time the total amount of DIP Advances exceeds the Maximum Amount (any such excess being referred to as a "**Currency Excess Amount**"), then the Borrowers shall immediately pay the DIP Lender an amount equal to the Currency Excess Amount, and, for greater certainty, the obligation to make such payment shall form part of the DIP Financing Obligations secured by the DIP Lender's Charge. If at any time, any account of the DIP Parties is in an overdraft position (any such amount in overdraft being the "**Overdraft Amount**"), then the Borrower shall immediately pay the DIP Lender an amount equal to the Overdraft Amount and, for greater certainty, the obligation to make such payment shall form part of the DIP Financing Obligations secured by the DIP Lender's Charge.

(e) **Commitment Fee:** 1.5% of the Maximum Amount, which is fully earned on execution of the DIP Term Sheet and shall be due and payable immediately in two instalments: (i) 0.25% of the Maximum Amount (being an amount equal to

$45,000), shall be due and payable on the date of the First Advance (as defined in the DIP Term Sheet), and (ii) 1.25% of the Maximum Amount (being an amount equal to $225,000), shall be immediately due and payable on May 2, 2025.

(f) **Interest:** 10% *per annum* for DIP Advances denominated in Canadian Dollars or U.S. Dollars, compounded monthly and payable monthly in arrears in cash on the first Business Day of each month, with the first payment being made on February 1, 2025. Upon the occurrence and during the continuation of an Event of Default, all overdue amounts shall bear interest at the applicable interest rate plus 2% per annum payable on demand in arrears in cash.

(g) **Events of Default:** (i) failure of the Borrower to pay principal, interest or other amounts when due pursuant to the DIP Term Sheet; (ii) failure of the Borrower to deliver, by no later than January 17, 2025, the DIP Budget; (iii) failure of the DIP Parties to perform or comply with any term pursuant to the DIP Term Sheet; (iv) any representation or warranty by the DIP Parties made in the DIP Term Sheet proving to be incorrect or misleading in any material respect; (v) issuance of any court order (A) dismissing or terminating these CCAA proceedings, (B) lifting the stay of proceedings in these CCAA proceedings for various reasons, (C) terminating the Sale prior to its completion, (D) granting any other Lien that is in priority to or *pari passu* with the DIP Lender's Charge; (E) modifying the DIP Term Sheet without the written consent of the DIP Lender, and (F) modifying any Court Order without the written consent of the DIP Lender; (vi) the expiry without further extension of the stay of proceedings provided for in the ARIO; (vii) the termination of the Sale prior to its completion, without the consent of the DIP Lender; (viii) a

Borrowing Base Report, Variance Report, Realization Process Report or Updated DIP Budget not being delivered when due under the DIP Term Sheet; (ix) (A) Actual Cumulative Receipts of the DIP Parties for the period commencing January 19, 2025 and ending at the end of any week are less than the "Minimum Cumulative Receipts" for such week, or (B) Actual Cumulative Disbursements of the DIP Parties for the period commencing January 19, 2025 and ending at the end of any week are more than the "Maximum Cumulative Disbursements" for such week; (x) filing by any DIP Party of any motion or proceeding that, among other things, is not consistent with any provision of the DIP Term Sheet; (xi) the making by the DIP Parties of a payment of any kind that is not permitted by the DIP Term Sheet; (xii) a default under or a revocation, termination or cancellation of any Material Contract; (xiii) denial or repudiation by the DIP Parties of the legality, validity, binding nature or enforceability of the DIP Term Sheet; (xiv) any Person seizing or levying upon any Collateral or exercising any right of distress, execution, foreclosure or similar enforcement process against any material portion of the Collateral; (xv) the entry of one or more final judgements, writs of execution, garnishment or attachment representing a claim in excess of $500,000 in the aggregate, against any Collateral; (xvi) the principal amount of outstanding DIP Advances exceeding the Maximum Amount; (xvii) the occurrence of any "Default" or "Event of Default" under the CIBC Credit Agreement, other than the Existing Events of Default; or (xviii) any Milestone set forth on Schedule "D" of the DIP Term Sheet not being satisfied.

40. The Applicants have also agreed to the following Milestone Dates, as set out at Schedule "D" to the DIP Term Sheet, which can be extended or waived with the express prior written consent

of the DIP Lender: (i) on January 17, 2025, if granted by this Court, the ARIO shall be issued and entered, (ii) on January 17, 2025, the parties shall execute and deliver all applicable DIP Financing Credit Documents (as defined in the DIP Term Sheet); (iii) on January 18, 2025, the Sale shall commence, (iv) on March 1, 2025, all outstanding Obligations (as defined in the DIP Term Sheet) under the CIBC Revolving Loan Facility shall be repaid in full, and (v) on April 27, 2025, the Sale shall be completed.

41. The DIP Facility is proposed to be secured by a Court-ordered super-priority charge (the "**DIP Lender's Charge**") on the Property, and by certain cash collateral and shares of Comark pledged by ParentCo. The DIP Lender's Charge will not secure any obligation that exists before the ARIO is made. The DIP Lender's Charge will have priority over all other security interests, charges and liens, except the Administration Charge and other Permitted Priority Liens (as defined in the DIP Term Sheet). The DIP Lender's Charge will rank in priority to the Interim Lender's Charge (which will terminate upon repayment in full of the Interim Borrowings in accordance with the ARIO and the DIP Term Sheet) and the security granted with respect to the CIBC Credit Facilities. Given the current financial circumstances of the Applicants, the DIP Lender has indicated that it is not prepared to advance funds without the security of the DIP Lender's Charge, including the proposed priority thereof.

42. I understand that the Monitor is supportive of the approval of the DIP Term Sheet and the granting of the DIP Lender's Charge.

(b) Authorization to Pursue a Transaction

43. Since the commencement of these CCAA proceedings, the Applicants have received outreaches and expressions of interest from several interested parties for the acquisition of certain of the Applicants' business and assets. The Applicants, with the consent of the Monitor, are seeking

the authority in the proposed ARIO to pursue offers for or avenues of refinancing, restructuring, sale or reorganization of the business or assets of the Applicants (a "**Transaction**"). Any such Transaction will be subject to the DIP Lender's consent.

44. Should the ARIO be granted, the Monitor intends to reach out forthwith to parties known to the Monitor and/or the Applicants who have expressed interest or may be interested in the business or assets of the Applicants. Depending on the level and nature of interest expressed, the Monitor may, in its reasonable judgment, establish a solicitation process letter setting out bid procedures (including minimum proposal requirements, key milestones, and successful bid selection criteria) as may be determined by the Applicants and Monitor with the consent of the DIP Lender. If such bid procedures are established, the Monitor will clearly communicate such procedures to the potentially interested parties identified by the Applicants and the Monitor. Depending on the level of interest, the Monitor may, in its reasonable judgment, directly negotiate a Transaction with a potential acquirer, in lieu of a formal sales process. To the extent a Transaction results, it will be subject to prior approval of this Court.

45. The Applicants do not have sufficient liquidity under the Updated Cash Flow Forecast or funding under the DIP Budget to run a more formal sales process. The funding in the DIP Budget is conditional on the Applicants commencing the Sale by no later than January 18, 2025, as any delay will further erode the Applicants' financial position.

46. The authorization to pursue a Transaction on an accelerated process as described herein would give the Applicants and the Monitor the flexibility to pursue all value-maximizing avenues for the assets of the Applicants, while concurrently conducting the Sale (with the ability to remove some or all of the Liquidating Stores from the Sale). This flexible and expedited process would benefit the Applicants' creditors and stakeholders generally by allowing the Applicants and the

Monitor to test the market to ascertain whether there may be a going concern transaction or transactions that would generate more value for creditors and stakeholders than the Sale. I understand that the DIP Lender has advised that it supports the Applicant and the Monitor engaging in discussions with potential interested parties in the manner described above.

(c) Increase to the Administration Charge and Directors' Charge

47. The Administration Charge is described at paragraphs 141 to 142 of my Initial Affidavit. The Initial Order approved the Administration Charge in the amount of $750,000, which was sized only to reflect fees and disbursements expected to be incurred or paid by the Applicants' counsel, the Monitor and Monitor's counsel during the Initial Stay Period. With the concurrence of the Monitor, the Applicants are now seeking to increase the Administration Charge to $1 million. I understand that the DIP Lender does not object to the proposed increase to the Administration Charge.

48. The Directors' Charge is described at paragraphs 143 to 146 of my Initial Affidavit. The Initial Order approved the Directors' Charge for the initial Stay Period in the amount of $6.2 million. With the concurrence of the Monitor, the Applicants are now seeking to increase the Directors' Charge to $7.4 million. I understand that the DIP Lender does not object to the proposed increase to the Directors' Charge.

(d) Extension of Stay Period

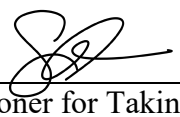
49. The Applicants are seeking to extend the stay of proceedings granted in the Initial Order (the "**Stay Period**") up to and including May 15, 2025. The extension of the Stay Period is necessary and appropriate in the circumstances to permit the Applicants, with the assistance of the Consultant and under the oversight of the Monitor, to conduct the Sale in accordance with the

Consulting Agreement and Sale Guidelines, while concurrently pursuing a going concern transaction or transactions for some or all of the Applicants' business or assets.

50. I believe that the Applicants have acted, and continue to act, in good faith and with due diligence in these CCAA proceedings. As described above, the Applicants have given notice of these CCAA proceedings to stakeholders including, most significantly, their Landlords and employees. In consultation with the Monitor, the Applicants have engaged, and will continue engaging, in discussions with their stakeholders as these CCAA proceedings progress.

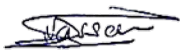
51. The cash flow projections prepared by the Monitor (the "**Updated Cash Flow Forecast**") demonstrate that, subject to this Court's approval of the DIP Facility and DIP Lender's Charge in the form requested in the proposed ARIO, the Applicants will have access to sufficient liquidity to fund operations during the requested extension of the Stay Period. The Monitor has expressed its support for the extension of the Stay Period to May 15, 2025.

SWORN BEFORE ME over videoconference this 16th day of January, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely. The affiant is located in the City of Vancouver, in the Province of British Columbia, while the commissioner is located in the City of Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits
(or as may be)

Sierra Farr (LSO#87551D)



Shamsh Kassam

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

Court File No: CV-20-00642013-00CL

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

AFFIDAVIT OF SHAMSH KASSAM

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Email: sfarr@osler.com

Fax: 416.862.6666

Lawyers for the Applicants

This is Exhibit "C" referred to in the Affidavit of SHAMSH KASSAM sworn by SHAMSH KASSAM of the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on May 8, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

SIERRA FARR

(LSO# 87551D)

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

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

AFFIDAVIT OF SHAMSH KASSAM
(Sworn January 30, 2025)

I, Shamsh Kassam, of the City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY:

1. I currently serve as Chief Executive Officer ("**CEO**") of Comark Holdings Inc. ("**Comark**"), Vice President of each of its subsidiaries, Ricki's Fashions Inc. ("**Ricki's**"), cleo fashions Inc. ("**cleo**") and Bootlegger Clothing Inc. ("**Bootlegger**") (together with Comark, the "**Applicants**" or the "**Comark Group**"), and a director of each of the Applicants. I am also a director and/or officer of a number of affiliated companies in a broader corporate group, including the parent company of Comark, 9383921 Canada Inc. ("**ParentCo**"), Warehouse One Clothing Ltd. ("**WarehouseOne**"), the Comark Group's logistics provider, Parian Logistics Inc. ("**Parian**") and others. As such, I have personal knowledge of the matters deposed to in this affidavit. Where I have relied on other sources of information, I have specifically referred to such sources and believe them to be true. In preparing this affidavit, I have consulted with legal, financial and other advisors to the Applicants and other members of the senior management teams of the Applicants. The Applicants do not waive or intend to waive any applicable privilege by any statement herein.

2. This affidavit is made in support of a motion by the Applicants for:

(a) an approval and vesting and DIP assignment order (the "**Approval and Vesting and DIP Assignment Order**"), among other things:

(i) approving an asset purchase agreement (the "**Putman APA**") between cleo and Ricki's (together, the "**Targets**"), as sellers, and 10011110197 Ontario Inc. (an affiliate of 2625229 Ontario Inc. (operating as "**Putman Investments**")), as purchaser (the "**Putman Purchaser**"), and the transactions contemplated therein, pursuant to which the Putman Purchaser will acquire certain assets of the retail business of each of Ricki's and cleo;

(ii) assigning certain leases of the Targets to the Putman Purchaser pursuant to section 11.3 of the *Companies Creditors Arrangement Act, R.S.C., 1985*, c. C-36 (the "**CCAA**");

(iii) approving the transfer and assignment by Canadian Imperial Bank of Commerce ("**CIBC**") to ParentCo of all of its rights, interests, and obligations as DIP Lender under and pursuant to the DIP Term Sheet and ARIO (including, but not limited to, the DIP Lender's Charge) (the "**DIP Assignment and Assumption**") and authorizing and empowering the Applicants to execute and deliver such documents as may be reasonably required in connection with the DIP Assignment and Assumption;

(iv) ordering that, upon delivery by the Monitor of a certificate (the "**Monitor's Certificate**") to the Targets, the Putman Purchaser, and the DIP Lender, certifying:

(A) the Putman Purchaser has paid the cash consideration of the Purchase Price to the Monitor, on behalf of the Targets, pursuant to the Putman APA;

(B) the Targets and the Putman Purchaser have each delivered written notice to the Monitor that all applicable conditions of closing under the Putman APA (other than delivery of the Monitor's Certificate) have been satisfied and/or waived, as applicable; and

(C) CIBC and ParentCo have each delivered written notice to the Monitor that all applicable conditions of closing under the Assignment and Assumption of Debt and Security Agreements (defined below) (other than delivery of the Monitor's Certificate) have been satisfied and/or waived, as applicable;

all of the Targets' respective rights, title and interest in and to the Purchased Assets (defined below) shall vest absolutely in the Putman Purchaser free and clear of and any and all Claims and Encumbrances, other than the Assumed Liabilities and Permitted Encumbrances (each as defined in the Putman APA); and

(v) amending the title of these CCAA proceedings, following the delivery of the Monitor's Certificate, to:

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.,

(b) a sale process letter and stalking horse term sheet approval order (the "**Stalking Horse Sale Process Approval Order**"), among other things:

(i) approving the form of process letter prepared by the Monitor (the "**Process Letter**") setting out the key milestones and bid requirements in respect of a sale of some or all of the Remaining Business (defined below);

(ii) authorizing and empowering the Applicants and the Monitor, and their respective affiliates, partners, directors, officers, employees, advisors, representatives, and agents (the "**Assistants**"), to engage in a sales process in accordance with the terms of the Process Letter, provided that the completion of any refinancing, restructuring, sale or reorganization transaction in respect of the Remaining Business will be subject to prior approval of the Court, and approving all actions taken by the Applicants, the Monitor and their Assistants *nunc pro tunc*;

(iii) authorizing the execution of the Stalking Horse Term Sheet (defined below) by the Applicants;

(iv) approving the Stalking Horse Term Sheet to act as a stalking horse bid in accordance with the Process Letter;

(v) authorizing and empowering the Applicants to negotiate and finalize a definitive agreement of purchase and sale (such definitive agreement being the "**Stalking Horse Purchase Agreement**") with WarehouseOne or its designated nominee (the "**Stalking Horse Purchaser**") substantially on the

terms set out in the Stalking Horse Term Sheet in respect of the Remaining Business; and

(vi) requiring the Monitor to post a copy of the finalized Stalking Horse Purchase Agreement to the Monitor's website and the Applicants to provide a copy of the Stalking Horse Purchase Agreement to the CCAA service list and each participant in the Sales Process (defined and described below).

3. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise, and do not represent amounts or measures prepared in accordance with ASPE or US GAAP.

4. This affidavit is organized in the follow sections:

A. Overview of the Applicants' Activities since the Comeback Hearing

5. On January 7, 2025, the Applicants were granted protection under the CCAA pursuant to an Initial Order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**").

6. The Initial Order, among other things, (i) appointed Alvarez & Marsal Canada Inc. as monitor within these CCAA proceedings (the "**Monitor**"); (ii) granted a stay of proceedings against the Applicants, the Monitor, and their respective employees, directors, advisors, officers and representatives acting in such capacities for an initial 10-day period (the "**Initial Stay Period**"); (iii) authorized the Applicants to borrow from CIBC, as interim lender (the "**Interim Lender**"), under the Applicants' existing revolving facility (the "**CIBC Revolving Loan Facility**") to fund the Applicants' working capital requirements and other general corporate purposes, capital expenditures, and costs of these proceedings during the Initial Stay Period, subject to certain conditions; (iv) authorized, but did not require, the Applicants to pay certain pre-filing amounts, with the consent of the Monitor and the Interim Lender, consistent with the Cash Flow Forecast (as defined in the First Kassam Affidavit (defined below)) or otherwise agreed to with the Interim Lender; and (v) granted priority charges over the Property.

7. In support of the application for the Initial Order, I swore an affidavit dated January 6, 2025 (the "**First Kassam Affidavit**"), which described, among other things, the events leading to the Applicants' insolvency and their urgent need for relief under the CCAA. A copy of the First Kassam Affidavit (without exhibits) is attached hereto as **Exhibit "A"**. In support of the relief sought at the comeback hearing held on January 17, 2025 (the "**Comeback Hearing**"), I swore an affidavit dated January 16, 2025 (the "**Second Kassam Affidavit**"). A copy of the Second Kassam Affidavit (without exhibits) is attached hereto as **Exhibit "B"**. Capitalized terms

not otherwise defined herein have the meanings given to them in the First Kassam Affidavit and/or the Second Kassam Affidavit.

8. At the Comeback Hearing, this Court granted the Amended and Restated Initial Order (the "**ARIO**"), among other things, (i) extending the stay of proceedings to May 15, 2025; (ii) authorizing the Applicants to enter into the DIP Term Sheet in the maximum principal amount of $18 million and granting the DIP Lender's Charge; (iii) authorizing the Applicants, with the support of the Monitor and the DIP Lender, to pursue offers for or avenues of restructuring, sale or reorganization of the Comark Group business or assets, in whole or in part; (iv) approving the form of Merchandise Transfer Agreement, authorizing the Applicants and the Monitor to enter Merchandise Transfer Agreements with Overseas Vendors and perform their respective obligations under any Merchandise Transfer Agreement, and authorizing and approving any Merchandise Transfer Agreement executed by the Monitor and the Applicants prior to January 17, 2025; and (v) increasing the maximum amount secured by the Administration Charge to $1 million and the maximum amount secured by the Directors' Charge to $7.4 million.

9. At the Comeback Hearing, this Court also granted the Realization Process Approval Order, among other things, (i) approving a consulting agreement between the Applicants and Tiger Asset Solutions Canada, ULC (the "**Consultant**") dated as of January 14, 2025 (as may be amended and restated in accordance with the terms of the Realization Process Approval Order, the "**Consulting Agreement**"), under which the Consultant is currently acting as exclusive consultant for the purpose of conducting a sale (the "**Sale**") of the Retail Entities' merchandise and inventory (collectively, the "**Inventory**") and goods, furniture, fixtures, equipment and/or improvements to real property (collectively, the "**FF&E**") located at or in transit to the Applicants' Liquidating Stores (as defined in the Consulting Agreement) or at any Warehouse

(as defined in the Consulting Agreement), or, in some cases, ordered by the Applicants following the commencement of the Sale; (ii) approving the proposed sale guidelines (the "**Sale Guidelines**") for the orderly realization of the Inventory and FF&E at the Applicants' Liquidating Stores; and (iii) authorizing the Applicants, with the assistance of the Consultant, to undertake the Sale in accordance with the terms of the Realization Process Approval Order, the Consulting Agreement and the Sale Guidelines.

10. Pursuant to the DIP Term Sheet, the Applicants were required to commence the Sale by no later than January 18, 2025. However, under the terms of the Consulting Agreement, the Consultant and the Applicants agreed that in the event that the Applicants identify one or more going concern transactions, including to any related party, for any of the Applicants' businesses or any portion thereof, the Applicants are entitled to remove any of the Applicants' Liquidating Stores from the Sale at any time prior to January 31, 2025 or upon giving 14-days written notice after January 31, 2025. The Applicants have the express right to terminate the Consulting Agreement in the event that they remove all of the Applicants' Liquidating Stores from the Sale.

11. Since the granting of the ARIO and the Realization Process Approval Order, the Applicants, in close consultation and with the assistance of the Monitor, have been working in good faith and with due diligence to, among other things:

(a) undertake the Sale, with the assistance of the Consultant, in accordance with the terms of the Realization Process Approval Order, the Consulting Agreement and the Sale Guidelines. On January 17th and 18th, 2025, after the granting of the Realization Process Approval Order, the Applicants and the Consultant commenced the Sale at substantially all of the Applicants' Liquidating Stores;

(b) pursue certain offers for and avenues of restructuring, sale and reorganization of the Comark Group business or assets, in accordance with the terms of the ARIO, including by negotiating and entering into a term sheet with the Putman Purchaser (the "**Putman Term Sheet**") and the Stalking Horse Term Sheet (defined below) with the Stalking Horse Purchaser, and by developing the Process Letter, all in accordance with the terms of the ARIO;

(c) negotiate the delivery and retrieval of the Applicants' in-transit merchandise, including by entering into Merchandise Transfer Agreements in accordance with the terms of the ARIO. As of January 28, 2025, the Applicants had entered into Merchandise Transfer Agreements in respect of approximately $5.4 million of in-transit inventory, at an aggregate cost of approximately $1.7 million;

(d) liaise with CIBC, in its capacity as DIP Lender, in respect of various matters in these CCAA proceedings, including the Putman Term Sheet, the Stalking Horse Term Sheet and the Assignment and Assumption of Debt and Security Agreements;

(e) maintain the daily ordinary course operations of the Applicants business, with no service interruptions;

(f) maintain daily liquidity and cash flow forecasts;

(g) engage with the Applicants' employees; and

(h) respond to creditor and stakeholder inquiries regarding these CCAA proceedings.

B. Putman Transaction

12. As noted in the Second Kassam Affidavit, shortly after the commencement of these CCAA proceedings, the Applicants received several outreaches and expressions of interest from parties potentially interested in acquiring certain of the Applicants' business and assets. The Putman Purchaser was one such interested party.

13. In the ARIO, the Applicants were granted the authority to pursue offers for or avenues of refinancing, restructuring, sale or reorganization of the business or assets of the Applicants (a "**Going Concern Transaction**"), with any such Going Concern Transaction being subject to the consent of the DIP Lender and further Court approval. The authorization to pursue a Going Concern Transaction was designed to allow the Applicants and the Monitor to immediately commence testing the market to ascertain whether there may be one or more Going Concern Transactions that would generate more value for creditors and stakeholders than the Sale.

14. Pursuant to this authorization in the ARIO, the Applicants, with the consent of the Monitor and the DIP Lender, commenced preliminary discussions with the Putman Purchaser regarding the purchase of some or all of the Applicants' business or assets. After further discussion, the parties focused on a potential acquisition of the retail business and assets of each of Ricki's and cleo.

15. During the course of the negotiations, the Putman Purchaser and the Applicants each made it clear to the other that their support for a transaction involving the assets the Targets was conditional on a transaction being consummated on an expedited basis. This was due, in large part, because with each passing day, an increasing amount of the Targets' inventory was being liquidated as part of the Sale. In addition, any delay would necessarily extend the time by which the Applicants need to disclaim leases for the Liquidating Stores (defined below), and would

expose the Applicants to other additional costs and expenses. To that end, the transaction contemplated in the Putman Term Sheet (the "**Putman Transaction**") was conditional on execution of the Putman Term Sheet on or before January 29, 2025.

16. After further negotiations with the assistance of the Monitor, on January 29, 2025, the Targets, with the consent of the Monitor and the DIP Lender, and in accordance with the ARIO, entered into the Putman Term Sheet with the Putman Purchaser, on the basis that it was the only executable expression of interest received for the Ricki's and cleo assets.

(a) Putman Term Sheet

17. On this motion, the Applicants are seeking approval of the Putman APA substantially in accordance with the Putman Term Sheet. The Putman Term Sheet is attached hereto as **Exhibit "C"**. As of the date of this affidavit, the Putman APA has not yet been executed. The Applicants intend to serve a copy of the Putman APA on the CCAA service list shortly following its execution, in advance of the hearing of this motion.

18. The Putman Purchaser is an affiliate of Putman Investments which owns retail brands like *Toys "R" Us Canada*, *Babies "R" Us Canada*, *Sunrise Records*, *For Your Entertainment Ltd.*, *Northern Reflections Ltd.*, *DavidsTea* and *HMV*. In the Putman Term Sheet, the Putman Purchaser has stated that it has the capital resources available to complete the Putman Transaction and the completion of the Putman Transaction is not subject to any financing condition.

19. Further key terms of the Putman Term Sheet include the following:[1]

(a) Subject to the satisfaction of the conditions in the Putman Term Sheet, the Putman Purchaser will acquire the following assets (the "**Purchased Assets**") free and clear of all encumbrances and on an "*as is, where is*" basis:

(i) all inventory and merchandise owned by and in the possession of each of the Targets wherever located, including, without limitation, all inventory and merchandise located within any and all of their respective leased locations in Canada (the "**Target Stores**") and any owned inventory and merchandise, as may be located at the Parian warehouse (the "**Parian Warehouse**"), in transit to the Target Stores, or located at or in transit to the Parian Warehouse to be delivered to the Target Stores (collectively, the "**Target Merchandise**");

(ii) all owned furnishings, trade fixtures, equipment (including owned IT and POS equipment), machinery, office supplies, and other personal property and fixed assets (the "**Target FF&E**") located in the Target Stores;

(iii) all intellectual and industrial property owned by the Targets, including, without limitation, the trade names; and

(iv) certain or all of the Targets' retail real property leases, to be confirmed by the Putman Purchaser prior to the Closing Date (defined below)

[1] All terms not defined herein are defined in the Putman Term Sheet. The below is intended to be a summary of the Putman Term Sheet only. Reference should be had to the Putman Term Sheet for the complete terms set out therein.

contemplated in the Putman APA (the "**Assumed Leases**"). The Target Stores relating to Assumed Leases are referred to as the "**Go-Forward Stores**", and the Target Stores relating to leases that are not Assumed Leases are referred to in the Putman Term Sheet as the "**Liquidating Stores**";

(b) The aggregate purchase price for the Purchased Assets shall be equal to $0.64 for each $1.00 of Target Merchandise (the "**Purchase Price**") plus any applicable sales or transfer taxes thereon. The Purchase Price is not conditional on the number of Assumed Leases assigned to the Putman Purchaser;

(c) The Purchase Price shall be payable in two installments:

(i) within three (3) business days following the date of the acceptance of the Putman Term Sheet, the Putman Purchaser shall transfer to the Monitor, to be held in trust, $3.0 million in cash (the "**Deposit**"), which Deposit shall be refundable (i) if the conditions of the Putman Term Sheet are not satisfied, other than if such failure to satisfy the applicable condition(s) is caused by the Putman Purchaser or any of its representatives, and the Putman Purchaser elects not to proceed with the Putman Transaction as a result of such conditions not being satisfied; or (ii) if the Targets fail to close the Putman Transaction, other than if such failure is caused by the Putman Purchaser or its representatives; and

(ii) the balance of the Purchase Price shall be payable in cash on the Closing Date;

(d) The Putman Purchaser will offer employment to certain of the Targets' retail level employees currently employed at the Go-Forward Stores, on substantially the same employment terms and conditions that such employees have with each of their respective Target employer (the "**Offers**"). The Offers will recognize employees' original dates of service/tenure and provide for employment with the Putman Purchaser commencing on the Closing Date. Employees who accept their respective Offers will become employees of the Putman Purchaser (the "**Transferring Employees**") effective as of the Closing Date[2];

(e) At the Closing Date, the Putman Purchaser shall assume all liabilities relating to any Assumed Leases, including the assumption of any cure costs for amounts of rent or otherwise (unless otherwise waived by the applicable landlord to effect an assignment), payable in connection with the assignment of such Assumed Leases;

(f) During the period between the Closing Date and an end date to be determined by the Targets and the Putman Purchaser, provided such end date is no later than 120 days following the Closing Date (the "**Transition Period**"), the Putman Purchaser shall enter into a transition services agreement or arrangement (a "**TSA**") with the Targets, pursuant to which the Putman Purchaser will agree to pay, reimburse or

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[2] For clarity, and for the avoidance of any doubt, the employment of the Transferring Employees will transfer to the Purchaser as of the Closing Date and the Purchaser shall be responsible for any and all employer duties, obligations, liabilities, losses, damages, costs, and expenses in respect of the employment of such Transferring Employees from and after the Closing Date, including but not limited to any vacation pay in relation to the Transferring Employees accrued (but not paid) prior to the Closing Date. Retail level employees currently employed at each of the Go-Forward Stores who: (a) are not offered employment by the Purchaser or (b) are offered employment with the Purchaser but do not accept such Offers (collectively, the "**Non Transferring Employees**") will continue to work at their respective Go-Forward Stores until their separation date; provided that the Purchaser shall not be responsible for (i) any termination or severance costs associated with such Non-Transferring Employees, or (ii) any other Employee Costs, in each case, unless otherwise expressly agreed to.

cover the following costs and expenses during the Transition Period, as set out in the Putman Term Sheet (the "**TSA Costs**"):

(i) all lease payments (including percentage rent, taxes, and common area maintenance costs, as applicable), utilities, maintenance, security and other operating costs relating to operating the Liquidating Stores;

(ii) all Employee Costs (as defined therein) for the retail level employees for the Liquidating Stores, together with all Employee Costs for any Non-Transferring Employees until the closure of the applicable Liquidating Store;

(iii) all shipping costs, freight, and duties associated with (i) any in-transit Target Merchandise and (ii) moving any Target Merchandise from the Liquidating Stores or the Warehouse to the Go-Forward Stores, or such other location as the Putman Purchaser may request;

(iv) any costs associated with credit card fees, banking fees and shared services costs relating to the IT and POS equipment, provided such amount shall not exceed a weekly cap amount to be agreed by the parties, acting reasonably, based on anticipated sales volumes;

(v) the costs associated with running the Parian Warehouse and the corporate overhead costs incurred by Parian related to the services provided by Parian to the Targets during the Transition Period provided that (i) such services will only be provided for an initial 30-day period, subject to up to three 30-day extensions upon no less than 10 days' advance written notice by the

Purchaser prior to expiration of the then applicable 30-day period, and (ii) the costs for each 30-day period will be subject to a maximum amount of $1.0 million. For any in-transit or other inventory that is received or handled by Parian after the expiry of the 30-day period, the Putman Purchaser shall pay Parian a handling fee at a price to be agreed to by the Targets and the Putman Purchaser, acting reasonably;

(vi) from and after the Closing Date, all costs associated with the Consulting Agreement associated with or related to the Liquidating Stores;

(vii) an allocation of the professional fees of the Monitor and the Monitor's counsel, based on the Liquidating Stores' share of sales, in comparison to the aggregate amount of sales of the Liquidating Stores, and the Bootlegger stores that remain in the CCAA proceedings; provided that, after the Closing Date, no share of the costs associated with the Applicants' legal counsel shall be allocated to the account of the Putman Purchaser; and provided further that any such amount to be payable by the Putman Purchaser shall not exceed an amount to be agreed to by the Targets and Purchaser acting reasonably; and

(viii) all sales or transfer taxes payable in connection with the TSA Costs;

(g) Cash proceeds from the sale of the Target Merchandise during the Transition Period, net of the TSA Costs, shall be property of the Putman Purchaser, and such cash proceeds shall constitute Purchased Assets;

(h) The Targets and the Putman Purchaser agree to work cooperatively to establish a schedule for the issuance of lease disclaimers for each of the Liquidating Stores with the intention of maximizing overall value and minimizing the TSA Costs; and

(i) During the period from the signing of the Putman Term Sheet through to the issuance of the proposed Approval and Vesting and DIP Assignment Order, and subject to the ARIO and the Realization Process Approval Order, each of the Targets agree to maintain the retail store leases in good standing, the Target Merchandise in good and salable condition, and the Target FF&E in good working condition.

20. The Putman Term Sheet provides that the Parties shall work diligently and in good faith to negotiate and settle the Putman APA (including the terms related to the Putman Purchaser's acquisition of the Purchased Assets and the TSA) and other ancillary agreements, which agreements will include the terms summarized in the Putman Term Sheet and such other representations, warranties, conditions, covenants, indemnities and other terms that are customary for transactions of this kind. As noted above, the Applicants intend to serve the Putman APA on the CCAA service list shortly after it has been executed and in advance of this motion.

21. The Putman APA will be subject to customary conditions, including (i) the Approval and Vesting and DIP Assignment Order being granted by this Court, in form and substance satisfactory to the Putman Purchaser; and (ii) any necessary approvals and third party consents relating to the Putman Transaction and the Purchased Assets being obtained or otherwise addressed in the Approval and Vesting and DIP Assignment Order.

22. The parties anticipate completing the Putman Transaction by February 7, 2025 (or otherwise extended by the Putman Purchaser in writing, up to a maximum of ten (10) days, beyond which any further extension will require the consent and agreement of the Targets) (the "**Closing Date**").

23. The Monitor has advised the Applicants that it is supportive of each of Ricki's and cleo entering into the Putman Term Sheet and negotiating the Putman APA on the terms of the Putman Term Sheet. As of the date of this affidavit, the Applicants and the Monitor have not received any other binding offers to purchase the assets or business of the Targets.

(b) Section 11.3 Assignment of Leases for Go-Forward Stores

24. In the proposed Approval and Vesting and DIP Assignment Order, the Applicants are seeking to effect the assignment of the Assumed Leases for the Go-Forward Stores to the Putman Purchaser pursuant to section 11.3 of the CCAA.

25. The bespoke manner by which this is proposed to be accomplished is as follows:

(a) The Putman Purchaser has prepared a list of the Go-Forward Stores in respect of which it wishes to designate the applicable lease, occupancy agreement, licence or other agreement giving cleo and/or Ricki's the right to occupy premises (the "**Eligible Lease List**") as an Assumed Lease under the Putman Transaction (the "**Eligible Leases**"). The Eligible Lease List is attached hereto as **Exhibit "D"**.

(b) As soon as possible after service of the motion record for this motion, the Putman Purchaser intends to send written notice to each of the landlords on the Eligible Lease List setting out the terms pursuant to which the Putman Purchaser would be prepared to assume the applicable Eligible Lease and requiring that an agreement

between the Putman Purchaser and the applicable landlord be entered into prior by a specified date (the "**Cure Cost Deadline**").

(c) In order for an Eligible Lease to become an Assumed Lease (and therefore subject to assignment under section 11.3 of the CCCA), either (i) the Putman Purchaser must have provided written confirmation to the Monitor that it will satisfy the cure costs and other lease terms in respect of the Assumed Lease; or (ii) the Putman Purchaser and the applicable landlord must have provided written confirmation to the Monitor that they have reached consensual arrangements with respect to cure costs, other lease terms and the assignment of such leases and other documents, in each case Cure Cost Deadline.

(d) At present, all Eligible Leases on the Eligible Lease List are included in the draft Approval and Vesting and DIP Assignment Order. However, only Eligible Leases that have met the above criteria by the Cure Cost Deadline shall be included on Schedule "1" to the Monitor's Certificate.

(e) Upon delivery of the executed Monitor's Certificate to the Putman Purchaser, the Targets and the DIP Lender, the leases listed on Schedule "1" will become "Assumed Leases" and assigned to the Putman Purchaser pursuant to section 11.3 of the CCAA.

26. The use of section 11.3 of the CCAA in this manner was designed by the Applicants and the Putman Purchaser, with input from the Monitor, in order to increase efficiency and convenience to all parties. As noted above, the Putman Transaction is being advanced on a compressed timeline to prevent further erosion of the Target Merchandise through the Sale, and to minimize other costs to the estate. The Applicants and the Monitor are of the view that the

process described herein is reasonable in the circumstances and will provide a fair and expeditious process for the assignment of Assumed Leases to the Putman Purchaser. The process ensures that a lease will only be assigned to the Putman Purchaser in circumstances where the Putman Purchaser has agreed to pay the cure costs in respect of such lease or has otherwise reached consensual arrangements with the applicable landlord. For clarity, the Applicants have no obligation under the Putman Term Sheet to seek to assign an Eligible Lease to the Putman Purchaser on an opposed basis and the purchase price payable by the Putman Purchaser is not dependent on the number of Assumed Leases ultimately assigned to the Putman Purchaser.

(c) Approval of the Putman Transaction

27. As noted above, the Putman Transaction is the only executable going concern transaction or restructuring alternative that has been identified for the Ricki's and cleo assets under the process set out in the ARIO.

28. The Putman Transaction provides significant benefits to the Applicants' stakeholders. Among other things:

(a) the operations of each of Ricki's and cleo will be preserved and will continue to operate as a going concern business, though with a reduced operating footprint;

(b) the Putman Transaction is supported by the DIP Lender and ParentCo, the most significant stakeholders of the Applicants in these CCAA proceedings;

(c) the Putman Transaction will preserve employment for Transferring Employees with each of Ricki's and cleo;

(d) the majority of contracts with vendors, trade creditors and other counterparties will continue in the normal course for the benefit of all parties thereto; and

(e) on closing, limited matters relating to Ricki's and cleo will remain for the administration and wind-down of the CCAA proceedings.

29. I am advised that the Monitor supports the proposed Putman Transaction, and the Applicants' request for the Approval and Vesting and DIP Assignment Order. The Monitor's views and recommendations with respect to the Putman Transaction will be set forth in the Second Report of the Monitor, to be filed.

C. Sale of Remaining Business

30. As noted above, the proposed Putman Transaction is limited to certain assets of Ricki's and cleo. As such, during the course of negotiating the Putman Term Sheet, the Applicants and the Monitor were concurrently considering whether and how best to pursue a transaction involving the remaining business or assets of the Applicants which are not included in the Putman Transaction (the "**Remaining Business**"), including a transaction that could potentially preserve some or all of the Bootlegger business as a going concern. As part of this consideration, the Applicants reached out to ParentCo to determine whether it, or one of its affiliates, might be interested in acquiring the Bootlegger business and the rest of the Remaining Business (including its tax attributes) and, if so, whether it would be prepared to act as a stalking horse bidder in any sale process conducted in respect of same. ParentCo advised the Applicants that its affiliate, WarehouseOne, was interested in the opportunity and, following additional discussions, WarehouseOne indicated that it was willing to act as a stalking horse bidder.

31. The Applicants, in consultation with the Monitor, subsequently engaged in negotiations with WarehouseOne which, as described in greater detail below, ultimately culminated in the entering into a term sheet with WarehouseOne (the "**Stalking Horse Term Sheet**"). At the same time, the Applicants and the Monitor worked to develop an expedited sales process (the "**Sales Process**") to solicit interest in the Remaining Business, as set out in the Process Letter, the purpose of which is to determine whether a transaction more favourable to the transaction contemplated by the Stalking Horse Term Sheet may be identified and completed.

(a) Process Letter

32. In the proposed Stalking Horse Sale Process Approval Order, the Applicants are seeking approval of the form of Process Letter attached thereto as **Exhibit "E"**. The Process Letter has been drafted by the Monitor, with input from the Applicants, pursuant to paragraph 12(f) of the ARIO. The Process Letter will be sent to parties known to the Applicants and/or the Monitor as having interest, or potentially having interest, in the Remaining Business. Among other things, the Process Letter provides (i) an update on the Putman Term Sheet; (ii) a summary of the Stalking Horse Term Sheet; (iii) information with respect to the submission of a bid for the Remaining Business; and (iv) certain key milestones that have been established pursuant to the Process Letter.

33. As outlined in the Process Letter, the proposed Sales Process is structured on an expedited timeline. The Process Letter states that interested parties wishing to pursue a transaction for (a) the business or assets of Bootlegger, and/or (b) the remaining assets of cleo and Ricki's available after the Putman Transaction (the "**Remaining Ricki's/cleo Assets**") must (i) execute a standard form of confidentiality agreement; and (ii) prepare and submit a non-binding expression of interest ("**EOI**") by no later than 5:00 p.m. on February 20, 2025 (the

"**EOI Bid Deadline**"). Parties who sign the confidentiality agreement will be provided with access to a virtual data room.

34. In order to be a Qualified Bidder (as defined in the Process Letter) in relation to the assets subject to the Stalking Horse Transaction, the purchase price must provide cash sufficient to pay in full upon closing: (i) the Stalking Horse Purchase Price (as defined in the Process Letter); (ii) an incremental overbid amount of $100,000; and (iii) an administrative reserve to wind-down the CCAA proceedings in an amount to be discussed with the Monitor. There is no minimum bid amount in relation to the Remaining Ricki's/cleo Assets that are not purchased assets pursuant to the Stalking Horse Transaction. The Stalking Horse Purchaser is deemed to be a Qualified Bidder for the purposes of the Sales Process.

35. If one or more Qualified Bidders (in addition to the Stalking Horse Purchase Agreement) are identified in the Sales Process, the Monitor, in consultation with the Applicants, will establish a process and timing for the selection of the Successful Bid (defined below), which may (but is not required to) include an auction process. The Monitor will communicate the process timing and requirements to the Qualified Bidders. Any Successful Bid identified in the Sales Process (including the Stalking Horse Transaction, as applicable) will be subject to approval by the Court.

36. The Process Letter sets out the following key milestones in the Sales Process, which can be extended or modified by the Monitor in its discretion:

(a) January 30, 2025: Formal Commencement of the Sales Process

(b) February 20, 2025: EOI Bid Deadline

(c) February 28, 2025: Selection of the "**Successful Bid**"

(d) April 21, 2025: Outside date for closing of the transaction

37. The Applicants and the Monitor are of the view that the milestone dates set out in the Process Letter are reasonable in the circumstances, given that (i) the Sale is proceeding and, with each passing day, there is less Bootlegger inventory to include in a Going Concern Transaction involving the Remaining Business; (ii) the Applicants do not have sufficient liquidity under the Cash Flow Forecast to run a lengthier sales process; and (iii) it is a condition of the Stalking Horse Term Sheet that any sales process not exceed 30 days in duration.

38. The Process Letter sets out the following bid requirements for any EOI submitted:

(a) Describe the proposed transaction structure, including an indication of (i) which of the Remaining Business the bidder is proposing to acquire or invest in; and (ii) whether the proposed transaction is to be implemented by way of an "asset vesting order", "reverse vesting order" or an alternative structure;

(b) State the cash consideration which the bidder would be prepared to pay and the valuation methodology used, including any working capital assumptions

(c) Include details on the identity of the proposed purchaser, including background and financial information and advisors that have been or are expected to be retained by the proposed purchaser;

(d) Include information about the intended sources and quantum of equity and debt financing for the transaction, evidence of the availability of such financing and details on any actions the bidder has taken to date to obtain funding commitment(s);

(e) Describe the strategic rationale for the bidder's interest in Bootlegger and/or the Comark Group and their plans for the business going forward, including employment offers;

(f) Describe the level of review and approval of the EOI presented;

(g) Set out any conditions to closing that the bidder wishes to impose or any other terms and conditions required to complete the proposed transaction;

(h) Outline any due diligence requirements the bidder would require to submit a binding proposal and the timeframe for remaining due diligence; and

(i) Confirm that the bidder will bear its own costs and expenses in connection with the EOI and proposed transaction.

39. The Monitor and the Applicants are of the view that the Sales Process articulated in the Process Letter will fairly and adequately canvass the market for interest in the Remaining Business. Based on my knowledge of the Remaining Business, I am of the view that the timelines and bid requirements set out in the Process Letter are fair, reasonable and appropriate in the circumstances, and provide sufficient time to allow interested parties to participate in the Sales Process, while also limiting the degradation of the value of the Bootlegger inventory, and therefore the Remaining Business, through the Sale.

(b) Stalking Horse Term Sheet

40. As described above, following negotiations, the Applicants and the Stalking Horse Purchaser entered into the Stalking Horse Term Sheet on January 28, 2025. In the proposed Stalking Horse Sale Process Approval Order, the Applicants are seeking approval of the Stalking

Horse Term Sheet and the authorization and direction to enter into a Stalking Horse Purchase Agreement substantially on the terms set out in the Stalking Horse Term Sheet. A copy of the Stalking Horse Term Sheet is attached hereto as **Exhibit "F"**.[3] The outside date for closing of this transaction (the "**Stalking Horse Transaction**"), if the Stalking Horse Transaction is selected as the Successful Bid in the Sales Process, is April 21, 2025.

41. The Stalking Horse Term Sheet sets out the key terms, conditions and timetable under which the Stalking Horse Purchaser will acquire the Bootlegger business, together with the tax attributes of the Comark Group and certain other related assets. Pursuant to the Stalking Horse Term Sheet, the Stalking Horse Purchaser expects to implement the Stalking Horse Transaction by purchasing 100% of the shares (or other equity ownership interests) of Bootlegger and/or one or more of the other members of the Comark Group (or their successor(s) by way of amalgamation or otherwise) (the "**Acquired Shares**") and the Retained Assets (defined below) through a reverse vesting transaction ("**ARVO Transaction**") in accordance with an approval and reverse vesting order ("**ARVO**"). The Stalking Horse Purchaser may, as a condition of closing, require that corporate steps be taken to effect the acquisition in a tax efficient manner and to acquire the Comark Group's tax attributes.

42. The Stalking Horse Purchaser has advised that it is not prepared to proceed with a transaction involving the Remaining Business on an "asset sale" only basis.

43. Key terms of the Stalking Horse Term Sheet include the following:

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[3] All terms not defined herein are defined in the Stalking Horse Term Sheet. The below is intended to be a summary of the Stalking Horse Term Sheet only. Reference should be had to the Stalking Horse Term Sheet for the complete terms set out therein.

(a) a purchase price calculated as follows (the "**Stalking Horse Purchase Price**"):

(i) an amount (the "**Cash Amount**") equal to the Outstanding Senior Secured Indebtedness[4] then outstanding on the closing date of the Stalking Horse Transaction (the "**Stalking Horse Closing Date**"), plus

(ii) an amount equal to the Retained Liabilities (defined below);

(b) the Stalking Horse Purchaser will satisfy the Stalking Horse Purchase Price through (i) a cash payment in the Cash Amount; and (ii) retention of the Retained Liabilities;

(c) the "**Retained Assets**" will include the following assets as at the Stalking Horse Closing Date:

(i) all inventory and merchandise owned by Bootlegger wherever located, including all inventory and merchandise located within any and all of their respective leased locations in Canada (the "**Bootlegger Stores**") and any owned inventory and merchandise, as may be located at the Parian Warehouse in transit to the Bootlegger Stores, or located at or in transit to the Parian Warehouse to be delivered to the Bootlegger Stores (collectively, the "**Bootlegger Merchandise**"), including any inventory and merchandise currently held or stored on any vessels or ships or at port in the possession and control of Bootlegger or its agents;

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[4] "**Outstanding Senior Secured Indebtedness**" is comprised of the total remaining amounts owing to CIBC (or any assignee thereof) under the DIP Facility, the CIBC Revolving Loan Facility and the CIBC Term Loan Facility (for greater certainty excluding the BCAP Facility), including principal, interest and Lender Expenses (as defined in the DIP Term Sheet). The Second Report of the Monitor will include the forecasted quantum of the Outstanding Senior Secured Indebtedness on the Stalking Horse Closing Date and the quantum will be communicated to interested parties through the Sales Process.

(ii) all FF&E located in the Bootlegger Stores;

(iii) all intellectual and industrial property owned by Bootlegger;

(iv) Bootlegger's cash, prepaid assets and deposits;

(v) certain of the Comark Group's retail real property leases, to be confirmed by the Stalking Horse Purchaser no less than three (3) days prior to the Stalking Horse Closing Date (the "**Acquired Leases**" and the applicable retail stores at such leased locations, the "**Going Concern Stores**"), provided, however, that the Stalking Horse Purchaser agrees to retain no less than 25 such leases;

(vi) such assets of Comark designated by the Stalking Horse Purchaser no less than three (3) days prior to the Stalking Horse Closing Date; and

(vii) the Comark Group's tax losses and other attributes, as determined by the Stalking Horse Purchaser;

(d) the "**Excluded Assets**" include all Target Merchandise sold under the Putman APA, all Comark Group leases other than the Acquired Leases, and any other designated assets as may be designated by the Stalking Horse Purchaser prior to the Stalking Horse Closing Date;

(e) the "**Retained Liabilities**" include only the following liabilities (which the Stalking Horse Purchaser is prepared to retain), with all other liabilities being "**Excluded Liabilities**" under the ARVO Transaction:

(i) liabilities from and after Stalking Horse Closing Date under all of the Acquired Leases, including the assumption or retention of any outstanding amounts of rent or other amounts outstanding under the Acquired Leases unless waived by the applicable landlord;

(ii) liabilities to the Retained Employees (as defined below), including obligations for wages, salaries, employee benefits and accrued vacation pay in respect of such employees from and after the Stalking Horse Closing Date;

(iii) all liabilities owed by Comark to ParentCo under the ParentCo Loan Agreement (defined in the First Kassam Affidavit) and such other intercompany liabilities as the Stalking Horse Purchaser may determine; and

(iv) all liabilities of Comark to persons set out in Appendix "A" of the Stalking Horse Term Sheet;

(f) except as otherwise agreed by the Stalking Horse Purchaser and Bootlegger, the Stalking Horse Purchaser (through Bootlegger and/or one or more of the other members of the Comark Group) will retain all retail employees at the Going Concern Stores and certain divisional employees to be determined prior to the Stalking Horse Closing Date (the "**Retained Employees**") on substantially the same terms and conditions. All other employees of the Comark Group will be terminated prior to the Stalking Horse Closing Date and all related liabilities and claims will be transferred to ResidualCo (as defined below);

(g) the Stalking Horse Purchaser is willing to act as a stalking horse purchaser in the Sales Process for the Remaining Business established by the Monitor, on terms and conditions acceptable to the Stalking Horse Purchaser and not to exceed 30 days in duration;

(h) the completion of the Stalking Horse Transaction is subject to the following conditions, among other things:

(i) negotiation of definitive documents (the "**Definitive Documents**") on the terms set out in the Stalking Horse Term Sheet and such other representations, warranties, conditions, covenants, indemnities and other terms that are customary for transactions of this kind;

(ii) Bootlegger and/or one or more of the other members of the Comark Group not having any liabilities on the closing of the ARVO Transaction other than the Retained Liabilities;[5]

(iii) an ARVO granted by this Court acceptable to the Stalking Horse Purchaser, confirming that (i) all Excluded Liabilities have been expunged; and (ii) all Excluded Liabilities and Excluded Assets have vested in a company to be incorporated and added to the CCAA proceedings as an applicant ("**ResidualCo**");

(iv) achievement of the following milestones:

[5] For clarity, the BCAP Facility (to the extent it remains outstanding at Closing) and any related liabilities and claims (including through subrogation or otherwise) will be Excluded Liabilities.

(A) Court Approval of Stalking Horse Term Sheet: no later than February 4, 2025:

(B) Commencement of Sales Process: no later than February 4, 2025;

(C) Execution of Definitive Documents: no later than February 18, 2025;

(D) Bid Deadline for Sales Process: March 6, 2025;

(E) Granting of the ARVO: no later than March 21, 2025; and

(F) Stalking Horse Closing Date: no later than April 21, 2025

(v) closing of the Putman Transaction, as described above, and the TSA executed, substantially on the terms of the Putman Term Sheet, in each case by no later than February 17, 2025;

(vi) concurrent with the closing of the Putman Transaction, ParentCo shall have acquired and taken an assignment of the Outstanding Senior Secured Indebtedness and related security and other documentation (other than the BCAP Facility, which is the subject of a Business Credit Availability Program ("**BCAP**") guarantee provided by Export Development Canada ("**EDC**") and such guarantee, the "**BCAP Guarantee**", and other documentation related solely to the BCAP Facility) as at such date, and ParentCo shall have paid in full to CIBC an amount equal to the Outstanding Senior Secured Indebtedness then outstanding as of the closing of the Putman Transaction. The documentation shall, among other things, (i)

include a requirement for satisfactory evidence that EDC will, on closing of the Pre-Filing Credit Assignment and Assumption Agreement, waive any subrogation rights (which requirement has already been met and provided to the Stalking Horse Purchaser), (ii) provide that CIBC remains as administrative agent under the amended and restated credit agreement dated as of September 9, 2024, solely with respect to the BCAP Facility to the extent required to facilitate reimbursement to CIBC under the BCAP Guarantee and otherwise transfer and assign to 9383921 Canada Inc. all rights of the administrative agent and security agent under such credit agreement, and (iii) provide that (a) following closing of the assignment, the BCAP Facility will be unsecured, and (b) upon payment by EDC to CIBC under the BCAP Guarantee, the BCAP Facility will be terminated;

(vii) completion of a pre-Closing reorganization of the Comark Group pursuant to which the Comark Group would amalgamate into the "**Stalking Horse Target**";

(viii) consent of the board of the Stalking Horse Purchaser and any other necessary approvals and third-party consents relating to the Stalking Horse Transaction; and

(ix) the Stalking Horse Target not having any liabilities other than the Retained Liabilities upon completion of the ARVO Transaction;

(c) Approval of the Sales Process and Stalking Horse Bid

44. The Applicants are requesting that the proposed Stalking Horse Sale Process Approval Order be granted by this Court, and that the Applicants be authorized to negotiate and enter into the Stalking Horse Purchase Agreement in accordance with the terms of the Stalking Horse Term Sheet and the proposed Stalking Horse Sale Process Approval Order.

45. The Applicants are of the view that conducting the Sales Process, supported by the inclusion of the Stalking Horse Transaction, is both necessary and appropriate in the circumstances, as it will help demonstrate that good faith efforts have been made by the Applicants to sell or otherwise dispose of the assets of the Remaining Business to persons who are not related parties (in the event that a superior transaction does not emerge through the Sales Process), or it will identify a superior transaction for the Remaining Business which will maximize value for the benefit of all stakeholders, in either case ensuring a going concern outcome for some or all of the Bootlegger business.

D. Assignment and Assumption of Debt and Security

46. As noted above, it is a condition of the Stalking Horse Term Sheet that, (a) concurrent with the closing of the Putman Transaction, ParentCo shall have acquired and taken an assignment of the Outstanding Senior Secured Indebtedness and related security documentation (other than the BCAP Facility) as at such date, and shall have paid in full to CIBC an amount equal to the Outstanding Senior Secured Indebtedness then outstanding as of the closing of the Putman Transaction; and (b) upon payment to CIBC by EDC pursuant to the BCAP Guarantee, the BCAP Facility shall terminate.

47. To that end, on January 29, 2025, CIBC, as Assignor, and ParentCo, as Assignee, agreed to two substantially similar agreements – one regarding the assignment and assumption of the CIBC Revolving Loan Facility, the CIBC Term Loan Facility and related security from CIBC to ParentCo (the "**Pre-Filing Credit Assignment and Assumption Agreement**") and one regarding the assignment and assumption of the DIP Facility and related security from CIBC to ParentCo (the "**DIP Assignment Agreement**" and together with the Pre-Filing Credit Assignment and Assumption Agreement, the "**Assignment and Assumption of Debt and Security Agreements**"). Copies of the Assignment and Assumption of Debt and Security Agreements are attached to this affidavit as **Exhibit "G"** and **"H"**, respectively.

48. The Assignment and Assumption of Debt and Security Agreements attached hereto are final other than the Payment Amount and the Principal Amount Assigned (each as defined in the Assignment and Assumption of Debt and Security Agreements). The amount of the Outstanding Senior Secured Indebtedness (and therefore the Payment Amount and the Principal Amount Assigned) changes daily as the liquidation proceeds from the Sale are received, such that it is not possible to calculate what the Outstanding Senior Secured Indebtedness will be on the Effective Date (defined below) at this time. The signatures of CIBC and ParentCo are currently held in escrow. The Parties confirmed their intent to release signatures from escrow upon agreement regarding the Payment Amount and the Principal Amount Assigned on the Effective Date, with such signatures becoming effective upon delivery of the Monitor's Certificate.

49. The Assignor's rights and obligations under the Assigned Facilities (as defined in the Assignment and Assumption of Debt and Security Agreements) will be irrevocably assigned to the Assignee following receipt by CIBC of the Payment Amount, with such assignment becoming effective only upon delivery of the Monitor's Certificate (the "**Effective Date**").

50. In connection with this assignment, the Assignee (i) shall be vested with the all the rights, powers, privileges and duties of the Assignor; and (ii) take assignment of all claims, suits, causes of action and any other right of the Assignor in relation to the Assigned Facilities (as permitted by applicable law). Except as otherwise set out in the Assignment and Assumption of Debt and Security Agreement, on the Effective Date, the Assignor is discharged from its duties and obligations under the Assigned Facilities. The Assignee shall have no liability or responsibility for actions taken or omissions by the Assignor prior to the Effective Date.

51. Under the proposed structure, and in accordance with the DIP Term Sheet, the Applicants will use the proceeds from the Putman Transaction to pay down (i) first, the CIBC Revolving Loan Facility, in full, (ii) second, the DIP Facility, with any proceeds from the Putman Transaction that remain once the CIBC Revolving Loan Facility is paid in full, and (iii) third, the CIBC Term Loan Facility, with any proceeds from the Putman Transaction that remain once the DIP Facility is paid in full. Concurrently, ParentCo will take assignment of the Outstanding Senior Secured Indebtedness, which will include any outstanding amounts under the CIBC Revolving Loan Facility, the CIBC Term Loan Facility and the DIP Facility (as reduced by the proceeds of the Putman Transaction) and shall pay CIBC an amount equal to the Outstanding Senior Secured Indebtedness.[6] Through this assignment, CIBC (both in its role as existing DIP Lender and as the Applicants' senior secured lender) will, in effect, be repaid in full (with the exception of the BCAP Facility) and the Applicants' Outstanding Senior Secured Indebtedness will now be owed to ParentCo. If selected as the Successful Bid and approved by the Court, the

[6] The CIBC Term Loan Facility will be retired by application of the cash collateral held by CIBC under the existing cash collateral agreement as between ParentCo and CIBC dated August 7, 2020.

proceeds from the Stalking Horse Transaction will then be used to repay such indebtedness now owing to ParentCo.

(a) DIP Assignment and Assumption Approval

52. As part of the Approval and Vesting and DIP Assignment Order, the Applicants are requesting that they be authorized and empowered to execute and deliver or make amendments to such documents as may be reasonably required in connection with the Assignment and Assumption of Debt and Security Agreements. I am advised by the Monitor and believe that the Monitor and CIBC, in its current capacity as DIP Lender, support the Approval and Vesting and DIP Assignment Agreement.

SWORN BEFORE ME over videoconference this 30th day of January, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely. The affiant is located in the City of Vancouver, in the Province of British Columbia, while the commissioner is located in the City of Toronto, in the Province of Ontario.

Commissioner for Taking Affidavits
(or as may be)

Sierra Farr (LSO#87551D)

Shamsh Kassam

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.

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

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AFFIDAVIT OF SHAMSH KASSAM

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Lawyers for the Applicants

This is Exhibit "D" referred to in the Affidavit of SHAMSH KASSAM sworn by SHAMSH KASSAM of the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on May 8, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

SIERRA FARR

(LSO# 87551D)

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

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., 9376208 CANADA INC. AND 10959367 CANADA INC.

APPLICANTS

AFFIDAVIT OF SHAMSH KASSAM
(Sworn March 14, 2025)

I, Shamsh Kassam, of the City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY:

1. I currently serve as Chief Executive Officer ("**CEO**") of Comark Holdings Inc. ("**Comark**"), Vice President of each of its subsidiaries, 10959367 Canada Inc. (formerly, Ricki's Fashions Inc.) ("**Old Ricki's**"), 9376208 Canada Inc. (formerly, cleo fashions Inc.) ("**Old cleo**") and Bootlegger Clothing Inc. ("**Bootlegger**") (together with Comark, the "**Applicants**" or the "**Comark Group**"), and a director of each of the Applicants. I am also a director and/or officer of a number of affiliated companies in a broader corporate group, including the parent company of Comark, 9383921 Canada Inc. ("**ParentCo**"), Warehouse One Clothing Ltd. ("**WarehouseOne**"), and others. As such, I have personal knowledge of the matters deposed to in this affidavit. Where I have relied on other sources of information, I have specifically referred to such sources and believe them to be true. In preparing this affidavit, I have consulted with legal, financial and other advisors to the Applicants and other members of the senior management teams of the Applicants. The Applicants do not waive or intend to waive any applicable privilege by any statement herein.

2. This affidavit is made in support of a motion by the Applicants for an approval and reverse vesting order (the "**ARVO**"), among other things:

(a) approving a purchase agreement (the "**Purchase Agreement**") among Comark, Old Ricki's, Old cleo, and Bootlegger (each, a "**Comark Entity**" and collectively, the "**Comark Entities**"), ParentCo, as vendor (the "**Vendor**"), and 16751598 Canada Inc., as purchaser (the "**Purchaser**"), dated February 17, 2025, and the transactions contemplated therein (the "**Transaction**"), pursuant to which the Purchaser will receive a conveyance of all of the issued and outstanding shares of Comark (the "**Purchased Shares**") through a reverse vesting transaction in accordance with the terms of the Purchase Agreement;

(b) upon delivery by the Monitor of a certificate (the "**Monitor's Certificate**") to the Vendor and Purchaser in accordance with the Purchase Agreement:

(i) adding 2688182 Alberta Inc. ("**ResidualCo**") as an Applicant to these CCAA proceedings;

(ii) transferring and vesting all of the Applicants' right, title and interest in and to the Excluded Assets, the Excluded Contracts and the Excluded Liabilities (each as defined below) in and to ResidualCo;

(iii) releasing and discharging the Applicants and the Retained Assets (defined below) from the Excluded Contracts and the Excluded Liabilities, and from any and all Claims and Encumbrances other than the Retained Liabilities and Permitted Encumbrances (each as defined in the Purchase Agreement);

(iv) establishing the Wind-Down Reserve (defined below) and, if applicable, any reserve amount(s) established pursuant to arrangements made under the Purchase Agreement, to be held by the Monitor free and clear of any Claims and Encumbrances;

(v) upon payment of the Closing Payment (as defined in the Purchase Agreement), which includes payment of an amount equal to the Outstanding Senior Secured Indebtedness (as defined in the Purchase Agreement) outstanding at the Closing Time, irrevocably extinguishing and cancelling the Outstanding Senior Secured Indebtedness and the Senior Secured Debt Documents (as defined in the Purchase Agreement) and releasing and discharging the Applicants, the Retained Assets, the Purchased Shares and the Vendor from all Claims and Encumbrances relating to the Outstanding Senior Secured Indebtedness and the Senior Secured Debt Documents;

(vi) transferring and vesting all of the Vendor's right, title and interest in and to the Purchased Shares in and to the Purchaser, free and clear of and from any and all Claims and Encumbrances (excluding the Retained Liabilities and Permitted Encumbrances); and

(vii) discharging Comark, Bootlegger, Old Ricki's and Old cleo as Applicants to these proceedings;

(c) granting certain related relief in accordance with the ARVO; and

(d) declaring that, pursuant to subsections 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act*, SC 2005, c 47, s 1 ("**WEPPA**"), effective as of (i) in the

case of Old Ricki's and Old cleo, May 1, 2025, and (ii) in the case of Bootlegger, the Effective Time (as defined in the ARVO), such corporations meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 (the "**WEPP Regulation**"), and, on and from the applicable effective date, their former employees are individuals to whom the WEPPA applies.

3. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise, and do not represent amounts or measures prepared in accordance with ASPE or US GAAP.

4. This affidavit is organized in the follow sections:

A. Overview of the Applicants' Activities since the Previous Motion

5. On January 7, 2025, Comark, Bootlegger, Old Ricki's and Old cleo were granted protection under the *Companies' Creditors Arrangement Act, R.S.C., 1985*, c. C-36 (the "**CCAA**") pursuant to an initial order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**").

6. The Initial Order, among other things, (i) appointed Alvarez & Marsal Canada Inc. as monitor within these CCAA proceedings (the "**Monitor**"); (ii) granted a stay of proceedings against the Applicants, the Monitor, and their respective employees, directors, advisors, officers and representatives acting in such capacities for an initial 10-day period (the "**Initial Stay Period**"); (iii) authorized the Applicants to borrow from Canadian Imperial Bank of Commerce ("**CIBC**"), as interim lender (in such capacity, the "**Interim Lender**"), under the Applicants' existing revolving facility (the "**CIBC Revolving Loan Facility**"), to fund the Applicants' working capital requirements and other general corporate purposes, and the costs of these proceedings during the Initial Stay Period, subject to certain conditions; (iv) authorized, but did not require, the Applicants to pay certain pre-filing amounts, with the consent of the Monitor and the Interim Lender, consistent with the Cash Flow Forecast (as defined in the First Kassam Affidavit (defined below)) or otherwise agreed to with the Interim Lender; and (v) granted priority charges over the Property.

7. In support of the application for the Initial Order, I swore an affidavit dated January 6, 2025 (the "**First Kassam Affidavit**"), which described, among other things, the events leading to the Applicants' insolvency and their urgent need for relief under the CCAA. A copy of the First Kassam Affidavit (without exhibits) is attached hereto as **Exhibit "A"**. In support of the relief sought at the comeback hearing held on January 17, 2025 (the

"**Comeback Hearing**"), I swore an affidavit dated January 16, 2025 (the "**Second Kassam Affidavit**"). A copy of the Second Kassam Affidavit (without exhibits) is attached hereto as **Exhibit "B"**. In support of the relief sought at the most recent motion held on February 4, 2025 (the "**February 4 Hearing**"), I swore an affidavit dated January 30, 2025 (the "**Third Kassam Affidavit**"). A copy of the Third Kassam Affidavit (without exhibits) is attached hereto as **Exhibit "C"**. Capitalized terms not otherwise defined herein have the meanings given to them in the First Kassam Affidavit, the Second Kassam Affidavit and/or the Third Kassam Affidavit, as applicable.

8. At the Comeback Hearing, this Court granted the Amended and Restated Initial Order (the "**ARIO**"), among other things, (i) extending the stay of proceedings to May 15, 2025; (ii) authorizing the Applicants to enter into the DIP Term Sheet in the maximum principal amount of $18 million and granting the DIP Lender's Charge; (iii) authorizing the Applicants, with the support of the Monitor and the DIP Lender, to pursue offers for or avenues of restructuring, sale or reorganization of the Comark Group business or assets, in whole or in part; (iv) approving the form of Merchandise Transfer Agreement, authorizing the Applicants and the Monitor to enter Merchandise Transfer Agreements with Overseas Vendors and perform their respective obligations under any Merchandise Transfer Agreement, and authorizing and approving any Merchandise Transfer Agreement executed by the Monitor and the Applicants prior to January 17, 2025; and (v) increasing the maximum amount secured by the Administration Charge to $1 million and the maximum amount secured by the Directors' Charge to $7.4 million.

9. At the Comeback Hearing, this Court also granted the Realization Process Approval Order, among other things, (i) approving a consulting agreement between the Applicants

and Tiger Asset Solutions Canada, ULC (the "**Consultant**"), under which the Consultant acted as exclusive consultant for the purpose of conducting a sale (the "**Sale**") of the Retail Entities' Inventory and FF&E (as defined in the Consulting Agreement); (ii) approving the proposed sale guidelines (the "**Sale Guidelines**") for the orderly realization of the Inventory and FF&E at the Applicants' Liquidating Stores; and (iii) authorizing the Applicants, with the assistance of the Consultant, to undertake the Sale in accordance with the terms of the Realization Process Approval Order, the Consulting Agreement and the Sale Guidelines.

10. Under the terms of the Consulting Agreement, the Consultant and the Applicants agreed that in the event that the Applicants identified one or more going concern transactions, including to any related party, for any of the Applicants' businesses or any portion thereof, the Applicants were entitled to remove any of the Applicants' Liquidating Stores from the Sale at any time prior to January 31, 2025 or upon giving 14-days written notice after January 31, 2025. The Applicants had the express right to terminate the Consulting Agreement in the event that they removed all of the Applicants' Liquidating Stores from the Sale.

11. At the February 4 Hearing, this Court granted the Approval and Vesting and DIP Assignment Order, among other things, (i) approving an asset purchase agreement (the "**Putman APA**") between Old cleo and Old Ricki's, as sellers, and 1001110197 Ontario Inc., as purchaser (the "**Putman Purchaser**"), pursuant to which the Putman Purchaser would acquire certain assets of the retail business of each of Old Ricki's and Old cleo, (ii) assigning certain leases of Old Ricki's and Old cleo to the Putman Purchaser pursuant to section 11.3 of the CCAA; (iii) approving the transfer and assignment of the DIP Facility and the DIP Lender's Charge from CIBC to ParentCo; and (iv) upon delivery of a monitor's

certificate confirming that the steps in the transaction noted above (the "**Putman Transaction**") had been completed, vesting all of Old Ricki's and Old cleo's rights, title and interest in and to the Purchased Assets, as defined in the Putman APA, to the Putman Purchaser; (v) directing a distribution of the cash proceeds of the Putman APA to CIBC, in its capacity as DIP Lender, as a mandatory repayment under the DIP Term Sheet; and (vi) amending the title of the CCAA proceedings, following the delivery of the Monitor's Certificate, to reflect the Old Ricki's and Old cleo numbered corporation names.

12. At the February 4 Hearing, this Court also granted the Stalking Horse Sale Process Approval Order, among other things (i) approving the process letter prepared by the Monitor (the "**Process Letter**") setting out the key milestones and bid requirements in respect of the remaining business or assets of the Applicants which are not included in the Putman Transaction (the "**Remaining Business**"); (ii) authorizing the Applicants and the Monitor to engage in a sales process in accordance with the terms of the Process Letter, provided that the result of such sales process would be subject to approval of this Court; (iii) authorizing the execution of a term sheet between the Applicants and a related entity (the "**Stalking Horse Term Sheet**") setting out the key terms, conditions and timetable under which the Stalking Horse Purchaser (as defined in the Stalking Horse Term Sheet) would acquire the Bootlegger business, together with the tax attributes of the Comark Group and certain other related assets through a reverse vesting transaction; (iv) approving the Stalking Horse Term Sheet to act as a stalking horse bid in accordance with the Process Letter; (v) authorizing and empowering the Applicants to negotiate and finalize the definitive Purchase Agreement; and (vi) requiring the Monitor to post a copy of the finalized Purchase Agreement to the Monitor's case website and the Applicants to provide a copy of the Purchase Agreement to the CCAA service list.

13. Since the granting of the Approval and Vesting and DIP Assignment Order and the Stalking Horse Sale Process Approval Order, the Applicants, in close consultation and with the assistance of the Monitor, have been working in good faith and with due diligence to, among other things:

(a) execute an amending agreement to the Consulting Agreement (the "**Amending Agreement**") between Bootlegger, Old cleo and Old Ricki's and the Consultant dated February 4, 2025;

(b) undertake the Sale, with the assistance of the Consultant, in accordance with the terms of the Realization Process Approval Order, the Consulting Agreement, the Amending Agreement and the Sale Guidelines;

(c) close the Putman Transaction in accordance with the terms of the Approval and Vesting and DIP Assignment Order (as described further below);

(d) disclaim the Old Ricki's and Old cleo leases that were not assigned to the Putman Purchaser through the Putman Transaction;

(e) terminate the Consulting Agreement in accordance with the terms of the Consulting Agreement and the Amending Agreement immediately prior to the date of the closing of the Putman Transaction;

(f) complete the corporate registrations and extra-provincial registrations to change the names of Old Ricki's and Old cleo to their respective underlying numbered corporation names;

(g) provide post-closing transition services to the Putman Purchaser under the terms of the Putman APA;

(h) negotiate and finalize the Purchase Agreement between the Purchaser, the Comark Group and the Vendor, as described and discussed below, and serve a copy on the service list for these CCAA proceedings; and

(i) negotiate lease amendments and assignment consents with the Purchaser and respective landlords of the Bootlegger locations that the Purchaser intends to retain pursuant to the Purchase Agreement.

B. Closing of Putman Transaction and Assignment of DIP Facility

14. As described above, at the February 4 Hearing, this Court granted the Approval and Vesting and DIP Assignment Order which, among other things, (i) approved the Putman APA and the Putman Transaction, (ii) provided for the transfer to and the vesting in the Putman Purchaser of all of the Vendors' right, title and interest in and to the Purchased Assets free and clear of any Claims and Encumbrances other than the Retained Liabilities and Permitted Encumbrances (each as defined in the Putman APA) upon the delivery of a monitor's certificate (the "**Putman Monitor's Certificate**"), and (iii) ordered the assignment of the Assumed Leases (as defined in the Third Kassam Affidavit) to the Purchaser pursuant to Section 11.3 of the CCAA upon delivery of the Putman Monitor's Certificate.

15. On February 19, 2025, the Putman Transaction closed, and the Monitor delivered the Putman Monitor's Certificate. As a result of this transaction:

(a) 61 leases were assigned from Old Ricki's and Old cleo to the Putman Purchaser. I also understand that the Putman Purchaser intends to continue to operate seven additional store locations under new leases with landlords of stores previously operated by Old Ricki's and Old cleo;

(b) approximately 455 former Old Ricki's and Old cleo employees accepted employment offers from the Putman Purchaser; and

(c) the Putman Purchaser paid a final Cash Purchase Price of $14,460,621.77.[1]

16. At the February 4 Hearing, the Applicants also described the process whereby ParentCo planned to take assignment of the Outstanding Senior Secured Indebtedness, including the DIP Facility. Such assignment of the rights and obligations of the DIP Lender was approved pursuant to the Approval and Vesting and DIP Assignment Order. On February 19, 2025, ParentCo and the Applicants' former senior secured lender, CIBC, confirmed that the Outstanding Senior Secured Indebtedness in the amount of approximately $2.65 million had been assigned to ParentCo in accordance with the Approval and Vesting and DIP Assignment Order and related assignment agreements.

17. Following the closing of the Putman Transaction, the Applicants issued, or will issue, notices to disclaim 86 leases that were not assigned to the Putman Purchaser, and have made arrangements to sell all of the remaining merchandise and FF&E, and exit each

[1] Pursuant to the Putman APA, the "**Cash Purchase Price**" was defined as an amount equal to $0.64 for each $1.00 of Merchandise constituting Purchased Assets on the Closing Date based on the Closing Merchandise Statement (each as defined in the Putman APA).

of these locations in a "broom swept" and clean condition (excluding the seven locations noted above that will continue to be operated by the Putman Purchaser under a new lease).

C. Sales Process

18. At the February 4 Hearing, this Court authorized and empowered the Applicants and the Monitor to engage in a sales process for the Remaining Business of the Comark Group (the "**Sales Process**") in accordance with the terms of the Process Letter.

19. The Court also approved the Stalking Horse Term Sheet to act as a stalking horse bid in accordance with the Process Letter and authorized and empowered the Applicants to negotiate and finalize the Purchase Agreement substantially on the terms set out in the Stalking Horse Term Sheet in respect of the Remaining Business. The Process Letter required that the parties participating in the Sales Process be provided with a copy of the Purchase Agreement once it was executed.

20. The Sales Process was structured on an expedited timeline, requiring interested parties to (i) execute a standard form of confidentiality agreement; and (ii) prepare and submit a non-binding expression of interest ("**EOI**") by no later than 5:00 p.m. on February 20, 2025 (the "**EOI Bid Deadline**"). Parties who signed the confidentiality agreement were to be provided with access to a virtual data room.

21. On January 30, 2025, the Monitor sent the Process Letter to 25 parties known to the Applicants and/or the Monitor as having interest, or potentially having interest, in the Bootlegger business and/or the Remaining Business. Following this date, additional parties also independently reached out to the Applicants and/or the Monitor to express their interest in the Bootlegger business and/or the Remaining Business. Of this group of potentially

interested parties, six parties executed the form of confidentiality agreement and received access to the Monitor's data room. However, none of these parties did substantial diligence or contacted the Monitor or the Applicants with substantive questions or additional information requests.

22. On February 17, 2025, the Applicants executed the Purchase Agreement and served it on the Service List and the Monitor posted a copy to the Monitor's case website.

23. The Applicants and the Monitor did not receive any EOIs in respect of the Remaining Business by the EOI Bid Deadline. As a result, the Purchase Agreement was the only Qualified Bid (as defined in the Process Letter). The Applicants, with the approval of the Monitor, proceeded to select the Purchaser as the successful bidder pursuant to the Process Letter.

24. The Transaction is the only going concern alternative for the Bootlegger business available to the Applicants, provides for the complete repayment of the remaining Outstanding Senior Secured Indebtedness that was acquired by ParentCo pursuant to the Approval and Vesting and DIP Assignment Order, and, in the view of the Applicants, is the best transaction in the circumstances.

D. The Transaction

25. To preserve accrued tax liabilities for the go-forward business, the Applicants have structured the Transaction as a reverse vesting transaction, whereby the Purchaser, a wholly-owned subsidiary of ParentCo and an affiliate of the Applicants, will acquire the shares of Comark. The go-forward business will continue to be operated in the ordinary course by

WarehouseOne, a men's and women's denim and apparel retailer currently operating over 100 locations across Canada.

26. As of the date of this affidavit, the Purchaser and Bootlegger have reached agreements in principle with the landlords of approximately 45 Retained Leases. It is the intention of the Purchaser that, following the Transaction, the stores corresponding to the Retained Leases will be operated by WarehouseOne, some of which will be converted to the WarehouseOne banner and some of which will continue to be operated under the Bootlegger banner (and some will be operated under both banners as a combo store). As discussed in further detail below, the Purchaser intends to reach consensual resolution and finalize documentation sometime before the Closing Time (as defined in the Purchase Agreement) with respect to the assignment of Retained Leases to WarehouseOne following closing and make offers of employment to the employees that work at the stores corresponding to the Retained Leases.

27. The parties intend to close the Transaction in April 2025, following the effective date of each of the lease disclaimers issued by the Applicants for the stores not assigned or assumed in connection with the Purchase Agreement or the Putman Transaction.

(a) The Purchase Agreement

28. Through the ARVO, the Applicants are seeking approval of the Transaction in accordance with the terms of the Purchase Agreement, whereby the Purchaser, a wholly owned subsidiary of ParentCo, will acquire substantially all of the Remaining Business through (i) a purchase of all issued and outstanding shares of Comark; and (ii) the transfer to ResidualCo of certain property, agreements and liabilities of, and certain claims and encumbrances against, the Comark Group that the Purchaser has determined not to retain.

29. The Transaction, contemplated in the Purchase Agreement, is a reverse vesting transaction and it is a condition to Closing that the Comark Group entities obtain an Order in the form of Schedule 1.1(g) of the Purchase Agreement that, among other things:

(a) adds ResidualCo as an Applicant to these CCAA Proceedings;

(b) transfers and vests the Excluded Assets, Excluded Contracts and Excluded Liabilities in ResidualCo;

(c) provides that the Comark Entities shall retain the Retained Assets and remain liable in respect of the Retained Contracts;

(d) vests the Vendor's right, title and interest in the Purchased Shares to Purchaser free and clear of any Claims and Encumbrances (other than the Retained Liabilities and Permitted Encumbrances (each as defined in the Purchase Agreement)); and

(e) removes Comark, Bootlegger, Old cleo and Old Ricki's as applicants in the CCAA Proceedings.

30. A copy of the Purchase Agreement is attached hereto as **Exhibit "D"**. All capitalized terms used in this subsection that are not otherwise defined in this affidavit shall have the meanings given to them in the Purchase Agreement. The Purchase Agreement is substantially on the same material terms as the Stalking Horse Term Sheet that was approved by this Court at the February 4 Hearing.

31. The Purchase Agreement provides for, among other things, the following:[2]

[2] The following high-level summary is qualified in its entirety by the Purchase Agreement. Capitalized terms not otherwise defined in this summary have the meanings ascribed to them in the Purchase Agreement.

(a) The Purchaser will purchase all of the issued and outstanding shares of Comark (the "**Purchased Shares**") for the following consideration (the "**Purchase Consideration**"):

(i) The "**Payment**":

(A) The Purchaser will pay to Vendor an amount equal to $1.00, and

(B) The Purchaser will pay, on behalf of Comark, by wire transfer to Vendor, cash in the amount of the Outstanding Senior Secured Indebtedness[3] outstanding at the Closing Time as repayment of the Outstanding Senior Secured Indebtedness.[4]

(ii) The Retained Liabilities: The Comark Group entities will retain the Retained Liabilities, as applicable.

(b) All of ParentCo's right, title and interest in and to the Purchased Shares shall vest absolutely and exclusively in, and to the extent applicable, be transferred to and assumed by the Purchaser free and clear of any and all Claims and Encumbrances (except for the Retained Liabilities and Permitted Encumbrances);

(c) Certain assets set out in the Purchase Agreement (the "**Excluded Assets**")[5] will be transferred to and vested in ResidualCo upon the closing of the Transaction, including:

(i) all "**Excluded Contracts**", which include the following:

(A) contracts related to Excluded Assets;

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[3] This refers to the remaining amounts owed by Comark to the Vendor under the DIP Term Sheet and the pre-filing Credit Agreement (excluding amounts owing under the BCAP facility) which were assigned to the Vendor by CIBC pursuant to the DIP Assignment Agreement and CA Assignment Agreement.

[4] This payment shall be made as a contribution of capital to Comark to be recorded as contributed surplus of Comark and paid to Vendor at the direction of Comark.

[5] At the time the Purchase Agreement was executed, which was prior to the closing of the Putman Transaction, "Excluded Assets" included all assets acquired by the Putman Purchaser, including the merchandise and inventory of Old Ricki's and Old cleo and certain of their leases. The Putman Transaction has now closed and, as such, these assets are no longer owned by Old Ricki's and Old cleo.

(B) Excluded Leases;[6] and

(C) all contracts of Old Ricki's and Old cleo, other than the Comark-Subsidiary Intercompany Loan Documents and Sponsor Loan Documents (each as defined below and described in the Purchase Agreement);

(ii) all assets of Old cleo, Old Ricki's and Comark which are not Retained Assets;

(iii) the Wind-Down Reserve (defined below); and

(iv) any reserve amount(s) established pursuant to an arrangement between the Purchaser and Vendor for the payment of accrued and unpaid vacation pay or statutory termination and severance entitlements to employees that are not Continuing Employees (defined below);

(d) All liabilities other than the Retained Liabilities (the "**Excluded Liabilities**") will be transferred to ResidualCo upon the closing of the Transaction, including all Liabilities:

(i) for Employee Costs or other Claims, including in respect of events or circumstances occurring prior to the Closing Time, against or owing by any Comark Entity to, or arising from or in connection with, any:

(A) Employee;

(B) other individual or entity formerly employed or engaged by any Comark Entity whose employment or engagement ended prior to the Closing Time; or

(C) other individual or entity to whom any Comark Entity has provided notice of termination of employment or engagement prior to the Closing Time;

(ii) arising from the conduct of the Business, the operation of the Retained Assets or the use of any Leased Real Property prior to the Closing Time;

(iii) in respect of trade payables;

[6] Excluded Leases include (i) all Leases of Old Ricki's and Old cleo; (ii) 25 Bootlegger leases across 6 provinces which have been disclaimed by the Comark Entities (as such list of Bootlegger leases may be updated in accordance with the Purchase Agreement); and (iii) any Leases that are added as Excluded Leases at least one day prior to Closing.

(iv) arising from or in connection with any Excluded Contracts which accrued before or after the date of the CCAA filing;

(v) relating to the Comark Group's Charitable Donations Program and Loyalty Program; and

(vi) arising from or in connection with any Excluded Assets;

(e) All Excluded Assets and Excluded Liabilities will be transferred to and vested in ResidualCo at the Closing Time and all claims and encumbrances against each Comark Entity and its respective business and property (other than the Retained Liabilities and Permitted Encumbrances) will be released;

(f) The Comark Entities shall retain the "**Retained Assets**", including (and in each case excluding any Excluded Assets):

(i) all of Bootlegger's property, assets and rights including, without limitation, cash, accounts receivable, inventory, and tangible personal property;

(ii) all the outstanding common shares of Bootlegger, Old cleo and Old Ricki's;

(iii) all books and records of the Comark Entities;

(iv) authorizations, approvals, licences or permits issued to the Vendor or Comark Entities by Governmental Authorities, except to the extent consent to change of control is required;

(v) the unused portion of amounts prepaid by or on behalf of any of the Comark Entities to any Person relating to the business carried on by Bootlegger and Comark or the Retained Assets;

(vi) Information Technology;

(vii) all intellectual property rights, whether registered or not, owned, used or held by Comark or Bootlegger;

(viii) Retained Contracts, which includes:

(A) the Retained Leases;

(B) intercompany loan documents among the Comark Entities (defined in the Purchase Agreement as the "**Comark-Subsidiary Intercompany Loan Documents**") and as between the Comark

Entities and Vendor (defined in the Purchase Agreement as the "**Sponsor Loan Documents**");

(C) all contracts between the Comark Group entities and Parian Logistics Inc. ("**Parian**"); and

(D) all insurance policies of the Comark Entities and related contracts;

(ix) inter-company receivables owing between Comark and its subsidiaries or between subsidiaries (and all Claims and Encumbrances relating thereto); and

(x) the right of the Comark Entities to receive recovery, settlement or proceeds from any insurance coverage or claims made in respect of the period prior to Closing; and

(g) The Comark Entities shall retain all of the "**Retained Liabilities**", including:

(i) all Liabilities under the Retained Contracts (including Retained Leases), unless waived by the applicable counterparties;

(ii) all Liabilities among the Comark Entities under the Comark-Subsidiary Intercompany Loan Documents and all Liabilities of the Comark Entities to ParentCo under the Sponsor Loan Documents; and

(iii) all Liabilities owed by the Comark Entities to Purchaser, Parian and Highgate Capital Ltd.; and

(h) The Purchaser shall retain at least 25 Leases as "**Retained Leases**", including as such Retained Leases are consensually amended through agreement between the Purchaser and the applicable landlord.

32. The Purchase Agreement also provides that the Purchaser may, up to one (1) day prior to the Closing Time, by giving Notice to the Vendor and the Monitor, elect to add or remove: (i) Retained Assets, including Retained Leases; (ii) Excluded Assets, including Excluded Leases; (iii) Retained Liabilities; and (iv) Excluded Liabilities. No change to the Payment shall result from such an election.

33. While the Transaction will be conducted on an "as is, where is" basis, the Purchase Agreement is subject to a number of conditions precedent in addition to the reverse vesting order conditions set out above, including:

(a) all Outstanding Senior Secured Indebtedness, Senior Debt Documents and all Claims and Encumbrances relating thereto shall have been released; and

(b) delivery of Monitor's Certificate, in accordance with the terms of the Purchase Agreement.

34. Closing is not subject to any financing condition in favour of the Purchaser.

35. No less than two (2) Business Days prior to Closing, the Parties will agree, with Monitor consent, on an amount to be set aside as a reserve (defined in the Purchase Agreement as the "**Wind-Down Reserve**") to be used to fund: (i) the fees of the Monitor, its counsel and counsel to the Applicants; (ii) any other expenses permitted pursuant to the Initial Order; and (iii) any costs associated with the bankruptcy of ResidualCo. The Wind-Down Reserve will be free and clear of all Claims and Encumbrances and held by the Monitor.

36. To the extent necessary and with the Monitor's consent, the Purchaser will cause the Comark Entities to provide services to ResidualCo and the Monitor that are reasonably required by ResidualCo in order for it to comply with its obligations regarding transition services and transition costs under the Putman APA.

37. The Purchase Agreement may be terminated upon written notice given prior to or at the Closing Time:

(a) by either Purchaser or Vendor and Comark Entities if a Governmental Authority issues an Order prohibiting the transaction contemplated by the Purchase Agreement or if the CCAA Proceedings are terminated in respect of any Comark Entity prior to the Closing Time;

(b) by Purchaser, if Vendor's closing conditions have not been satisfied or waived by April 21, 2025, provided Purchaser is not in breach of its obligations; and

(c) by Vendor and Comark Entities, if Purchaser's closing conditions have not been satisfied or waived by April 21, 2025, provided that Vendor and Comark Entities are not in breach of their obligations.

(b) The Employees and Leases

38. As discussed above, it is the intention of the Purchaser that, following the Transaction, the stores corresponding to the Retained Leases will be operated by WarehouseOne, some of which will be converted to the WarehouseOne banner and some of which will be operated under the Bootlegger banner (and some as combo stores).

39. Pursuant to the Purchase Agreement, the Purchaser will deliver termination notices to all employees of the Comark Entities at least two (2) Business Days prior to Closing (or by such other date which is prior to Closing and agreed upon by the Parties with the Monitor's consent). At Bootlegger stores where the lease is a Retained Lease, WarehouseOne will make offers of employment to substantially all Employees who work at such stores. Offers will be made on substantially the same terms and conditions that Employees had immediately prior to the Closing Time and will recognize the Employees'

original dates of hire for any purposes required by applicable employment standards legislation.

40. All of the Employees who accept these Offers will be "**Continuing Employees**" and their employment with WarehouseOne will commence on the Closing Date. Purchaser will cause WarehouseOne to recognize and honour Bootlegger's obligation to pay accrued and unpaid vacation pay to Continuing Employees at Closing.

41. For terminated Employees that are not Continuing Employees, prior to or at Closing, the Comark Entities will pay (or the Vendor and Purchaser will have agreed to arrangements which are acceptable to the Monitor to provide for the payment of) all accrued and unpaid vacation pay as at Closing.

42. Pursuant to the Purchase Agreement, leases may be designated as Retained Leases or Excluded Leases up until the Closing Time. As discussed above, at least 25 leases must be retained by the Purchaser pursuant to the Purchase Agreement. As of the date of this affidavit, the Applicants have reached agreements with the landlords for 45 leases. Immediately following the Closing Time, all Retained Leases would be assigned through the corporate structure first to Comark Holdings and then to WarehouseOne.

43. At the request of the Purchaser, the Vendor and the Comark Group have sought or will be seeking consent to these assignments and, where necessary, changes to the permitted use as part of the landlord discussions.

44. Subject to any arrangements mutually agreed by the parties, cure costs for assigned leases will be paid. Where the parties are not able to agree on acceptable arrangements, the leases will be excluded from the Transaction as Excluded Leases and disclaimed**.**

(c) Approval of the Transaction

45. As noted above, the Transaction is the only executable going concern transaction or restructuring alternative that has been identified for the Remaining Business through the Sales Process.

46. The Transaction provides significant benefits to the Applicants' stakeholders. Among other things:

(a) approximately 45 leases will be retained by the Purchaser;

(b) the operations of Bootlegger will be preserved and will continue to operate as a going concern business, though with a reduced operating footprint;

(c) employment will be preserved for the Continuing Employees;

(d) various contracts with counterparties will continue in the normal course for the benefit of all parties thereto; and

(e) on closing, limited matters will remain for the administration and wind-down of these CCAA proceedings.

47. The Transaction is structured as a sale of shares in order to preserve the significant accrued tax attributes of the Comark Group for the go-forward business. As of February 24, 2024, the end of the Applicants' most recently completed fiscal year, the Applicants have approximately $98.8 million of non-capital tax losses. The Purchaser has insisted that it is a condition of the Transaction that it be structured through a reverse vesting transaction. The same condition was included in the Stalking Horse Term Sheet.

48. Utilizing the reverse vesting structure will increase the economic benefit of the Transaction to the Applicants' stakeholders over that which could be achieved in an asset sale (should one have been available) as it will allow value to be realized from the Applicants' significant tax losses that would not be possible in an asset sale. More importantly, there is no viable alternative to the reverse vesting structure, as the Purchaser has indicated it not prepared to proceed with the transaction as an asset sale. As noted, the Transaction was the only Qualified Bid received for any part of the Remaining Business. As a result, leases and employment for the Continuing Employees, as described above, will be preserved through approval of the Transaction.

49. The vesting transactions that form part of the Transaction included in the ARVO will enable the Purchaser to acquire the Comark Entities, the Retained Assets and the Purchased Shares free and clear of all Claims and Encumbrances (except for the Retained Liabilities and the Permitted Encumbrances).

50. As part of the Transaction, the Outstanding Senior Secured Indebtedness owed to ParentCo will be repaid in full.

51. In short, this structure is necessary to complete the best and only transaction available to the Applicants in the time frame to best ensure that the Bootlegger business is able to continue as a going concern. Any other transaction structure that does not enable a timely and efficient closing while achieving these restructuring objectives would undermine the future viability of the Bootlegger business as a going concern.

52. The proposed ARVO provides for a full and final release of (i) the current and former directors, officers, employees, consultants legal counsel and advisors of the Applicants and ParentCo; (ii) the current and former directors, officers, employees,

consultants, legal counsel and advisors to ResidualCo; (iii) the Purchaser and its legal counsel and their respective current directors, officers, partners, employees, consultants, advisors and assignees; and (iv) the Monitor and its legal counsel and their respective current directors, officers, partners, employees, consultants and advisors ((i), (ii), (iii), and (iv), collectively, the "**Released Parties**"), from any and all present and future claims, liabilities, demands, etc. arising in connection with or relating to the Purchase Agreement or consummation or implementation of the Transaction and/or any document, agreement, instrument, matter or transaction involving the Applicants arising in connection with or pursuant to the foregoing (collectively, the "**Released Claims**") which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, and are not vested nor transferred to ResidualCo or to any other entity and are extinguished, provided that, nothing in the proposed release shall waive, discharge, release, cancel or bar (i) any claim with respect to any act or omission that is finally determined by a court of competent jurisdiction to have constituted actual fraud or any claim against the current or former directors of the Applicants that is not permitted to be released pursuant to section 5.1(2) of the CCAA, or (ii) any Released Party from the performance of its obligations pursuant to the Purchase Agreement.

53. The proposed releases are being sought, with the support of the Purchaser and the Monitor, in order to achieve certainty and finality for the Released Parties in the most efficient and appropriate manner given the current circumstances. The Applicants are of the view that the proposed releases are appropriate, given the significant and material contributions that the Released Parties have made in connection with these CCAA proceedings, the SISP, the Putman Transaction and in connection with the Transaction. The continued involvement, oversight and support of, among others, the Applicants' directors

and officers, the Monitor and the Purchaser and their respective professional advisors have been critical to advancing the Applicants' restructuring efforts, which has resulted in going concern transactions for the Old Ricki's business, the Old cleo business and the Bootlegger business, for the benefit of the Applicants' stakeholders.

54. To date, no stakeholder of the Applicants has made the Applicants or the Monitor aware that they intend to assert a claim against any of the Released Parties in respect of any of the Released Claims.

55. In the circumstances, the Applicants believe that the proposed releases contemplated in the Approval and Reverse Vesting Order are reasonable and appropriately tailored to, among other things, carve out claims of actual fraud against a current or former director and claims that are not permitted to be released pursuant to section 5.1(2) of the CCAA. The releases are an important component of the Transaction.

56. I am advised that the Monitor supports the proposed Transaction, and the Applicants' request for the ARVO. The Monitor's views and recommendations with respect to the Transaction will be set forth in the Third Report of the Monitor, to be filed.

E. Wage Earner Protection Program

57. I am advised by Sven Poysa at Osler, Hoskin & Harcourt LLP, and believe that WEPPA permits eligible former employees to collect certain eligible wages, including termination and severance pay, owed to such former employees where the former employer is the subject of CCAA proceedings and a court determines that the criteria prescribed by regulation are met. I am advised that the WEPP Regulation requires that the Court determine

whether the former employer is the former employer of all the employees in Canada who have been terminated other than any retained to wind down its business operations.

58. As described above, on the closing of the Putman Transaction, 61 leases were assigned from Old Ricki's and Old cleo to the Putman Purchaser. The Putman Purchaser will also continue operating seven additional store locations under new leases with landlords of stores previously operated by Old Ricki's and Old cleo. I am informed by the Putman Purchaser that approximately 455 former employees of Old Ricki's and Old cleo have accepted employment with the Putman Purchaser. All employees that were not offered or did not accept employment with the Putman Purchaser have received notices of termination and their employment by Old Ricki's or Old cleo, as applicable, will terminate on a rolling basis in connection with the closure of their respective stores. Accordingly, each of Old Ricki's and Old cleo has terminated all of its employees in Canada other than employees retained to wind down their business operations.

59. As described above, as part of the Transaction, WarehouseOne will offer employment to substantially all employees at Bootlegger stores that are subject to a Retained Lease. The total number of Bootlegger employees that are expected to receive employment offers from WarehouseOne will not be known until the Purchaser completes discussions with landlords with respect to Retained Leases. The Purchase Agreement provides that, not less than two (2) business days prior to Closing Date of the Transaction, written termination notices will be delivered to all employees (including employees who will receive an employment offer from WarehouseOne). It is expected that employee terminations will occur on a rolling basis in connection with the closing of Bootlegger stores that are not subject to a Retained Lease. Accordingly, Bootlegger will not have any remaining

employees following completion of the Bootlegger Transaction and the store closure process.

60. In order to assist eligible terminated employees of the Applicants access payments in respect of eligible wages under WEPPA in a timely manner following the termination of all Canadian employees, the Applicants are seeking a declaration in the ARVO that, pursuant to subsections 5(1)(b)(iv) and 5(5) of WEPPA, the Applicants meet the criteria prescribed by section 3.2 of the WEPP Regulation.

61. I understand that the Monitor supports the requested relief.

SWORN BEFORE ME over videoconference this 14th day of March, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely. The affiant is located in the City of Vancouver, in the Province of British Columbia, while the commissioner is located in the City of Toronto, in the Province of Ontario.

Commissioner for Taking Affidavits
(or as may be)

Sierra Farr (LSO#87551D)

Shamsh Kassam

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., 9376208 CANADA INC. AND 10959367 CANADA INC.

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

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

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Lawyers for the Applicants

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 2688182 ALBERTA INC.

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

Ontario
SUPERIOR COURT OF JUSTICE
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Proceeding commenced at Toronto

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TAB 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	THURSDAY, THE 15TH
	)	
JUSTICE CAVANAGH	)	DAY OF MAY, 2025

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 2688182 ALBERTA INC. (the "**Applicant**")

EXPANSION OF MONITOR'S POWERS AND CCAA TERMINATION ORDER

THIS MOTION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, *inter alia*, (i) expanding the powers of Alverez & Marsal Canada Inc. ("**A&M**") in its capacity as monitor in these CCAA proceedings (in such capacity, the "**Monitor**"), (ii) authorizing the Applicant to make an assignment in bankruptcy, (iii) extending the Stay Period (as defined in the Initial Order (as defined below)), (iv) terminating these CCAA proceedings upon the service of the Monitor's Certificate (as defined below) on the service list in these CCAA proceedings (the "**Service List**"), (v) terminating and releasing the court-ordered Charges upon the service of the Monitor's Certificate, (vi) discharging A&M as the Monitor upon the service of the Monitor's Certificate, (vii) granting certain releases, (viii) approving the Monitor's Reports (as hereinafter defined) and the activities described therein, (ix) approving the fees and disbursements of the Monitor and the Monitor's legal counsel, Goodmans LLP ("**Goodmans**"), as described in the Fourth Report (as hereinafter defined) and the affidavits sworn in support thereof, and (x) granting certain related relief, was heard this day by videoconference.

ON READING the Notice of Motion of the Applicant, the affidavit of Shamsh Kassam sworn May 8, 2025 and the exhibits thereto (the "**Fifth Kassam Affidavit**"), the Fourth Report of the Monitor dated May [●], 2025 (the "**Fourth Report**"), the affidavit of Joshua Nevsky sworn May [●], 2025 and the exhibits thereto (the "**A&M Fee Affidavit**"), the affidavit of Bradley Wiffen sworn May [●], 2025 and exhibits thereto (the "**Goodmans Fee Affidavit**"), and on hearing the submissions of counsel for the Applicant, the Monitor and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of [●] affirmed May [●], 2025.

SERVICE

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

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein have the meanings ascribed to them in the Fifth Kassam Affidavit and/or the Amended and Restated Initial Order of this Court in the within proceedings dated January 17, 2025 (as further amended or otherwise modified from time to time, the "**Initial Order**"), as applicable.

MONITOR'S ENHANCED POWERS

3. **THIS COURT ORDERS** that, in addition to the powers and duties of the Monitor set out in the Initial Order, any other Order of this Court granted in these CCAA proceedings, the CCAA and applicable law, the Monitor is hereby authorized and empowered to exercise any powers which may be properly exercised by the board of directors or any officer of the Applicant, including, without limitation, to:

(a) take any and all actions and steps in the name of and on behalf of the Applicant to facilitate the administration of the Applicant's business, property, operations, affairs and estate as may be necessary, appropriate, or desirable, in the sole

discretion of the Monitor, including wind-down, liquidation, sale, assignment, transfer or disposal of assets, or other activities;

(b) execute all agreements, documents and writings, on behalf of, and in the name of, the Applicant, in order to facilitate the performance of any of its powers or obligations, or the exercise of any of its rights, including, without limitation, in connection with the Putman APA, the Purchase Agreement, any Order of this Court, or any agreement or instrument to which an Applicant is party;

(c) execute such other documents, on behalf of, and in the name of, the Applicant, as may be necessary or desirable in connection with any proceedings before this Court or pursuant to any Order of this Court, including such disclaimers, notices of termination and/or assignment agreements as may be reasonably necessary in connection with the CCAA proceedings;

(d) take any and all corporate actions and actions regarding the governance of the Applicant and such actions taken by the Monitor are hereby authorized without requiring any further action or approval by the Applicant or any current or former officer, director or shareholder of the Applicant;

(e) cause the Applicant to take any action or make any payment or disbursement permitted pursuant to the Initial Order or any other Order granted in the CCAA proceedings;

(f) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of the Applicant (including any government authority or body) in the name of or on behalf of the Applicant;

(g) claim, or cause the Applicant to claim, any and all insurance refunds, tax refunds, or return of duties or levies, including refunds of goods and services taxes and harmonized sales taxes, to which the Applicant is entitled;

(h) engage, retain, or terminate the services of, or cause the Applicant to engage, retain or terminate the services of any officer, employee, consultant, agent, representative, advisor, or other person or entity, all under the supervision and

direction of the Monitor, as the Monitor deems necessary or appropriate to assist with the exercise of its powers and duties;

(i) facilitate or assist the Applicant with accounting, tax and financial reporting functions, based solely upon the information in the Applicant's books and records and on the basis that the Monitor shall incur no liability or obligation to any Person with respect to such reporting, remittances, statements, records or other documents;

(j) take any steps and execute any documents reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and

(k) take any and all actions necessary to give effect to this Order on behalf of the Applicant and such actions taken by the Monitor are hereby authorized without requiring any further action or approval by the Applicant or any current or former officer, director or shareholder of the Applicant;

and, in each case where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Applicant, and without interference from any other Person, provided, however, that the Monitor shall comply with all applicable laws.

BANKRUPTCY

4. **THIS COURT ORDERS** that:

(a) the Applicant is hereby authorized to make an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3;

(b) the Monitor, or such other licenced trustee as may be engaged by the Applicant, is hereby authorized and empowered to file any such assignment in bankruptcy for and on behalf of the Applicant, and to take any steps incidental thereto, including to sign such documents in the name of such Applicant as are necessary to make the assignment into bankruptcy. For greater certainty, no resolutions or other

authorizations from any director, officer, or shareholder of the Applicant will be required to commence such bankruptcy proceeding; and

(c) the Monitor, or such other licenced trustee as may be engaged by the Applicant, is hereby authorized and empowered to fund a reasonable retainer to any trustee in bankruptcy in respect the Applicant from the Wind-Down Reserve.

MONITOR'S ADDITIONAL PROTECTIONS

5. **THIS COURT ORDERS** that in addition to the rights and protections afforded to the Monitor under the CCAA, in the Initial Order or any other Order of the Court in these CCAA proceedings, or as an officer of this Court, (i) the Monitor and its legal counsel shall continue to have the benefit of all of the indemnities, stays of proceedings, charges, protections and priorities as set out in the Initial Order and any other Order of this Court, and all such indemnities, stays of proceedings, charges, protections and priorities shall apply and extend to the Monitor in carrying out of the provisions of this Order and exercising any powers granted to it hereunder; and (ii) the Monitor and each of its affiliates, current and former officers, directors, partners, employees, representatives and agents, as applicable, shall incur no liability or obligation as a result of the Monitor's appointment, the carrying out of the provisions of this Order, the exercise of any powers granted to the Monitor hereunder, or the performance by the Monitor of any of its duties, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the Initial Order or any other Order of this Court in the CCAA proceedings, the CCAA or any applicable legislation.

6. **THIS COURT ORDERS** that neither the Monitor nor any officer, director, partner, employee, representative or agent of the Monitor shall be deemed to: (i) be a director, officer or employee of the Applicant, (ii) assume any obligation of the Applicant; or (iii) assume any fiduciary duty towards the Applicant or any other Person, including any creditor or shareholder of the Applicant.

7. **THIS COURT ORDERS** that the Monitor shall not be liable for any employee-related liabilities in respect of the current or former employees of the Applicant or the Comark Group (or any predecessor in interest), including any successor employer liabilities as provided for in Section 11.8(1) of the CCAA. Nothing in this Order shall cause the Monitor to be liable for any

employee-related liabilities in respect of any former employees of the Applicant or the Comark Group (or any predecessor interest), including, without limitation, wages, severance pay, termination pay, vacation pay, and pension or benefits amounts.

8. **THIS COURT ORDERS** that, without limiting the provisions of the Initial Order, the Applicant shall remain in possession and control of its respective Property and Business and the Monitor shall not take or maintain, or be deemed to have taken or maintained, possession or control of the Business or Property or any part thereof.

9. **THIS COURT ORDERS** that nothing in this Order shall constitute or be deemed to constitute the Monitor as receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of the Applicant within the meaning of any relevant legislation and that any distributions to creditors of the Applicant by the Monitor will be deemed to have been made by the Applicant. Nothing in this Order shall constitute or be deemed to constitute the Monitor as a person subject to subsection 150(3) of the *Income Tax Act* (Canada), RSC 1985, c. 1, and the Monitor shall have no obligation to prepare or file any tax returns of the Applicant with any taxing authority.

STAY EXTENSION

10. **THIS COURT ORDERS** that the Stay Period is hereby extended until and including the earlier of (i) the CCAA Termination Time (as defined below), or (ii) August 15, 2025.

TERMINATION OF CCAA PROCEEDINGS

11. **THIS COURT ORDERS** that, upon service by the Monitor of an executed certificate in substantially the form attached hereto as Schedule "A" (the "**Monitor's Certificate**") on the Service List certifying that, to the knowledge of the Monitor, all matters to be attended to in connection with these CCAA proceedings have been completed, these CCAA proceedings shall be terminated without any further act or formality (the "**CCAA Termination Time**"), save and except as provided in this Order, and provided that nothing herein impacts the validity of any Orders made in these CCAA proceedings or any actions or steps taken by any Person pursuant to or as authorized by any Orders of the Court made in these CCAA proceedings.

12. **THIS COURT ORDERS** that the Monitor is hereby directed to file a copy of the Monitor's Certificate with the Court as soon as reasonably practicable following service thereof on the Service List.

13. **THIS COURT ORDERS** that the Charges set out in the Initial Order shall be terminated, released and discharged at the CCAA Termination Time without any other act or formality.

DISCHARGE OF THE MONITOR

14. **THIS COURT ORDERS** that effective at the CCAA Termination Time, A&M shall be and is hereby discharged from its duties as the Monitor in these CCAA proceedings and shall have no further duties, obligations or responsibilities as Monitor from and after the CCAA Termination Time, provided that, notwithstanding the discharge of A&M as Monitor, the Monitor have the authority to carry out, complete or address any matters in its role as Monitor that are ancillary or incidental to these CCAA proceedings following the CCAA Termination Time, as may be required ("**Monitor Incidental Matters**").

15. **THIS COURT ORDERS** that, notwithstanding its discharge and the termination of these CCAA proceedings, nothing herein shall affect, vary, derogate from, limit or amend, and A&M and its counsel shall continue to have the benefit of, any of the rights, approvals, releases, and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order, and any other order of the Court in these CCAA proceedings or otherwise, including in connection with any Monitor Incidental Matters and other actions taken by the Monitor pursuant to this Order following the CCAA Termination Time.

16. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court and on prior written notice to the Monitor.

APPROVAL OF THE MONITOR'S REPORTS, ACTIVITIES AND FEES

17. **THIS COURT ORDERS** that the Pre-Filing Report of the Proposed Monitor dated January 6, 2025, the First Report of the Monitor dated January 16, 2025, the Second Report of the Monitor dated January 31, 2025, the Third Report of the Monitor dated March 18, 2025, and

the Fourth Report (collectively, the "**Monitor's Reports**"), and the activities and conduct of the Monitor set out therein, are hereby ratified and approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

18. **THIS COURT ORDERS** that the fees and disbursements of the Monitor for the period from January 7, 2025 to April 26, 2025, as set out in the A&M Fee Affidavit, are hereby approved.

19. **THIS COURT ORDERS** that the fees and disbursements of Goodmans, legal counsel to the Monitor, for the period from January 7, 2025 to May 8, 2025, as set out in the Goodmans Fee Affidavit, are hereby approved.

20. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and Goodmans, incurred in the period commencing on April 27, 2025 (in the case of the Monitor) or May 9, 2025 (in the case of Goodmans) and ending on the CCAA Termination Time, or incurred to complete any Monitor Incidental Matters, not to exceed $250,000 in the aggregate (excluding applicable taxes), are hereby approved. The Monitor, on behalf of the Applicant, is authorized to pay such funds from the Wind-Down Reserve, without further application to this Court for approval of such fees.

RELEASES

21. **THIS COURT ORDERS** that effective upon the CCAA Termination Time, (a) Comark Holdings Inc., Bootlegger Clothing Inc., 9376208 Canada Inc. (f/k/a cleo fashions Inc.) and 10959367 Canada Inc. (f/k/a Ricki's Fashions Inc.) and their current and former directors, officers, employees, consultants, legal counsel, affiliates and advisors, but in each case solely to the extent relating to the period prior to closing of the Bootlegger Transaction (as defined in the Fifth Kassam Affidavit); (b) current and former directors, officers, employees, consultants, legal counsel, affiliates and advisors of the Applicant; and (c) A&M (in its capacity as Monitor and in its personal capacity), its legal counsel, and their current and former directors, officers, partners, employees, consultants, affiliates and advisors (the Persons listed in (a), (b) and (c) being collectively, the "**Released Parties**" and each a "**Released Party**") shall be deemed to be forever irrevocably released and discharged from any and all liability or claims of any nature or kind

whatsoever (whether direct or indirect, known or unknown, absolute or contingent, liquidated or unliquidated, in law or equity and whether based in statute or otherwise) in connection with or based in whole or in part on any act or omission, transaction, dealing or other occurrence in any way relating to, arising out of, or in respect of, these CCAA proceedings and/or with respect to their respective conduct in these CCAA proceedings, including any actions required or steps taken in carrying out any Monitor Incidental Matters or any other actions taken by A&M or Goodmans following the CCAA Termination Time with respect to the Applicant or the CCAA proceedings (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, and the Released Parties shall have no liability in respect thereof, provided that the Released Claims shall not include any claim or liability finally determined to be the result of the gross negligence, willful misconduct or fraud on the part of the applicable Released Party.

22. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against any Released Party in any way arising from or related to its respective Released Claim, except with prior leave of this Court on at least fifteen (15) days' prior written notice to the applicable Released Parties and upon the granting of such order securing the costs of the applicable Released Party in connection with any proposed action or proceeding as the Court hearing the motion for leave to proceed may deem just and appropriate.

GENERAL

23. **THIS COURT DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.

24. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties under this Order, as applicable, or in the interpretation or application of this Order.

25. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, and regulatory and administrative

bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order.

26. **THIS COURT ORDERS** that the Applicant and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

27. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. prevailing Eastern Time on the date of this Order without the need for entry and filing.

_____

SCHEDULE "A"

FORM OF MONITOR'S CERTIFICATE

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

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 2688182 ALBERTA INC.

(the "**Applicant**")

MONITOR'S CERTIFICATE

RECITALS

A. Alvarez & Marsal Canada Inc. ("**A&M**") was appointed as the Monitor of Comark Holdings Inc., Bootlegger Clothing Inc., 9376208 Canada Inc. (f/k/a cleo fashions Inc.) and 10959367 Canada Inc. (f/k/a Ricki's Fashions Inc.) (collectively, the "**Comark Entities**") in the within proceedings commenced under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated January 7, 2025 (as amended and restated, the "**Initial Order**").

B. On March 21, 2025, the Court granted an Approval and Reverse Vesting Order that, among other relief, released the Comark Entities from the purview of these CCAA proceedings and added 2688182 Alberta Inc. as an applicant to the CCAA proceedings upon the delivery of a Monitor's certificate substantially in the form appended to such Order, which Monitor's certificate was delivered on April 22, 2025.

C. Pursuant to an Order of the Court dated May 15, 2025 (the "**CCAA Termination Order**"), among other things, A&M will be discharged as the Monitor and the CCAA

proceedings shall be terminated upon the service of this Monitor's Certificate on the Service List, all in accordance with the terms of the CCAA Termination Order.

D. Capitalized terms used but not defined herein have the meanings ascribed to them in the CCAA Termination Order.

THE MONITOR CERTIFIES that, to the knowledge of the Monitor, all matters to be attended to in connection with the Applicant's CCAA proceedings (Court File No. CV-25-00734339-00CL), have been completed.

ACCORDINGLY, the CCAA Termination Time has occurred.

DATED at Toronto, Ontario this _____ day of _____, 2025.

ALVAREZ & MARSAL CANADA INC., in its capacity as Monitor of the Applicant, and not in its personal or corporate capacity

Per: _____

Name:

Title:

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 2688182 ALBERTA INC.

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

ONTARIO

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

EXPANSION OF MONITOR'S POWERS AND CCAA TERMINATION ORDER

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Lawyers for the Applicant

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 2688182 ALBERTA INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

MOTION RECORD OF THE APPLICANTS
(Motion for Expansion of Monitor's Powers and CCAA Termination Order returnable May 15, 2025)

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Lawyers for the Applicants