

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 1000156489 ONTARIO INC.

SIXTH REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.

June 14, 2023

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1.0 INTRODUCTION

- 1.1 On December 20, 2022 (the “**Filing Date**” or the “**Petition Date**”), 1000156489 Ontario Inc. (f/k/a DCL Corporation) (the “**Applicant**”) obtained an initial order (the “**Initial Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The proceedings commenced thereby are referred to herein as the “**CCAA Proceedings**”. Among other things, the Initial Order appointed Alvarez & Marsal Canada Inc. (“**A&M**”) as monitor in the CCAA Proceedings (in such capacity, the “**Monitor**”).
- 1.2 In connection with the CCAA Proceedings, A&M, then in its capacity as proposed monitor, filed the Pre-Filing Report of the Proposed Monitor dated December 20, 2022 (the “**Pre-Filing Report**”). Since its appointment, the Monitor has provided to this Court five reports, comprised of the First Report of the Monitor dated December 27, 2022 (the “**First Report**”), the Second Report of the Monitor dated February 16, 2023 (the “**Second Report**”), the Third Report of the Monitor dated March 15, 2023 (the “**Third Report**”), the Fourth Report of the Monitor dated March 28, 2023 (the “**Fourth Report**”), the Fifth Report of the Monitor dated May 3, 2023 (the “**Fifth Report**”) (collectively and together with the Pre-Filing Report, the “**Prior Reports**”). The Prior Reports and other Court-filed documents in the CCAA Proceedings are available on the Monitor’s case website at: www.alvarezandmarsal.com/DCLCanada (the “**Case Website**”) and are attached hereto as appendices.¹

¹ Materials filed in connection with the Chapter 11 Proceedings are available at: <https://cases.ra.kroll.com/DCL>

- 1.3 The Applicant is a subsidiary of its U.S. parent, H.I.G. Colors Inc. (“**Holdings**”), a direct wholly-owned subsidiary of the ultimate corporate parent, H.I.G. Colors Holdings, Inc. (“**HIG Colors Holdings**” and, together with Holdings and its direct and indirect subsidiaries, including the Applicant and its subsidiaries, the “**DCL Group**”).
- 1.4 The CCAA Proceedings were commenced as part of a larger coordinated restructuring of the DCL Group. On the Petition Date, HIG Colors Holdings and certain of its U.S.-based subsidiaries (collectively, “**DCL US**” or the “**Chapter 11 Debtors**”)² each filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “**U.S. Bankruptcy Court**”, and such proceedings, the “**Chapter 11 Proceedings**”, and together with the CCAA Proceedings, the “**Restructuring Proceedings**”). On December 22, 2022, the U.S. Bankruptcy Court granted a number of “first day orders” in the Chapter 11 Proceedings.
- 1.5 On December 29, 2022, the Applicant obtained an amended and restated Initial Order (the “**Amended and Restated Initial Order**”) that, among other things, approved the DIP Facility and the Final DIP Credit Agreement (each as defined in the First Report), and extended the Stay Period (as defined in the Amended and Restated Initial Order).
- 1.6 As described in the Prior Reports, the DCL Group conducted a sales process in the Restructuring Proceedings that culminated in a transaction (the “**Transaction**”) with Pigments Services, Inc. (including any permitted assignees, “**Pigments**”), an affiliate of the prepetition term loan lenders to the Applicant and DCL US. On March 29, 2023, this Court issued an Order (the “**Approval and Vesting Order**”), which, among other things:

² The Chapter 11 Debtors are: HIG Colors Holdings, Holdings, DCL Holdings (USA), Inc., DCL Corporation (USA) LLC, DCL Corporation (BP), LLC, and Dominion Colour Corporation (USA).

(i) approved the Transaction; and (ii) extended the Stay Period until and including June 30, 2023. The Transaction closed on April 14, 2023.

1.7 On May 8, 2023, this Court issued an Order (the “**Expansion of Monitor’s Powers Order**”), which, among other things: (i) granted the Monitor the Expanded Powers (as defined and described in the Fifth Report), expanding the powers of the Monitor to, among other things, oversee the wind-down activities of the Applicant; and (ii) changed the style of cause in the CCAA Proceedings to reflect the Applicant’s change of name following the closing of the Transaction.

1.8 The purpose of the sixth report of the Monitor (this “**Sixth Report**”) is to provide this Court with information regarding the following:

- (i) an update with respect to the CCAA Proceedings since the date of the Fifth Report;
- (ii) the Monitor’s motion for an Order (the “**Claims Procedure Order**”), among other things:
 - (a) granting the proposed claims procedure (the “**Claims Procedure**”), pursuant to which claimants may file claims against the Applicant, or the Applicant’s current or former directors (“**Directors**”) or officers (“**Officers**”), as applicable;
 - (b) extending the Stay Period until and including December 31, 2023; and
 - (c) approving the Prior Reports and this Sixth Report, and the actions, activities and conduct of the Monitor and its legal counsel described therein;

- (iii) the activities of the Monitor since the date of the Fifth Report; and
- (iv) the Monitor's conclusions and recommendations in connection with the foregoing, as applicable.

2.0 TERMS OF REFERENCE AND DISCLAIMER

2.1 In preparing this Sixth Report, A&M, in its capacity as Monitor, has been provided with and has relied upon unaudited financial information and the books and records prepared by the Applicant and the DCL Group (collectively, the "**Information**"). Except as otherwise described in this Sixth Report:

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

2.2 Unless otherwise stated, all monetary amounts contained in this Sixth Report are expressed in U.S. dollars ("**USD**"). Capitalized terms used but not otherwise defined herein shall have

the meanings given to such terms in the Fifth Report or the Second Amended and Restated Sale Agreement (as defined in and appended to the Fifth Report) dated as of March 28, 2023 between the Applicant, DCL US and Pigments, as applicable.

3.0 UPDATES SINCE THE DATE OF THE FIFTH REPORT

Employee Matters

- 3.1 As discussed in the Fifth Report, the Applicant is the sponsor of the following registered pension plans: (i) the Salaried DC Plan; (ii) the Hourly DC Plan; (iii) the Hourly DB Plan; (iv) the Salaried DB Plan; and (v) the Monteith Plan (collectively, the “**Canadian Pension Plans**”).
- 3.2 After closing of the Transaction, it was discovered by the Applicant that certain amounts remained owing by the Applicant in respect of certain of the Canadian Pension Plans³ and also the Applicant’s registered retirement savings plan for hourly and salaried employees.
- 3.3 The Monitor understands that these amounts were not paid by the Applicant prior to the closing of the Transaction as a result of simple administrative inadvertence. Following the closing of the Transaction, the Applicant’s counsel, the Monitor and representatives of Pigments (being former management of the Applicant) worked with the administrators of each of the plans to reconcile and confirm the amounts owing by the Applicant under each plan, which in aggregate was approximately CAD\$130,000. As of the date of this Sixth Report, the amounts owing in respect of such Canadian Pension Plans and the Applicant’s

³ The Monitor understands that amounts were not owing by the Applicant in respect of the Hourly DB Plan and the Monteith Plan.

registered retirement savings plan for hourly and salaried employees have been paid by Pigments, on behalf of the Applicant.

3.4 As discussed in the Fifth Report, if, after the liabilities of the Hourly DB Plan or the Salaried DB Plan are settled and surplus assets remain, such assets will be allocated in accordance with each such plan's governing documents or as may otherwise be agreed with the applicant plan members or as ordered by the Court. The Applicant's counsel and Monitor's counsel are still in the process of gathering and reviewing the governing documents.

3.5 The Monitor is also engaged in discussions with Pigments and its advisors regarding the purported treatment of accrued vacation pay for the period from January 1, 2023 to the closing date for transferred salaried and non-unionized hourly employees in Ontario following the closing of the Transaction and, if necessary, will provide a further update to this Court at the relevant time.

Amounts Received by the Monitor on Closing

3.6 Upon the closing of the Transaction, Pigments paid to the Monitor:

- (i) the Canadian Designated Amount Portion of \$575,000;
- (ii) the CCAA Cash Pool of \$750,000; and
- (iii) \$1,442,134.50 in respect of HST exigible on the Transaction, to be held by the Monitor on behalf of the Applicant, in trust.

Canadian Designated Amount Portion

- 3.7 Pursuant to the Approval and Vesting Order, the Canadian Designated Amount Portion shall be used to pay all remaining costs, professional fees and other amounts incurred in connection with the CCAA Proceedings and the wind-down of the Applicant.
- 3.8 As of the date of this Sixth Report, the Monitor has not yet disbursed any amounts from the Canadian Designated Amount Portion and continues to hold \$575,000. The Monitor notes, however, that approximately \$255,000 (CAD\$340,000) of professional fees are outstanding to the Applicant's legal counsel, the Monitor, and the Monitor's legal counsel, relating to the period after the closing of the Transaction.

CCAA Cash Pool

- 3.9 Pursuant to the Approval and Vesting Order, the CCAA Cash Pool shall be held by the Monitor for the benefit of the Applicant's estate in the CCAA Proceedings, including any costs to administer the CCAA Proceedings. As of the date of this Sixth Report, the Monitor continues to hold \$750,000. It is intended that the CCAA Cash Pool, less any applicable administrative costs, will be made available for distribution to claimants with proven claims in the Claims Procedure, subject to further order of this Court.

HST Balance

- 3.10 As of the date of this Sixth Report, the Monitor continues to hold \$1,442,134.50 in respect of HST exigible on the Transaction on behalf of the Applicant. The Monitor is currently working with the Applicant's tax advisors to complete the necessary steps in order to file

the applicable HST returns and to remit the amount required to the Canada Revenue Agency on behalf of the Applicant.

4.0 PROPOSED CLAIMS PROCEDURE

Overview

- 4.1 Capitalized terms used but not defined in this section of this Sixth Report have the meaning ascribed to them in the proposed Claims Procedure Order.
- 4.2 The purpose of the proposed Claims Procedure is to establish a process for the identification, quantification, and resolution of claims of claimants of the Applicant and the Applicant's current and former Directors and Officers.
- 4.3 Key steps and timelines described in the proposed Claims Procedure Order are summarized in the table below:

Timeframe	Activity
June 20, 2023	Scheduled date for the hearing of the motion seeking the proposed Claims Procedure Order
No later than July 4, 2023	Claims Packages to be sent by the Monitor, on behalf of the Applicant, to each of the known Potential Claimants
August 18, 2023	Claims Bar Date for the filing of Prefiling Claims against the Applicant and the Director/Officer Claims

Claims

- 4.4 As set out in greater detail in the proposed Claims Procedure Order, the Monitor, on behalf of the Applicant, will solicit the following claims:

- (i) *Prefiling Claims*: Being, generally, any right or claim of any Person against the Applicant in connection with any indebtedness, liability or obligation of any kind whatsoever that was in existence on the Filing Date (December 20, 2022);
- (ii) *Restructuring Period Claims*: Being, generally, any right or claim of any Person against the Applicant arising out of the restructuring, disclaimer, termination or breach by the Applicant on or after the Filing Date of any contract, lease or other agreement whether written or oral; and
- (iii) *Director/Officer Claims*: Being, generally, any existing or future right or claim of any Person against one or more of the Directors and/or Officers of the Applicant, however arising, whereby such Directors or Officers are by law or equity, liable to pay in his or her capacity as a Director or Officer.

4.5 The proposed Claims Procedure Order does not apply to any Excluded Claim, being:

- (i) any Claim secured by any of the Charges (as defined in the Amended and Restated Initial Order);
- (ii) any Claim of Pigments or any Affiliate thereof;
- (iii) any Claim of: (a) Wells Fargo Bank, National Association, including any Claim of Wells Fargo Bank, National Association, as Administrative Agent under the Credit Agreement, dated as of April 25, 2018 (as amended, supplemented and otherwise modified from time to time) (the “**Revolving Loan Agreement**”); (b) Delaware Trust Company, including any Claim of Delaware Trust Company as Collateral Agent under the Credit Agreement, dated as of April 6, 2018 (as amended,

supplemented and otherwise modified from time to time) (the “**Term Loan Agreement**”); (c) any lender or other agent from time to time under the Revolving Loan Agreement or the Term Loan Agreement; and (d) in each case of (a), (b) or (c), any of their respective Affiliates;

(iv) any Claim enumerated in sections 5.1(2) and 19(2) of the CCAA; and

(v) any Excluded Claim arising through subrogation.

4.6 Pursuant to the proposed Claims Procedure Order, the Monitor shall be authorized and empowered to assist any Claimant, including any current or former employee of the Applicant or the Union in the filing of a Proof of Claim.

4.7 With respect to Unionized Employees, the Union shall be authorized to file a Proof of Claim on its own behalf and on behalf of any or all Unionized Employees. With respect to Non-Union Employees, anyone who was or may be deemed to be or have been an employee of the Applicant who wishes to file a Claim and does not receive a Claims Package within ten (10) Business Days prior to the Claims Bar Date, shall contact the Monitor and request a Claims Package in order to file a Proof of Claim.

Claims Bar Dates

4.8 It is proposed that any Claimant asserting a Prefiling Claim or a Director/Officer Claim be required to file the applicable Proof of Claim form with the Monitor by no later than 5:00 p.m. Eastern Standard Time on the Claims Bar Date (August 18, 2023) or such later date as the Court may otherwise direct, failing which the Claim of such Claimant will be forever extinguished and such Claimant barred from asserting or enforcing any such Claim. The

Monitor believes that the Claims Bar Date is reasonable in that it provides sufficient time from the date of the receipt of the Claims Package for potential Claimants to evaluate and submit any Claim they may have against the Applicant or any of the Directors and/or Officers of the Applicant.

- 4.9 It is proposed that any Claimant asserting a Restructuring Period Claim be required to file the applicable Proof of Claim form with the Monitor by the later of: (i) thirty (30) days after the date on which the Monitor sends a Claims Package with respect to a Restructuring Period Claim; and (ii) the Claims Bar Date (the “**Restructuring Period Claims Bar Date**”), or such later date as the Court may otherwise direct, failing which the Claim of such Claimant will be forever extinguished and such Claimant barred from asserting or enforcing any such Claim. The Monitor believes that a thirty (30)-day period is reasonable in that it provides sufficient time from the date a Claims Package is sent to a Claimant to evaluate and submit any Claim they may have against the Applicant in respect of a Restructuring Period Claim.

Notice

- 4.10 The proposed Claims Procedure Order provides that the Monitor will do the following in providing notification of the Claims Procedure:
- (i) by no later than 5:00 p.m. Eastern Standard Time on July 4, 2023, cause a Claims Package to be sent, on behalf of the Applicant, to each of the known Potential Claimants;

- (ii) as soon as practicable after the date of the Claims Procedure Order, cause the Notice Letter (or a condensed version thereof), to be published once in *The Globe and Mail* (National Edition);
- (iii) as soon as practicable after the date of the Claims Procedure Order, post a copy of the following on the Monitor's Website: (a) the Claims Procedure Order; (b) the Monitor's Motion Record in respect of the Claims Procedure Order; and (c) the Claims Package;
- (iv) deliver, as soon as reasonably possible following receipt of a request therefor, a copy of the Claims Package to any Person claiming to be a Claimant and requesting such material in writing;
- (v) with respect to any notices of disclaimer delivered to potential Claimants by or on behalf of the Applicant after the date of the Claims Procedure Order, deliver an accompanying Claims Package; and
- (vi) upon becoming aware of any other circumstance giving rise to a Restructuring Period Claim, send a Claims Package to the applicable Claimant or direct such Claimant to the documents posted on the Monitor's Website in respect of such Restructuring Period Claim.

Assessment and Determination of Claims

- 4.11 The Monitor will: (i) review all Proofs of Claim received on or before the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable; and (ii) accept, revise or disallow the classification, nature, and/or amount of each Claim. In respect of

Director/Officer Claims, the Monitor, in consultation with the relevant Director or Officer, will: (a) review all Proofs of Claims received by the Claims Bar Date in respect of Director/Officer Claims; and (b) accept, revise or disallow the classification, nature, and/or amount of such Director/Officer Claim, in whole or in part (which acceptance, revision or disallowance shall require the consent of the applicable Director or Officer). The Monitor will provide the relevant Director or Officer (and his or her counsel, if known to the Monitor) with a copy of any Proofs of Claim received in respect of Director/Officer Claims.

4.12 If the Monitor intends to revise or disallow a Claim or a Director/Officer Claim, in whole or in part, the Monitor will notify the Claimant by sending a Notice of Revision or Disallowance along with the reasons for such revision or disallowance. In respect of revised or disallowed Director/Officer Claims, the Monitor shall provide a copy of such Notice of Revision or Disallowance to the Director or Officer (and his or her counsel, if known to the Monitor) subject to a Director/Officer Claim.

4.13 Any Claimant who intends to dispute a Notice of Revision or Disallowance must send written notice to the Monitor by completing a Notice of Dispute of Revision or Disallowance by no later than 5:00 p.m. Eastern Standard Time on the date that is fourteen (14) Calendar Days after the date the Monitor sends the Notice of Revision or Disallowance to the applicable Claimant. In respect of Director/Officer Claims, the Monitor shall provide a copy of such Notice of Dispute of Revision or Disallowance to the Director or Officer (and his or her counsel, if known to the Monitor) subject to the applicable Director/Officer Claim upon the receipt of such Notice of Dispute of Revision or Disallowance.

- 4.14 Any Claimant that receives a Notice of Revision or Disallowance that does not file a Notice of Dispute of Revision or Disallowance with the Monitor within the prescribed fourteen (14)-day time period shall be deemed to have accepted the amount and determination as set out in the Notice of Revision or Disallowance for voting and distribution purposes, as applicable, and all of the Claimant's rights to dispute same or to otherwise assert or pursue the Claim in an amount that exceeds the amount set forth in the Notice of Revision or Disallowance shall be forever extinguished and barred without further act or notification.
- 4.15 In the event that a dispute raised in a Notice of Dispute of Revision or Disallowance is not settled within a time period or in a manner satisfactory to the Monitor, the Monitor shall so notify the Claimant. Thereafter, the Monitor shall refer the Disputed Claim to the Court or to such alternative dispute resolution proceeding as may be ordered by the Court or agreed to by the Monitor and the applicable Claimant. The Court or the Person or Persons conducting the alternative dispute resolution proceeding, as the case may be, shall resolve the dispute.
- 4.16 With respect to Director/Officer Claims, in the event that the Monitor determines that it is necessary to finally determine the amount of a Director/Officer Claim and the Monitor, with the consent of the applicable Directors and/or Officers, is unable to resolve a dispute regarding such Director/Officer Claim with the Claimant asserting such Director/Officer Claim within a period or in a manner satisfactory to the Monitor and the applicable Directors and/or Officers, the Monitor shall notify the applicable Directors and/or Officers and such Claimant. Thereafter, the Monitor shall refer the Disputed Claim to the Court for resolution or to such alternative dispute resolution proceeding as may be ordered by the Court or as agreed to by the Monitor, the relevant Director or Officer and the applicable

Claimant. The Court or the Person or Persons conducting the alternative dispute resolution proceeding, as the case may be, shall resolve the dispute.

D&O Indemnity Claims

- 4.17 To the extent that any Claim filed in accordance with the Claims Procedure Order includes a Director/Officer Claim, a corresponding D&O Indemnity Claim shall be deemed to have been filed in respect of each Director/Officer Claim prior to the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable. Directors and Officers shall not be required take any action or to file a Proof of Claim in respect of any such D&O Indemnity Claim.

Claims Barred and Extinguished

- 4.18 The proposed Claims Procedure Order provides that any Person that does not deliver a Proof of Claim to the Monitor on or before the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable: (i) shall not be entitled to attend or vote at a Meeting in respect of such Claim; (ii) shall not be entitled to receive any distribution in respect of such Claim pursuant to a Plan or otherwise; (iii) shall not be entitled to any further notice in the CCAA Proceedings (unless it has otherwise sought to be included on the Service List); and (iv) shall be forever barred from making or enforcing such Claim against the Applicant, the Directors or the Officers or any of them, and such Claim shall be extinguished without any further act or notification.

5.0 EXTENSION OF THE STAY PERIOD

- 5.1 The Stay Period currently expires on June 30, 2023.

5.2 The Monitor proposes that this Court extend the Stay Period until and including December 31, 2023, for the following reasons:

- (i) the stay of proceedings will provide the necessary time for the Monitor to implement the proposed Claims Procedure and to begin to assess, quantify and seek to resolve the claims filed in connection therewith;
- (ii) the stay of proceedings is required to provide the necessary stability and certainty to enable the Monitor to facilitate the wind-down of the CCAA Proceedings;
- (iii) the Canadian Designated Amount Portion and the CCAA Cash Pool are expected to provide sufficient liquidity to fund the remaining costs associated with the wind-down of the Applicant's estate and other administrative costs of the CCAA Proceedings (including the costs of establishing and implementing the Claims Procedure), respectively, including, for certainty, through to and beyond the proposed extended Stay Period; and
- (iv) the Applicant, under the direction and oversight of the Monitor, continues to act in good faith and with due diligence.

6.0 ACTIVITIES OF THE MONITOR SINCE THE DATE OF THE FIFTH REPORT

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

- (i) engaging in discussions with representatives of Pigments (being former management of the Applicant), as well as the Applicant's legal counsel regarding the CCAA Proceedings, including wind-down activities and the amounts owing in

respect of the Canadian Pension Plans and the Applicant's registered retirement savings plan for hourly and salaried employees;

- (ii) engaging in discussions with the appointed administrators of the Hourly DB Plan, Salaried DB Plan, Hourly DC Plan and Salaried DC Plan regarding the Canadian Pension Plans;
- (iii) preparing for and attending the Court hearing on May 8, 2023 for the granting of the Expansion of Monitor's Powers Order;
- (iv) delivery of the Amended Monitor's Certificate (as defined in the Expansion of Monitor's Powers Order);
- (v) corresponding with the Canada Revenue Agency regarding the status of various tax matters;
- (vi) corresponding with the Applicant's cash management services provider in connection with the closure of the Applicant's bank accounts and other activities related to the wind-down of the Applicant;
- (vii) engaging in discussions with the Applicant's tax advisor with respect to the preparation of the Applicant's 2023 income tax returns for the period ending March 31, 2023, sales tax returns, and the preparation of various tax election forms;
- (viii) responding to inquiries from stakeholders, including addressing questions or concerns of parties who contacted the Monitor on the hotline number or email account established by the Monitor for the CCAA Proceedings;

- (ix) posting non-confidential materials filed with this Court to the Case Website; and
- (x) with the assistance of its legal counsel, preparing the proposed Claims Procedure Order and this Sixth Report.

7.0 CONCLUSIONS AND RECOMMENDATIONS

- 7.1 For the reasons set out in this Sixth Report, the Monitor respectfully recommends that this Court grant the proposed Claims Procedure Order, including approving the activities of the Monitor and the Monitor's Canadian legal counsel, Osler, Hoskin & Harcourt LLP, as described in this Sixth Report and each of the Prior Reports.

All of which is respectfully submitted to this Court this 14th day of June, 2023.

**ALVAREZ & MARSAL CANADA INC.,
solely in its capacity as Monitor of
1000156489 Ontario Inc. (f/k/a DCL Corporation)
and not in its personal or corporate capacity**

Per:



Josh Nevsky
Senior Vice-President

Per:



Stephen Ferguson
Senior Vice-President

APPENDIX “A”

PRE-FILING REPORT OF THE PROPOSED MONITOR DATED DECEMBER 20, 2022

(without appendices)

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 DCL CORPORATION

PRE-FILING REPORT OF THE PROPOSED MONITOR
ALVAREZ & MARSAL CANADA INC.

DECEMBER 20, 2022

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Appendix “A” – Cash Flow Forecast

Appendix “B” – Management’s Representation Letter Regarding the Cash Flow Forecast

Appendix “C” – Professional Qualifications of Scott Davido

Appendix “D” – CRO Engagement Letter

1.0 INTRODUCTION

- 1.1 Alvarez & Marsal Canada Inc. (“**A&M**” or the “**Proposed Monitor**”) understands that DCL Corporation (“**DCL Canada**” or the “**Applicant**”), intends to make an application to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for an order (the “**Initial Order**”) granting, among other things, a stay of proceedings pursuant to *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and appointing A&M as Monitor of the Applicant (in such capacity, the “**Monitor**”). The proceedings to be commenced by the Applicant under the CCAA are referred to herein as the “**CCAA Proceedings**”.
- 1.2 DCL Canada is a subsidiary of its U.S. parent, H.I.G. Colors Inc. (“**Colors**”), a direct wholly-owned subsidiary of the ultimate corporate parent, H.I.G. Colors Holdings, Inc. (“**Holdings**” and, together with Colors and its direct and indirect subsidiaries, including the Applicant and its subsidiaries, the “**DCL Group**”). DCL Canada is incorporated under the laws of Ontario and its head office is located in Toronto, Ontario.
- 1.3 The CCAA Proceedings are being commenced as part of a larger coordinated restructuring of the DCL Group. A&M understands that Holdings and certain of its U.S.-based subsidiaries (collectively, “**DCL US**” or the “**Chapter 11 Debtors**”)¹ intend to file voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “**U.S. Bankruptcy Court**”, and such proceedings, the “**Chapter 11 Proceedings**”, and together with the CCAA Proceedings, the “**Restructuring Proceedings**”). A corporate chart setting out the legal

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

structure of the DCL Group, is attached as Exhibit “B” to the Davido Affidavit (as defined below).

- 1.4 The objective of the Restructuring Proceedings is to stabilize and maintain the DCL Group’s business and to commence a court-supervised marketing process for the business and assets of the DCL Group. The Proposed Monitor understands that, at a later date, to be coordinated with the Chapter 11 Proceedings, the Applicant intends to seek an order approving certain bidding procedures for the business and assets of the DCL Group (the “**Bidding Procedures**”).
- 1.5 The purpose of this pre-filing report (the “**Report**”) is to provide the Court with information, and where applicable, the Proposed Monitor’s views, on:
 - (i) A&M’s qualifications to act as Monitor;
 - (ii) background information with respect to DCL Canada;
 - (iii) events leading to the CCAA Proceedings;
 - (iv) the proposed debtor-in-possession financing facility (the “**DIP Facility**”);
 - (v) DCL Canada’s cash management system;
 - (vi) DCL Canada’s weekly cash flow forecast;
 - (vii) intercompany transactions and arrangements among DCL Canada and other members of the DCL Group, and the proposed treatment of intercompany transfers during the Restructuring Proceedings;

- (viii) the relief sought by the Applicant as part of the proposed Initial Order, including with respect to:
- (a) the approval of the appointment of Mr. Scott Davido as the chief restructuring officer (“**CRO**”);
 - (b) the stay of proceedings and extending the stay of proceedings to include the DCL USA LLC Inventory (as defined below) which is situated in Canada;
 - (c) the approval of the Intercompany Agreements (as defined below); and
 - (d) the priority Court-ordered charges over the property and assets of the Applicant (collectively, the “**Property**”); and
- (ix) the Proposed Monitor’s conclusions and recommendations in connection with the foregoing.

2.0 TERMS OF REFERENCE AND DISCLAIMER

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

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

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

2.3 This Report should be read in conjunction with the affidavit of Mr. Scott Davido, sworn December 20, 2022 (the “**Davido Affidavit**”), and filed in support of the Applicant’s application for relief under the CCAA. Capitalized terms used but not defined in this Report shall have the meanings given to such terms in the Davido Affidavit.

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

3.0 A&M'S QUALIFICATIONS TO ACT AS MONITOR

- 3.1 Alvarez & Marsal Canada Inc. was engaged to act as a consultant to DCL Canada on September 29, 2022, and as such, the Proposed Monitor is familiar with the business and operations of the Applicant, its personnel, and the key issues and stakeholders in the proposed CCAA Proceedings. A&M is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA.
- 3.2 A&M is related to Alvarez & Marsal Holdings, LLC, which is an independent international professional services firm, providing, among other things, bankruptcy, insolvency and restructuring services. The senior A&M personnel with carriage of this matter include experienced insolvency and restructuring practitioners who are Chartered Professional Accountants, Chartered Insolvency and Restructuring Professionals, and Licensed Insolvency Trustees, and whom have previously acted in CCAA matters of a similar nature.
- 3.3 The Proposed Monitor has retained Osler, Hoskin & Harcourt LLP (“**Osler**”) to act as its independent legal counsel.
- 3.4 A&M has consented to act as Monitor of the Applicant should the Court grant the Applicant's request to commence the CCAA Proceedings pursuant to the Initial Order.

4.0 BACKGROUND INFORMATION

Overview

- 4.1 A more extensive background of DCL Canada's business and operations is set out in the Davido Affidavit. Certain key points are summarized below.
- 4.2 The DCL Group, through its subsidiaries and affiliates, including DCL Canada, is an integrated global manufacturer and reseller of colour pigments and dispersions for the coatings, plastics, and ink industries.
- 4.3 DCL Canada maintains its head office in Toronto, Ontario (the "**DCL Head Office**") and operates out of three facilities in Ontario:
- (i) a 67,000 square foot manufacturing and warehousing facility producing organics and basic dye products in Toronto, Ontario (the "**New Toronto Plant**");
 - (ii) a 54,000 square foot manufacturing facility producing organics and CYMO (Chrome Yellow & Molybdenum Orange) and an adjacent 58,000 square foot distribution centre in Ajax, Ontario (together, the "**Ajax Plant**"); and
 - (iii) a 15,000 square foot manufacturing facility producing dispersions and an adjacent office and manufacturing facility in Mississauga, Ontario (collectively the "**Mississauga Plant**").

DCL Canada owns the real property on which the New Toronto Plant and Ajax Plant are located and leases the DCL Head Office and the Mississauga Plant.

- 4.4 DCL Canada's operations are comprised of procurement, manufacturing, distribution and administrative support functions. As discussed in further detail below, DCL USA LLC owns all customer sales contracts and customer lists and maintains all customer relationships with the exception of a relatively small group of customers serviced out of the Mississauga Plant. Accordingly, substantially all DCL Canada's revenues are generated from Inventory Sales (as defined below) to DCL USA LLC.
- 4.5 During the fiscal year ended March 31, 2022 and year-to-date through September 30, 2022, DCL Canada reported revenues of \$116.8 million and \$35.1 million, respectively, and net income of \$11.3 million and net loss of \$3.3 million, respectively.²

Employees

- 4.6 DCL Canada currently employs approximately 206 people in Canada, including 46 at the DCL Head Office, 80 at the Ajax Plant, 62 at the New Toronto Plant and 18 at the Mississauga Plant. Certain employees at the Ajax Plant and the New Toronto Plant are unionized.
- 4.7 Payroll for employees of DCL Canada is processed in Canada through a third-party payroll processor (ADP, LLC) and paid through DCL Canada's Cash Management System (as defined below).

²

DCL Canada's financial results do not take into account the go-forward impact of the Intercompany Balance Sheet Transactions described in Section 9.0 Intercompany Transactions, and are subject to further adjustment based on the DCL Group's Transfer Pricing Policy (as defined below).

4.8 DCL Canada sponsors five registered pension plans:

- (i) two are defined benefit plans, one for salaried employees (the “**Salaried DB Plan**”) and one for hourly employees (the “**Hourly DB Plan**”). The Salaried DB Plan is comprised of 95 members, including 59 retirees, and the Hourly DB Plan is comprised of 113 members, including 40 retirees. Both the Salaried DB Plan and the Hourly DB Plan were in a surplus position as of the date of the last actuarial valuation report, being December 31, 2021;
- (ii) two are defined contribution plans, one for salaried employees (the “**Salaried DC Plan**”) and one for hourly employees (the “**Hourly DC Plan**”), comprised of 89 members and 51 members, respectively; and
- (iii) one legacy defined contribution plan for Monteith employees who work at the Mississauga Plant with a total of 17 members, including 1 retiree. No contributions are currently being made to this legacy plan and an application has been made to transfer the assets to the Salaried DC Plan and Hourly DC Plan, as applicable.

4.9 DCL Canada also sponsors a group benefits plan which provides medical, dental, vision, life, accidental death and dismemberment, business travel insurance, short-term disability and long-term disability for certain of its employees and their dependents.

4.10 The Proposed Monitor understands that, during the CCAA Proceedings, DCL Canada intends to continue funding all employee related costs and benefits in the normal course, and that DCL Canada is current in all of its funding obligations in respect of such costs and benefits.

Prepetition Secured Credit Facilities

- 4.11 The DCL Group maintains two secured credit facilities, each of which are joint facilities that include DCL US and DCL Canada entities as borrowers. As at the date of this Report, the DCL Group had approximately \$132.2 million in outstanding funded secured debt:

<i>(USD in millions)</i>	Total Outstanding
Prepetition ABL Facility	\$41.7
Prepetition Term Loan	\$90.5
Total Prepetition Secured Debt Outstanding	\$132.2

- 4.12 Each of the credit facilities is described in detail in the Davido Affidavit. Key terms and components of the facilities include the following:

Prepetition Secured Credit Facilities (Capitalized terms have the meaning ascribed thereto in this Report or in the applicable credit document, as applicable)	
Prepetition ABL Facility	
Agreement	<ul style="list-style-type: none">• Credit agreement dated as of April 25, 2018 (as amended)
Borrowers	<ul style="list-style-type: none">• DCL Canada, as Canadian Borrower• DCL USA LLC and DCL BP, as U.S. Borrowers
Guarantors	<ul style="list-style-type: none">• Guarantors include Colors, DCL Holdings and Dominion Colour Corporation (USA)
Lender Parties	<ul style="list-style-type: none">• Wells Fargo Bank, National Association, as Agent (the “Prepetition ABL Agent”) and Lead Arranger• Lenders from time-to-time party thereto
Maximum Credit Amount	<ul style="list-style-type: none">• \$55 million• Maximum Credit Amount is the total maximum aggregate amount available under the US and Canadian revolving loan facilities, subject to applicable borrowing bases³
Interest	<ul style="list-style-type: none">• US Revolving Loans:<ul style="list-style-type: none">(A) the US Base Rate plus the Applicable Margin; or(B) the LIBOR Rate plus the Applicable Margin• Canadian Revolving Loans:<ul style="list-style-type: none">(A) denominated in Canadian Dollars:

³

As further described in the Davido Affidavit, the terms of the Prepetition Term Loan restrict the borrowers thereunder, including the Applicant, from incurring indebtedness under the Prepetition ABL Facility above a prescribed amount. The Proposed Monitor understands that the Applicant has received waiver letters regarding such cap from the Prepetition Term Loan Agent (as defined below), but such waivers were limited in time and have expired.

	<ul style="list-style-type: none"> (1) the Canadian Base Rate plus the Applicable Margin; or (2) the Canadian BA Rate plus the Applicable Margin; and <p>(B) denominated in US Dollars:</p> <ul style="list-style-type: none"> (1) the US Base Rate plus the Applicable Margin; or (2) the LIBOR Rate plus the Applicable Margin • Swingline Loans at the applicable Base Rate plus the Applicable Margin • Additional default interest of 2.0%
Maturity Date	<ul style="list-style-type: none"> • April 25, 2023
Security & Intercreditor Arrangements	<ul style="list-style-type: none"> • On a first-priority basis by liens on the ABL Priority Collateral, including accounts, inventory, and cash, other than Excluded Collateral (which includes real property) • Other than with respect to Excluded Collateral, on a second-priority basis by liens on the Term Loan Priority Collateral, which includes all collateral that does not constitute ABL Priority Collateral, including tangible personal property and intellectual property
Prepetition Term Loan	
Agreement	<ul style="list-style-type: none"> • Credit agreement dated as of April 6, 2018 (as amended)
Borrowers	<ul style="list-style-type: none"> • DCL Canada, as the Canadian Borrower • DCL Holdings, as the U.S. Borrower • Colors (added pursuant to the Fourth Amendment (as defined below))
Guarantors	<ul style="list-style-type: none"> • Canadian Loan Guarantors include Colors, U.S. Borrower, DCC USA LLC, DCL BP and Dominion Colours Corporation (USA) • U.S. Loan Guarantors include Colors, DCC USA LLC, DCL BP and Dominion Colour Corporation (USA)
Lender Parties	<ul style="list-style-type: none"> • Delaware Trust Company, as Administrative Agent and Collateral Agent (as successor to Virtus Group, LP) (the “Prepetition Term Loan Agent”) • Lenders from time-to-time party thereto
Commitment	<ul style="list-style-type: none"> • \$99 million initial commitment and delayed draw commitment of \$25 million (which was never utilized), with additional \$67 million pursuant to the Fourth Amendment
Interest	<ul style="list-style-type: none"> • ABR Loans: Alternate Base Rate plus Applicable Loan Margin (between 6.25% to 7.25%) • Eurodollar Loans: Adjusted LIBOR Rate for the relevant Interest Period in effect plus Applicable Loan Margin (between 7.25% to 8.25%) • Additional default interest of 2.0%
Maturity Date	<ul style="list-style-type: none"> • April 6, 2024
Security & Intercreditor Arrangements	<ul style="list-style-type: none"> • On a first-priority basis by liens on the Term Loan Priority Collateral • On a second-priority basis by liens on the ABL Priority Collateral

Unsecured Creditor Profile

4.13 Based on the Applicant’s consolidated books and records, as at December 9, 2022, amounts payable to unsecured trade creditors were approximately \$11.9 million, owing primarily to

third-party suppliers of chemicals and pigments used in the manufacturing process and suppliers of freight, logistics, brokerage, marketing and other general services.

- 4.14 In September 2016, the Colors corporate group acquired the shares of DCL Canada from KNRV Investments Inc. (“**KNRV**”) pursuant to a share purchase agreement that contemplated an earnout payment to KNRV (the “**Earnout Payment**”). The Proposed Monitor understands that, as of November 18, 2022, the amount of the Earnout Payment of CAD\$9.822 million has been agreed to with KNRV. The Applicant has not made any payments to KNRV in respect of the Earnout Payment.
- 4.15 Pursuant to the sponsor subordinated promissory note dated April 26, 2019, as amended and restated on July 31, 2021, DCL Canada and DCL Holdings are indebted to H.I.G. Dominion, LLC, in the total amount, as of March 31, 2022, of \$9.8 million.
- 4.16 As further described in the Davido Affidavit, the Proposed Monitor understands that various environmental obligations associated with the property, plant and equipment exist at the Ajax Plant and the New Toronto Plant. DCL Canada has advised the Proposed Monitor that air testing has confirmed there is no threat to the public health. Following its appointment as Monitor, the Proposed Monitor intends to review and report on these obligations as necessary.

Security Review

- 4.17 As the same parties to the Prepetition ABL Facility are providing the DCL Group with the DIP Facility, the Proposed Monitor requested that Osler conduct a review of the security granted by the Applicant in respect of the Prepetition ABL Facility. Osler has provided the Proposed Monitor with a written opinion that provides that, in Osler’s view, subject to

standard assumptions, qualifications and limitations customary in rendering security opinions of this nature, the security granted by the Applicant in respect of the Prepetition ABL Facility constitutes valid and enforceable⁴ security perfected by registration in the Province of Ontario.

5.0 EVENTS LEADING TO THE CCAA PROCEEDINGS

- 5.1 As further described in the Davido Affidavit, on a consolidated basis, the DCL Group is incurring considerable operating losses and is facing significant liquidity constraints due to a combination of factors, including sharp increases in input and manufacturing costs resulting from inflationary factors, ongoing supply chain issues materially impacting its manufacturing operations, and challenges with retaining and recruiting employees (including certain critical executive roles).
- 5.2 The Applicant is also currently in default of various obligations under the Prepetition ABL Facility, and as noted above, a significant obligation with respect to the Earnout Payment is also due, and the Applicant does not have the financial resources to pay such amount at this time.
- 5.3 As a result of the DCL Group's outstanding secured debt and the magnitude of the above financial and liquidity issues, the Proposed Monitor understands that the DCL Group began exploring alternatives to deleverage its balance sheet or otherwise restructure its business.
- 5.4 In September 2022, certain entities within the DCL Group engaged TM Capital Corp. ("**TM Capital**") to assist with a sale process for the DCL Group, including DCL Canada

⁴ The opinion assumes enforceability in instances where the governing law of the applicable credit document is not the Province of Ontario.

(the “**Pre-Filing Sale Process**”). TM Capital canvassed a select list of parties who had been identified as the most likely acquirers of the DCL Group (“**Potential Bidders**”). During the period between September and December of 2022, certain of these Potential Bidders performed diligence on the DCL Group’s business and in early December 2022, certain parties submitted non-binding indications of interest to acquire the DCL Group. Notwithstanding the interest received during the Pre-Filing Sale Process, the DCL Group determined that it did not have sufficient liquidity to consummate a transaction with any of the Potential Bidders.

- 5.5 As part of the Restructuring Proceedings, the Proposed Monitor understands that DCL Canada and the Chapter 11 Debtors, with assistance from TM Capital, intend to commence a going concern marketing process for the business and assets of the DCL Group, and that DCL Canada and the Chapter 11 Debtors intend to serve motions in the Chapter 11 Proceedings and the CCAA Proceedings, respectively, seeking approval of the Bidding Procedures within approximately five to six weeks from the commencement of the Restructuring Proceedings.
- 5.6 During the interim period, the DCL Group will continue to seek to identify Potential Bidders, including a potential stalking horse bidder. The Proposed Monitor understands that, should a stalking horse bidder be selected by the Applicant and the Chapter 11 Debtors, each will bring a motion seeking approval of the stalking horse agreement by the applicable court, to be heard at the hearing to approve the Bidding Procedures. The Proposed Monitor intends to file a report with the Court in connection with such motion by the Applicant at the appropriate time.

6.0 DIP FACILITY

- 6.1 As described in the Davido Affidavit, the DCL Group, including DCL Canada, requires financing during the Restructuring Proceedings to provide the liquidity necessary to maintain their business as a going concern, preserve value of their assets for their stakeholders and to pursue and implement any transactions resulting from the process contemplated by the Bidding Procedures.
- 6.2 In order to obtain access to such liquidity, the DCL Group negotiated the terms of the DIP Facility. The DIP Facility and the process undertaken by the DCL Group to secure the DIP Facility are described in greater detail in the Davido Affidavit. Key terms and components of the DIP Facility include the following:⁵

DIP Facility (Capitalized terms have the meaning ascribed thereto in this Report or in the DIP Credit Agreement, as applicable)	
Agreement	<ul style="list-style-type: none">• Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement substantially in the form attached to the Davido Affidavit (the “DIP Credit Agreement”)
Borrowers	<ul style="list-style-type: none">• DCL USA LLC and DCL BP (as borrowers, the “US Borrowers”)• DCL Canada (as borrower, the “Canadian Borrower”, and collectively with the US Borrowers, the “DIP Borrowers”)
Guarantors	<ul style="list-style-type: none">• Guarantors of the obligations under the DIP Facility include DCL Canada and the Chapter 11 Debtors
Lender Parties	<ul style="list-style-type: none">• Wells Fargo Bank, National Association, as administrative agent (the “DIP Agent”)• Lenders from time-to-time party thereto (the “DIP Lenders”)
Commitment & Borrowing Base	<ul style="list-style-type: none">• \$55 million revolving facility, subject to a borrowing base calculation based on eligible accounts receivable and inventory, less certain reserves, for both the US Borrowers and the Canadian Borrower• Canadian Borrower’s borrowings will be limited to \$5 million until the comeback hearing• Letter of Credit Sublimit of \$2 million, subject to the applicable borrowing base
Interest	<ul style="list-style-type: none">• SOFR Loan obligations and Letters of Credit: Adjusted Term SOFR or Canadian BA Rate, plus 4.00%• Base Rate obligations and Swingline Loans: US Base Rate or Canadian Base

⁵ The discussion included herein is based on the most recent draft of the DIP Credit Agreement (as defined below) provided to the Proposed Monitor for review and is subject to change based upon the final, agreed upon terms of the DIP Credit Agreement.

	<p>Rate, plus 3.00%</p> <ul style="list-style-type: none"> • Unused line fee of 0.50% • Additional default interest of 2.0%
Maturity Date	<p>The earlier of:</p> <ul style="list-style-type: none"> • March 31, 2023 • the date of implementation of a confirmed Chapter 11 or CCAA plan • the closing date of a sale of all or substantially all of the business and/or assets of the DIP Borrowers • the date of termination of revolver commitments during the continuance of an event of default under the DIP Facility, including among other things, conversion of the Chapter 11 Proceedings to Chapter 7 proceedings, appointment of a trustee under Chapter 11, dismissal of any of the Chapter 11 Proceedings, a termination of the CCAA Proceedings, conversion of the CCAA Proceedings into a receivership or bankruptcy under the BIA <p><i>The above is a summary and not a comprehensive list</i></p>
Cash Flow Covenant	<p>Tested weekly, on a rolling three-week basis, the DIP Borrowers shall not permit:</p> <ul style="list-style-type: none"> • total disbursements (excluding professional fees and expenses) to exceed the DIP Budget by more than 15% • total collections to be less than 80% of the DIP Budget • Excess Availability as of the reporting date to be more than 15% less than the DIP Budget • Loan balance as of the reporting date to be more than 15% of the DIP Budget
DIP Milestones	<ul style="list-style-type: none"> • Within 1 Business Day after the Petition Date, the Loan Parties shall have filed with each Bankruptcy Court a motion seeking entry of the Bid Procedures Order • On or before January 31, 2023, the Loan Parties shall have filed the DIP Asset Purchase Agreement with each Bankruptcy Court, duly authorized, executed and delivered by the parties thereto, providing for the Sale Transaction (such Sale Transaction to act as the stalking horse bid) • On or before February 7, 2023, each Bankruptcy Court shall enter the Bid Procedures Order which shall provide that bids shall be due by no later than March 10, 2023 • On or before March 15, 2023, the Loan Parties shall have commenced the auction, if one is necessary, and shall have selected the winning bid(s) • On or before March 17, 2023, each Bankruptcy Court shall have entered the Sale Order with respect to the results of the auction, and with the proceeds to be applied to the obligations under the DIP Facility sufficient to repay such obligations in full in cash • On or before March 31, 2023, the Loan Parties shall have consummated the Sale Transaction • On or before March 31, 2023, the Loan Parties shall make payment in full in cash of all Obligations under the DIP Facility and the Prepetition ABL Facility (to the extent still outstanding) <p><i>The above is a summary and not a comprehensive list</i></p>
DIP Collateral	<ul style="list-style-type: none"> • To be secured in Canada by the DIP Charge (as defined below)

6.3 The Proposed Monitor notes the following with respect to the DIP Facility:

- (i) the terms of the DIP Facility are the result of extensive negotiations as between the DCL Group, the DIP Agent and their respective advisors, and represents the best that the DCL Group could negotiate in the circumstances to seek a going concern outcome for its business;
- (ii) Ankura has advised the Proposed Monitor that in light of the significant amount of existing secured debt, the DCL Group was unable to obtain acceptable debtor-in-possession financing proposals other than those reflected in the DIP Facility;
- (iii) the DIP Facility is conditioned on the approval of the Court and the U.S. Bankruptcy Court. The Proposed Monitor understands that the Chapter 11 Debtors will seek approval of the DIP Facility from the U.S. Bankruptcy Court as part of the “First Day” hearings to be scheduled;
- (iv) although: (A) DCL Canada is not a joint and several obligor, and guarantor of, the obligations of its U.S. affiliates under the Prepetition ABL Facility, such joint and several liability of, and guarantee by, DCL Canada, is required by the DIP Facility; and (B) the DIP Facility contemplates a “creeping roll up” of the Chapter 11 Debtors’ obligations thereunder in the Chapter 11 Proceedings⁶, the Proposed Monitor notes that:

⁶ As the Applicant does not have obligations owing under the Prepetition ABL Facility at this time given the transfer of its indebtedness under the Prepetition ABL Facility discussed herein, the “roll-up” contemplated by the DIP Credit Agreement does not directly apply to the Applicant. However, the Proposed Monitor notes that, pursuant to the proposed DIP Facility, the Applicant will be joint and severally liable for, and guarantee, the rolled-up U.S. obligations under the DIP Facility.

- (a) under the DIP Credit Agreement, the borrowing capacity of the US Borrowers is restricted by the US Borrowers' borrowing base, which is based on a percentage of the value of eligible inventory and receivables of the US Borrowers (and does not include the inventory and receivables of DCL Canada);
- (b) the DIP Credit Agreement includes provisions⁷ that require that, upon the maturity of the DIP Facility or an event of default thereunder, the proceeds of the collateral of DCL Canada shall be applied to satisfy obligations of the US Borrowers only after the proceeds of substantially all of the ABL Priority Collateral of the US Borrowers has been applied to such obligations. Accordingly, the chance that assets (or proceeds therefrom) of DCL Canada will be needed to satisfy obligations of the US Borrowers under the DIP Facility is reduced as a result of such provisions of the DIP Credit Agreement noted above and the fact that loans to the US Borrowers under the DIP Facility will be made based only on the US Borrowers' eligible inventory and receivables;
- (c) as described in greater detail below, DCL Canada's previous indebtedness of approximately \$40 million under the Prepetition ABL Facility was restructured to make DCL USA LLC the primary borrower thereof prior to the commencement of the Restructuring Proceedings, and had such

restructuring not taken place, then DCL Canada would have continued to be liable for such amount; and

- (d) the Proposed Monitor understands that: (A) DCL Canada being a joint and several borrower, and guarantor of the obligations of its U.S. affiliates, under the DIP Facility, was a requirement of the DIP Agent and the DIP Lenders in providing the DIP Facility to the DCL Group; and (B) DCL USA LLC is expected to provide intercompany funding to DCL Canada for the CCAA Proceedings from amounts that DCL USA LLC borrows under the DIP Facility;
- (v) the DIP Facility is structured in a manner that is substantially similar to the Prepetition ABL Facility and provides DCL Canada with substantially the same borrowing availability, but not subject to the availability suppression in the Prepetition ABL Facility as detailed in the Davido Affidavit, and is being provided by the existing third-party lenders under the Prepetition ABL Facility;
- (vi) the DIP Facility, together with the proposed Intercompany Transfers (as defined below), is projected to provide DCL Canada with sufficient liquidity during the CCAA Proceedings to allow the Applicant to continue to operate in the normal course and implement the process contemplated by the Bidding Procedures; and
- (vii) in the Proposed Monitor's view, the DIP Milestones (as further defined in the DIP Credit Agreement and summarized above), including with respect to the commencement of the marketing process contemplated by the Bidding Procedures and the selection of a stalking horse bidder, and the pricing and other financial terms

of the DIP Facility, are reasonable in the circumstances. The Proposed Monitor notes that the DIP Milestones provide as little as two days between the proposed auction date and Canadian sale approval hearing date. The Proposed Monitor understands that the Applicant and the DIP Agent have discussed this matter and will work together to ensure that proper service of the Canadian sale approval hearing is made. If necessary, the Proposed Monitor will provide a further update to the Court at the relevant time.

7.0 CASH MANAGEMENT SYSTEM

- 7.1 As described in the Davido Affidavit, the Applicant's cash management system is operated through various accounts with HSBC Canada and Wells Fargo Canada (the "**Cash Management System**"). The Cash Management System is administered by the DCL Group's treasury department at DCL Head Office in Toronto.
- 7.2 DCL Canada utilizes 17 bank accounts, of which, 15 are held at HSBC Canada, and two are held at Wells Fargo Canada (collectively, the "**Bank Accounts**"). The Bank Accounts are in various currencies, including CAD, USD, GBP, EUR, and JPY. An overview of the Applicant's Bank Accounts is detailed in the Davido Affidavit.
- 7.3 The Applicant intends to continue using its existing Cash Management System in substantially the same manner as before the commencement of the CCAA Proceedings and is seeking approval of the Court to do so. Given the scale and nature of the Applicant's operations and the volume of transactions that are processed daily within the Cash Management System, the Proposed Monitor is of the view that the continued use of the

existing Cash Management System is required and appropriate during these CCAA Proceedings.

7.4 As part of its monitoring procedures, the Proposed Monitor will:

- (i) review receipts and disbursements processed through the Bank Accounts;
- (ii) review weekly receipts and disbursements summaries, compare the summaries to the corresponding cash flow forecasts and review variances with management; and
- (iii) review disbursements, as reasonably appropriate, for compliance with provisions of the proposed Initial Order.

8.0 CASH FLOW FORECAST

8.1 The Applicant has prepared a weekly cash flow forecast (the “**Cash Flow Forecast**”) for the 15-week period from December 17, 2022 to March 31, 2023 (the “**Cash Flow Period**”). A copy of the Cash Flow Forecast, together with a summary of assumptions (the “**Cash Flow Assumptions**”) and management’s report on the cash-flow statement required by section 10(2)(b) of the CCAA are attached hereto as **Appendices “A” and “B”**, respectively.

8.2 The following table provides a summary of the Cash Flow Forecast, including the period prior to the comeback hearing, being the two-week period ending December 30, 2022 (the “**Initial 2-Week Period**”).⁸

⁸ It is expected that the comeback hearing will be scheduled the week of December 26, 2022.

Cash Flow Forecast		USD\$000's	
	2-Week Period	13-Week Period	15-Week Total
	<i>Dec-30</i>	<i>Mar-31</i>	<i>Mar-31</i>
Receipts			
Third-party collections	185	842	1,027
Intercompany Transfers	--	20,337	20,337
	185	21,179	21,364
Disbursements			
Payroll & Benefits	(613)	(3,909)	(4,522)
Vendor Payments	(1,853)	(12,672)	(14,525)
Rent, Utilities, Insurance	(89)	(768)	(857)
Freight, Duties & Other	(306)	(3,073)	(3,379)
Professional Fees	(442)	(2,307)	(2,749)
DIP Interest & Fees	--	(49)	(49)
Other	(25)	(163)	(188)
KEIP	--	(40)	(40)
	(3,328)	(22,981)	(26,309)
Net Cash Flow	(3,143)	(1,802)	(4,945)
Cash balance, opening	313	--	313
Net Cash Flow	(3,143)	(1,802)	(4,945)
Revolving Facility draws	2,830	(2,830)	--
Exit Financing / Sale Proceeds (placeholder) ⁹	--	4,632	4,632
Ending Cash Balance	--	--	--

8.3 The Proposed Monitor notes the following with respect to the Cash Flow Forecast:

- (i) during the Initial 2-Week Period, net cash flows are projected to be negative \$3.1 million, projected to be sufficiently funded by cash-on-hand of approximately \$313,000 and draws on the DIP Facility of approximately \$2.8 million;
- (ii) during the entire Cash Flow Period, net cash flows (excluding Intercompany Transfers and the Exit Financing / Sale Proceeds (as defined below)) are projected

to be negative \$25.3 million, which is projected to be sufficiently funded by: (a) cash-on-hand; (b) draws on the DIP Facility which peak at approximately \$3.5 million; and (c) Intercompany Transfers of approximately \$20.3 million;

- (iii) as described in the Intercompany Transactions section below, Intercompany Transfers are payments made by DCL USA LLC to DCL Canada for: (a) Inventory Sales to DCL USA LLC; (b) the net provision of Shared Services (as defined below); and (c) for any additional funding required to support the Applicant during the CCAA Proceedings to be made by way of Intercompany Loans (as defined below). As described in further detail below, it is proposed that amounts advanced for Intercompany Loans, if any, will be provided the benefit of the Intercompany Charge (as defined below) in the CCAA Proceedings; and
- (iv) the “Exit Financing / Sale Proceeds” of \$4.6 million is a placeholder balance only. As required by the DIP Agent, the DCL Group included this placeholder in the DIP Budget to reflect a hypothetical sale transaction closing on or before March 31, 2023, the proceeds of which would be used to repay obligations outstanding under the DIP Facility at that time. This placeholder amount is not indicative or representative of the total proceeds that may be generated by any actual sale transaction involving the DCL Group and the Applicant, nor does it contemplate a proper allocation of such proceeds as between DCL Canada and DCL US.

8.4 Based on the Proposed Monitor's review,¹⁰ nothing has come to its attention that causes it to believe, in all material respects, that:

- (i) the Cash Flow Assumptions are not consistent with the purpose of the Cash Flow Forecast;
- (ii) as at the date of this Report, the Cash Flow Assumptions are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Cash Flow Forecast, given the Cash Flow Assumptions; or
- (iii) the Cash Flow Forecast does not reflect the Cash Flow Assumptions.

The Cash Flow Forecast has been prepared solely for the purpose described above, and readers are cautioned that it may not be appropriate for other purposes.

8.5 As part of the Restructuring Proceedings, and as required by the DIP Facility, the DCL Group has prepared a cash flow forecast for its consolidated operations (the "**DIP Budget**"). DCL Canada's Cash Flow Forecast makes up one component of the DIP Budget.

¹⁰ The Proposed Monitor has reviewed the Cash Flow Forecast to the standard required of a Court-appointed Monitor by section 23(1)(b) of the CCAA. Section 23(1)(b) requires a Monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the Court on the Monitor's findings. Pursuant to this standard, the Proposed Monitor's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to information supplied to it by the Applicant, Ankura and key members of DCL Canada's management. The Proposed Monitor reviewed information provided by management for the Cash Flow Assumptions. Since the Cash Flow Assumptions need not be supported, the Proposed Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast.

9.0 INTERCOMPANY TRANSACTIONS

9.1 This section of the Report provides a preliminary overview of:

- (i) certain intercompany balance sheet transactions that occurred within the DCL Group, as detailed below (the “**Intercompany Balance Sheet Transactions**”);
- (ii) the ordinary course intercompany transactions that DCL Canada is party to with other members within the DCL Group; and
- (iii) the proposed intercompany arrangements during the Restructuring Proceedings.

Intercompany Balance Sheet Transactions

9.2 Over the last two fiscal years, the DCL Group effected the Intercompany Balance Sheet Transactions, resulting in certain balance sheet accounts being transferred between members of the DCL Group, including DCL Canada. The Proposed Monitor notes that it is continuing its review of the Intercompany Balance Sheet Transactions that relate to DCL Canada and will report to the Court when such review is complete. Accordingly, the overview provided below is preliminary and could be subject to updates when additional information is obtained and reviewed by the Proposed Monitor.

9.3 The primary purpose of the Intercompany Balance Sheet Transactions was to re-align the DCL Group’s entity-level financial statements following: (i) the DCL Group’s 2021 acquisition of the Bushy Park manufacturing facility in South Carolina, which substantially increased the DCL Group’s U.S.-based operations and manufacturing capacity, and increased sales of DCL US by approximately \$67 million over the last twelve months; and

(ii) an operational restructuring that was implemented to centralize all of the DCL Group's sales and commercialization processes through DCL US.

9.4 The Intercompany Balance Sheet Transactions as they relate to DCL Canada are summarized below:

Sale of DCL Canada's Customer Contracts and Working Capital Assets

9.5 Pursuant to an Order Book Purchase and Sale Agreement dated December 15, 2021, with an effective date of August 1, 2021 (the "**Working Capital Sale Effective Date**"), DCL Canada sold its non-Canadian customer sales contracts to DCL USA LLC (the "**Customer Contracts Sale**"). The Proposed Monitor understands that the purchase price for the Customer Contracts Sale was determined based on the fair market value of the underlying intangible assets, pursuant to a valuation by the DCL Group's tax advisor, Grant Thornton LLP, an independent international accounting firm (the "**DCL Group Tax Advisor**").

9.6 Consideration for the Customer Contracts Sale was provided by DCL USA LLC as part of the restructuring of the Prepetition Term Loan (as described below) in December 2021.

9.7 The Proposed Monitor understands that, following the Working Capital Sale Effective Date, Inventory Sales were made by DCL Canada to DCL USA LLC at arm's length prices as determined by the parties, in consultation with the DCL Group's Tax Advisor and consistent with the DCL Group's Transfer Pricing Policy.

9.8 However, the Proposed Monitor notes that, as a result of certain constraints within the DCL Group's financial reporting system, these Inventory Sales were not recorded in the DCL Group's books and records until July 1, 2022. Notwithstanding these system constraints,

the DCL Group made certain adjustments to the tax returns of the Applicant and DCL USA LLC for fiscal year end March 31, 2022, as if there were no system issues and the Inventory Sales had been recorded as of the Working Capital Sale Effective Date. These adjustments were made in consultation with the DCL Group Tax Advisor at pricing consistent with the DCL Group's Transfer Pricing Policy.

9.9 The Proposed Monitor also understands that on July 1, 2022, DCL Canada sold the following to DCL USA LLC: (i) all existing third-party accounts receivable of the Applicant relating to its customer contracts transferred to DCL USA LLC¹¹ (the “**July 2022 Receivables**”); (ii) all existing finished goods inventory manufactured for DCL USA LLC's third-party customers (the “**July 2022 Inventory**”); and (iii) substantially all of the Applicant's sales contracts with Canadian customers (other than a small group of sales contracts relating to the Monteith business) (the “**Non-Monteith Canadian Contracts**”).

9.10 The Proposed Monitor understands that these transactions were recorded in the books and records of the Applicant as follows:

- (i) the transfer of the July 2022 Receivables was recorded at book value;
- (ii) the transfer of the July 2022 Inventory was recorded at book value; however, the Proposed Monitor understands that the DCL Group intends to make a retroactive adjustment to reflect an arm's length purchase price, to be consistent with the DCL Group's Transfer Pricing Policy; and

¹¹ The accounts receivable transferred on the Applicant's and DCL USA LLC's books and records included both accounts receivable related to the Non-Monteith Canadian Contracts transferred on July 1, 2022 and also accounts receivables relating to the non-Canadian contracts transferred to DCL USA LLC on August 1, 2021, the latter due to systems issues that prevented the recording of the accounts receivables transfers until July 1, 2022.

- (iii) the transfer of the Non-Monteith Canadian Contracts has not yet been recorded; however, the Proposed Monitor understands that the DCL Group intends to record a retroactive entry after a fair market valuation has been completed by the DCL Group Tax Advisor.

9.11 The books and records of the Applicant as at September 30, 2022 (i.e., after the July 1, 2022 transactions described above, but prior to the ABL Restructuring (as defined and described below)), showed an intercompany receivable owing from DCL USA LLC of approximately \$40.9 million. However, as noted above, these intercompany transactions remain subject to further review and adjustment, including in respect of the July 1, 2022 transactions.

9.12 The Proposed Monitor understands that, during the period leading up to the Restructuring Proceedings and following discussions with the Prepetition ABL Agent and in cooperation therewith, in order to align the DCL Group's indebtedness outstanding under the Prepetition ABL Facility with the entity that owns the working capital assets that support those borrowings, the total balance owing under the Prepetition ABL Facility by DCL Canada of approximately \$40 million was restructured to make DCL USA LLC the primary borrower of such amount. To affect this restructuring, DCL USA LLC drew approximately \$40 million on the Prepetition ABL Facility and made an immediate payment to the Applicant, who in turn used the \$40 million to repay all of its obligations owing under the Prepetition ABL Facility, reducing its obligations thereunder to \$0. As a result of the foregoing transaction (the "**ABL Restructuring**"), the net intercompany balance owing to the Applicant by DCL USA LLC was reduced by \$40 million. Accordingly, all else being

equal and subject to the anticipated adjustments noted above, the net intercompany balance owing to the Applicant by DCL USA LLC would be approximately \$0.9 million.

Pre-Petition Term Loan Amendment and Related Transactions

9.13 In connection with the above Customer Contracts Sale and as documented in a fourth amendment to the Prepetition Term Loan dated December 16, 2021 (the “**Fourth Amendment**”), Colors (a U.S. entity) was added as a borrower under the Prepetition Term Loan in order to facilitate the internal restructuring of same.

9.14 The Davido Affidavit describes the series of intercompany transactions in more detail, however, in summary, the net effect was a transfer of \$67 million of the Prepetition Term Loan that was owed directly by DCL Canada prior to the Fourth Amendment, to Colors. Following the series of transactions, DCL Canada continues to have an outstanding direct Prepetition Term Loan obligation of approximately \$11.6 million.

Operating Intercompany Transactions & Shared Services

9.15 As part of its ordinary course operations, DCL Canada is party to a number of intercompany transactions within the DCL Group (the “**Operating Intercompany Transactions**”), consisting primarily of the following:

- (i) as a result of the Customer Contracts Sale and the subsequent sale of the Canadian non-Monteith customer sales contracts to DCL USA LLC, DCL Canada sells substantially all of its goods manufactured at the Ajax Plant and the New Toronto Plant to DCL USA LLC, which DCL USA LLC then sells to its third-party customers (the “**Inventory Sales**”);

- (ii) DCL Canada provides DCL US and other affiliates with essential corporate functions, supply chain, human resources, global procurement, information technology, finance, sales and marketing, regulatory and research & development (collectively, “**Shared Services**”), primarily from its head office in Toronto, Ontario¹²; and
- (iii) on a regular basis, cash transfers are made between DCL Canada, DCL US and their other affiliates to fund operating disbursements and to settle open balances as among the parties (the “**Intercompany Transfers**”).

The costs and fees associated with the Operating Intercompany Transactions are charged through the intercompany accounts.

- 9.16 The DCL Group utilizes a transfer pricing policy (the “**Transfer Pricing Policy**”) to record the Operating Intercompany Transactions on a “cost plus” basis. The Proposed Monitor understands that from time-to-time the DCL Group engages the DCL Group Tax Advisor to conduct a transfer pricing analysis of the Operating Intercompany Transactions. The Proposed Monitor reviewed the latest of such draft reports (dated November 8, 2022) and notes that the DCL Group Tax Advisor concluded the Operating Intercompany Transactions are being recorded on a basis consistent with industry standards and arm’s-length principles.

¹² DCL Canada is also the recipient of shared services from DCL USA LLC. Accordingly, amounts owing by DCL USA LLC to the DCL Canada in respect of Shared Services represent the net amount owing after deducting the value of the shared services provided by DCL USA LLC to DCL Canada.

9.17 The ongoing finished goods inventory sales by the Applicant to DCL USA LLC are reflected by way of book entries in the records of DCL USA LLC and the Applicant. Generally, these accounts are reconciled monthly, and are subject to adjustments from time to time pursuant to the DCL Group's Transfer Pricing Policy established in consultation with the DCL Group Tax Advisor. The transfer pricing adjustments are reflected in the pricing schedules to the US/Canada Intercompany Agreement (as defined and described below) and any adjustments are to be reflected retroactively on the Applicant's books and records.

Proposed Intercompany Arrangements During the Restructuring Proceedings

9.18 As further described in the Davido Affidavit, in connection with the Restructuring Proceedings and as required under the DIP Credit Agreement, DCL Canada and DCL USA LLC formalized and entered into: (i) an intercompany agreement between DCL Canada and DCL USA LLC (the "**US/Canada Intercompany Agreement**"); and (ii) an intercompany agreement between DCL Canada, DCL USA LLC and DCL Canada's European subsidiaries¹³ (the "**European Intercompany Agreement**", and together with the US/Canada Intercompany Agreement, the "**Intercompany Agreements**"). The European Subsidiaries are not debtors in the CCAA Proceedings nor the Chapter 11 Proceedings. Substantially final form copies of the Intercompany Agreements are attached to the Davido Affidavit as Exhibit "C" and "D", respectively. The copies of the Intercompany Agreements are redacted to remove commercially sensitive pricing information. The Proposed Monitor has received unredacted copies of the Intercompany

¹³ DCL Corporation (NL) B.V., located in the Netherlands ("**DCL NL**") and DCL Corporation (Europe) Limited located in the U.K. (together with the DCL NL, the "**European Subsidiaries**").

Agreements and understands that the Applicant has agreed to make unredacted versions available to the Court upon request.

US/Canada Intercompany Agreement

- 9.19 The proposed US/Canada Intercompany Agreement provides for the Operating Intercompany Transactions to continue in the normal course during the Restructuring Proceedings, including that DCL USA LLC will continue to make Intercompany Transfers to DCL Canada for the provision of Inventory Sales and net Shared Services.
- 9.20 To the extent that, during the Restructuring Proceedings, the value of Intercompany Transfers paid by DCL USA LLC exceeds: (i) the value of Inventory Sales and net Shared Services provided by DCL Canada; and (ii) the amount pre-funded by DCL USA LLC to DCL Canada for the payment of certain invoices on behalf of DCL NL (the “**DCL NL Supplier Invoices**”), such excess amount will be recorded as an intercompany loan (“**Intercompany Loan**”). As part of the proposed Initial Order, the Applicant is seeking the Court’s approval of a charge in favour of DCL USA LLC as security for the Intercompany Loans (the “**Intercompany Charge**”).
- 9.21 To the extent that the value of Intercompany Transfers paid by DCL USA LLC is less than the value of the Inventory Sales and the net Shared Services provided by DCL Canada during the Restructuring Proceedings and the amount of the DCL NL Supplier Invoices required to be pre-funded (i.e., if the Applicant is in a receivable position with DCL USA LLC), such amount will be recorded through the intercompany accounts as a DCL Canada receivable (“**DCL Canada Receivable**”). The Proposed Monitor understands that the Chapter 11 Debtors intend to seek approval from the U.S. Bankruptcy Court of an

administrative claim (the “**U.S. Administrative Claim**”) in the Chapter 11 Proceedings for any such DCL Canada Receivable amount incurred during the pendency of the Restructuring Proceedings.

9.22 The Proposed Monitor notes that the Intercompany Charge and the U.S. Administrative Claim will be subordinate to certain other charges or liens, including those securing the DIP Facility, the Prepetition ABL Facility and the Prepetition Term Loan.

9.23 Pursuant to the US/Canada Intercompany Agreement, the DCL Group will continue to utilize the Transfer Pricing Policy and record Inventory Sales and the provision of Shared Services at arm’s length prices as determined in consultation with the DCL Group Tax Advisor. Schedules “B” and “C” of the US/Canada Intercompany Agreement provide that from time to time the DCL Canada and DCL USA LLC will review the Transfer Pricing Policy and make any necessary adjustments to the prices, with corresponding retroactive adjustments to the intercompany accounts, including the Intercompany Loan or DCL Canada Receivable balances.

9.24 The Proposed Monitor will monitor the Operating Intercompany Transactions and the Intercompany Transfers that occur during the CCAA Proceedings and will provide regular updates to the Court, including details of any Intercompany Loans and any DCL Canada Receivable balances.

European Intercompany Agreement

9.25 The proposed European Intercompany Agreement sets out the arrangements between DCL Canada, DCL USA LLC and the European Subsidiaries, and is described in greater detail in the Davido Affidavit.

- 9.26 As it relates to the Applicant only, during the Restructuring Proceedings, DCL Canada will continue to: (i) provide Shared Services to the European Subsidiaries, the cost of which will be charged to the European Subsidiaries but will be paid for by DCL USA LLC; and (ii) pay the DCL NL Supplier Invoices, for which amounts will be advanced by DCL USA LLC prior to the Applicant making the supplier payment.
- 9.27 Similar to the US/Canada Intercompany Agreement, all intercompany transactions will be recorded through the intercompany accounts based on arm's length prices as determined in consultation with the DCL Group Tax Advisor, as calculated and adjusted in accordance with the schedules to the European Intercompany Agreement.

10.0 STAY OF PROCEEDINGS

- 10.1 The proposed Initial Order contemplates the granting of an initial 10-day stay of proceedings in respect of the Applicant, its business and the Property. The proposed stay of proceedings will provide the breathing space required for the Applicant to stabilize its business and preserve value for its stakeholders. Moreover, it will prevent the termination of key contracts and the commencement of enforcement steps, which would be detrimental to the Applicant's restructuring efforts.
- 10.2 Further, pursuant to the proposed Initial Order, the Applicant is seeking an extension of the stay of proceedings to provide that no action can be taken against the inventory owned by DCL USA LLC situated in Canada (the "**DCL USA LLC Inventory**"). As at November 30, 2022, the value of the DCL USA LLC Inventory was approximately \$17.9 million.

- 10.3 As described in the Davido Affidavit, the DCL USA LLC Inventory forms an integral component of the DCL Group's operations, including forming a considerable portion of the inventory collateral included in the DCL US borrowing base of the DIP Facility.
- 10.4 The proposed extension of the limited stay of proceedings to the DCL USA LLC Inventory is a requirement of the DIP Facility and will assist in the uninterrupted operations during the Restructuring Proceedings. Accordingly, the Proposed Monitor supports the Applicant's request for the proposed extension of the stay of proceedings in respects of the DCL USA LLC Inventory.

11.0 CHIEF RESTRUCTURING OFFICER

- 11.1 The proposed Initial Order seeks the approval of the appointment of Mr. Scott Davido, a Senior Managing Director from Ankura, as CRO. The Proposed Monitor understands that Mr. Davido is an experienced restructuring professional having served many similar roles in prior large restructurings, including those with cross border elements. A summary of Mr. Davido's professional qualifications is attached hereto as **Appendix "C"**.
- 11.2 The engagement letter dated November 16, 2022 and attached hereto as **Appendix "D"** (the "**CRO Engagement Letter**") sets forth the terms of Mr. Davido's appointment as CRO of the DCL Group and provides that the CRO will be responsible for the following: (i) providing oversight and guidance to enhance and preserve the DCL Group's available liquidity; (ii) working with the DCL Group's management and external advisors to execute current and future financial restructuring; (iii) serving as the DCL Group's designee by engaging with internal and external stakeholders such as creditors, landlords and other restructuring-related interested parties; and (iv) leading the DCL Group's management and

advisors in informing and advising the DCL Group's board of directors or their designees on restructuring options and recommendations.

- 11.3 The Proposed Monitor notes that: (i) the CRO Engagement Letter sets out a chargeable rate of \$1,195 per hour for the CRO's services; (ii) the CRO is limited to charging up to 40 hours in any calendar week; (iii) to avoid duplication, Ankura shall not be entitled to charge for any services rendered by Mr. Davido, whether as CRO or otherwise, under any agreement other than the CRO Engagement Letter; and (iv) Ankura shall be entitled to reimbursement of reasonable out-of-pocket and direct expenses incurred in connection with services provided under the CRO Engagement Letter. The Proposed Monitor understands that DCL USA LLC is expected to pay for service fees and expenses under the CRO Engagement Letter and such fees and expenses will be accounted for as part of the shared services being provided by DCL USA LLC under the US/Canada Intercompany Agreement.

12.0 COURT ORDERED CHARGES SOUGHT IN THE INITIAL ORDER

- 12.1 The proposed Initial Order seeks the granting of the Administration Charge, DIP Charge, Intercompany Charge and Directors' Charge (each as defined below) over the Property (other than certain specified excluded collateral as set out below) (collectively, the "Charges").

12.2 The priorities of the Charges, the ABL Pre-Filing Security and the Term Loan Security on the ABL Priority Collateral, as between them, are proposed to be as follows:

Proposed Charges & Priorities		\$000's
1.	Administration Charge	\$175,000
2.	DIP Charge	<i>as described below</i>
3.	ABL Pre-Filing Security	<i>as described below</i>
4.	Term Loan Security	<i>as described below</i>
5.	Intercompany Charge (if any)	<i>as described below</i>
6.	Directors' Charge	CAD\$1,000,000

12.3 The priorities of the Charges, the ABL Pre-Filing Security and the Term Loan Security on the Term Loan Priority Collateral, as between them, are proposed to be as follows:

Proposed Charges & Priorities		\$000's
1.	Administration Charge	\$175,000
2.	Term Loan Security	<i>as described below</i>
3.	DIP Charge	<i>as described below</i>
4.	ABL Pre-Filing Security	<i>as described below</i>
5.	Intercompany Charge (if any)	<i>as described below</i>
6.	Directors' Charge	CAD\$1,000,000

12.4 The proposed Initial Order provides that the Charges are to rank behind all other existing security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise if a holder thereof is not served with notice of the application for the CCAA Proceedings.

Administration Charge

12.5 The proposed Initial Order provides for a charge over the Property other than the cash collateral held by HSBC (the “**HSBC Cash Collateral**”) in an amount not to exceed \$175,000 in favour of the Monitor, counsel to the Monitor and Canadian counsel to DCL

Canada (the “**Administration Charge**”). The Proposed Monitor understands that the Applicant intends to seek an increase in the amount of the Administration Charge to \$1.1 million at the comeback hearing.

- 12.6 The Proposed Monitor assisted the Applicant in the calculation of the Administration Charge and is of the view that the amount of the charge for the initial 10-day period is reasonable and appropriate in the circumstances, having regard to the nature of the proceedings, potential work involved at peak times and the size of charges approved in similar CCAA proceedings.

DIP Charge

- 12.7 The proposed Initial Order provides for a charge on the Property (other than the Excluded Collateral¹⁴) as security for the outstanding obligations of the Applicant under the DIP Facility (the “**DIP Charge**”).
- 12.8 It is a condition of the DIP Facility that the DIP Charge be granted by the Court. The Proposed Monitor’s observations with respect to the DIP Facility are set out in Section 6.0 above. The Proposed Monitor is of the view that the DIP Charge is reasonable and appropriate in the circumstances.

¹⁴ As described in the Davido Affidavit, Excluded Collateral is comprised of (i) the real property of the Applicant; (ii) the HSBC Cash Collateral; and (iii) the De Lage Landen Collateral.

Directors' Charge

- 12.9 The proposed Initial Order provides that DCL Canada will indemnify their directors and officers against obligations and liabilities that they may incur in their capacity as directors and officers of the Applicant from the commencement of the CCAA Proceedings, except to the extent that any obligation or liability was incurred as a result of gross negligence or wilful misconduct, and provides for a charge on the Property (other than the HSBC Cash Collateral) in the amount of CAD\$1 million in favour of the Applicant's directors and officers as security for any such obligations or liabilities arising after the commencement of these CCAA Proceedings (the "**Directors' Charge**"). The Proposed Monitor understands that the Applicant intends to seek an increase in the amount of the Directors' Charge to CAD\$1.7 million at the comeback hearing.
- 12.10 DCL Canada's directors and officers will only be entitled to the benefit of the Directors' Charge to the extent they do not have coverage under DCL Canada's directors' and officers' insurance policy or to the extent such coverage is insufficient to pay an indemnified amount.
- 12.11 The Proposed Monitor assisted the Applicant in the calculation of the Directors' Charge, taking into consideration the amount of the Applicant's payroll, vacation pay and federal and provincial sales tax liabilities during the initial 10-day stay period. The Proposed Monitor is of the view that the Directors' Charge is required and reasonable in the circumstances.

Intercompany Charge

- 12.12 As described above, the proposed Initial Order provides for the Intercompany Charge on the Property (other than the HSBC Cash Collateral) in favour of DCL USA LLC in the aggregate amount of any Intercompany Loan. In the Proposed Monitor's view, the Intercompany Charge is required and reasonable in the circumstances given the intention of the DCL Group to continue ordinary course Operating Intercompany Transactions during the Restructuring Proceedings and the anticipated need for DCL USA LLC to provide funding to DCL Canada during the pendency of the CCAA Proceedings.
- 12.13 As discussed above, the Proposed Monitor understands that pursuant to the U.S. Administrative Claim, the Chapter 11 Debtors intend to provide the Applicant with protections in event that amounts are owing by the Chapter 11 Debtors to the Applicant relating to the Inventory Sales or the provision of net Shared Services.

13.0 CONCLUSIONS AND RECOMMENDATIONS

- 13.1 For the reasons set out in this Report, if the Court is satisfied that the Applicant is a company to which the CCAA applies, the Proposed Monitor is of the view that the relief requested by the Applicant in the proposed Initial Order is reasonable, appropriate and necessary having regard to the current circumstances of the Applicant. As such, the Proposed Monitor supports the Applicant's application for CCAA protection and

respectfully recommends that the Court grant the Initial Order containing the relief requested by the Applicant.

All of which is respectfully submitted to this Court this 20th day of December, 2022.

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

Per:



Josh Nevsky
Senior Vice-President

Per:



Stephen Ferguson
Senior Vice-President

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

Court File No.: _____

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

**PRE-FILING REPORT OF THE PROPOSED
MONITOR**

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not in its personal or corporate capacity

APPENDIX “B”

FIRST REPORT OF THE MONITOR DATED DECEMBER 27, 2022

(without appendices)

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

FIRST REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.

DECEMBER 27, 2022

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APPENDICES

Appendix “A” – Pre-Filing Report (without appendices)

Appendix “B” – Updated Cash Flow Forecast

1.0 INTRODUCTION

- 1.1 On December 20, 2022 (the “**Filing Date**” or “**Petition Date**”), DCL Corporation (“**DCL Canada**” or the “**Applicant**”) obtained an initial order (the “**Initial Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The proceedings commenced thereby are referred to herein as the “**CCAA Proceedings**”.
- 1.2 DCL Canada is a subsidiary of its U.S. parent, H.I.G. Colors Inc. (“**Colors**”), a direct wholly-owned subsidiary of the ultimate corporate parent, H.I.G. Colors Holdings, Inc. (“**Holdings**” and, together with Colors and its direct and indirect subsidiaries, including the Applicant and its subsidiaries, the “**DCL Group**”).
- 1.3 The CCAA Proceedings were commenced as part of a larger coordinated restructuring of the DCL Group. On the Petition Date, Holdings and certain of its U.S.-based subsidiaries (collectively, “**DCL US**” or the “**Chapter 11 Debtors**”) ¹ each filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**U.S. Bankruptcy Court**”, and such proceedings, the “**Chapter 11 Proceedings**”, and together with the CCAA Proceedings, the “**Restructuring Proceedings**”). On December 22, 2022, the U.S. Bankruptcy Court granted a number of “first day orders” in the Chapter 11 Proceedings.
- 1.4 Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as proposed monitor, filed the Pre-Filing Report of the Proposed Monitor dated December 20, 2022 (the “**Pre-Filing**

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

Report”). The Pre-Filing Report and other Court-filed documents in the CCAA Proceedings are available on the Monitor’s case website at: www.alvarezandmarsal.com/DCLCanada (the “**Case Website**”).² A copy of the Pre-Filing Report (without appendices) is also attached hereto as **Appendix “A”**.

1.5 The Initial Order, among other things:

- (i) appointed A&M as monitor of the Applicant (in such capacity, the “**Monitor**”);
- (ii) granted a stay of proceedings in respect of the Applicant until and including December 30, 2022 (the “**Stay Period**”) and extended the stay of proceedings to include the DCL USA LLC Inventory (as defined in the Pre-Filing Report) which is situated in Canada; and
- (iii) granted the Administration Charge, the DIP Charge and the Directors’ Charge (each as defined in the Initial Order).

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

- (i) updates regarding the CCAA Proceedings since the granting of the Initial Order, including with respect to the Stalking Horse APA and the Final DIP Credit Agreement (each as defined below);
- (ii) the Applicant’s updated cash flow forecast;

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

- (iii) the relief sought by the Applicant pursuant to the proposed amended and restated Initial Order (the “**Amended and Restated Initial Order**”), including with respect to:
 - (a) approving the Final DIP Credit Agreement;
 - (b) approving the Intercompany Agreements and granting the Intercompany Charge (each as defined below), and sealing the unredacted copies of the Intercompany Agreements attached to the Second Davido Affidavit (as defined below);
 - (c) authorizing the Applicant to make certain pre-filing payments to Critical Suppliers (as defined below);
 - (d) approving the Applicant’s engagement of TM Capital Corp. (“**TM Capital**”) as investment banker;
 - (e) extending the Stay Period until and including March 17, 2023; and
 - (f) increasing the quantum of the Administration Charge, the DIP Charge and the Directors’ Charge, and extending the DIP Charge over the DCL USA LLC Inventory;
- (iv) the activities of the Monitor since the Filing Date; and
- (v) the Monitor’s conclusions and recommendations in connection with the foregoing.

2.0 TERMS OF REFERENCE AND DISCLAIMER

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

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

2.2 Future oriented financial information referred to in this First Report was prepared based on DCL Canada's and the Chapter 11 Debtors' estimates and assumptions. Readers are

cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results may vary from the projections, even if the assumptions materialize, and the variations could be significant.

2.3 This First Report should be read in conjunction with the affidavit of Mr. Scott Davido, sworn December 20, 2022 (the “**Initial Davido Affidavit**”) and the affidavit of Mr. Scott Davido, sworn December 23, 2022 (the “**Second Davido Affidavit**”), each filed in support of the Applicant’s application for relief under the CCAA. Capitalized terms used but not defined in this First Report shall have the meanings given to such terms in the Initial Davido Affidavit and the Second Davido Affidavit, as applicable.

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

3.0 UPDATES SINCE THE INITIAL ORDER

Stalking Horse APA

3.1 The objective of the Restructuring Proceedings is to stabilize and maintain the DCL Group’s business and to commence a court-supervised marketing process for the business and assets of the DCL Group. The Monitor understands that the DCL Group views the entering into of a stalking horse agreement as beneficial to such marketing process and stabilizing to its business and for its employees. In furtherance thereof, and as required pursuant to the DIP Facility (as defined below), on December 21, 2022, the Chapter 11 Debtors and the Applicant, as sellers (the “**Sellers**”), and a nominee of the term loan lenders to DCL Canada and DCL US (the “**Term Loan Lenders**”), as purchaser (the “**Purchaser**”), entered into an asset purchase agreement (the “**Stalking Horse APA**”),

which is intended to serve as the “stalking horse” agreement in the process contemplated by the revised bidding procedures filed by DCL US in the Chapter 11 Proceedings (the “**Revised Bidding Procedures**”).

3.2 The Stalking Horse APA and the Revised Bidding Procedures remain subject to approval of the Court and the U.S. Bankruptcy Court in the Restructuring Proceedings. Copies of the Stalking Horse APA and the Revised Bidding Procedures are attached as Exhibit “E” and “F”, respectively, to the Second Davido Affidavit. The Monitor understands that the Applicant intends to return to Court for additional relief, including the approval of the Stalking Horse APA, as a stalking horse agreement, and the granting of an order approving the Revised Bidding Procedures (the “**Bidding Procedures Order**”), in mid-January 2023. The Monitor will file a report with the Court in advance of such hearing setting forth its views on the terms of the Stalking Horse APA and the Revised Bidding Procedures.

3.3 Although the Monitor is in the process of reviewing the terms of the Stalking Horse APA, the Monitor notes that the Stalking Horse APA contemplates, among other things:

- (i) the potential acquisition of substantially all of the assets of DCL US and DCL Canada for consideration that includes, in part, a “credit bid” of a portion of the prepetition term loan held by the Term Loan Lenders and the repayment in full of the obligations outstanding under the DIP Facility and the ABL Credit Facility; and
- (ii) various wind-down reserve amounts, the applicability of which will depend on the locations and assets that may be designated by the Purchaser as excluded from the sale transaction, if any. The Monitor notes that the Stalking Horse APA provides the Sellers with the ability, in consultation with the Monitor, to review and adjust

such wind-down reserve amounts; provided that, the Purchaser may elect to terminate the Stalking Horse APA within the ten-day period that follows receipt of any such adjustment notice from the Sellers. The Monitor intends to work with the Sellers to review and finalize the wind-down reserve amounts in the Stalking Horse APA.

DIP Facility

- 3.4 On December 22, 2022, the Applicant and DCL US also finalized and executed the final senior secured, super-priority debtor-in-possession credit agreement (the “**Final DIP Credit Agreement**”, and the facility provided thereunder, the “**DIP Facility**”).^{3,4}
- 3.5 Pursuant to the Amended and Restated Initial Order, the Applicant seeks approval of the Final DIP Credit Agreement.
- 3.6 The revisions reflected in the Final DIP Credit Agreement are described in the Second Davido Affidavit and primarily address matters relating to the execution of the Stalking Horse APA. In addition, the Final DIP Credit Agreement adjusted the DIP Milestones, which establish the key milestone dates for the Restructuring Proceedings. The revised DIP Milestones can be summarized as follows:

³ This Section of this First Report should be read in conjunction with the discussion of the DIP Facility included in Section 6 of the Pre-Filing Report. The Monitor reviewed a substantially final form draft of the credit agreement in preparing the Pre-Filing Report, but such form was prepared prior to the execution of the Stalking Horse APA.

⁴ The Monitor notes that the Applicant’s European subsidiaries also entered into the Final DIP Credit Agreement as guarantors; however, DCL NL’s signature page to the Final DIP Credit Agreement appears to have been inadvertently omitted from the compiled Final DIP Credit Agreement attached to the Second Davido Affidavit.

DIP Milestones ⁵	<ul style="list-style-type: none"> • On or before February 7, 2023, each Bankruptcy Court shall have entered one or more orders, each in form and substance acceptable to Agent, approving the DIP Asset Purchase Agreement and the Bidding Procedures Order and providing, among other things, that qualifying bids shall be due by no later than March 10, 2023. • On or before March 9, 2023, the Loan Parties shall have filed a motion (the “Canadian Sale Motion”) seeking approval of the Sale Transaction and entry of the Sale Order, pursuant to and in accordance with the CCAA, which Canadian Sale Motion (including all deadlines contained therein) shall be satisfactory to Agent. • On or before March 14, 2023, Loan Parties shall have commenced the auction (if there is more than one qualifying bid) for the Sale Transaction, and, in accordance with the Bidding Procedures Order applicable thereto, shall have selected the winning bid(s) for the Sale Transaction at the conclusion of such auction. • On or before March 16, 2023, each Bankruptcy Court shall have entered the Sale Order with respect to the results of the auction, and with the proceeds to be applied to the obligations under the DIP ABL Credit Facility sufficient to repay such obligations in full in cash. • On or before March 17, 2023, Loan Parties shall have consummated the Sale Transaction, pursuant to the DIP Asset Purchase Agreement entered into among Loan Parties and the winning bidder(s) at the auction. • On or before March 17, 2023, the Loan Parties shall make Payment in Full (as defined in the Final US Financing Order) of all Obligations under the DIP ABL Credit Facility and the Pre-Petition ABL Credit Facility (to the extent still outstanding). <p><i>The above is a summary and not a comprehensive list</i></p>
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3.7 Further to the discussion in the Pre-Filing Report, the Monitor continues to be of the view that the revised DIP Milestones, which the Monitor understands have been brought forward due to the execution of the Stalking Horse APA, are on balance reasonable in the circumstances. The Monitor intends to work with the Applicant and the DIP Agent to ensure that proper service of materials for the Canadian sale approval hearing is made and, if necessary, will provide a further update to the Court at the relevant time.

⁵ Capitalized terms used in this table but not otherwise defined have the meaning attributed to them in the Final DIP Credit Agreement.

3.8 Accordingly, the Monitor supports the Applicant’s request for approval of the Final DIP Credit Agreement.

4.0 UPDATED CASH FLOW FORECAST

4.1 After entering into the Stalking Horse APA and revising the DIP Milestones, DCL Canada prepared an updated cash flow forecast (the “**Updated Cash Flow Forecast**”) for the 13-week period from December 17, 2022 to March 17, 2023 (the “**Cash Flow Period**”). A copy of the Updated Cash Flow Forecast, together with a summary of assumptions, is attached hereto as **Appendix “B”**. A summary of the Updated Cash Flow Forecast is set out in the following table:

Updated Cash Flow Forecast		USD\$000's
Receipts		
Third-party Collections		957
Intercompany Transfers		17,369
		18,326
Disbursements		
Payroll & Benefits		(3,909)
Vendor Payments		(12,745)
Rent, Utilities, Insurance		(768)
Freight, Duties & Other		(2,944)
Professional Fees		(2,666)
DIP Interest & Fees		(49)
Other		(163)
KEIP		(40)
		(23,284)
Net Cash Flow		(4,958)
Cash Balance, Opening		326
Net Cash Flow		(4,958)
DIP Facility Draws		6,544
DIP Facility Repayment		(6,544)
Exit Financing / Sale Proceeds (placeholder) ⁶		4,632
Ending Cash Balance		--

⁶ See discussion note in Section 4.2(iii) herein.

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

- (i) as further described in the Pre-Filing Report, the Intercompany Transfers of \$17.4 million are forecast payments made by DCL USA LLC to DCL Canada for: (a) Inventory Sales to DCL USA LLC; (b) the net provision of Shared Services; (c) amounts owing by DCL Canada's Dutch subsidiary, DCL NL, to a single supplier, which amounts are paid by DCL Canada but funded by DCL USA LLC; and (d) for any additional funding required to support the Applicant during the CCAA Proceedings to be made by way of Intercompany Loans (each as defined in the Pre-Filing Report). As described in greater detail below, it is proposed that amounts advanced as Intercompany Loans will be provided the benefit of the Intercompany Charge in the CCAA Proceedings;
- (ii) during the Cash Flow Period, net cash flows (excluding Intercompany Transfers and the "Exit Financing / Sale Proceeds" line item described below) are projected to be negative approximately \$22.3 million, which is projected to be sufficiently funded by: (a) cash-on-hand; (b) draws on the DIP Facility, with a peak outstanding amount of approximately \$3.5 million during the pendency of the CCAA Proceedings; and (c) Intercompany Transfers of approximately \$17.4 million; and
- (iii) the "Exit Financing / Sale Proceeds" line item of approximately \$4.6 million is a placeholder balance only. As required by the DIP Agent, the DCL Group included this placeholder in the DIP Budget to reflect a hypothetical sale transaction closing on or before March 17, 2023, the proceeds of which would be used to repay obligations outstanding under the DIP Facility at that time. This placeholder

amount is not indicative or representative of the total proceeds that may be generated by any actual sale transaction involving the DCL Group (including the Applicant), nor does it contemplate a proper allocation of such proceeds as between DCL Canada and DCL US.

5.0 AMENDED AND RESTATED INITIAL ORDER

Intercompany Agreements

- 5.1 A comprehensive overview of the ordinary course intercompany transactions that occur within the DCL Group was included in the Pre-Filing Report. As described therein, a requirement of the DIP Facility was for DCL Canada and DCL USA LLC to formalize certain intercompany arrangements pursuant to two intercompany agreements, being the US/Canada intercompany agreement between the Applicant and DCL USA LLC and the European intercompany agreement between the Applicant, DCL USA LLC and the European subsidiaries, DCL UK and DCL NL (collectively, the “**Intercompany Agreements**”). The Intercompany Agreements provide for the Operating Intercompany Transactions (as defined and described in the Pre-Filing Report) to continue in the normal course during the Restructuring Proceedings.
- 5.2 As part of the Amended and Restated Initial Order, in connection with these intercompany arrangements, the Applicant is seeking the approval of the Court to enter into the Intercompany Agreements and the granting of the Intercompany Charge (discussed in greater detail below). In addition, the Applicant is seeking the granting of a limited sealing order to protect certain pricing information included in the Intercompany Agreements. The

Monitor supports the granting of such relief as reasonable in the circumstances given the commercially sensitive nature of such pricing information to the Applicant.

Pre-Filing Payments to Critical Suppliers

- 5.3 DCL Canada intends to pay for goods and services supplied as contemplated in the Updated Cash Flow Forecast. As part of the Amended and Restated Initial Order, DCL Canada is requesting the Court's authorization to, with the consent of the Monitor, pay certain critical suppliers (the "**Critical Suppliers**") for goods or services supplied to DCL Canada prior to the Filing Date if, in the opinion of the Applicant, following consultation with the Monitor, such payment is necessary to maintain the uninterrupted operations of the Applicant's business on trade terms that are satisfactory to the Applicant.
- 5.4 The Monitor considered the following to assess the reasonableness of the above requested relief:
- (i) the intended outcome of these CCAA Proceedings is to complete the sale transaction contemplated by the Stalking Horse APA, or a similar transaction that may result from the process to be conducted pursuant to the Revised Bidding Procedures. As such, to minimize disruption to the Applicant's business, which could potentially impact a going concern outcome, the Monitor is of the view that the payment of certain pre-filing amounts is reasonable in the circumstances;
 - (ii) the DIP Budget (including the Updated Cash Flow Forecast), as approved by the DIP Agent, provides for the payment of certain pre-filing payments to Critical Suppliers; and

- (iii) the Monitor's consent will be required before any such proposed payment may be made.

Engagement of TM Capital

- 5.5 Colors has engaged TM Capital for itself and other members of the DCL Group to act as investment banker and sale advisor pursuant to an engagement letter dated September 6, 2022 (the "**TM Capital Engagement Letter**"). As described in the Pre-Filing Report, TM Capital was assisting the DCL Group with the Pre-Filing Sale Process and will now be continuing those marketing efforts in connection with the process contemplated by the Revised Bidding Procedures.
- 5.6 The TM Capital Engagement Letter was described in the Initial Davido Affidavit and was attached thereto as Exhibit "M". As described in the Initial Davido Affidavit, the fees associated with the engagement of TM Capital are comprised of monthly retainer payments and a transaction fee to be calculated based on a percentage of total consideration.
- 5.7 Pursuant to the Amended and Restated Initial Order, the Applicant is seeking the approval of the TM Capital Engagement Letter, including that the Applicant be authorized and directed to pay its pro-rata share of the fees and expenses therein, including the monthly retainer payments and any transaction fees, as such amounts are determined in consultation with the Monitor. The Monitor understands that TM Capital's fees will be paid by DCL USA LLC, and with an appropriate allocation of such fees to DCL Canada, with such allocation to be made in consultation with the Monitor. The Monitor is of the view that the fees provided for in the TM Capital Engagement Letter are reasonable in the circumstances given, among other things, the fees and expenses found in similar engagements on

comparable cross-border restructuring transactions and that the Applicant will only be responsible for its pro-rata share of such fees.

Extension of the Stay Period

5.8 Pursuant to the Initial Order, the Stay Period is set to expire on December 30, 2022. The Applicant is seeking an extension of the Stay Period until and including March 17, 2023.

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

- (i) it will provide the Applicant with the stability to continue to operate in the ordinary course;
- (ii) the Applicant is projected to have sufficient liquidity through to the end of the proposed extended Stay Period; and
- (iii) the Applicant continues to act in good faith and with due diligence.

6.0 COURT-ORDERED CHARGES

6.1 The Initial Order granted the Administration Charge, the DIP Charge and the Directors' Charge over the Applicant's property and assets (the "**Property**") (other than certain excluded collateral as set out below) (collectively, the "**Charges**").

6.2 As described in the Pre-Filing Report, DCL Canada advised at the time of the CCAA application that it intended to seek increases to certain Charges at the comeback hearing as each Charge under the Initial Order was limited to the extent reasonably necessary for the initial 10-day Stay Period.

Administration Charge

- 6.3 The Initial Order provides for the Administration Charge over the Property (other than the cash collateral held by HSBC Bank Canada (the “**HSBC Cash Collateral**”)) in an amount not to exceed \$175,000 in favour of the Monitor, counsel to the Monitor and Canadian counsel to DCL Canada. The Applicant is seeking to increase the Administration Charge to \$1.1 million.
- 6.4 The Monitor assisted the Applicant in the calculation of the Administration Charge and is of the view that the increased amount of the charge is reasonable and appropriate in the circumstances, having regard to the nature of the proceedings, potential work involved at peak times, and the size of charges approved in similar CCAA proceedings.

DIP Charge

- 6.5 The Initial Order provides for the DIP Charge over the Property (other than the Excluded Collateral⁷) as security for the outstanding obligations of the Applicant under the DIP Facility, in an amount not to exceed \$4 million.
- 6.6 In the Amended and Restated Initial Order, the Applicant is seeking: (i) to allow the DIP Charge to increase to the full amount of any obligations of the DCL Group under the DIP Facility; and (ii) to extend the DIP Charge over the DCL USA LLC Inventory to secure the obligations of DCL USA LLC under the DIP Facility.⁸ The Monitor understands that, pursuant to the interim order entered by the U.S. Bankruptcy Court on December 22, 2022 (the “**US Interim DIP Order**”), which, among other things, approved the DIP Facility in

⁷ As described in the Initial Davido Affidavit, Excluded Collateral is comprised of (i) the real property of the Applicant; (ii) the HSBC Cash Collateral; and (iii) the De Lage Landen Collateral.

⁸ As at November 30, 2022, the value of the DCL USA LLC Inventory was approximately \$17.9 million.

the Chapter 11 Proceedings on an interim basis, the U.S. Bankruptcy Court requested that the Court provide aid and assistance in extending the charge in favour of the DIP Agent over the DCL USA LLC Inventory located in Canada to secure the obligations of DCL USA LLC under the DIP Facility.⁹ A copy of the US Interim DIP Order is attached as Exhibit “C” to the Second Davido Affidavit.

- 6.7 The Monitor is of the view that the Applicant’s request is appropriate and reasonable in the circumstances.

Directors’ Charge

- 6.8 The Initial Order provides that DCL Canada will indemnify its directors and officers against obligations and liabilities that they may incur in their capacity as directors and officers of the Applicant from the commencement of the CCAA Proceedings, except to the extent that any obligation or liability was incurred as a result of gross negligence or wilful misconduct. The Initial Order provides for the Directors’ Charge over the Property (other than the HSBC Cash Collateral), in the amount of CAD\$1 million, in favour of the Applicant’s directors and officers for that indemnity. The Applicant is seeking to increase the Directors’ Charge to CAD\$1.7 million.
- 6.9 DCL Canada’s directors and officers will only be entitled to the benefit of the Directors’ Charge to the extent they do not have coverage under DCL Canada’s directors’ and officers’ insurance policy or to the extent such coverage is insufficient to pay any indemnified amounts.

⁹ See paragraph 5.17 of the US Interim DIP Order.

6.10 The Monitor assisted the Applicant in the calculation of the proposed increase in the Directors' Charge, taking into consideration the amount of the Applicant's payroll, vacation pay, statutory employee obligations and sales tax liabilities. The primary components of the proposed CAD\$1.7 million charge are approximately: (i) CAD\$600,000 for employee salary and wages, taking into consideration the Applicant's payroll cycles; (ii) CAD\$300,000 for accrued vacation pay; (iii) CAD\$700,000 for ongoing sales tax remittance obligations; and (iv) CAD\$100,000 for other statutory employee obligations. The Monitor is of the view that the increased amount of the Directors' Charge is appropriate and reasonable in the circumstances.

Intercompany Charge

6.11 As described in the Pre-Filing Report, the Applicant is seeking a Court-ordered charge over the Property (other than the HSBC Cash Collateral) (the "**Intercompany Charge**") in favour of DCL USA LLC in the aggregate amount of any Intercompany Loan.

6.12 In the Monitor's view, the Intercompany Charge is required and reasonable in the circumstances, given the intention of the DCL Group to continue ordinary course Operating Intercompany Transactions during the Restructuring Proceedings and the anticipated need for DCL USA LLC to provide funding to DCL Canada during the pendency of the CCAA Proceedings.

6.13 The Monitor also understands that, pursuant to the US Interim DIP Order, to the extent the Applicant has an intercompany claim against any Chapter 11 Debtor on account of money, goods or services provided by the Applicant to such Chapter 11 Debtor after the Petition Date, such intercompany claim shall be entitled to an administrative expense priority under

the Bankruptcy Code in the Chapter 11 Proceedings (the “**U.S. Administrative Claim**”).¹⁰

The U.S. Administrative Claim is intended to provide the Applicant with additional protection in event that amounts are owing by the Chapter 11 Debtors to the Applicant relating to the Inventory Sales or the provision of net Shared Services.

Priority of Charges

- 6.14 The priorities of the Charges, the ABL Pre-Filing Security and the Term Loan Security on the ABL Priority Collateral, as between them, are proposed to be as follows:

Proposed Charges & Priorities		
1.	Administration Charge	\$1.1 million
2.	DIP Charge	<i>as described above</i>
3.	ABL Pre-Filing Security	<i>as described in the Pre-Filing Report</i>
4.	Term Loan Security	<i>as described in the Pre-Filing Report</i>
5.	Intercompany Charge (if any)	<i>as described above</i>
6.	Directors' Charge	CAD\$1.7 million

- 6.15 The priorities of the Charges, the ABL Pre-Filing Security and the Term Loan Security on the Term Loan Priority Collateral, as between them, are proposed to be as follows:

Proposed Charges & Priorities		
1.	Administration Charge	\$1.1 million
2.	Term Loan Security	<i>as described in the Pre-Filing Report</i>
3.	DIP Charge	<i>as described above</i>
4.	ABL Pre-Filing Security	<i>as described in the Pre-Filing Report</i>
5.	Intercompany Charge (if any)	<i>as described above</i>
6.	Directors' Charge	CAD\$1.7 million

¹⁰ See paragraph 2.6(b) of the US Interim DIP Order.

7.0 ACTIVITIES OF THE MONITOR SINCE THE FILING DATE

7.1 Since the Filing Date, the activities of the Monitor have included the following:

- (i) engaging in discussions with the DCL Group and its legal counsel and financial advisors regarding the Restructuring Proceedings and the Stalking Horse APA;
- (ii) assisting DCL Canada with communications to employees, suppliers, Critical Suppliers, and other parties;
- (iii) assisting DCL Canada in implementing an appropriate accounting cut-off to ensure proper determination of pre- and post-filing obligations and liabilities;
- (iv) activating the Case Website and coordinating the uploading of Court-filed documents thereon;
- (v) completing and coordinating the noticing requirements pursuant to paragraph 44 of the Initial Order, including:
 - (a) arranging for publication of notice of the CCAA Proceedings, in the prescribed form, in *The Globe and Mail (National Edition)* on December 30, 2022 and January 3, 2023;
 - (b) posting the Initial Order to the Case Website on December 20, 2022; and
 - (c) arranging for notices of the CCAA Proceedings to all known creditors having a claim against the Applicant of more than CAD\$1,000;


- (vi) activating the Monitor's toll-free number and email account for the CCAA Proceedings, and responding to creditor and other inquiries received through those contact points;
- (vii) completing the statutory filings pursuant to Section 23 of the CCAA, including filing the requisite forms (Form 1 and Form 2) with the Office of the Superintendent of Bankruptcy (Canada); and
- (viii) with the assistance of its legal counsel, preparing this First Report.

8.0 CONCLUSIONS AND RECOMMENDATIONS


8.1 For the reasons set out in this First Report, the Monitor respectfully recommends that the Court grant the Amended and Restated Initial Order containing the relief requested by the Applicant.

All of which is respectfully submitted to this Court this 27th day of December, 2022.

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

Per: 

Josh Nevsky
Senior Vice-President

Per: 

Stephen Ferguson
Senior Vice-President

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

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

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

FIRST REPORT OF THE MONITOR

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personal or corporate capacity

APPENDIX “C”

SECOND REPORT OF THE MONITOR DATED FEBRUARY 16, 2023

(without appendices)

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

SECOND REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.

FEBRUARY 16, 2023

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APPENDICES

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

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

1.0 INTRODUCTION

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

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

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

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

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

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

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

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

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

2.0 TERMS OF REFERENCE AND DISCLAIMER

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

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

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

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

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

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

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

3.0 CASH FLOW RESULTS

DCL Group's Consolidated Cash Flow Results

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

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

DCL Canada's Cash Flow Results

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

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

3.5 During the Reporting Period:

- (i) the negative variance in Intercompany Transfers³ of approximately \$5.2 million was due primarily to the positive variance in disbursements, resulting in lower funding requirements for DCL Canada;
- (ii) the positive variance in total disbursements is primarily due to lower than forecast payments to vendors and for freight and duties, resulting from: (a) the scheduled shut down of DCL Canada's three operating facilities during the December holiday period, which was not contemplated in the forecast; (b) the delayed restart of the Ajax Plant (as defined below) due to an equipment malfunction and raw material inventory shortage; and (c) lower than expected manufacturing volume during January and February 2023, due to lower than forecast sales levels and raw material availability. The Monitor understands from DCL Canada's management that the majority of this positive variance is expected to be a permanent savings; and
- (iii) DCL Canada made, with the consent of the Monitor, pre-filing payments totalling approximately \$921,000 to third parties in respect of: (a) goods and services provided to the Applicant prior to the Filing Date; and (b) vendor payments made on behalf of DCL NL (as described in greater detail below). Each such payment

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

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

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

Cash Management System

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

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

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

Intercompany Agreements & Intercompany Account

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

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

3.13 As set out above, as at January 27, 2023, the Intercompany Account reflected a net receivable balance of approximately \$571,000.⁵

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

4.0 UPDATED CASH FLOW FORECAST

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

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

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

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

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

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

⁶ See discussion note in Section 4.2(iii) herein.

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

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

5.0 GLOBAL SETTLEMENT, STALKING HORSE APA AND BIDDING PROCEDURES

Global Settlement

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

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

Stalking Horse APA

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

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

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

- 5.4 Pursuant to the Order, the Applicant seeks, among other things, the Court's: (i) authorization to enter into the Stalking Horse APA, *nunc pro tunc*; and (ii) approval of the bid made by the Stalking Horse Bidder pursuant to the Stalking Horse APA as the stalking horse bid in the Final Bidding Procedures (the "**Stalking Horse Bid**").
- 5.5 Concurrently with the relief being sought by the Applicant in respect of the Stalking Horse Bid and the Final Bidding Procedures, the DCL Group is seeking approval of the Stalking Horse Bid, to act as the stalking horse bid in the Stalking Horse Sales Process, and the Final Bidding Procedures in the U.S. Bankruptcy Court at a hearing (the "**Second Day Hearing**") scheduled, as of the date of this Second Report, to be heard on February 21, 2023.
- 5.6 The Monitor's understanding of certain key terms of the Stalking Horse APA is summarized below:⁸
- (i) the estimated Purchase Price under the Stalking Horse APA is approximately \$166.2 million to \$170.9 million⁹, comprised of:
- (a) a credit bid in the amount of \$45 million owing pursuant to the Prepetition Term Loan (the "**Credit Bid**"). The Stalking Horse Bidder may increase the

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

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

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

- (b) the cash amount of approximately \$47.4 million to \$48.1 million, sufficient to repay the DIP Facility and any outstanding Pre-Petition ABL Obligations, and to cash collateralize any outstanding letters of credit, financial assurances or Bank Products (each as defined in the Final DIP Credit Agreement);
- (c) the cash amount of up to \$2.75 million, required to fund the Required Amount¹⁰ to the extent there is insufficient cash on hand and availability under the DIP Facility on Closing; and
- (d) the assumption of the Assumed Liabilities, which is defined to include certain employee, real property lease, post-petition trade obligations and environmental obligations, as well as the Prepetition Term Loan obligations not subject to the Credit Bid, estimated to be approximately \$71 million to \$75 million (approximately \$45.5 million of which relates to the Prepetition Term Loan obligations not subject to the Credit Bid);

¹⁰

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

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

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

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

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

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

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

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

Bidding Procedures

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

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

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

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

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

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

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

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

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

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

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

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

Security Review

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

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

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

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

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

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

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

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

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

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

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

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


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

7.0 CONCLUSIONS AND RECOMMENDATIONS


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

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

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

Per: 

Josh Nevsky
Senior Vice-President

Per: 

Stephen Ferguson
Senior Vice-President

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

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

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

SECOND REPORT OF THE MONITOR

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personal or corporate capacity

APPENDIX “D”

THIRD REPORT OF THE MONITOR DATED MARCH 15, 2023

(without appendices)

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

THIRD REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.

MARCH 15, 2023

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APPENDICES

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

1.0 INTRODUCTION

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

subsidiaries (collectively, “**DCL US**” or the “**Chapter 11 Debtors**”)¹ each filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “**U.S. Bankruptcy Court**”, and such proceedings, the “**Chapter 11 Proceedings**”, and together with the CCAA Proceedings, the “**Restructuring Proceedings**”). On December 22, 2022, the U.S. Bankruptcy Court granted a number of “first day orders” in the Chapter 11 Proceedings.

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

2.0 PURPOSE OF THIS REPORT

- 2.1 Given certain recent developments (as discussed below), the Monitor needed to discuss, consider, and assess such new facts and circumstances in the days leading up to the Applicant’s motion for the Stay Extension Order (as defined below). Accordingly, the Monitor was only able to finalize, serve and file this third report of the Monitor (this “**Third Report**”) on the date hereof.

¹ The Chapter 11 Debtors are: HIG Colors Holdings, Holdings, DCL Holdings (USA), Inc., DCL Corporation (USA) LLC, DCL Corporation (BP), LLC, and Dominion Colour Corporation (USA).

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

2.2 The Monitor understands that, at this time, the Applicant is seeking the Court's approval of only the Stay Extension Order, and is requesting an adjournment of its motion for an order, among other things, approving the transactions (collectively, the "**Transaction**") contemplated by the Stalking Horse APA (the "**Approval and Vesting Order**") until a later date. The Monitor will provide a report to Court in connection with the Approval and Vesting Order at the appropriate time, together with a more fulsome report on actual cash flow results and other updates since the date of the Second Report.

2.3 The purpose of this Third Report is to provide the Court with information and, where applicable, the Monitor's views on:

- (i) the Applicant's updated cash flow forecast for the six-week period ending April 14, 2023;
- (ii) the proposed order extending the Stay Period until and including March 31, 2023 (the "**Stay Extension Order**"); and
- (iii) the Monitor's conclusions and recommendations in connection with the foregoing, as applicable.

3.0 TERMS OF REFERENCE AND DISCLAIMER

3.1 In preparing this Third Report, A&M, in its capacity as Monitor, has been provided with and has relied upon unaudited financial information and the books and records prepared by DCL Canada and the DCL Group (including information prepared by the Applicant's and the Chapter 11 Debtors' restructuring advisor, Ankura LLC ("**Ankura**")) and has held discussions with management, the chief restructuring officer (the "**CRO**"), Ankura and the

DCL Group’s Canadian and U.S. restructuring legal counsel (collectively, the “**Information**”). Except as otherwise described in this Third Report, in respect of DCL Canada’s cash flow forecast:

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

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

3.3 This Third Report should be read in conjunction with the affidavit of the CRO, Mr. Scott Davido, sworn March 10, 2023 (the “**Fourth Davido Affidavit**”) filed in support of the Applicant’s motion for relief under the CCAA. Capitalized terms used but not defined in

this Third Report shall have the meanings given to such terms in the Fourth Davido Affidavit.

- 3.4 Unless otherwise stated, all monetary amounts contained in this Third Report are expressed in U.S. dollars (“USD”).

4.0 UPDATED CASH FLOW FORECAST

- 4.1 As described in the Prior Reports, the objective of the Restructuring Proceedings is to stabilize and maintain the DCL Group’s business and to commence a court-supervised marketing process for the business and assets of the DCL Group (the “**Stalking Horse Sales Process**”).

- 4.2 The Stalking Horse Sales Process was supported by an amended and restated asset purchase agreement (as it may be further amended, the “**Stalking Horse APA**”) dated as of February 13, 2023, between the Applicant and the Chapter 11 Debtors, as sellers, and Pigments Holdings, Inc., as purchaser (including any permitted assignees, “**Pigments**” or the “**Purchaser**”)³, which served as the “stalking horse bid” pursuant to the Final Bidding Procedures. The Stalking Horse APA, together with the Final Bidding Procedures, were summarized in the Second Report.

- 4.3 On the expiry of the bid deadline under the Final Bidding Procedures on March 10, 2023, the DCL Group received no “Qualified Bids” other than the Stalking Horse APA, and the

³ Pigments is an affiliate of the prepetition term loan lenders to DCL Canada and DCL US. As discussed in the Second Report, a significant portion of Pigments’ contemplated purchase price is comprised of a credit bid of the obligations outstanding under the prepetition term loan.

Stalking Horse APA was therefore deemed to be the “Successful Bid” (each as defined in the Final Bidding Procedures).

- 4.4 The Monitor understands that due to a delay in obtaining certain registrations, permits and licenses that are required by the Purchaser to continue to operate the business of the DCL Group without interruption, the parties require additional time to close the transaction.
- 4.5 The Final DIP Credit Agreement and the Stalking Horse APA each require that the Court and the U.S. Bankruptcy Court enter an order approving the transaction selected pursuant to the Final Bidding Procedures by no later than March 16, 2023, and that such transaction be consummated by no later than March 17, 2023.
- 4.6 The failure by the Applicant or the Chapter 11 Debtors to meet the foregoing milestones will result in events of default arising under the Final DIP Credit Agreement and the Stalking Horse APA. The Monitor understands that the DCL Group and the DIP Agent have reached an agreement in principle to a limited forbearance which will extend to March 24, 2023, or later, in respect of such defaults, while the parties work to finalize amendments and modifications to the Final DIP Credit Agreement to extend the sale approval deadline and maturity date, and to make other consequential changes in order to provide the additional time required to close the transactions contemplated by the Stalking Horse APA (the “**Proposed DIP Amendments**”). The Monitor understands that the DCL Group and the Purchaser are also working on analogous waivers, amendments and modifications to the Stalking Horse APA (the “**Proposed APA Amendments**”).
- 4.7 The Monitor has been advised by legal counsel to each of the Applicant, the DIP Agent and the Purchaser that the parties are working constructively and expect to finalize such documentation in short order. If this is not the case, either the Monitor or the Applicant

will return to Court to provide an appropriate update and seek advice and direction from the Court.

4.8 Accordingly, the Applicant is requesting a short extension of the Stay Period in order to provide it with the time necessary to finalize the Proposed DIP Amendments and the Proposed APA Amendments.

4.9 In connection with the Proposed DIP Amendments and the proposed Stay Period extension, the DCL Group has prepared an amended DIP Budget (the “**Amended DIP Budget**”). One component of the Amended DIP Budget is an updated cash flow forecast for DCL Canada (the “**Updated Cash Flow Forecast**”) for the six-week period from March 4, 2023 to April 14, 2023. A copy of the Amended DIP Budget, together with the Updated Cash Flow Forecast, is attached hereto as **Appendix “A”**.

4.10 Based on the Amended DIP Budget and the Updated Cash Flow Forecast, the Applicant is forecast to have sufficient liquidity through the period required to provide the DCL Group with the opportunity to finalize the proposed amendments discussed above and to close the Transaction.

5.0 STAY EXTENSION ORDER

5.1 The Stay Period currently expires on March 17, 2023, and the Applicant is seeking an extension of the Stay Period until and including March 31, 2023.

5.2 The Monitor supports the Applicant’s motion to extend the Stay Period for the following reasons:


- (i) it will provide the Applicant with the stability to continue to operate in the ordinary course and to negotiate the Proposed DIP Amendments and the Proposed APA Amendments;
- (ii) the Applicant intends to bring a further motion before the Court during the extended Stay Period to seek approval of the Transaction and the Stalking Horse APA;
- (iii) the Applicant is projected to have sufficient liquidity through to the end of the proposed extended Stay Period; and
- (iv) the Applicant continues to act in good faith and with due diligence.


6.0 CONCLUSIONS AND RECOMMENDATIONS

6.1 For the reasons discussed herein, the Monitor respectfully recommends that the Court grant the Stay Extension Order.

All of which is respectfully submitted to this Court this 15th day of March, 2023.

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

Per: 
Josh Nevsky
Senior Vice-President

Per: 
Stephen Ferguson
Senior Vice-President

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

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

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

THIRD REPORT OF THE MONITOR

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personal or corporate capacity

APPENDIX “E”

FOURTH REPORT OF THE MONITOR DATED MARCH 28, 2023

(without appendices)

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

FOURTH REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.

MARCH 28, 2023

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APPENDICES

Appendix “A” – Supplemental DIP Budget

Appendix “B” – Second Report of the Monitor dated February 16, 2023 (without appendices)

1.0 INTRODUCTION

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

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

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

2.0 PURPOSE OF THIS REPORT

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

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

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

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

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

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

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

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

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

3.0 TERMS OF REFERENCE AND DISCLAIMER

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

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

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

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

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

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

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

4.0 CASH FLOW RESULTS

DCL Canada’s Cash Flow Results

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

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

4.2 During the Reporting Period:

- (i) the negative variance in Intercompany Transfers⁴ of approximately \$698,000 is due primarily to the positive variance in disbursements and available cash on hand, resulting in lower funding requirements for DCL Canada; and
- (ii) the positive variance in total disbursements of approximately \$412,000 is attributed primarily to the timing of certain professional fee payments, which have been deferred until the Transaction closing date, and accordingly are considered timing in nature.

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

Critical Suppliers

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

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

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

Cash Management System

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

Intercompany Account

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

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

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

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

- 4.10 As set out above, as at March 17, 2023, the Intercompany Account reflected a net payable balance of approximately \$351,000.⁵
- 4.11 Given that, in the ordinary course, the Intercompany Account is reconciled on a monthly basis, the table above includes preliminary estimates of such balances and is subject to further review and retroactive adjustment. The Monitor will continue to monitor and report on the Intercompany Account during the CCAA Proceedings, including with respect to any

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

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

5.0 UPDATED CASH FLOW FORECAST

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

6.0 APPROVAL AND VESTING ORDER

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

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

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

Stalking Horse Sales Process

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

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

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

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

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

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

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

Sale Transaction

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

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

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

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

Canadian Pension Plans

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

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

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

Approval and Vesting Order

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

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

Impact to Canadian Creditors

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

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

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

Stay Extension

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

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

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

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

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

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

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

8.0 CONCLUSIONS AND RECOMMENDATIONS

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

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

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

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


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

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

Per:


Josh Nevsky
Senior Vice-President

Per:


Stephen Ferguson
Senior Vice-President

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

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

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

FOURTH REPORT OF THE MONITOR

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

APPENDIX “F”

FIFTH REPORT OF THE MONITOR DATED MAY 3, 2023

(without appendices)

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

FIFTH REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.

MAY 3, 2023

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APPENDICES

Appendix “A” – Fourth Report of the Monitor dated March 28, 2023 (without appendices)

Appendix “B” – Second Amended and Restated Sale Agreement (without schedules)

Appendix “C” – Effective Time Agreement

1.0 INTRODUCTION

- 1.1 On December 20, 2022 (the “**Petition Date**”), 1000156489 Ontario Inc. (f/k/a DCL Corporation) (“**DCL Canada**” or the “**Applicant**”) obtained an initial order (the “**Initial Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The proceedings commenced thereby are referred to herein as the “**CCAA Proceedings**”. Among other things, the Initial Order appointed Alvarez & Marsal Canada Inc. (“**A&M**”) as monitor in the CCAA Proceedings (in such capacity, the “**Monitor**”).
- 1.2 In connection with the CCAA Proceedings, the Monitor has provided to this Court four reports (the “**Prior Reports**”), including the Fourth Report of the Monitor dated March 28, 2023 (the “**Fourth Report**”) attached as **Appendix “A”** hereto (without appendices). A&M also filed the Pre-Filing Report of the Proposed Monitor dated December 20, 2022. The Prior Reports and other Court-filed documents in the CCAA Proceedings are available on the Monitor’s case website at: www.alvarezandmarsal.com/DCLCanada (the “**Case Website**”).¹
- 1.3 DCL Canada is a subsidiary of its U.S. parent, H.I.G. Colors Inc. (“**Holdings**”), a direct wholly-owned subsidiary of the ultimate corporate parent, H.I.G. Colors Holdings, Inc. (“**HIG Colors Holdings**” and, together with Holdings and its direct and indirect subsidiaries, including the Applicant and its subsidiaries, the “**DCL Group**”).
- 1.4 The CCAA Proceedings were commenced as part of a larger coordinated restructuring of the DCL Group. On the Petition Date, HIG Colors Holdings and certain of its U.S.-based

¹ Materials filed in connection with the Chapter 11 Proceedings are available at: <https://cases.ra.kroll.com/DCL>

subsidiaries (collectively, “**DCL US**” or the “**Chapter 11 Debtors**”)² each filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “**U.S. Bankruptcy Court**”, and such proceedings, the “**Chapter 11 Proceedings**”, and together with the CCAA Proceedings, the “**Restructuring Proceedings**”). On December 22, 2022, the U.S. Bankruptcy Court granted a number of “first day orders” in the Chapter 11 Proceedings.

- 1.5 On December 29, 2022, the Applicant obtained an amended and restated Initial Order (the “**Amended and Restated Initial Order**”) that, among other things, approved the DIP Facility and the Final DIP Credit Agreement, and extended the Stay Period (each as defined in the Amended and Restated Initial Order).
- 1.6 As described in the Prior Reports, the DCL Group conducted sales processes with the final phase commencing when the Applicant and the Chapter 11 Debtors (collectively, the “**Sellers**”) entered into an asset purchase agreement with Pigments Holdings, Inc. (including any permitted assignees, “**Pigments**”)³ dated as of December 22, 2022 (as amended, the “**Stalking Horse APA**”).
- 1.7 Pursuant to the Final Bidding Procedures (as defined in the Prior Reports), the Stalking Horse APA acted as the “stalking horse bid” in connection with the sales process conducted in the Restructuring Proceedings and was subject to better and higher offers to be received on or prior to March 10, 2023 (the “**Bid Deadline**”). Other than the Stalking Horse APA,

² The Chapter 11 Debtors are: HIG Colors Holdings, Holdings, DCL Holdings (USA), Inc., DCL Corporation (USA) LLC, DCL Corporation (BP), LLC, and Dominion Colour Corporation (USA).

³ Pigments is an affiliate of the prepetition term loan lenders to DCL Canada and DCL US. As discussed in the Second Report of the Monitor dated February 16, 2023, a significant portion of Pigments’ purchase price comprised of a credit bid of the obligations outstanding under the prepetition term loan.

no such offers were received by the DCL Group on or prior to the Bid Deadline, and the Stalking Horse APA was declared the “Successful Bid” on March 10, 2023.

1.8 On March 29, 2023, this Court issued an Order (the “**Approval and Vesting Order**”), which, among other things: (i) approved the sale transactions (collectively, the “**Transaction**”) contemplated by a second amended and restated asset purchase agreement dated as of March 28, 2023 (the “**Second Amended and Restated Sale Agreement**”)⁴, between the Sellers and Pigments; and (ii) extended the Stay Period until and including June 30, 2023. A copy of the Second Amended and Restated Sale Agreement (without schedules) is attached as **Appendix “B”** hereto.

1.9 The purpose of the fifth report of the Monitor (this “**Fifth Report**”) is to provide this Court with information on:

- (i) the closing of the Transaction and related matters;
- (ii) the Monitor’s motion for a proposed Order (the “**Expansion of Monitor’s Powers Order**”), among other things:
 - (a) granting to the Monitor, the Expanded Powers (as defined below) and additional protections;
 - (b) declaring that the Canadian Designated Amount Portion (as defined in the Second Amended and Restated Sale Agreement) shall be held by the Monitor to conduct an orderly wind-down of the Applicant and to

⁴ For certainty, the Second Amended and Restated Sale Agreement is a further amendment and restatement to the Stalking Horse APA as further described in the Fourth Report.

administer the CCAA Proceedings (and any subsequent proceedings) until completion;

- (c) declaring that the CCAA Cash Pool (as defined in the Second Amended and Restated Sale Agreement) shall be held by the Monitor for the benefit of the Applicant's estate in the CCAA Proceedings, including any costs to administer the CCAA Proceedings, pending further Order of this Court;
- (d) declaring that the Applicant meets the criteria prescribed by section 3.2 of the WEPP Regulations (as defined below) and that the Applicant's former employees are eligible to receive payments under and in accordance with the WEPP Act (as defined below);
- (e) amending the style of cause in the CCAA Proceedings; and
- (f) discharging the CRO (as defined below);

(iii) the activities of the Monitor since the date of the Fourth Report; and

(iv) the Monitor's conclusions and recommendations in connection with the foregoing, as applicable.

2.0 TERMS OF REFERENCE AND DISCLAIMER

2.1 In preparing this Fifth Report, A&M, in its capacity as Monitor, has been provided with and has relied upon unaudited financial information and the books and records prepared by DCL Canada and the DCL Group (collectively, the "**Information**"). Except as otherwise described in this Fifth Report:

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

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

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

3.0 SALE TRANSACTION

Closing

3.1 Pursuant to the Second Amended and Restated Sale Agreement and the Approval and Vesting Order, in order for the Transaction to close:

- (i) the Sellers and Pigments were required to provide written confirmation to the Monitor that all closing conditions set out in Article 9 of the Second Amended and Restated Sale Agreement were satisfied or waived by the applicable parties; and
- (ii) the Monitor was required to receive the Canadian Designated Amount Portion of \$575,000 and the CCAA Cash Pool of \$750,000.⁵

3.2 On April 14, 2023, the Sellers and Pigments commenced the steps necessary to close the Transaction, including the initiation of wire transfers, confirmations of which were provided to the Monitor and the Sellers. While the receipt of certain wire transfers was confirmed on April 14, 2023, not all the wire transfers were confirmed to be received until April 17, 2023.

3.3 On April 17, 2023, following receipt of the confirmations and the funds referred to above, the Monitor delivered the Monitor's certificate (the "**Monitor's Certificate**") to the Sellers and Pigments, as contemplated by the Approval and Vesting Order. Thereafter, the Monitor filed a copy of the Monitor's Certificate with this Court, served a copy on the service list in the CCAA Proceedings (the "**Service List**") and posted a copy to the Case Website.

⁵ On closing of the Transaction, the Monitor also received, on behalf of the Applicant, in trust, approximately \$1.4 million in respect of HST paid to the Applicant by Pigments in respect of HST exigible on the Transaction.

- 3.4 Pursuant to and in accordance with the Approval and Vesting Order, upon delivery of the Monitor's Certificate to Pigments, all of the Applicant's right, title and interest in and to the Canadian Purchased Assets (as defined in the Second Amended and Restated Sale Agreement) vested in and to Pigments free and clear of any security, lien, charge or other restriction, other than the Permitted Encumbrances (as defined in the Approval and Vesting Order).

Amended Monitor's Certificate

- 3.5 Notwithstanding that the Monitor's Certificate was delivered on April 17, 2023, the Sellers and Pigments both intended for the closing date of the Transaction to occur on April 14, 2023, and entered into an agreement deeming the closing to have occurred at 11:59 p.m. (Toronto time) on April 14, 2023 (the "**Effective Time Agreement**"). A copy of the Effective Time Agreement is attached as **Appendix "C"** hereto.
- 3.6 To give effect to the intention of the parties and the Effective Time Agreement, the Expansion of Monitor's Powers Order seeks to amend the date and time set forth in the Monitor's Certificate to 11:59 p.m. (Toronto time) on April 14, 2023, and to provide the Monitor with the authority to serve such amended Monitor's Certificate to the Service List and file a copy with this Court. The Monitor is of the view that no creditor or other stakeholder should be prejudiced by such amendments to the Monitor's Certificate.

Transition Services Agreement

- 3.7 In connection with the closing of the Transaction, the Sellers and Pigments entered into a transition services agreement with respect to provision of payroll and bank account transition services to Pigments by the Sellers post-closing (the "**Transition Services**

Agreement’’). The transition services are for a maximum of sixty (60) days post-closing, but the parties also acknowledged and agreed that it is their objective to have all such transition services and all related transition activities completed as soon as reasonably practicable, with the stated goal of accelerating transition activities, where practical.

Amounts Received by Monitor on Closing

- 3.8 The amounts received by the Monitor upon the closing of the Transaction are currently being held by the Monitor in interest-bearing trust accounts. As further described below, the Monitor will administer the Canadian Designated Amount Portion and the CCAA Cash Pool in accordance with the Orders made by this Court in the CCAA Proceedings, and will remit, for and on behalf of the Applicant, the appropriate HST amount received in connection with the closing of the Transaction to the Canada Revenue Agency when the Applicant’s HST returns have been filed.

Name Change

- 3.9 Pursuant to the Second Amended and Restated Sale Agreement and the Approval and Vesting Order, following the closing of the Transaction, the Applicant’s legal name was changed to 1000156489 Ontario Inc. The Expansion of Monitor’s Powers Order seeks to amend the style of cause in the CCAA Proceedings to reflect the new name of the Applicant.

Registered Pension Plans

- 3.10 The Applicant is the sponsor of the following registered pension plans: (i) the Salaried DC Plan; (ii) the Hourly DC Plan; (iii) the Hourly DB Plan; (iv) the Salaried DB Plan (each as defined in the Second Amended and Restated Sale Agreement); and (v) the Pension Plan

for the Employees of Monteith Inc. registered under the *Pension Benefits Act* (Ontario) and the *Income Tax Act* (Canada) with registration number 1046994 (the “**Monteith Plan**”, and together with the aforementioned plans, the “**Canadian Pension Plans**”).

- 3.11 Pursuant to the Second Amended and Restated Sale Agreement, Pigments had the right to designate for assumption, or partial assumption, none or one or more the Applicant’s Canadian Pension Plans prior to the closing of the Transaction. Prior to such closing date, Pigments elected not to designate any, or any portion, of the Canadian Pension Plans for assumption.
- 3.12 On April 14, 2023, the Chief Executive Officer (the “**CEO**”) of the Financial Services Regulatory Authority (“**FSRA**”) appointed Actuarial Services Inc. as the administrator of the Hourly DB Plan and the Salaried DB Plan, and on April 24, 2023, the CEO of FSRA appointed Canada Life as the administrator of the Hourly DC Plan and the Salaried DC Plan.
- 3.13 If, after the liabilities of the Hourly DB Plan or the Salaried DB Plan are settled and surplus assets remain, the Monitor seeks the authority pursuant to the Expansion of Monitor’s Powers Order to apply for such assets to be allocated in accordance with each such plan’s governing documents or as may otherwise be agreed with the applicable plan members or as ordered by the Court. The Applicant’s counsel and Monitor’s counsel are in the process of gathering the governing documents for review.
- 3.14 The Monitor also understands that there may be one or more missed contributions to one or more of the Canadian Pension Plans and is in the process of confirming the status of

such contributions with the Applicant. The Monitor will provide a further update to this Court on the status of such contributions at the relevant time.

- 3.15 The Monteith Plan is currently the subject of asset transfer applications which, if approved, will see the assets of the Monteith Plan transferred to the Hourly DC Plan and the Salaried DC Plan, as applicable, and the Monteith Plan terminated without any remaining assets and liabilities. The Monitor understands that the approval of the assets transfer is forthcoming, after which it is expected that FSRA will order the termination of the Monteith Plan. The Monitor does not expect to be involved in the assets transfer or termination of the Monteith Plan.

Union Grievances

- 3.16 Unionized workers of DCL Canada are represented by the Teamsters Chemical, Energy and Allied Workers (Local Union NO. 1979) (the “**Teamsters**”). On February 28, 2023 the Teamsters filed a grievance (the “**Temporary Lay-Off Grievance**”) in connection with the temporary lay-off of unionized workers at the Applicant’s manufacturing facility located in Ajax, Ontario (the “**Ajax Plant**”), alleging that certain of the unionized employees who were placed on temporary lay off at the Ajax Plant were not provided with sufficient notice as contemplated by the collective bargaining agreement effective from March 19, 2021 to March 18, 2024 (the “**CBA**”). The affected employees were provided with five days’ notice. The CBA contemplates seven days’ notice. With the consent of the Monitor, the Applicant subsequently processed a wage payment of CAD\$13,830.08 to the affected employees, which represented two days of wages, less applicable statutory withholdings.

- 3.17 On March 22, 2023, the Teamsters filed two additional grievances in connection with the permanent lay-off of employees at the Ajax Plant. One grievance alleged that the Applicant failed to pay termination and severance payments pursuant to the CBA and the other grievance alleged that the Applicant denied union workers health and dental benefits in accordance with the provisions of the CBA.
- 3.18 On April 7, 2023, the Monitor's counsel wrote to the Teamsters advising that the grievances were subject to the CCAA stay of proceedings (the "**Stay Letter**").
- 3.19 The Monitor understands that none of the grievances have been resolved. With respect to the Temporary Lay-Off Grievance, the Monitor understands that the Teamsters have advised the Applicant that the Teamsters do not believe any agreement was reached, in principle or otherwise, and do not believe the above-referenced wage payment resolved the Temporary Lay-Off Grievance.

4.0 EXPANSION OF MONITOR'S POWERS ORDER

Expanded Powers

- 4.1 The Monitor seeks the Expansion of Monitor's Powers Order to provide the Monitor with the powers necessary to, effectively and efficiently, administer the Applicant's estate following the closing of the Transaction and to complete the CCAA Proceedings (or any subsequent proceeding) and any related wind-down activities.
- 4.2 The Monitor is of the view that the Expanded Powers are the matters that the Monitor is best positioned to supervise and administer given that, following the closing of the Transaction, the Applicant no longer conducts business operations and no longer has any

employees.⁶ In the Monitor's view, granting the Expanded Powers to the Monitor would be reasonable in the circumstances.

4.3 Pursuant to the proposed Expansion of Monitor's Powers Order, and in addition to the Monitor's prescribed rights and obligations under the CCAA and the Amended and Restated Initial Order, the Monitor shall be authorized and empowered, but not obligated, to, among other things:

- (i) apply to this Court, on its own behalf or on behalf of the Applicant, for any orders necessary or advisable to carry out its powers and obligations, including for advice and directions with respect to any matter;
- (ii) meet and consult with current or former management of: (a) the Applicant and/or its affiliates; or (b) Pigments and its affiliates, or any of their respective advisors;
- (iii) receive, collect and take control of all property and assets of the Applicant: (a) which are not Purchased Assets (as defined in Second Amended and Restated Sale Agreement) for and on behalf of the Applicant and to sell or dispose of such property and assets in accordance with any Orders of this Court; and (b) which are Purchased Assets for and on behalf of Pigments and to provide such property and assets to Pigments, as applicable;

⁶ One member of the board of directors of the Applicant has remained to assist the Monitor with the wind-down of the Applicant's business.

- (iv) for and on behalf of the Applicant, to:
 - (a) perform, or cause the Applicant to perform duties as the Monitor considers necessary or desirable in order to facilitate or assist the Applicant in dealing with any winding-up, dissolution, liquidation or other activities, including, without limitation: (A) entering into any agreements or disclaiming any agreements; and (B) taking any action necessary to affect a winding-up, dissolution or liquidation of the Applicant;
 - (b) take control of the existing bank accounts of the Applicant, including transferring any funds received into these bank accounts⁷, subject to the terms of the Transition Services Agreement; and
 - (c) exercise any shareholder, partnership, joint venture or other right or power, contractual or otherwise, which the Applicant may have, including in connection with the Transition Services Agreement;
- (v) have access to all books and records that are the property of the Applicant in the Applicant's possession or control as of the closing date of the Transaction;
- (vi) cause the Applicant to file, or take such actions necessary for the preparation and filing of, on behalf of and in the name of the Applicant: (a) any tax returns; (b) the Applicant's employee-related remittances, T4 statements and records of employment for the Applicant's former employees; and (c) any sales taxes

⁷

Following the closing of the Transaction, amounts were deposited into the Applicant's bank accounts in respect of the collection of accounts receivable and other amounts that constituted Purchased Assets under the Second Amended and Restated Sale Agreement, and such amounts less any disbursements made in the post-closing period are pending transfer to Pigments.

associated with the Transaction delivered to the Monitor by Pigments for such purpose, in each case, 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 matters;

- (vii) cause the Applicant to claim, or claim on behalf of the Applicant, any rebates, refunds, and other amounts of tax (including sales taxes, capital taxes and income taxes) paid or payable by the Applicant;
- (viii) provide instructions to counsel to the Applicant on behalf of the Applicant in connection with the wind-down or post-closing matters related to the Transaction;
- (ix) have the authority to sign such agreements and other documents on behalf of the Applicant as the Monitor deems appropriate (including, without limitation, tax returns and tax filings);
- (x) take any and all corporate actions and actions regarding the governance of the Applicant without requiring any further action or approval by any person, including any former directors or officers of the Applicant;
- (xi) develop, facilitate and oversee a claims procedure for the identification and quantification of certain claims against the Applicant and the current and former directors and officers of the Applicant;
- (xii) on behalf of the Applicant or on its own behalf, instruct and engage with any person regarding the Applicant's registered and non-registered pension, savings or retirement plans, and to the extent of any surplus assets held in connection with any

of the Applicant's defined benefit pension plans, to apply for such assets to be allocated in accordance with each such plan's governing documents or as may otherwise be agreed with the applicable plan members or as ordered by the Court;

(xiii) on behalf of the Applicant or on its own behalf, engage or continue to engage assistants or advisors to carry out the terms of any Order in the CCAA Proceedings, and such persons shall be deemed to be or shall continue to be "Assistants" under and as defined in the Amended and Restated Initial Order;

(xiv) pay from the Canadian Designated Amount Portion and the CCAA Cash Pool, the fees, costs and expenses secured by the Administration Charge (as defined in the Amended and Restated Initial Order) and/or incurred by the Monitor and the Applicant in connection with post-closing matters related to the Transaction, the wind-down of the Applicant, and the administration of the CCAA Proceedings (and any subsequent proceedings) until completion; and

(xv) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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 person (collectively, the "**Expanded Powers**").

4.4 Pursuant to the Expansion of Monitor's Powers Order, the Monitor shall also be authorized and empowered, but not obligated, to file an assignment in bankruptcy for and on behalf

of the Applicant, and A&M shall be authorized and empowered, but not obligated, to serve as trustee in bankruptcy in any respect of such bankruptcy.

- 4.5 The Expansion of Monitor's Powers Order also seeks additional protections for the Monitor with respect to its carrying out of the Expanded Powers in connection with any and all potential environmental, employment and pension-related liabilities.

Canadian Designated Amount Portion & CCAA Cash Pool

- 4.6 On closing of the Transaction, Pigments paid the Canadian Designated Amount Portion and the CCAA Cash Pool to the Monitor.

- 4.7 The Canadian Designated Amount Portion shall be used by the Monitor, in its sole discretion, to pay all costs, professional fees and other amounts related to, incurred and payable in connection with the CCAA Proceedings and any dissolution or bankruptcy of the Applicant. Professional fees will include, without limitation, professional fees and disbursements of the Monitor and counsel to the Monitor (which shall be subject to Court approval in accordance with the Amended and Restated Initial Order), and professional fees and disbursements of counsel to the Applicant. Pursuant to the Expansion of Monitor's Powers Order, only the Administration Charge shall attach to the Canadian Designated Amount Portion. The CCAA Cash Pool shall be held by the Monitor for the benefit of the Applicant's estate in the CCAA Proceedings, including any costs to administer the CCAA Proceedings. Pursuant to the Expansion of Monitor's Powers Order, any surplus amounts received by the Applicant in respect of its defined benefit pension plans shall be deemed to form part of the CCAA Cash Pool. Only the claims and encumbrances set forth in paragraph 7 of the Approval and Vesting Order shall attach to the CCAA Cash Pool, which

claims and encumbrances shall not include certain secured and intercompany claims against the Applicant.

4.8 The Monitor shall have the sole discretion to administer the Canadian Designated Amount Portion and the CCAA Cash Pool in accordance with Expansion of Monitor's Powers Order and other Orders of this Court in the CCAA Proceedings.

4.9 The Monitor is of the view that the Canadian Designated Amount Portion provides sufficient liquidity through to the end of the Stay Period to administer the wind-down and it is intended that a further motion will be brought before this Court during the Stay Period to commence a claims process to administer the CCAA Cash Pool.

WEPP Act Declaration

4.10 Subsection 5(1) of the *Wage Earner Protection Program Act*, S.C. 2005, c. 47 s. 1, as amended (the "**WEPP Act**"), provides that an individual is eligible to receive payment under the Wage Earner Protection Program if, among other things: (i) the individual's employment is ended for a reason prescribed by regulation; (ii) the individual is owed eligible wages by a former employer; (iii) the former employer is subject to proceedings under the CCAA; and (iv) a court determines under subsection 5(5) of the WEPP Act that the criteria prescribed by regulation are met.

4.11 Section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 (the "**WEPP Regulation**") provides that the Court "may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations".

4.12 At this time, the employment relationship between DCL Canada and all of its employees has ended.⁸ The Monitor understands that certain of the Applicant's employees were terminated during the CCAA Proceedings, and all of the Applicant's former employees who did not commence employment with Pigments have ceased their employment relationship with Applicant. The proposed WEPP Act declaration is intended to ensure that the Applicant's former employees, who did not commence employment with Pigments such that they may be owed termination and severance pay, are able to access benefits under the WEPP Act at the earliest opportunity.

4.13 In light of the foregoing, the Monitor supports the declaration that DCL Canada is a former employer for the purposes of subsection 5(5) of the WEPP Act. If such declaration is made, the Monitor intends to work with the Applicant's former management to identify all employees that may be eligible for payments under the WEPP Act (the maximum amount of which for 2023 is CAD\$8,278.83) and assist eligible individuals in making submissions to Service Canada at the appropriate time.

Discharge of CRO

4.14 Pursuant to the Expansion of Monitor's Powers Order, effective from and after the closing of the Transaction, Scott Davido, in his capacity as chief restructuring officer of the Applicant ("**CRO**"), shall be discharged and released from his duties as the CRO. In the Monitor's view, the CRO has been essential in facilitating the CCAA Proceedings and the

⁸

As noted above, one member of the board of directors of the Applicant has remained to assist the Monitor with the wind-down of the Applicant's business. This individual is a director of the Applicant, not an employee.

Transaction, which resulted in the majority of the DCL Group's business (including the Applicant's) continuing for the benefit of a variety of its stakeholders.

5.0 ACTIVITIES OF THE MONITOR SINCE THE DATE OF THE FOURTH REPORT

5.1 Since the date of the Fourth Report, the activities of the Monitor have included the following:

- (i) continuing to assist DCL Canada with communications to suppliers, critical service providers, customers and other parties;
- (ii) engaging in discussions with the DCL Group, as well as their respective legal counsel and financial advisor regarding the Restructuring Proceedings, including closing of the Transaction;
- (iii) engaging in discussions with the FSRA staff and the appointed administrator of the Hourly DB Plan and Salaried DB Plan regarding the Canadian Pension Plans;
- (iv) attending the March 29, 2023 hearing for the granting of the Approval and Vesting Order;
- (v) provided the Stay Letter to the Teamsters;
- (vi) delivery of the Monitor's Certificate;
- (vii) responding to inquiries from stakeholders, including addressing questions or concerns of parties who contacted the Monitor on the hotline number or email account established by the Monitor for the CCAA Proceedings;

- (viii) monitoring receipts, disbursements, purchase commitments and the intercompany account between the Applicant and DCL US, including the review of payments made through to the closing of the Transaction;
- (ix) posting non-confidential materials filed with this Court to the Case Website; and
- (x) with the assistance of its legal counsel, preparing the proposed Expansion of Monitor's Powers Order and this Fifth Report.

6.0 CONCLUSIONS AND RECOMMENDATIONS

- 6.1 For the reasons set out in this Fifth Report, the Monitor respectfully recommends that this Court grant the proposed Expansion of Monitor's Powers Order.

All of which is respectfully submitted to this Court this 3rd day of May, 2023.

**ALVAREZ & MARSAL CANADA INC.,
solely in its capacity as Monitor of
1000156489 Ontario Inc. (f/k/a DCL Corporation)
and not in its personal or corporate capacity**

Per:



Josh Nevsky
Senior Vice-President

Per:



Stephen Ferguson
Senior Vice-President

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

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

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

FIFTH REPORT OF THE MONITOR

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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
1000156489 ONTARIO INC.**

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

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

SIXTH REPORT OF THE MONITOR

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