

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
INDEED LABORATORIES INC.,  
IN THE CITY OF MISSISSAUGA, IN THE PROVINCE OF ONTARIO**

**FACTUM OF INDEED LABORATORIES INC.**  
(Returnable May 2, 2025)

May 1, 2025

**CHAITONS LLP**  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, Ontario M2N 7E9

**Harvey Chaiton** (LSO No. 21592F)  
Tel: (416) 218-1129  
E-mail: [harvey@chaitons.com](mailto:harvey@chaitons.com)

**Laura Culleton** (LSO No. 82428R)  
Tel: (416) 218-1128  
Email: [laurac@chaitons.com](mailto:laurac@chaitons.com)

**Lawyers for Indeed Laboratories Inc.**

TO: THE SERVICE LIST

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**PART I – NATURE OF THE RELIEF SOUGHT**

1. This factum is filed by Indeed Laboratories Inc. (“**Indeed Labs**” or the “**Company**”) in support of its application for:

- (a) An order (the “**Ancillary Order**”):
  - (i) if necessary, abridging the time for service and filing of the Notice of Motion and the Motion Record of Indeed Labs or, in the alternative, dispensing with service thereof;
  - (ii) approving the activities and conduct of BDO Canada Limited in its capacity as proposal trustee of Indeed Labs (the “**Proposal Trustee**”) as set out and described in the First Report of the Proposal Trustee dated April 23, 2025 (the “**First Report**”) and the Second Report of the Proposal Trustee dated April 30, 2025 (the “**Second Report**”);
  - (iii) authorizing an increase in the amount the Company is authorized to borrow up to the maximum of the \$500,000 under the interim financing

term sheet between Indeed Labs and 1000481370 Ontario Inc. dated April 22, 2025 (the “**Term Sheet**”);

- (iv) granting a \$250,000 first ranking priority charge over all of the Company’s assets, undertakings, and property (the “**Administration Charge**”) in favour of the Proposal Trustee, counsel for the Proposal Trustee and counsel for the Company to secure payment of their professional fees and disbursements;
- (v) granting an extension of the time required to file its proposal, from May 17, 2025, the date the current stay expires, to July 1, 2025 (the “**Stay Extension**”); and

(b) An order (the “**Sale Process Order**”):

- (i) approving the marketing and sale process (the “**Sale Process**”) for the business and assets of the Company as set out in Appendix “III” to the Second Report;
- (ii) approving and authorizing the Company to enter into the Stalking Horse Asset Purchase Agreement dated April 29, 2025 (the “**Stalking Horse Agreement**”) between Indeed Labs and 1000481370 Ontario Inc. as purchaser (in such capacity, the “**Stalking Horse Bidder**”, otherwise referred to as “**370 Ontario**”), solely for the purpose of acting as the stalking horse bid in the Sale Process, in the form attached as Appendix “V” to the Second Report, including approving the \$50,000 expense reimbursement (the “**Expense Reimbursement**”) in favour of the Stalking Horse Bidder contemplated therein; and

- (c) such further and other relief as the Company may request and the Court may deem appropriate.

## **PART II – FACTS**

### **Overview of the Company and Business**

2. Indeed Labs is a company incorporated pursuant to the Canada Business Corporations Act, on December 19, 2008. Indeed Labs' main office is located at 118 Avenue Road, Toronto, ON. It also has a warehouse located at 5181 Everest Drive, Mississauga, ON. Both the main office and warehouse are leased from affiliates to a shareholder of the Company and 370 Ontario.<sup>1</sup>

3. Indeed Labs is a developer and distributor of skincare products across Canada, the United States of America and the United Kingdom. The Company's products are manufactured by third-party contract manufacturers. The Company has several trademarks and owns proprietary formulas.<sup>2</sup>

4. The Company's main customers are Shoppers Drug Mart ("**Shoppers**"), Loblaws, Ulta, Amazon US and Amazon UK.<sup>3</sup>

### **Employees**

5. Indeed Labs currently employs approximately 17 (seventeen) people consisting mainly of administrative and sales staff. Payroll is paid to employees on a biweekly basis.<sup>4</sup>

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<sup>1</sup> Motion Record of Indeed Labs dated April 23, 2025 ("**First Motion Record**"), Tab 2, Affidavit of Kevin Watkinson sworn April 23, 2025 (the "**Watkinson Affidavit**"), at para. 3.

<sup>2</sup> First Motion Record, Tab 2, Watkinson Affidavit, at para. 4.

<sup>3</sup> First Motion Record, Tab 2, Watkinson Affidavit, at para. 5.

<sup>4</sup> First Motion Record, Tab 2, Watkinson Affidavit, at para. 6.

## Secured Creditors

6. Indeed Labs is currently indebted to 370 Ontario in the amount of approximately \$8,600,000 pursuant to:<sup>5</sup>

- (a) a grid promissory note dated as of December 31, 2021, assigned to 370 Ontario by In-Store Products Limited by way of an Assignment of Debt and Security Agreement and Debt Purchase Agreement both dated April 15, 2025. As security for this debt, 370 Ontario was assigned all of In-Store Products Limited's right, title and interest in, to and under a General Security Agreement dated December 31, 2021 granted by Indeed Labs to Total Cart Management Inc. (which was assigned to In-Store Products limited as of July 17, 2024); and
- (b) a convertible debenture effective as of June 15, 2018 in the principal amount of \$1,000,000 plus interest, assigned by Maycal Growth Fund LP (formerly Trilogy Growth Fund LP) to 370 Ontario by Maycal Growth Fund LP by way of an Assignment of Debt and Security Agreement and Debt Purchase Agreement both dated February 28, 2025.

7. Indeed Labs is also indebted to Cosmetic Synergies Incorporated in the principal amount of \$1,000,000 plus interest pursuant to a convertible debenture effective as of June 15, 2018.<sup>6</sup>

## The NOI Proceeding

8. On April 17, 2024 (the "**Filing Date**"), the Company filed a Notice of Intention to File a Proposal ("**NOI**") under the *Bankruptcy and Insolvency Act* (the "**NOI Proceeding**"). The NOI

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<sup>5</sup> First Motion Record, Tab 2, Watkinson Affidavit, at para. 7.

<sup>6</sup> First Motion Record, Tab 2, Watkinson Affidavit, at para. 8.

filing was necessary to provide stability to the allow the Company to restructure. BDO Canada Limited is the trustee in the NOI Proceeding (“**Proposal Trustee**”).<sup>7</sup>

### **DIP Financing**

9. On April 24, 2025, the Court granted an order (the “**Apr 24 Order**”), inter alia:<sup>8</sup>
- (a) authorizing the Company to enter into an interim financing term sheet with 1000481370 Ontario Inc. (in such capacity, the “**DIP Lender**”, otherwise referred to as “**370 Ontario**”) dated April 22, 2025 (the “**DIP Term Sheet**”), to obtain interim financing of up to \$500,000 to facilitate the continued operations of the Company during these proceedings and 370 Ontario was granted a \$500,000 second ranking priority charge over all of the Company’s assets, undertakings and property to secure repayment of the financing (the “**DIP Lender’s Charge**”); and
  - (b) authorizing interim advances under the Term Sheet of up to \$75,000 until further order of the Court.
10. The Company requires the ability to draw additional advances from the interim financing facility (the “**DIP Loan**”) under the Term Sheet to continue its operations. The Company’s 15-week cash flow (the “**Cash Flow**”) shows that the Company’s expenditures exceed its receipts in each week during the cash flow period.<sup>9</sup>

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<sup>7</sup> First Motion Record, Tab 2, Watkinson Affidavit at paras. 21-22.

<sup>8</sup> Motion Record of Indeed Laboratories Inc. dated April 30, 2025 (the “**Second Motion Record**”), Tab 2, Second Report of the Proposal Trustee dated April 30, 2025 (the “**Second Report**”) at para. 6.

<sup>9</sup> Second Motion Record, Tab 2, Second Report at paras. 18-19.

## Sale Process

11. The Proposal Trustee, in consultation with the Company, developed the Sale Process intended to solicit interest in and opportunities for a sale of all, substantially all, or a portion of the Company's business and assets (the "**Property**"). All capitalized terms not defined herein have the meaning ascribed to them in the Second Report.<sup>10</sup>

12. The Proposal Trustee and BDO Transaction Advisory (the "**Sales Agent**") are qualified to administer the Sale Process for the following reasons:<sup>11</sup>

- (a) they have considerable experience conducting similar sales processes;
- (b) they have industry and institutional contacts who they will ensure will be made aware of this opportunity;
- (c) they are independent of the Company; and
- (d) they will ensure that the Sale Process is conducted in a thorough, transparent, and efficient manner for the benefit of the Company's stakeholders.

13. The Sale Process shall commence within 5 business days following the issuance of the Sale Process Order. The table below sets out the key deadlines in the Sale Process (terms within the table are defined in the Second Report):<sup>12</sup>

<b>Milestone</b>	<b>Deadline</b>
Commencement of Sale Process	Within 5 business days after receipt of Sale Process Order
Distribution of the Notice and Teaser Letter	May 13, 2025

<sup>10</sup> Second Motion Record, Tab 2, Second Report at para. 20; Appendix "III" to the Second Report.

<sup>11</sup> Second Motion Record, Tab 2, Second Report at para. 21.

<sup>12</sup> Second Motion Record, Tab 2, Second Report at para. 22.

Bid Deadline	June 13, 2025
Auction	No later than June 20, 2025
Sale Approval Hearing	No later than July 31, 2025
Outside Closing Date Deadline	August 31, 2025

14. The key terms of the Sale Process are as follows:<sup>13</sup>
- (a) the Sales Agent will prepare a process summary describing the Opportunity (the “**Teaser Letter**”) and a non-disclosure agreement (the “**NDA**”);
  - (b) any party who wishes to participate in the Sale Process (“**Potential Bidder(s)**”) must provide to the Sales Agent an executed NDA and a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder;
  - (c) Qualified Bidders (as defined in the Second Report) that wish to make a formal offer to purchase the Property or a portion thereof shall submit a binding offer (a “**Bid**”) on substantially the same terms and conditions (except as to price and payment terms) as the terms and conditions contained in the Stalking Horse Agreement;
  - (d) in order for a bid to be considered a Qualified Bid, it must meet certain criteria as set out in the Second Report;
  - (e) Bids will be evaluated based on several factors including, without limitation: (i) the Purchase Price and the net value provided by such Qualified Bid, (ii) the identity, circumstances and ability of the Qualified Bidder to successfully complete such

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<sup>13</sup> Second Motion Record, Tab 2, Second Report at paras. 23-34.

Transaction, and (iii) factors affecting the speed, certainty and value of the Transaction;

- (f) the Stalking Horse Agreement will act as the minimum bid against which all other bids will be evaluated in the Sale Process;
- (g) Qualified Bidders with Qualified Bids shall proceed to an auction with the Stalking Horse Bidder to be held on or before June 20, 2025 (the “**Auction**”), which shall proceed according to the Auction Procedures set out in Schedule “B” to the Sale Process to identify the Successful Bid, and the bidder making such Successful Bid will be the Successful Bidder; and
- (h) if no other Superior Bids are received, it is contemplated that the Stalking Horse Agreement will be selected as the Successful Bid in the Sale Process, subject to court approval.

15. The key terms of the Stalking Horse Agreement are as follows:<sup>14</sup>

- (a) the Stalking Horse Agreement is structured as an asset purchase;
- (b) the purchase price to be paid by the Stalking Horse Bidder is the sum of i) \$4,900,000 (the “**Credit Bid Amount**”), and ii) all amounts ranking in priority to the Stalking Horse Bidder’s security on the Purchased Assets (the “**Priority Payables**”, and together with the Credit Bid Amount, the “**Purchase Price**”);
- (c) the Stalking Horse Bidder anticipates the retention of the majority of the Company’s employees;

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<sup>14</sup> Second Motion Record, Tab 2, Second Report at paras. 35-36; Appendix “V” to the Second Report.

- (d) closing is scheduled 15 days, or sooner, after receipt from the Court of an approval and vesting order in respect of the Sale Approval Motion; and
- (e) in the event a Qualified Bidder that is not the Stalking Horse Bidder is the successful bidder, the Stalking Horse Bidder is entitled to an expense reimbursement fee of \$50,000 inclusive of HST (the “**Expense Reimbursement**”). If the Stalking Horse Bidder is the Successful Bidder under the Sale Process, the Expense Reimbursement will not be payable, and the amounts advanced under the Term Sheet will be credited towards the Purchase Price.

16. Management has advised the Proposal Trustee that Cosmetic Synergies Incorporated (“**CSI**”), the Company’s subordinate secured creditor, is supportive of the Sale Process and the Stalking Horse Agreement.<sup>15</sup>

17. The Proposal Trustee is of the view that the stalking horse sale process will preserve the business and relationships with customers, suppliers and employees by signaling that the business of the Company will continue. In the view of the Proposal Trustee, the Expense Reimbursement amount is fair and reasonable and will not discourage third parties from submitting Bids.<sup>16</sup>

### **370 Security**

18. The Proposal Trustee obtained a security opinion from Capstone Legal (“**Capstone**”). Capstone has advised the Proposal Trustee that, subject to the usual qualifications and assumptions contained, it is of the opinion that the security held by 370 Ontario constitutes a validly perfected

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<sup>15</sup> Second Motion Record, Tab 2, Second Report at para. 37.

<sup>16</sup> Second Motion Record, Tab 2, Second Report at para. 39.

security interest in the assets and business of the Indeed enforceable against the Company in accordance with their terms.<sup>17</sup>

### **Administration Charge**

19. Indeed Labs seeks an order granting the Administration Charge over its property securing the fees and disbursements of counsel to Indeed Labs, the Proposal Trustee and its counsel in the amount of \$250,000. The professionals whose fees are to be secured by the Administration Charge have taken on, and will continue to take on, a critical role in this proceeding.<sup>18</sup>

### **Extension of NOI Period**

20. The stay of proceedings is set to expire on May 17, 2025 (the “**Proposal Period**”). Indeed Labs seeks a 45-day extension of the Proposal Period to give it the time needed to commence the sale process. If the Company is able to draw upon the full amount of the DIP Loan that was approved at the hearing on April 24, 2025, the Company is expected to have sufficient liquidity to fund its operations and the costs of these proceedings through the end of July.<sup>19</sup>

21. Indeed Labs has acted and is acting in good faith and with due diligence. The Company will likely be able to make a viable proposal to its creditors if the extension is granted.<sup>20</sup>

22. There is no known prejudice that will be suffered by any creditors by the proposed extension.<sup>21</sup>

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<sup>17</sup> Second Motion Record, Tab 2, Second Report at para. 40-42.

<sup>18</sup> First Motion Record, Tab 2, Watkinson Affidavit, at para. 30.

<sup>19</sup> First Motion Record, Tab 2, Watkinson Affidavit, at paras. 31-32; and Second Motion Record, Tab 2, Second Report at paras. 18-19.

<sup>20</sup> First Motion Record, Tab 2, Watkinson Affidavit, at paras. 33-34; Second Motion Record, Tab 2, Second Report at para. 45.

<sup>21</sup> First Motion Record, Tab 2, Watkinson Affidavit, at para. 35; Second Motion Record, Tab 2, Second Report at para. 45.

23. The Proposal Trustee and the DIP Lender support the extension of the Proposal Period.<sup>22</sup>

### **PART III – ISSUES**

24. The issues to be determined on this motion are whether the Court should:
- (a) approve the activities of the Proposal Trustee as set out in the First Report and the Second Report;
  - (b) approve the Sale Process and the Stalking Horse Agreement, including the Expense Reimbursement;
  - (c) authorize the Company to draw upon the full amount of the DIP Loan;
  - (d) grant the Administration Charge; and
  - (e) grant the Stay Extension.

### **PART IV – LAW AND ARGUMENT**

#### **Sale Process and Stalking Horse Agreement**

25. This Court recognized in *Danier Leather Inc., Re*, stalking horse agreements are commonplace in insolvency proceedings as they facilitate sales by establishing a baseline price and transactional structure to assess and optimize superior bids from interested parties. These agreements aim to maximize the value of a business for the benefit of its stakeholders, enhance the fairness of the sale process and assure a going-concern outcome.<sup>23</sup>

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<sup>22</sup> Second Motion Record, Tab 2, Second Report at para. 45.

<sup>23</sup> [Danier Leather Inc \(Re\), 2016 ONSC 1044](#) at [para 20](#) [*Danier*]; [CCM Master Qualified Fund v. blutip Power Technologies, 2012 ONSC 1750](#) at [para. 7](#) [*CCM*].

26. In approving a stalking horse agreement for the purpose of acting as a stalking horse bid, courts have considered whether the proposed stalking horse bid encourages the sale process without negatively impacting its efficiency and expediency.<sup>24</sup> In this case, the Stalking Horse Agreement should be approved as:<sup>25</sup>

- (a) the Stalking Horse Agreement sets a floor purchase price for the Property and encourages interested parties to submit a higher and better offer, maximizing the value of the transaction for the benefit of all of Indeed Labs' stakeholders;
- (b) the Stalking Horse Bidder was the only party that showed credible and timely interest in acquiring the Company's business and funding the Sale Process to allow the Company to effectively market and solicit offers for the Property.
- (c) the Stalking Horse Agreement promotes an efficient, transparent and competitive Sale Process;
- (d) the Stalking Horse Agreement assures that Indeed Labs' business will continue as a going concern;
- (e) the Stalking Horse Agreement does not include any break fee that may deter submission of bids from interested parties; and
- (f) having regard to the timelines contemplated by the Sale Process, the Proposal Trustee is of the view that the terms of the Stalking Horse Agreement, including the Expense Reimbursement, are fair and commercially reasonable and is supportive of its approval.

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<sup>24</sup> [CCM](#), at [paras. 7-8](#).

<sup>25</sup> Second Motion Record, Tab 2, Second Report at paras. 35-39.

27. When considering the approval of a sale process under the proposal provisions of the BIA, this Court has stated that the following four factors should be considered:<sup>26</sup>

- (a) Is a sale transaction warranted at this time?
- (b) Will the sale benefit the whole "economic community"?
- (c) Do any of the debtors' creditors have a bona fide reason to object to a sale of the business?
- (d) Is there a better viable alternative?

28. Although the decision to approve a particular sale process is distinct from approving a sale under section 65.13 of the BIA, courts have nonetheless noted that the adequacy of a sales process should be assessed with regard to whether it will result in a transaction that is capable of satisfying the non-exhaustive criteria enumerated in section 65.13.<sup>27</sup>

29. In particular, the Court will consider:<sup>28</sup>

- (a) Whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) Whether the proposal trustee approved the process leading to the proposed sale or disposition;

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<sup>26</sup> [Danier](#) at [paras. 23-25](#); [Mustang GP Ltd \(Re\)](#), 2015 ONSC 6562 at [paras. 37-38](#) [*Mustang*].

<sup>27</sup> [Danier](#), at [paras. 21-23](#), 34.

<sup>28</sup> [Bankruptcy and Insolvency Act](#), RSC 1985, c. B-3 s 65.13 [*BIA*]; [Danier](#) at [paras. 34-35](#).

- (c) Whether the proposal trustee filed with the Court a report stating that in their opinion, the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) The extent to which creditors were consulted;
- (e) The effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) Whether the consideration to be received for the assets is fair and reasonable, taking into account the market value for the assets.

30. Having regard to the above considerations, the Company submits that the Sale Process should be approved as:

- (a) a sale of Indeed Labs' business on a going-concern basis is in the Company's best interests and the interests of its stakeholders;
- (b) the Sale Process was designed to be flexible and maximize value;
- (c) the solicitation period of the Sale Process will provide sufficient time for the Company's assets to be exposed to the market;
- (d) a sale of Indeed Labs' business will maximize value for stakeholders, including the Company's employees and is expected to provide a higher and better result than a bankruptcy or liquidation scenario;
- (e) the Sale Process will be conducted by the Proposal Trustee and the Sales Agent in a fair and transparent matter;

- (f) the Sale Process will result in minimal disruption to the Company's operations;
- (g) the Proposal Trustee is supportive of the Sale Process and is of the view that it is the best option for the Company to preserve the value of its business and assets and to continue as a going-concern.

### **Interim Financing**

31. Pursuant to section 50.6 of the BIA, the Court may make an order declaring that all or part of the Company's property is subject to a security or charge and order that the security or charge rank in priority over the claim of any secured creditor of the Company.<sup>29</sup> At the last appearance, this Court approved the DIP Loan and DIP Lender's Charge, however, the Company was only permitted to draw upon the DIP Loan, the maximum amount of \$75,000 until further order of this Court.

32. The Company should be permitted to draw upon the full amount of the DIP Loan for the following reasons, which are consistent with the factors articulated in [Colossus Minerals Inc. \(Re\), 2014 ONSC 514](#) for approval of the DIP Term Sheet at paragraphs 4 to 9:<sup>30</sup>

- (a) the Company requires the DIP Loan to make its payroll and other operating expenses; and
- (b) the Company will be forced to cease operations if it does not receive interim funding.

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<sup>29</sup> [BIA, section 50.6\(1\) and 50.6\(3\).](#)

<sup>30</sup> See also [Mustang](#) at [paras. 26 to 31](#).

## **Administration Charge**

33. Indeed Labs seeks an Administration Charge in the maximum amount of \$250,000 (the “**Administration Charge**”) to secure the fees and disbursements of the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Company that are incurred in connection with these proposal proceedings. The Administration Charge is required to facilitate the NOI Proceeding.

34. Subsection 64.2(1) of the BIA provides that a court may grant a charge in favour of, among others, the Proposal Trustee and other professionals in respect of their fees and expenses to be incurred during NOI proceedings. Subsection 64.2(2) of the BIA provides that the court may order that the charge rank in priority over the claim of any secured creditor.<sup>31</sup>

35. In *Canwest Publishing*, the Court considered the following factors when addressing the analogous section of the CCAA:<sup>32</sup>

- (a) the size and complexity of the business being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the monitor.

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<sup>31</sup> [BIA, ss. 64.2\(1\) – 64.2\(2\)](#).

<sup>32</sup> [Canwest Publishing Inc \(Re\)](#), 2010 ONSC 222 at para. 54.

36. Administration charges have been approved in other proposal proceedings where the participation of the parties whose fees are to be secured is necessary to maximize the chances of a successful proceeding under the BIA.<sup>33</sup>

37. The Administration Charge should be granted for the following reasons:

- (a) the Administration Charge was determined by the Company in consultation with the Proposal Trustee based upon the fees incurred by the beneficiaries of the Administration Charge prior to filing and the fees expected to be incurred in the NOI Proceeding;
- (b) the quantum of the Administration Charge is fair and reasonable in the circumstances given the complexity and size of Indeed Labs' business and operations;
- (c) the beneficiaries of the Administration Charge will play critical roles in assisting the Company in the NOI Proceeding and the stalking horse sale process (if approved); there is no unwarranted duplication of roles of each of the proposed beneficiaries; and
- (d) the Proposal Trustee supports the Administration Charge.

### **Extension of Time**

38. Section 50.4(9) of the BIA provides that the Court may grant an extension or further extension not exceeding forty-five (45) days for any individual extension or five months in the

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<sup>33</sup> See [\*In the Matter of the Notice of Intention to Make a Proposal of The Body Shop Canada Limited\*, 2024 ONSC 1651](#) at paras. 55-56, [\*In the Matter of the Notice of Intention to Make a Proposal of Scotch & Soda Canada Inc.\*](#) at para. 13-18 (unreported); [\*Mustang\*](#) at paras. 32-33.

aggregate following the expiry of the original 30 day period. In determining whether to grant a debtor an extension under s. 50.4(9) the Court is required to examine three factors: (a) whether the debtor has acted in good faith and with due diligence; (b) whether the debtor would likely be able to make a viable proposal if the extension being applied for were granted; and (c) whether any creditor will be materially prejudiced by the extension.<sup>34</sup>

39. Indeed Labs submits that each of the factors have been met in this instance and the extension of the proposal period is appropriate as the extension will give Indeed Labs time to commence the sale process.<sup>35</sup>

40. The Company has acted and is acting in good faith and with due diligence.<sup>36</sup> The Company will likely be able to make a viable proposal to its creditors if the extension is granted.<sup>37</sup>

41. There is no known prejudice that will be suffered by any creditors by the proposed extension.<sup>38</sup>

42. With the DIP Loan, the Company is projected to have sufficient cash to continue operating through the end of July.<sup>39</sup>

43. The Proposal Trustee and the DIP Lender support the extension of the Proposal Period.

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<sup>34</sup> [BIA, s. 50.4\(9\)](#). See also [In the Matter of the Notice of Intention to Make a Proposal of The Body Shop Canada Limited, 2024 ONSC 1651](#) at paras. 73-75.

<sup>35</sup> First Motion Record, Tab 2, Watkinson Affidavit, at para. 32.

<sup>36</sup> First Motion Record, Tab 2, Watkinson Affidavit, at para. 33.

<sup>37</sup> First Motion Record, Tab 2, Watkinson Affidavit, at para. 34.

<sup>38</sup> First Motion Record, Tab 2, Watkinson Affidavit, at para. 35.

<sup>39</sup> Second Motion Record, Tab 2, Second Report at paras. 18-19.

**PART IV – ORDERS REQUESTED**

44. For the above reasons, Indeed Labs requests the Orders sought at paragraph 1 of this factum.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 1<sup>st</sup> day of May, 2025.



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**CHAITONS LLP**

5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, Ontario M2N 7E9

**Harvey Chaiton** (LSO #21592F)

Tel: (416) 218-1129

E-mail: [harvey@chaitons.com](mailto:harvey@chaitons.com)

**Laura Culleton** (LSO No. 82428R)

Tel: (416) 218-1128

Email: [laurac@chaitons.com](mailto:laurac@chaitons.com)

**Lawyers for Indeed Laboratories Inc.**

## SCHEDULE “A”

### AUTHORITIES

1. [\*Danier Leather Inc \(Re\)\*, 2016 ONSC 1044](#)
2. [\*CCM Master Qualified Fund v. blutip Power Technologies\*, 2012 ONSC 1750](#)
3. [\*Mustang GP Ltd. \(Re\)\*, 2015 ONSC 6562](#)
4. [\*Colossus Minerals Inc. \(Re\)\*, 2014 ONSC 514](#)
5. [\*Canwest Publishing Inc \(Re\)\*, 2010 ONSC 222](#)
6. [\*In the Matter of the Notice of Intention to Make a Proposal of The Body Shop Canada Limited\*, 2024 ONSC 1651](#)
7. [\*In the Matter of the Notice of Intention to Make a Proposal of Scotch & Soda Canada Inc. \(unreported\)\*](#)

## **SCHEDULE “B”**

### **TEXT OF STATUTES, REGULATIONS & BY - LAWS**

#### ***Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended***

##### **Who may make a proposal**

50 (1) Subject to subsection (1.1), a proposal may be made by

- (a) an insolvent person;
- (b) a receiver, within the meaning of subsection 243(2), but only in relation to an insolvent person;
- (c) a liquidator of an insolvent person’s property;
- (d) a bankrupt; and
- (e) a trustee of the estate of a bankrupt.

##### **Notice of intention**

50.4 (1) Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person’s locality, stating

- (a) the insolvent person’s intention to make a proposal,
- (b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and
- (c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor’s books,

and attaching thereto a copy of the consent referred to in paragraph (b).

##### **Extension of time for filing proposal**

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

##### **Order — interim financing**

50.6 (1) On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the debtor’s property is subject to a security or charge — in an amount that the court considers

appropriate — in favour of a person specified in the order who agrees to lend to the debtor an amount approved by the court as being required by the debtor, having regard to the debtor's cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.

### **Individuals**

- (2) In the case of an individual,
- (a) they may not make an application under subsection (1) unless they are carrying on a business; and
  - (b) only property acquired for or used in relation to the business may be subject to a security or charge.

### **Priority**

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

### **Priority — previous orders**

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

### **Factors to be considered**

- (5) In deciding whether to make an order, the court is to consider, among other things,
- (a) the period during which the debtor is expected to be subject to proceedings under this Act;
  - (b) how the debtor's business and financial affairs are to be managed during the proceedings;
  - (c) whether the debtor's management has the confidence of its major creditors;
  - (d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;
  - (e) the nature and value of the debtor's property;
  - (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
  - (g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.

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

64.2 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

- (a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;
- (b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

### **Priority**

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

### **Individual**

(3) In the case of an individual,

(a) the court may not make the order unless the individual is carrying on a business; and

(b) only property acquired for or used in relation to the business may be subject to a security or charge.

### **Restriction on disposition of assets**

65.13 (1) An insolvent person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

### **Individuals**

(2) In the case of an individual who is carrying on a business, the court may authorize the sale or disposition only if the assets were acquired for or used in relation to the business.

### **Notice to secured creditors**

(3) An insolvent person who applies to the court for an authorization shall give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

### **Factors to be considered**

(4) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the trustee approved the process leading to the proposed sale or disposition;

(c) whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

**Additional factors — related persons**

(5) If the proposed sale or disposition is to a person who is related to the insolvent person, the court may, after considering the factors referred to in subsection (4), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the insolvent person; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

**Related persons**

(6) For the purpose of subsection (5), a person who is related to the insolvent person includes

(a) a director or officer of the insolvent person;

(b) a person who has or has had, directly or indirectly, control in fact of the insolvent person; and

(c) a person who is related to a person described in paragraph (a) or (b).

**Assets may be disposed of free and clear**

(7) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the insolvent person or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

**Restriction — employers**

(8) The court may grant the authorization only if the court is satisfied that the insolvent person can and will make the payments that would have been required under paragraphs 60(1.3)(a) and (1.5)(a) if the court had approved the proposal.

**Restriction — intellectual property**

(9) If, on the day on which a notice of intention is filed under section 50.4 or a copy of the proposal is filed under subsection 62(1), the insolvent person is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (7), that sale or disposition does not affect the other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as

long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
INDEED LABORATORIES INC.  
IN THE CITY OF MISSISSAUGA, IN THE PROVINCE OF ONTARIO**

Court File No. BK-25-03213105-0032

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

**FACTUM OF INDEED LABORATORIES INC.**  
**(RETURNABLE MAY 2, 2025)**

**CHAITONS LLP**

5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, Ontario M2N 7E9

**Harvey Chaiton** (LSO No. 21592F)

Tel: (416) 218-1129

E-mail: [harvey@chaitons.com](mailto:harvey@chaitons.com)

**Laura Culleton** (LSO No. 82428R)

Tel: (416) 218-1128

Email: [laurac@chaitons.com](mailto:laurac@chaitons.com)

**Lawyers for Indeed Laboratories Inc.**