

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
COMMERCIAL LIST**

THE HONOURABLE )

FRIDAY, THE 2ND



*HAINEX*)

DAY OF NOVEMBER, 2018

Court File No. 31-2436097

**IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF  
FLUID BRANDS INC.,**

*(Court Seal)*

Court File No. 31-2436108

**IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF  
11041037 CANADA INC.**

Court File No. 31-2436109

**IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL  
OF 11041045 CANADA INC.**

**ADMINISTRATION ORDER**

**THIS MOTION**, made by Fluid Brands Inc., 11041037 Canada Inc. and 11041045 Canada Inc. (the "Debtors") for an Order, among other things, extending the time for filing a proposal pursuant to s. 50.4(9) of the *Bankruptcy and Insolvency Act* (the "BIA") approving the procedural consolidation of the Debtors' proposal proceedings, authorizing certain court-ordered charges against the property of the Debtors and other related relief was heard this day at the court house, 330 University Avenue, 7th Floor, Toronto, Ontario, M5G 1R7.

**ON READING** the Notice of Motion of the Debtors, in particular, the Affidavit of Fred Benitah, sworn November 1, 2018 (the “**Benitah Affidavit**”) and on reading the First Report to Court of Richter Advisory Group Inc. (“**Richter**”) in its capacity as Proposal Trustee (the “**Proposal Trustee**”) and on hearing the submissions of the counsel for the Debtors, counsel for the Proposal Trustee, counsel for Isaac Benitah Sales Agencies Inc., and counsel for the Canadian Imperial Bank of Commerce under the Credit Agreement (“**CIBC**”), being the first-ranking secured creditor and primary operating lender of the Debtors, such other persons listed on the counsel slip, no one else appearing.

### **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the First Report is hereby abridged and validated so that this motion is properly returnable today and that service, including the form, manner and time that such service was actually effected on all parties, is hereby validated, and where such service was not effected such service is hereby dispensed with.
2. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined herein have the meaning ascribed to them in the Forbearance Agreement.

### **PROCEDURAL CONSOLIDATION**

3. **THIS COURT ORDERS** that the Proposal proceedings of Fluid Brands Inc. (Court/Estate File No. 31-2436097), 11041037 Canada Inc. (Court/Estate File. No, 31-2436108) and 11041045 Canada Inc. (Court/Estate File No 31-2436109), are hereby procedurally consolidated.

4. **THIS COURT FURTHER ORDERS** that all further documents in any of the three consolidated proceedings be filed with the Court under the Court/Estate File No. 31-2436097 and that the title of proceedings in all three consolidated estates is as follows:

Court File No. 31-2436097  
Court File. No, 31-2436108  
Court File No 31-2436109

IN THE MATTER OF THE NOTICES OF INTENTION  
TO MAKE A PROPOSAL OF  
FLUID BRANDS INC.,  
11041037 CANADA INC. and 11041045 CANADA INC.

5. **THIS COURT ORDERS** that Richter, in its capacity as the Proposal Trustee of the consolidated Proposal Proceedings may administer the Proposal Proceedings on a consolidated basis, and the Proposal Trustee is authorized to administer the Proposal Proceedings as if they were a single proposal proceeding for the purpose of carrying out its administrative duties and responsibilities as proposal trustee under the BIA with respect to the administration of proposal proceedings generally, including without limitation:

- (a) the Proposal Trustee is authorized to issue consolidated reports in respect of the Proposal Proceedings; and
- (b) the Proposal Trustee is authorized to perform a consolidated mailing, filing, advertising and distribution of all filings and notices in the Proposal Proceedings required under the BIA.

#### **INTERIM FINANCING**

6. **THIS COURT ORDERS** that the Debtors are authorized pursuant to s. 50.6(1) of the BIA to collectively borrow Revolving Post-Petition Loans (all amounts advanced under the Revolving

Post-Petition Loans and all other Post-Petition Obligations under the Forbearance Agreement, the “**DIP Facility**”) from the DIP Lender (as defined below) up to the amount of the Credit pursuant to the Forbearance Agreement dated November 1, 2018 between *inter alia* the Debtors and CIBC (in such capacity, the “**DIP Lender**”) attached to the Benitah Affidavit (the “**Forbearance Agreement**” or the “**DIP Agreement**”) .

7. **THIS COURT ORDERS** the Debtors are hereby authorized and empowered to execute and deliver the Forbearance Agreement (which is hereby approved) and such other agreements, mortgages, charges, hypothecs or security agreement, or guarantees or other documents in connection with the interim financing (together with all such definitive documents previously executed and delivered by the Debtors to CIBC and the DIP Lender and presently in force and effect, the “**Definitive Documents**”) authorized herein and are hereby authorized and directed to pay and perform all of its indebtedness, interest and fees, liabilities and obligations to the DIP Lender pursuant to the DIP Facility and Definitive Documents as and when the same become due or are to be performed, notwithstanding any other provision in this Order.

8. **THIS COURT ORDERS** that the DIP Lender shall be entitled to a charge (the “**DIP Charge**”) against all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the “**Property**”) of each of the Debtors in priority to all Encumbrances (as defined below) as security for the due repayment of the DIP Facility.

9. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may, if it deems necessary, take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge but nothing herein obligates the DIP Lender to take any such steps;
- (b) Subject to the terms of the Forbearance Agreement, the DIP Lender (i) upon three (3) business days' written notice to the Applicant and the Proposal Trustee, may exercise any and all of its respective rights and remedies against the Debtors or the Property under or pursuant to the DIP Facility and the DIP Charge, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Debtors and for the appointment of a trustee in bankruptcy of the Debtors or to seize and retain proceeds from the sale of the Property and the cash flow of the Debtors to repay amounts owing to the DIP Lender; (ii) immediately upon providing written notice to the Debtors and the Proposal Trustee, may cease making advances to the Debtors and set off and/or consolidate any amounts owing by the DIP Lender to the Debtors and issue written demand for repayment, accelerate payment and give other notices; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of any of the Debtors or the Property, or in any proceedings under the *Companies' Creditors Arrangement Act* (the "CCAA").

10. **THIS COURT ORDERS AND DECLARES** that, unless otherwise agreed to in writing, the DIP Lender shall be treated as unaffected in any Proposal, plan of arrangement or compromise

filed by the Debtors under the CCAA or any plan of arrangement filed under the *Canada Business Corporations Act* or equivalent provincial legislation, with respect to the DIP Facility and in furtherance thereof CIBC in respect of the Pre-Petition Obligations under the Credit Agreement and the Existing Security and the DIP Lender under the Forbearance Agreement, shall be unaffected by any stay of proceedings under the BIA, but subject to Paragraph 9(b) above.

11. **THIS COURT ORDERS AND DECLARES** that except as may be expressly consented to by the DIP Lender, at no time on and after the NOI Filing Date shall all or part of any the Property be the subject of a Court ordered security or charge in favour of any party (other than the DIP Charge in favour of the DIP Lender) where such security or charge is purported to rank in any manner whatsoever in priority or *pari passu* to any claim of the DIP Lender in respect of the DIP Facility and in respect of the DIP Charge or any claim of CIBC in respect of the Pre-Petition Obligations under the Credit Agreement and the Existing Security.

12. **THIS COURT ORDERS** that the Debtors are hereby authorized to pay the DIP Lender, in accordance with the terms of the Forbearance Agreement and the Definitive Documents, from funds on hand, or from funds generated by post-filing sales of inventory or otherwise, any and all amounts owing by the Debtors to CIBC pursuant to the Credit Agreement on account of Pre-Petition Obligations.

#### **APPROVAL OF THE D&O CHARGE**

13. **THIS COURT ORDERS** that the Debtors shall indemnify their current and future directors and officers (the "Directors and Officers") against obligations and liabilities that they may incur as directors or officers of the Debtors after the commencement of the within proceedings, including, without limitation, in respect of any failure to pay wages and source

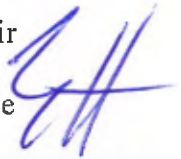
deductions and vacation pay, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or willful misconduct.

14. **THIS COURT ORDERS** that the Directors and Officers shall be entitled to the benefit of and are hereby granted a charge (the "D&O Charge") on all assets, rights, undertakings and properties of the Debtors, of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the "Property"), which charge shall not exceed an aggregate amount of \$500,000, as security for the indemnity provided in this Order. The D&O Charge shall have the priority set out herein.

15. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the Directors and Officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 6 of this Order.

**APPROVAL OF THE KEY EMPLOYEE INCENTIVE PAYMENTS (THE "KEIP")**

16. **THIS COURT ORDERS** that the Debtors shall be entitled to make KEIP's to their employees as determined by the Debtors' management, with the approval of the Proposal Trustee provided that the total aggregate amount of such payments shall not exceed \$500,000 and that the employees who are the beneficiaries of the KEIP (the "KEIP Beneficiaries") shall be entitled to the benefit of and are hereby granted a charge (the "KEIP Charge") on the Property as security of all amounts now or hereafter owing under the KEIP to the KEIP Beneficiaries, before and after the



making of this Order. The KEIP Charge shall have the priority set out in paragraph 19 herein, ~~subject to the Forbearance Agreement.~~



**APPROVAL OF THE ADMINISTRATION CHARGE**

17. **THIS COURT ORDERS** that the Proposal Trustee, Osler, Hoskin & Harcourt LLP as counsel for the Proposal Trustee (the “**Proposal Trustee’s Counsel**”) and Torkin Manes LLP as counsel to the Debtors in connection with these proceedings (the “**Company’s Counsel**”) shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Debtors as part of the costs of these proceedings. The Debtors are hereby authorized and directed to pay the accounts of the Proposal Trustee, the Proposal Trustee's Counsel and the Company's Counsel (for work performed in connection with these BIA proceedings) on a weekly basis.

18. **THIS COURT ORDERS** that the Proposal Trustee, the Proposal Trustee's Counsel and the Company's Counsel shall be entitled to the benefit of and are hereby granted a charge (the “Administration Charge”) on the Property, which Administration Charge shall not exceed an aggregate amount of \$500,000, as security for their professional fees and disbursements incurred at their respective standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out herein.

**PRIORITY OF CHARGES**

19. **THIS COURT ORDERS** that the priorities of the charges created under this Order, (together, the “Charges”), as among them shall be as follows:

First - the Administration Charge (to the maximum amount of \$500,000);



Second - the DIP Charge;

Third - the D&O Charge (to the maximum amount of \$500,000); and

Fourth - the KEIP Charge (to a maximum amount of \$500,000).

20. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts (including constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, the “**Encumbrances**”) in favour of any individual, firm, corporation, governmental body or agency or any other entity (each of the foregoing being a “Person”) save and except the Definitive Documents (including Existing Security) held by CIBC (and Encumbrances relating thereto) in respect of any and all amounts owing by the Debtors to CIBC pursuant to the Credit Agreement on account of Pre-Petition Obligations which such Definitive Documents of CIBC (and Encumbrances related thereto) shall rank in priority to the KEIRP Charge and D&O Charge.

21. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

22. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtors shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Debtors also obtain the

prior written consent of the Proposal Trustee and the other beneficiaries of the Charges, or further Order of this Court.

23. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “Chargees”) thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “Agreement”) which binds the Debtors, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Debtors of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by the creation of the Charges; and
- (c) the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

24. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Debtors' interest in such real property leases.

**AUTHORIZATION TO PAY PRE-FILING AMOUNTS**

25. **THIS COURT ORDERS** that the Debtors shall be at liberty to pay critical pre-filing creditors if, in the opinion of the Debtors, the Proposal Trustee and the DIP Lender, such payments are critical to the business and ongoing operations of the Debtors, up to a maximum of \$200,000 and provided that any such payments are specifically approved by the Proposal Trustee and the DIP Lender.

**STAY EXTENSION**

26. **THIS COURT ORDERS** that the Proposal Period is hereby extended in accordance with subsection 50.4(9) of the BIA, to and including ~~November 26, 2018~~ <sup>December 20, 2018</sup>.



**SERVICE AND NOTICE**

27. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the Rules of Civil Procedure (Ontario) (the "Rules"), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://www.richter.ca/Folder/Insolvency-Cases/Bombay>.

28. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Debtors and the Proposal Trustee are at liberty to serve or distribute this Order, any other materials and orders in these proceedings and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

29. **THIS COURT ORDERS** that the Debtors, the Proposal Trustee and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

30. **THIS COURT ORDERS** that the Proposal Trustee continues to be and is hereby authorized to take all steps required to fulfill its duties under the BIA or as an officer of the Court, including, without limitation, to:

- (a) monitor the Debtors' receipts and disbursements;

- (b) report to this Court at such times and intervals as the Proposal Trustee may deem appropriate with respect to matters relating to the Property, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Debtors in their preparation of the Debtors' cash flow statements, which information shall be reviewed with the Proposal Trustee and delivered to the DIP Lender, and its counsel, and to any financial advisors to the DIP Lender on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
- (d) assist the Debtors, to the extent required by the Debtors, in its dissemination to the DIP Lender and its counsel, and to any financial advisors to the DIP Lender, on a weekly basis of financial and other information as agreed to between the Debtors and the DIP Lender;
- (e) assist the Debtors in their development of a proposal to their creditors and any amendments to such proposal;
- (f) assist the Debtors, to the extent required by the Debtors, with the holding and administering of creditors' or shareholders' meetings for voting on a proposal;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Debtors, to the extent that is necessary to adequately assess the Debtors' business and financial affairs or to perform its duties arising under the BIA or this Order;

- (h) be at liberty to engage such Persons as the Proposal Trustee deems necessary or advisable respecting the exercise of its powers and performance of its obligations under the BIA or this Order; and
- (i) perform such other duties as are required by the BIA, this Order or by this Court from time to time.

31. **THIS COURT ORDERS** that the Proposal Trustee shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Debtors' business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Debtors' business or the Property, or any part thereof.

32. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Proposal Trustee under the BIA or as an officer of this Court, the Proposal Trustee shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to the Proposal Trustee under the BIA or any applicable legislation.

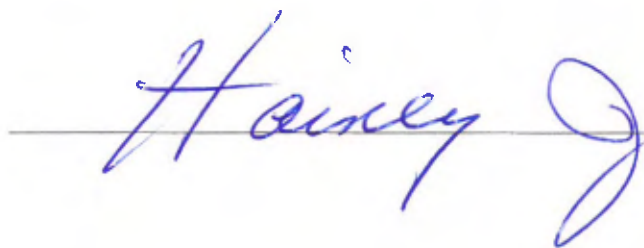
#### **GENERAL**

33. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

34. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of

America, to give effect to this Order and to assist the Debtors, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtors and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Debtors and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

35. **THIS COURT ORDERS** that any interested party (including the Debtors and the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF FLUID BRANDS INC.  
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 11041037 CANADA INC.  
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 11041045 CANADA INC.

Court File Nos. 31-2436097, 31-2436108 & 31-2436109

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**ADMINISTRATION ORDER**

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